

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

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

**AP-20240000009686
AP-20240000009687
AP-20240000009688**

WĀHANGA <i>Under</i>	Sections 239 and 338(3) Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Torere Reserve and Others
NĀ <i>By</i>	RACHELL MIO Te kaitono <i>Applicant</i>

Nohoanga: 10 December 2024
Hearing (Heard at Torere)

Kanohi kitea: J Gear for the Applicant
Appearances

Whakataunga: 20 December 2024
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ T M WARA
Judgment of Judge T M Wara

Ko Tainui te waka
Ko Kapuarangi te maunga
Ko Wainui te awa
Ko Torere-nui-a-rua raua ko Manaaki-ao ngaa tupuna
Ko Ngaitai te iwi

Hei tīmatanga kōrero

Introduction

[1] In 1999, the people of Ngaitai had the foresight to collectivise the administration of their reservation lands, including Torere Pa Reserve, Torere Reserve No. 2 (Beach, River and Stores Depot), Torere Reserve No. 4 (Torere and Manakiao), and Torere Urupas (Hanoa, Te One, Owainene and Opeperu). These reservations, set aside for the benefit of the people of Ngaitai, were aggregated under the administration of the Torere Reserves Trust (the Trust).

[2] In 2014, the trustees decided it was time to update their charter to encompass all relevant regulations and frameworks. This updated charter took four (4) years to complete and was ratified by the people of Ngai Tai on 21 April 2018 (the Charter). The Charter records that:¹

the trustees and beneficiaries of the reservation have reached an agreement as to the terms of a Charter under which the powers and responsibilities of the trustees are recorded for the effective and efficient administration of **all Torere Reserves**.

(Emphasis added)

[3] Garry Watson was one of the trustees who signed the Charter in agreement with the people of Ngaitai. He now challenges the Charter and its application to the reserves outside of the Torere Pa Reserve (being the marae). He says that the Charter only applies to the marae, and that the Māori Reservation Regulations 1994 (the MRRs) apply to the administration of the other three (3) reserves. As a result, the administration of the Trust has been at a standstill since late 2023, as two factions within the trustees have been incapable of working together in the interest of their beneficiaries.

[4] There are five applications currently before the Court:

¹ Torere Reserves Trust Charter, Torere Reserves Trust, 21 April 2018 at 7.

- (a) **AP-20240000004695** - An application filed by Rachell Mio seeking an inquiry into the administration of a Māori Reservation;
- (b) **AP-20240000004688** - An application filed by Rachell Mio seeking a judicial conference seeking directions for a review of trust;
- (c) **AP-20240000009686** - An application filed by Lawrence Williams, Rachell Mio and Garry Watson seeking to reduce the trustees of the Torere Reserves Trust by removing Ripeka (Rebecca) Mihaere, Jackie Mihaere and Kimberley Tui Tuiawekare Enoke;
- (d) **AP-20240000009687** - An application filed by the Deputy Registrar seeking to replace Garry Watson and Heke Collier with Rangi Williams, Frank Lewis Vokaty, Rawinia Mariner and Brent Ranapia Day as responsible trustees of the Torere Reserves Trust;
- (e) **AP-20240000009688** - An application filed by the Deputy Registrar seeking to set out the terms of trust for the Torere Reserves Trust.

He aha te kaupapa o te kehi?

What is this case about?

[5] This case is about ensuring that the Trust can operate effectively, and that the trustees can work together in the interests of the people they serve, being the people of Ngai Tai.

[6] There are currently ten (10) trustees of the Torere Reserves Trust, namely:

- (a) Diana Grace Anderson,²
- (b) Garry Watson,³
- (c) Heke Collier,⁴

² Appointed at 304 Waiariki MB 205-212 (304 WAR 205-212) on 2 Nov 2023.

³ Appointed at 87 Waiariki MB 164-173 (87 WAR 164-173) on 7 Nov 2013.

⁴ Appointed at 87 Waiariki MB 164-173 (87 WAR 164-173) on 7 Nov 2013.

- (d) Jackie Mihaere,⁵
- (e) Kimberley Tui Tuiawekare Enoke,⁶
- (f) Lawrence Paratene Williams,⁷
- (g) Ngaroma Wency Rewi,⁸
- (h) Rachell Vivian Mio,⁹
- (i) Ripeka (Rebecca) Mihaere¹⁰ and
- (j) Tania Lee van den Broek.¹¹

[7] On 18 June 2024, I heard two applications pertaining to the Trust, being the applications filed by Rachell Mio seeking an inquiry into the administration of a Māori Reservation, and a judicial conference seeking directions for a review of the Trust.

[8] Rachell's opening kōrero at the hearing sums up her concerns:¹²

R Mio: Our trust is split. There has been disagreements for months. Our trust has been confused with governance and what legislation that we're ruled by. Part of our trust believes the Tōrere Charter governs our trust.

...

R Mio: And the other part of our trust believe it's the Ture Whenua Act and the Māori Reservation Regulations as the main ones. The split has escalated to violence within our community. This split has incited hate, bringing our trust into disrepute with the community and I refer to Rose Hawke's pākiki petition as evidence of that.

The Tōrere Marae Facebook page is full of hate speech against some trustees. Our reserves have been used without permission from the trustees and when we have raised that with the other trustees they've said that I'm bringing, or Garry's bringing in our tauwi ways and we've been kicked out of meetings, we've been locked out of

⁵ Appointed at 90 Opotiki MB 174-179 (90 OPO 174-179) on 2 Dec 2005.

⁶ Appointed at 286 Waiariki MB 216-223 (286 WAR 216-223) on 14 Nov 2022.

⁷ Appointed 316 Waiariki MB 248-249 (316 WAR 248-249) on 27 June 2024.

⁸ Appointed 152 Waiariki MB 152-157 (152 WAR 152-157) on 14 Nov 2016.

⁹ Appointed 266 Waiariki MB 115-122 (266 WAR 115-122) on 2 Nov 2021.

¹⁰ Appointed 213 Waiariki MB 49-52 (213 WAR 49-52) on 6 May 2019.

¹¹ Appointed 286 Waiariki MB 216-223 (286 WAR 216-223) on 14 Nov 2022.

¹² 317 Waiariki MB 272-294 (317 WAR 272-294) at 273-274.

meetings. We've been misled that the meeting is over and yet the meetings have continued.

We were hoping that by asking the Court for help that we would be able to keep the trust from getting a bad reputation in the community and now it's just taking so long it's gotten worst.

[9] There was a general acceptance from the other trustees present at the hearing that the Trust was not functioning. Aside from the dispute as to whether the trustees follow the Charter or the MRRs, there were also issues as to vacancies that had arisen due to resignations, and whether those trustees who had resigned could still vote at meetings. The appointment of a chairperson was also challenged. In addition, concerns were also expressed about financial matters that needed to be addressed.

[10] The trustees convene their monthly meetings on the third Monday of the month. At the hearing, the trustees agreed to hold their next meeting on the Monday following the Court hearing being 24 June 2024.

[11] Ultimately there was an agreement from the parties for their issues to be referred to mediation, and the hearing was adjourned.

[12] Following the hearing, the Court received various correspondence from the trustees. There were issues regarding the meeting of trustees that was to take place prior to 24 July 2024. Tania had tried to call a meeting however this meeting did not proceed due to the availability of trustees. A further meeting was held on 20 July 2024 that was attended by four trustees: Garry, Rachell, Heke and Katene. Those four trustees passed a resolution to appoint Garry as chairperson and adjourn the annual general meeting (AGM) until after mediation.

[13] In the meantime, Tania had published the notice for the AGM, which included, amongst other matters, an election and a discussion regarding the terms of the trust. The notice was sent to the Court on 31 July 2024. The notice confirmed an election for four (4) trustee vacancies:

(a) Ripeka Mihaere: resignation

(b) Kimberly Enoka: resignation

(c) Garry Watson: rotation

(d) Heke Collier: rotation

[14] On 5 August 2024, Mr Joshua Gear, counsel for Garry, Rachell, Heke and Katene, sought a direction for the AGM to be deferred until after mediation, referring to the resolution passed by his clients at the meeting of 20 July 2024.

[15] The following day, I directed for the meeting to proceed as advertised, sanctioning the meeting. I confirmed that mediation would take place following the AGM. In addition, I offered to appoint an independent facilitator to assist. This offer of assistance was declined by Garry, Rachell, Heke and Katene.

[16] On 9 August 2024, Mr Gear filed a further memorandum seeking a judicial conference to discuss my directions and filed a statement from some of the trustees in support. The following issues were raised:

- (a) Who is the rightful chairperson of the Torere Reserves Trust;
- (b) The trust should be presenting a unified position; and
- (c) Concerns as to personal safety at the AGM.

[17] I addressed these matters in a minute dated 14 August 2024.¹³ I directed that a facilitator is appointed to facilitate the meeting in accordance with the advertised agenda, subject to some minor amendments.

I ahatia i te hui a tau?

What happened at the AGM?

[18] The AGM proceeded on 24 August 2024, and unsurprisingly, was not without some conflict. I received reports from Jimi McLean of the Māori Land Court, who I appointed to

¹³ 318 Waiariki MB 72-75 (318 WAR 72-75).

facilitate the AGM, and Carol Smith, Pae Tukutuku of the Māori Land Court,¹⁴ who were present at the meeting. The reports were circulated to the parties on 18 October 2024.

[19] The report of Mr McLean advised that there were challenges on the day. This includes procedural challenges from Garry regarding the meeting, the appointment of a facilitator, and the involvement of Court staff. In addition, Mr McLean reported that four trustees, Garry, Heke, Rachell and Katene, threatened to walk out of the meeting, however, after an initial departure Garry and Katene sat in the audience for the election.¹⁵ Ultimately Mr McLean reports that despite the disruption, 13 nominations were received for the four (4) vacancies, and an election took place.

[20] The report of Ms Smith addressed the nomination and voting process for the replacement trustees. Ms Smith reported that the meeting was well attended, with 86 people present in person, and a further 13 attending by way of Zoom. Ms Smith also reported on the outcome of two agenda items: (a) terms of trust; and (b) election of trustees.

[21] With regard to the terms of trust, Ms Smith's report advises that the resolution put to the meeting of owners as per the Court's agenda was: "whether the people of Ngai Tai support the adoption of the current charter as the terms of trust for all the reserves."¹⁶ The resolution was passed by majority, with the draft minutes of the AGM recording that 14 people voted against the resolution, and signalled that another person ought to have been included in the count.

[22] As to the election of trustees, Ms Smith reported that nominations were received from the floor, and thirteen (13) nominations were made and accepted. Voting was by way of ballot, in accordance with the Court's directions, on a form created by Court staff. There were 71 people who voted on the day, and twelve (12) people who voted online. Each person could vote for up to four (4) nominees. The results for the four (4) replacement trustees are as follows:

¹⁴ Ms Smith provided two separate reports: Report to Her Honour Judge Wara, Carol Smith, 29 August 2024; Report on Nomination process and voting of replacement trustees, Carol Smith, 29 August 2024.

¹⁵ Memorandum to Her Honour Judge Wara, Jimi Mclean, 5 September 2024 at [4].

¹⁶ Report to Her Honour Judge Wara, Carol Smith, 29 August 2024.

Nominee/name	Votes on the day	Votes online	Total
Rangi Williams	56	10	66
Brent Day	35	10	45
Rawinia Mariner	36	8	44
Frank Vokaty	30	5	35

Ngā take*Issues for determination*

[23] The relevant issues for determination are:

- (a) Were there any procedural issues arising from before the AGM?
- (b) Was the AGM valid?
- (c) Are the decisions reached at the AGM valid?
- (d) Are the trustee elects suitable?

Were there any procedural issues arising from before the AGM?

[24] Requests had been made for adjournments prior to the hearing of 10 December 2024. I have already dealt with these requests in previous minutes and will not repeat my decisions.

[25] As to whether notice was sufficient, notice requirements under reg 19(1) of the MRRs sets out that notice of an AGM must be published 21 days prior to the AGM being held. This notice must be published in the local newspaper and must include the time and place of the meeting and anything else as directed by the Court. Clause 6.1.2 of the Torere Reserves Trust Charter (the Charter) states that 21 days' notice of an AGM shall be issued to the trustees of the Trust and be advertised in the Ōpōtiki News.

[26] In *Pita v Ngatiwai ki Whangaruru Whenua Topu Trust*, the Court considered the sufficiency of notice.¹⁷ The Court found that notice, absent of the special resolutions voted on at the meeting, was sufficient, as the trustees were well aware of the issues being addressed.

[27] The notice for the Torere Reserves Trust AGM scheduled for 24 August 2024 was provided to the Court on 31 July 2024 and subsequently advertised, meeting the timeframe of 21 days. This notice included a detailed agenda. On 14 August 2024, I issued directions regarding the AGM, including an amended agenda.¹⁸ Although the directed agenda was slightly different to the original notice, the items on the agenda remained the same.

[28] While the issuing of the amended agenda was less than 21 days prior to the AGM, it was reasonable for the trustees and the beneficiaries to expect that the resolution of “Whether the people of Ngai Tai support the adoption of the current charter as the terms of trust for all the reserves?” was to be discussed at the AGM. This resolution was discussed at length at the hearing on 18 June 2024.¹⁹

[29] For these reasons, I am satisfied that notice was sufficient.

Was the AGM valid?

[30] Procedural issues have been raised about the AGM by the following trustees: Garry, Rachell, Katene and Heke. They were present at the hearing of 10 December 2024 held at Torere Marae, and their counsel, Mr Gear, made submissions on their behalf.

[31] Many of the procedural issues being raised relate to two decisions made at a trustee meeting held on 20 July 2024 (the July meeting), attended by Garry, Rachell, Katene and Heke. The first decision being the appointment of Garry as the chairperson, and second, a decision to defer the AGM. If these decisions are valid, then it follows that there are potential validity issues for the AGM.

¹⁷ *Pita v Ngatiwai Ki Whangaruru Whenua Topu Trust* (2010) 10 Taitokerau MB 40 (10 TTK 40).

¹⁸ Above n 13.

¹⁹ Above n 12.

[32] The problem is however, as raised with counsel, the issue of quorum. At the time of the July meeting, there were ten (10) trustees in office following the appointment of Lawrence Paratene Williams.²⁰ While counsel argued that only the active trustees should be included as a matter of practice, the legal position is clear. The assessment of quorum includes all current trustees, regardless of whether or not they have resigned.²¹

[33] Under reg 17(c) of the MRRs, no business shall be transacted at any meeting unless a quorum is present. Regulation 17(d) of the MRRs confirms that a quorum shall consist of at least one-half in the number of trustees. As the total number of trustees in office at the time of the July meeting was ten (10), then six (6) trustees were required to transact business. At the July meeting, only four trustees were present. It follows that any decisions made at the July meeting, including the decision to defer to AGM, and to appoint Garry as chairperson, are invalid due to lack of quorum.

[34] Therefore, the concerns raised about the validity of the AGM, given the trustees decision to defer the AGM, and the closing of the AGM by the chairperson are without foundation as Garry was not the appointed chairperson.

[35] Another issue that arose during the AGM was the departure of four of the trustees before the completion of business. They assert that the meeting fails as it became inquorate. The MRRs are silent as to a requisite quorum of trustees, or beneficiaries, at an AGM. However, clause 6.1.3 of the Charter requires a quorum of ten (10) beneficiaries and five (5) trustees at any general meeting.

[36] During the AGM, concerns were raised by Garry, asserting that abusive comments were being made towards the trustees. After repeated warnings, Garry, Rachell, Katene and Heke threatened to walk out of the meeting citing safety concerns. I will return to the issue of safety shortly. Rachell and Heke left the meeting entirely while Garry and Katene remained and sat with the beneficiaries, informing the facilitator that they were present only in their capacity as beneficiaries, not trustees. They say that the departure of trustees resulted in the meeting failing due to lack of quorum.

²⁰ Lawrence was appointed as an additional trustee at 316 Waiariki MB 248-249 on 27 June 2024 by the Registrar in accordance with the application filed by Garry Watson (AP-20240000006553).

²¹ *Wall v Karaitiana – Tauhara Middle 15 Trust* (2008) 87 Taupo 107 (87 TPO 107) at [88]; *Donnelley v Tuala Rongohaere Marae* (2007) 78 Ruatoria MB 55 (78 RUA 55) at [31].

[37] Firstly, I am not satisfied that a trustee can change their hats during a meeting – in that they can leave a meeting as a trustee but return as a beneficiary. There is no authority to support this proposition. Secondly, six (6) other trustees remained at the meeting, therefore the exit of four (4) trustees had no impact on the quorum under the Charter. In any event, even if a meeting is closed early due to it becoming unruly, in accordance with *Perenara v Pryor*, the Court’s role is to assess the evidence from the meeting and determine the weight to be attributed:²²

... if a formal meeting is convened and then fails for want of procedure, the Court should identify that and weigh it in balance. If the formal meeting transforms into an informal hui, as happened here, then the Court needs to make that assessment and determine the weight to be given to such evidence.

[38] Furthermore, as stated in *Walker – Katikati Parish 1A*:²³

Meetings are simply to decide what evidence might be given by this particular group of persons to the Court. In the end it is the Court that affects rights and interests and it is at Court that legitimate expectations exist and the rules of natural justice apply.

...

If the meeting is in fact a sham or is “hijacked” then that reflects on the quality of the evidence that can be given to the Court and the weight upon which the Court can properly place upon it.

[39] Taking these factors into account, I am satisfied that the exit of Rachell and Heke had no bearing on the quorum of the meeting.

[40] Returning to the safety concerns, these matters were raised with the Court prior to the meeting. I directed the appointment of a facilitator to assist with the AGM and approved Zoom attendance to relieve safety concerns. In addition, I directed ballot voting to ensure that those who attended remotely could still participate in the business, including the election of trustees and voting on the terms of trust.

[41] Ultimately those trustees who had signalled concerns about their safety ahead of the meeting could have mitigated their concerns and attended the meeting remotely.

²² *Perenara v Pryor – Matata 930* (2004) 10 Waiariki Appellate MB 233 (10 AP 233).

²³ *Walker - Katikati Parish 1A* (1995) 18 Waikato Maniapoto Appellate MB 260 (18 APWM 260) at 261-262.

[42] As to the steps taken by the Court, the appointment of a facilitator and directing the ability for parties to attend the meeting remotely are options available to the Court to assist with the procedure of the AGM. These directions are consistent with the general objective set out in s 17 of Te Ture Whenua Māori Act 1993 (the Act), where the primary objective of the Court is to assist in the effective use and management of Māori land, through the promotion of practical solutions.

[43] Taking these factors into account I am satisfied that the meeting was valid, and in any event, my role is to decide how much weight to put on the evidence from the meeting.

Are the decisions reached at the AGM valid?

[44] There were two key resolutions considered at the AGM:

- (a) The terms of trust; and
- (b) The election of trustees.

[45] With regard to the terms of trust, s 338(8) of the Act provides that the Court may set out the terms of trust for the administration of the reservation. This has become a necessary step since, as rightly identified by Garry at the hearing of 18 June 2024, the Charter only applies to the marae reservation as opposed to all the reserves per reg 7 of the MRRs.

[46] As previously stated, the applicability of the Charter, versus administration in accordance with the MRRs, is central to the current dispute. It was discussed at length during the hearing of 18 June 2024, where I raised a practical solution, being the adoption of the Charter for the terms of trust for the administration of the entire reservation, not only the marae. The reason for this was twofold. First, it gives the trustees one rulebook to follow – which should be read consistently with the MRRs in any event. Second, as a matter of practicality, as it took the trustees and beneficiaries four years to settle on an acceptable charter.

[47] While issues have been raised as to whether alternative options ought to be considered, given the disputes between the trustees, further delays were untenable.

[48] The resolution was put to the meeting of owners as per the Court’s agenda: “whether the people of Ngai Tai support the adoption of the current charter as the terms of trust for all the reserves.” The evidence is that the resolution was discussed, and ultimately a decision was reached. The vast majority of the people of Ngai Tai supported the adoption of the current charter as the terms of trust. I am satisfied that there is a sufficiency of support.

[49] Even if there was insufficient support, precedent indicates that the views of beneficiaries do not need to be taken into account when setting out terms of trust. In contrast to Part 12 of the Act, where the Court must take into account sufficiency of support for the approval or variation of terms of trust, there is no such requirement under s 338(8) of the Act. In *Pita v Ngatiwai ki Whangaruru Whenua Topu Trust*, Judge Ambler determined that he would set out the terms of trust, without the contents being considered or approved by the beneficiaries.²⁴

[50] Turning now to the election of trustees, thirteen (13) nominations were made and accepted. Voting was by way of ballot in accordance with the Court’s directions, on a form created by Court staff. There were 71 people who voted on the day, and twelve (12) people who voted online. Each person could vote for up to four (4) nominees. The four successful candidates, as I have previously mentioned above, are: Rangi Williams; Brent Day; Rawinia Mariner and Frank Vokaty. Again, I am satisfied that there is a sufficiency of support for these candidates.

[51] Taking these matters into account, I am satisfied that the decisions reached at the meeting were valid, and the evidence supports the setting out of the Charter as the terms of trust per s 338(8) of the Act; and the appointment of replacement trustees per s 239 of the Act.

When do the terms of trust take effect?

[52] Counsel has raised an issue as to the effect of the terms of trust, in that those terms only take effect once orders are granted. It follows, in counsel submission, that Garry and Heke can only be replaced with respect to the marae reservation in accordance with the Charter and a further meeting is required as to the remaining reservations.

²⁴ Above n 15.

[53] This would result in complete impracticality, to have different trustees on the trust, particularly when the people of Torere are clear about their desire for the reserve to be managed collectively. In any event, I will grant orders first setting the terms of trust, and then replace trustees.

Are the trustee elects suitable?

[54] Based on the evidence, I am satisfied that all of the trustee elects are suitable to be appointed as trustees.

[55] There is one issue, however. The Charter provides for a maximum of nine (9) trustees, and there have been ten (10) trustees in office. Therefore, while four (4) vacancies were advertised, in actual fact there are only three (3) vacancies to be filled. Therefore, I will only appoint the three highest polling candidates, being Rangi Williams; Brent Day and Rawinia Mariner.

Kupu whakatau

Decision

[56] I am satisfied that there is sufficient support for setting the terms of trust for the Torere Reserves Trust, and the appointment of replacement trustees. Accordingly, orders are granted under:

- (a) s 338(8) of the Act setting out terms of trust, in accordance with the terms currently contained in the Charter.
- (b) s 239(1) replacing Ripeka (Rebecca) Mihaere and Kimberley Tui Tuiawekare Enoka who have resigned, and Garry Watson and Heke Collier who have retired, with Rangi Williams; Brent Day and Rawinia Mariner.
- (c) s 239(3) vesting in Brent Ranapia Day, Diana Grace Anderson, Lawrence Paratene Williams, Ngaroma Wency Rewi; Rawinia Mariner; Rachell Vivian Mio; Rangi Williams and Tania van der Broek the lands known as Torere Pa Reserve, Torere Reserve No. 2 (Beach, River and Stores Depot), Torere Reserve No. 4 (Torere and Manakiao), and Torere Urupas (Hanoa, Te One, Owchainene and Opeperu).

I whakapuaki i te 3:00pm i Rotorua, rua tekau o ngā rā Tīhema i te tau 2024.
Pronounced at 3:00pm in Rotorua on this 20th day of 2024.

T M Wara
KAIWHAKAWĀ