

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TĀKITIMU***In the Māori Land Court of New Zealand
Tākitimu District***AP-20230000020570****A20230001370****WĀHANGA**
Under

Section 338, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
*In the matter of*HBP2/1145 Section 1 SO Plan 9584 (also known
as Pawhare Flats)**I WAENGA I A**
*Between***JENNY NELSON-SMITH**
Te kaitono
*Applicant***ME**
*And***RAWIRI BARLOW JOHNSTON, RIPIA WAAKA
AND ANGIE GOLAN AS MEMBERS OF THE
WAIPUKURAU MĀORI COMMITTEE**
Ngā kaiurupare
*Respondents***Nohoanga:**
*Hearing*2 Ākuhata 2024, 112 Tākitimu MB 24-50
5 Noema 2024, 115 Tākitimu MB 21-50
(Heard at Hastings)**Whakataunga:**
Judgment date

29 October 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ D H STONE*Judgment of Judge D H Stone*

Hei tīmatanga kōrero

Introduction

[1] The Waipukurau Māori Committee (“the Māori Committee”) is established under the Māori Community Development Act 1962. It owns a parcel of General land in Waipukurau comprising 3,030m². Six residential units, known as the Pawhare Flats, are situated on this land. Although the Pawhare Flats are owned by the Māori Committee, the Waipukurau Community Marae Committee (“the Marae Committee”) has managed the flats for many years. The Marae Committee administers the land adjoining the Pawhare Flats, which was set aside in 1989 as a Māori reservation. The Marae Committee now seeks an order per s 338(2) of Te Ture Whenua Māori Act 1993 (“the Act”) to include the Pawhare Flats and the land on which they sit in that Māori reservation.

Whakarāpopototanga

Summary

[2] I decline to grant an order under s 338(2) of the Act to include the Pawhare flats in the Waipukurau Community Marae reservation.

I ahatia?

What has happened?

[3] The history relating to the Waipukurau Community Marae is briefly set out in the charter for the Marae Committee. The vision to establish a community marae in Waipukurau arose in the early 1980s. Through various fundraising efforts, around \$25,000 was raised to fund the purchase of land for this purpose. The Māori Committee was constituted under the Māori Community Development Act 1962 as a vehicle to purchase and manage this land. In 1984, the Māori Committee purchased approximately 2 hectares, which was eventually to become the Pawhare Flats and the Māori reservation.

[4] In 1988, the Māori Committee entered into a memorandum of understanding with the then Ministry of Works, which involved the Ministry purchasing a portion of the land owned by the Māori Committee (being 3,030m²) for Māori housing purposes. This area was surveyed and issued a separate title. This is the area on which the Pawhare Flats are now located.

[5] That same year, this Court recommended to the Chief Executive of the Ministry of Māori Development to set aside the balance of the land owned by the Māori Committee as a Māori reservation “for the purposes of a marae for the common use and benefit of the community of Waipukurau”. This recommendation was accepted and formalised by *Gazette* notice on 7 September 1989. Therefore, by the end of the decade, the land purchased by the Māori Committee in 1984 had been divided into two parcels: one, comprising 3,030m², owned by the Ministry of Works and the other, comprising 16,824m², set aside as a Māori reservation.

[6] By 1994, the Ministry of Works had completed the construction of the Pawhare Flats on the land it then owned. The land and the Pawhare Flats were then transferred back to the Māori Committee and the purchase price was met through mortgage finance. This mortgage was fully discharged in 2013.

[7] For some reason, the Māori Committee became unable to manage the Pawhare Flats. The Marae Committee, in whom the reservation was vested, therefore took over the management of the Pawhare Flats in around 2010. The Marae Committee continues to manage the flats.

[8] In 2020, the Marae Committee applied to the Court per s 173 of the Act to convene a meeting of the beneficiaries of the Marae Committee to discuss the ownership and management of the Pawhare Flats. The Court endorsed the calling of such a meeting and appointed an independent facilitator for that purpose. In the end, the independent facilitator ran two properly notified hui of the beneficiaries. The first hui was held on 4 December 2020. It was agreed at this hui that the Marae Committee should write to the Māori Committee and invite them to discuss the establishment of a working party with representation from both committees, to discuss a preferred management structure for the Pawhare Flats. The second hui was held on 29 October 2021. Two main agenda items were discussed at this hui: the consideration of a new marae charter for the Māori reservation and an update on discussions between the Marae Committee and the Māori Committee on the future management of the Pawhare Flats. In this latter respect, the meeting noted that a joint working party between the Marae Committee and the Māori Committee would be established (“the Working Party”), made up of two representatives from each committee.

[9] The Working Party was duly established and met regularly between late 2021 and 2022. On 10 August 2022, the Māori Committee passed a motion moved by Tony Renata, a member of the Working Party and the Māori Committee. The main principles expressed in the motion were as follows:

- (a) There should be a transfer and vesting of the Pawhare Flats in the Māori reservation.
- (b) The purpose of this vesting was to support the social, cultural, economic management and development of the Pawhare Flats in the hands of the Marae Committee.
- (c) A hui of the Waipukurau Māori Community should be convened to receive and vote on the motion.

[10] Following the Māori Committee hui of 10 August 2022, the Marae Committee held a hui on 31 August 2022. A report was provided to that meeting on the Pawhare Flats. That report noted that the Working Party had recommended that the flats become part of the Māori reservation. Representatives of the Māori Committee who were present at this hui agreed that the Māori Committee should advertise and hold a properly notified public hui before the end of 2022 to allow the beneficiaries of the Māori Committee to consider and vote on the Working Party's recommendation. Unfortunately, this hui was not called. The Māori Committee did not subsequently endorse the Working Party's recommendation, and it was left in abeyance.

[11] The Marae Committee then held its annual general meeting on 22 November 2022. The Pawhare Flats were not on the formal agenda, although they were discussed as part of the chairperson's report to this hui. No resolutions were passed regarding the Pawhare Flats. However, the new charter for the Marae Committee was ratified and new trustees for the Marae Committee were elected at this hui.

[12] On 12 January 2023, the Court received two further applications from the Marae Committee. The first sought to appoint new trustees. The second is the present application to include the Pawhare Flats in the Māori reservation administered by the Marae Committee.

The Marae Committee sought a judicial conference per s 67 of the Act to discuss this vesting. That judicial conference was held on 4 July 2024. Unfortunately, no representatives of the Māori Committee attended it. In any event, the applications filed by the Marae Committee were heard on 2 August 2024 alongside several other applications relating to the reservation. All of the matters except the future of the Pawhare Flats were resolved at this hearing. Timetable orders were made to bring the Pawhare Flat issues to hearing on 5 November 2024. At that hearing, the Court heard the evidence and submissions of the parties and adjourned the application for a reserved decision.

Ngā tuku kōrero
Submissions

[13] The Marae Committee argues that the Court can include the Pawhare Flats and associated land in the Māori reservation per s 338(2) of the Act. A decision to exercise this jurisdiction must be consistent with the kaupapa and purposes of the Act, including the Preamble. The Marae Committee says it is consistent with the Preamble and the purposes of the Act for this land, as taonga tuku iho, to be vested in the Marae Committee to ensure it is managed and administered effectively.

[14] The Marae Committee further argues that the class of beneficiaries for the Marae Committee and the Māori Committee are the same. Thus, vesting the Pawhare Flats in the Marae Committee does not change the class of beneficiaries for whom it is held.

[15] The Marae Committee also says that there is sufficient support among the beneficiaries for the inclusion of the Pawhare Flats in the Māori reservation. Although s 338(2) of the Act does not impose a sufficiency of support test, it is argued that is the appropriate test to apply here. The Marae Committee points to the various hui that were held on proper (public) notice between 4 December 2020 and 22 November 2022 as evidence that the beneficiaries support what is proposed.

[16] Finally, the Marae Committee says there is no prejudice to the Māori Committee if the Pawhare Flats are included in the Māori reservation. Firstly, the Marae Committee already manages the flats. Thus, the vesting of the flats into the Marae Committee will simply reflect the status quo. Secondly, if the Pawhare Flats are excluded from the Māori

reservation in the future, s 338(9) of the Act provides that the flats will then revest in the Māori Committee.

[17] The Māori Committee opposes the inclusion of the Pawhare Flats in the Māori reservation. They say that the land is owned by the Māori Committee, and it should not be revested in any other person without their consent.

Ngā take

Issues

[18] The sole issue to determine is whether the Pawhare Flats should be included in the Māori reservation administered by the Marae Committee, even though the owner of the Pawhare Flats (the Māori Committee) does not consent.

Te Ture

The Law

[19] The section that allows land to be included in a Māori reservation is s 338(2) of the Act. It provides:

(2) The court may make an order to declare any other Maori freehold land or General land to be included in any Maori reservation, and thereupon the land shall form part of that reservation accordingly.

[20] Section 338(4) of the Act is also relevant. It provides:

(4) Land may be so set apart as or included in a Maori reservation although it is vested in an incorporated body of owners or in the Māori Trustee or in any other trustees, and notwithstanding any provisions of this Act or any other Act as to the disposition or administration of that land.

[21] Interestingly, there are relatively few instances where the Court has invoked s 338(2) to include Māori freehold land or General land in a Māori reservation. Where the Court has invoked this jurisdiction, the owners of the land to be included in the Māori reservation have

consented.¹ I am not aware of any instances where the Court has included land in a Māori reservation without the consent of the owner(s) of that land.

Tātaritanga *Analysis*

[22] The Marae Committee argue that the Court should look to the level of support among the beneficiaries for the Pawhare flats to be included in the Māori reservation. They say that many provisions in the Act require the Court to be satisfied that the beneficiaries have had sufficient notice of an application, sufficient opportunity to discuss and consider it and that there is sufficient support for it. They submit that this test should be applied to s 338(2) of the Act.

[23] It is true that, for many types of applications, the Court is required to be satisfied that the beneficiaries or owners of the land to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it. It is also true that, for those types of applications, the Court usually must be satisfied that there is sufficient support for the application among the beneficiaries or owners. These requirements do not expressly apply to s 338(2) of the Act.

[24] However, this Court has been prepared to “read in” these requirements when considering whether to set apart a Māori reservation per s 338(1) of the Act. When considering the role of owners in a decision to set apart a Māori reservation, the Court in *Taueki v McMillan - Horowhenua 11 (Lake)* made the following observation:²

Indeed, the very idea that the Court could impose such an important change without some assessment of the support or otherwise of the trust beneficiaries is not a sustainable position. All through the legislation there is an emphasis on the owners, their Whānau and hapū as well as reference to the sufficiency of notice, opportunity for discussion and expression of support tests.

¹ See for example *Cranstone – Kauangaroa No 2* (2017) 366 Aotea MB 250 (336 AOT 250); 240 Taitokerau MB 295-306 and 277 Taitokerau MB 163-164; 318 Waiariki MB 234-240; 316 Waiariki MB 29-31.

² *Taueki v McMillan - Horowhenua 11 (Lake)* (2014) 324 Aotea MB 144 (324 AOT 144).

[25] What, then, is the test to be applied to invoke s 338(2) of the Act to include land in a Māori reservation? Surely it must be the same test that is applied to set apart a Māori reservation per s 338(1). This is because the inclusion of land into a Māori reservation significantly changes who the land is managed by and who it is managed for. If the land is to be administered by trustees, as will be the case here, then the owners of the land lose the ability to manage and control it (the land is then managed and controlled by the trustees of that reservation). The reservation is then held for the benefit of the persons specified in the order, usually Māori of a specified class, often wider than the group of owners.

[26] It could be argued that, because s 338(4) permits the Court to include land in a Māori reservation despite any provisions in the Act or any other Act as to the disposition of that land, the consent of the owners of that land is not required. I do not read s 338(4) of the Act in that way. It is aimed at exempting the inclusion of land into a Māori reservation from what may otherwise be technical hurdles, such as how the land is owned. It does not, in my view, override the presumption that owners must consent to changes in who has rights and responsibilities over their land.

[27] The Marae Committee properly raised the argument that the beneficiaries of the Māori reservation are also the beneficiaries of the Māori Committee, such that because the beneficiaries of the Māori reservation have consented to the inclusion of the Pawhare Flats into the Māori reservation, so too have the beneficiaries of the Māori Committee. There are two points in response. First, it is not clear that the beneficiaries of the Māori reservation have consented to this outcome. For example, there has not been a comprehensive vote on this question at any of the meetings held by the Marae Committee since 2021. It is true that the sentiment of those present at the independently facilitated hui on 4 December 2020 and 29 October 2021 was that the Pawhare Flats should be vested in the Māori reservation. However, no such resolution was passed. Instead, those present at those meeting expected that a Working Party, comprising members appointed by the Marae Committee and the Māori Committee, would be established. This implies that the beneficiaries of the Marae Committee were at least conscious that nothing could happen regarding the ownership of the Pawhare Flats without the consent of the Māori Committee.

[28] Second, the proper course is for the Māori Committee, as the current legal owners of the land, to convene a vote of its own beneficiaries regarding whether the Pawhare Flats

should be included in the Māori reservation. It is unfortunate that the Māori Committee has not taken that step already. Indeed, it is not clear why the members of the Māori Committee have not put this matter to their beneficiaries for consideration. The Māori Community Development Act 1962 contains specific requirements for the election of Māori Committee members and financial reporting, and it is not clear whether the current members of the Māori Committee have complied with these requirements. Whatever the legitimacy of the current Māori Committee, it is imperative that the Māori Committee urgently seek the views of its beneficiaries on the future ownership and management of the Pawhare Flats. If I had jurisdiction to issue directions to this effect, I would have exercised it here.

Whakataunga*Decision*

[29] I decline to grant an order under s 338(2) of the Act to include the Pawhare Flats in the Waipukurau Community Marae reservation.

[30] The application is dismissed.

I whakapuaki i te 2.00 pm i Te Whanganui a Tara, te 29 o ngā rā o Oketopa i te tau 2025.

D H Stone

JUDGE