

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O WAIKATO MANIAPOTO**

*In the Māori Land Court of New Zealand
Waikato Maniapoto District*

AP-20240000004637

WEHENGĀ
Under

Section 238, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Allotment 62D Parish of Waipa (Waingaro Marae)

I WAENGĀ I A
Between

KOPU NGAHERE-POMPEY; MOMO HAUNUI;
MARGARET DILLON; MABEL POMPEY;
HERA HAUNUI-THOMPSON AND KATRINA
BEVAN
Ngā kaitono
Applicants

ME
And

JEFFREY RAYMOND GREEN, MARTHA
MAATA TIHORE, CHARLIE CLINTON
WYNYARD, TONY KETI PALMER, PAKIRA
MATENGA AND ROBERT SAMMY TAPAUE
MANIAPOTO AS TRUSTEES OF WAINGARO
MARAE
Ngā kaiurupare
Respondents

Kōtitanga:
Hearing

7 April 2025, 279 Waikato Maniapoto MB 10-60
10 September 2025, 285 Waikato Maniapoto MB 95-136
25 June 2026, 282 Waikato Maniapoto MB 105-163
(Heard at Hamilton)

Kanohi kitea:
Appearances

T Barker for Applicants
S Barker for Respondent

Whakataunga:
Judgment date

4 August 2026

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

Ko Pongawhakatihi me Karioi ngaa maunga

Ko Ohautira te awa

Ko Whaingaroa te Moana

Ko Ngaati Tamainupo, Ngaati Toa Kotara me Ngaati Te Huaki ngaa hapuu

Ko Waikato te iwi

Ko Tainui te waka

Ko Waingaro te paa

Tainui aa Whiro ngunguru te ao, ngunguru te poo

Hei tīmatanga kōrero

Introduction

[1] This decision is about the mamae and disconnect that is experienced when whaanau and hapuu feel alienated from their marae, Waingaro.

[2] Its primary hapuu are Ngaati Tamainupoo, Ngaati Toa Kootara and Te Huaki. The whare tupuna is Ngaa Tokotoru. The marae connects ancestrally to Tainui waka, the Whaingaroa moana, the Oohautira awa and the maunga Pongawhakatihi, Rawhitiroa and Karioi.

[3] In 2019, Waingaro Marae was closed. It remained closed during the Covid-19 pandemic that plagued Aotearoa, and continued to be closed to its beneficiaries, Nga Haapu Toko Toru, until 2024, when it was only open for limited use. The applicants say that during the closure period there was no transparency or accountability with the beneficiaries of the marae.

[4] This led to the applicants, who are beneficiaries of Waingaro Marae, namely Kopu Ngahere Pompey, Momo Haunui, Margaret Dillon, Mabel Pompey, Hera Haunui Thompson and Katrina Bevan seeking an inquiry into the administration of the reservation and an enforcement as to the obligations of trust.

[5] Fundamentally, the applicants seek the removal of trustees, which is opposed by the respondent trustees.

[6] On 10 September 2025 I replaced the trustees of the Māori Reservation.¹ This decision addresses for reasons for replacement.

He aha te kaupapa o teenei tono?

What is this case about?

[7] Waingaro Marae is located 7 kms south of Waingaro and 25 kms northeast of Whaiaingaroa (Raglan), on the northern shores of the Whaiaingaroa (Raglan) Harbour. It is home to the descendants of Ngaati Tamainupo, Ngaati Kotara and Ngaati Huaki, referred to as “Ngaa Hapuu Toko Toru”. It is a rural marae within the Waikato/Whaiaingaroa area.

[8] The marae was set aside as a Maaori Reservation in 1934 and sits on Parish of Waipa 62D. It is one of 68 marae of the Confederation of Waikato Tainui and therefore receives marae dividends, grants and allowances from Waikato-Tainui.

[9] The reservation was administered by the Waingaro Marae Maaori Reservation trustees who were appointed between 2004 and 2018, namely Nora Palmer; Hera Haunui Rene Katipa; Pakira Matenga Jeffrey Green; Mabel Pompey and Robert Maniapoto. Of the seven trustees, Hera Haunui has passed, Mabel Pompey was asked to stand down; and several trustees initially sought retirement including Nora Palmer; Pakira Matenga and Rene Katipa. While efforts had been taken to replace trustees, no application to replace trustees was filed, and no orders were granted by the Court.

[10] The Marae was closed in 2019 and no Annual General Meetings (AGMs) or financial reporting to the beneficiaries has occurred until the 2025 AGM held on June. The beneficiaries had raised concerns with the Trustees regarding this closure without success.

[11] On 17 May 2024, the Applicants filed the application for an inquiry into the administration of the reservation, including the enforcement of the obligations of trust. Due to delays at the time, this application was not progressed until late 2024.

[12] Judicial conferences were held on 24 February 2025 and 24 March 2025 to see if matters could be resolved, followed by the issuing of timetabling directions.

[13] An initial hearing was held on 7 April 2025.² At the hearing a discussion took place, which assisted in addressing a number of issues before the Court. The trustees have conceded

¹ 285 Waikato Maniapoto MB 95-136 (285 WMN 95-136) at 134.

² 279 Waikato Maniapoto MB 10-60 (279 WMN 10-60).

that they had failed to comply with the Maaori Reservation Regulations 1994, in that they failed to hold annual general meetings and present financial reports. The chairman of the Trust confirmed that all trustees would resign, and that the resignation would take effect at the upcoming AGM. It was also confirmed that an AGM would be held on 4 May 2025 at Waingaro Marae. I directed an independent facilitator be appointed to assist with the facilitation of the election process and the meeting.

[14] The AGM was postponed by consent to suit the parties and the facilitator, Alan Cockle. It was held on 8 June 2025, where an election took place. The outcome of the election is that all the trustees were replaced, and this was effected at the hearing on 10 September 2025.

[15] In spite of the trustee's resignations, the applicants continue to seek their removal.

Ngaa take

Issues for determination

[16] The issues for the Court to determine are:

- (a) whether an inquiry into the administration of the Marae should be conducted;
- (b) whether there is sufficient evidence for the Court to conduct the inquiry; and
- (c) whether the obligations of trust should be enforced, including the removal of the Trustees.

Te Ture

The Law

[20] The Court has jurisdiction to conduct an inquiry into the administration of a reservation pursuant to reg 21 of the Maaori Reservation Regulations 1994 (the Regulations). Regulation 21 of the Regulations empowers the Court to conduct an inquiry into the administration of a Maaori reservation. This contemplates a three-stage process:³

- (a) First, to determine whether to conduct an inquiry.

³ *Pera v Broomfield-Hoet – Tuhuna 16B Block (Te Kotahitanga Marae)* (2021) 229 Taitokerau MB 190 (229 TTK 190) citing *Hamilton — Tuahu 3X (Erepeti Marae)* [2009] 34 Gisborne Appellate MB 230 (34 APGS 230) at [8].

- (b) Second, if an inquiry is to be conducted, then to conduct the inquiry in the manner sought fit.
- (c) Third, the Court may then invoke its powers per ss 237 to 245 of Te Ture Whenua Maaori Act (the Act), if required.⁴

[21] In addition, an application for the enforcement of obligations of trust has also been filed pursuant to s 238 of the Act. The enforcement of obligations trust provision is used regularly by the Court in response to proceedings initiated invariably by owners or other trustees. Such proceedings are often connected to applications for removal of trustees, for review of trust as well as for the replacement of trustees and the termination of trusts.

Me whakahaere au teetahi uiuinga?

Should an Inquiry be conducted?

[22] The trustees have conceded that the Regulations have been breached. Therefore, an inquiry into the administration is appropriate.

In conducting the inquiry, what is the extent of the breaches?

[23] Based on the claims and the evidence before the court, there were a number of matters raised seeking inquiry. Some of these matters go to core trustee obligations, and others do not. I will only address the following matters:

- (a) Breach of the Regulations;
- (b) Closure of the Marae;
- (c) Te Whakakitenga Elections;
- (d) Tainui-a-whiro (Poukai).

⁴ *Hamilton -Tuahu 3X (Erepeti Marae)* [2009] 34 Gisborne Appellate MB 230 (34 APGS 230).

Te takahi o ngaa waeture

Breach of the Regulations

[24] The applicants claim that the trustees have failed to comply with the Regulations as follows:

- (a) Failing to hold an Annual General Meeting since 2019: reg 19;
- (b) Failing to keep and maintain accurate and up to date records and accounts: reg 15;
- (c) Failing to keep minutes of all Trustee meetings: reg 17(i);
- (d) Failing to produce Trust records and accounts to the Court for examination: reg 15;
- (e) Failing to have a charter in place: reg 7; and
- (f) Failing to comply with their duties: reg 6.

[25] These breaches are not disputed. They were accepted and acknowledged at the hearing of 7 April 2025, initially through counsel, Ms MacDonald, and then by Mr Green directly.

[26] Counsel for the applicant submits that these breaches also amount to breaches of the Trustees' duties to know and comply with their terms of trust, to act in the interest of the beneficiaries, to keep core documents, and to provide information to their beneficiaries.

[27] As previously identified, the trustees have conceded that they have failed to comply with the Regulations, in that they failed to hold annual general meetings and present financial reports. However, the trustees say that financial documentation was retained and submitted to funders and a financial report provided to the Court. They also say that communication was maintained through notice with Waikato-Tainui, and that there is a Marae Charter in place.

[28] The trustees have difficulty in maintaining some of their assertions. The Court issued directions for the Trustees to produce a financial report and file that no later than the 24 March 2025, and they failed to meet this direction.

[29] There are also issues regarding the status of a Charter. The trustees have filed a charter that says it was adopted by the beneficiaries and trustees on 5 May 2013 – but there is no supporting evidence as to its adoption. I do note that that Charter predates the appointment of many of the trustees and this explains the lack of knowledge as to its existence.

[30] In any event, even if the Charter was in place, the accepted failures regarding AGMs and reporting would result in the objects and duties set out in the Charter being breached.

Te waa i kati te marae

Closure of the Marae

[31] The Marae was closed from 2019 until December 2023. The beneficiaries say they were not adequately notified of the decision to close the Marae or the reasons for this. During the period of closure, the beneficiaries assert that there was a lack of regular reporting to them on the status of any repairs or redevelopment. This resulted in the beneficiaries feeling isolated from their turangawaewae, and the inability to practice their tikanga.

[32] The Trustees say that the Marae was closed in 2019 due to urgent health and safety repairs, and that in doing so, they acted in accordance with their obligations to preserve trust property. They say that unfortunately, Covid-19 closed all efforts to begin repairs. They say that following the Covid-19 period, which was between March 2020 and December 2021, the trustees resumed efforts, contending with a backlog of repairs and administrative responsibilities.

[33] The trustees have produced a Marae Development Plan that was prepared in 2021 with special funding from Waikato-Tainui. The plan was a pre-requisite to funding for capital works projects. The report confirms that there were two strategic planning workshops on 28 March 2021 and 21 May 2021, but there were some issues as to the endorsement of the plan.

[34] The Trustees say that they have engaged with whaanau and developed the revised Marae Development Plan.

[35] The closure of the marae was significant for Ngaa Hapuu Toko Toru and is clearly the source of much hurt and mamae that has been reflected during various hearings. The closure has been the source of conflict, and I accept the applicant's evidence that there have been issues as to the way in which beneficiaries were informed and engaged with following the closure.

Te pootitanga o Te Whakakitenga

Te Whakakitenga Elections

[36] Te Whakakitenga is the governance body for Waikato-Tainui and each marae that is part of Waikato-Tainui is entitled to elect two representatives as members of Te Whakakitenga. Elections of marae representatives and members occur every three years and the process is set out in the relevant rules of Te Whakakitenga. The applicants say that the trustees failed to comply with the relevant rules of Te Whakakitenga.

[37] The trustees deny that the election process did not give the beneficiaries a fair and reasonable opportunity to participate in the election of representatives for the Marae.

[38] In any event, this issue does not relate to the administration of the Maaori Reservation, and it is not appropriate that I inquire into this matter. This needs to be raised with and addressed in accordance with the rules of Te Whakakitenga.

Tainui-a-whiro (Poukai) ki Waingaro Marae i te tau 2024

The annual Kiingitanga meeting at Waingaro Marae in 2024

[39] The Applicants initially raised a number of issues regarding the Tainui-aa-whiro (Poukai) in relation to the preparations and hosting of Poukai in 2024. Concerns were raised in relation to the mana of the Marae with specific regard to: kawē mate; raising of the flag; and kai.

[40] Given the seriousness of the issues raised, the court called for Rahui Papa, Puukenga o te Kiingitanga, to give evidence about the significance of poukai, and present a Kiingitanga perspective in relation to the specific issues raised. He gave evidence at the hearing of 7

April 2025, where he characterised, the issues raised as hapa.⁵ He was with Kingi Tuheitia at the Poukai and confirmed that the hapa were addressed to King's satisfaction. This meant that there was no ongoing impact on the mana of the marae.

[41] The applicants accept the evidence of Puukenga Rahui Papa as to the hapa at the 2024 Poukai, and the perspective of the Kiingitanga as to the mana of the Marae. The remaining issue being the trustees' failure to be transparent with the beneficiaries as preparation and hosting of the Poukai, and reporting to the beneficiaries.

Me whakamana te Kooti i ngaa mana o wehenga 237 me 245?

Should the Court invoke powers under ss 237 to 245 of the Act?

[42] In addition to the inquiry, that applicants sought to enforce the obligations of trust pursuant to s 238 of the Act, as well as the removal of trustees pursuant to s 240.

Should the trustee's obligations be enforced?

[43] As confirmed by the Court of Appeal in *Clarke v Karaitiana*:⁶

The Māori Land Court has wide supervisory and enforcement powers under s 238. These include the power to require any trustee to provide a written report to the Court and to appear before the Court in any matter relating to the administration of the trust or the performance of his or her duties as a trustee. In addition, the Court may, at any time, in respect of any trustee, enforce the obligations of the trust whether by injunction or otherwise. As well, the Court has the power, at any time, to add, reduce, replace or remove trustees under ss 239 and 240.

[44] As to the specifics, the Applicants seek the following:

- (a) A hand-over of trust records, including financial records and details regarding the renovations;
- (b) Independent audit of financial records;
- (c) Ratification of a Marae Charter through a waananga process.

⁵ 279 Waikato Maniapoto MB 10-60 (279 WMN 10-60) at 17-18.

⁶ *Clarke v Karaitiana* [2011] NZCA 154 at [36].

(d) Court oversight of new trustees; and

(e) Removal of trustees.

[45] As a matter of observation, both parties have at times frustrated the process, in a manner that has either extended or complicated the proceedings before the Court. The trustees failed to comply with timetabling directions, and the applicants filed multiple unjustified applications which also delayed progression.

[46] As to the specific outcomes being sought, I find as follows:

- (a) Trust Records: these must be handed over as required by Reg 20 and in the event that this has not occurred, the now former trustees are required to do this immediately.
- (b) Independent audit: given the limited income of the marae, this issue can be addressed by the current trustees.
- (c) Ratification of a Marae Charter through a waananga process: all Maaori Reservations that are set aside as marae are required to have a charter in accordance with Reg 7. Again, this issue can be addressed by the current trustees.
- (d) Court oversight of new trustees: the Court is not going to undertake oversight of the new trustees, rather a direction was issued at the hearing of 10 September 2025 for a review of trust within one year. As confirmed at 285 Waikato Maniapoto MB 95-136:⁷

I am going to direct a review of trust within one year's time. I will direct the registrar to file that so that it is before the Court. When that review comes up, the trustees can then inform the Court as to what steps have been undertaken over the year, any strategies that have been developed in terms of both governance and the marae facilities themselves, so that the issues that have been raised around transparency can be addressed by the trustees themselves. That information will be able to be put before a meeting of owners, as well as then it following a report to the Court after the meeting of owners.

⁷ 285 Waikato Maniapoto MB 95-136 (285 WMN 95-136) at 134.

Should the trustees be removed for cause?

[47] As to the final outcome being sought, the Applicants seek removal of trustees, in spite of the trustees tendering their resignation.

[48] I have jurisdiction to remove a trustee for cause pursuant to s 240 of Te Ture Whenua Māori Act 1993. Section 240 provides that the Court may order the removal of a trustee if it is satisfied that:

- (a) The trustee has lost the capacity to perform their role; or
- (b) Their removal is desirable for the proper execution of the trust, meeting one or more of:
 - (i) Repeatedly failing to act as a trustee;
 - (ii) Becoming an undischarged bankrupt or subject to an insolvency event;
 - (iii) Being no longer suitable to be a trustee due to their conduct or circumstances – for example due to a conviction involving dishonesty, being uncontactable, or becoming prohibited from involvement in a company, incorporated or unincorporated body.

[49] The Māori Appellate Court in *Henderson v Brooking - Wharekahika A47* set out what should be taken into account when considering removal of a trustee under s 240 as follows:⁸

- (a) The Court must first be satisfied that one or more of the grounds for removal listed in s 240(1)(b) has been met. That list is prescriptive.
- (b) One of those grounds is that a trustee is no longer suitable to hold office because of his or her conduct or circumstances. This ground is wide in scope and ambit. This wide-ranging ambit is necessary to allow the Court to consider the range of conduct or circumstances that may result in a trustee being unsuitable to hold office.
- (c) Section 240(3) sets out examples of conduct or circumstances that mean a person may no longer be suitable to hold office as a trustee. The examples are a guide and do not form an exhaustive list.

⁸ *Henderson v Brooking - Wharekahika A47* [2023] Māori Appellate Court MB 17 (2023 APPEAL 17) at [28].

- (d) If the Court is satisfied that one of the grounds in s 240(1)(b) has been met, the Court must then consider whether removal is desirable for the proper execution of the trust. This involves an exercise of discretion and the kaupapa of the Act, as set out in the Preamble and ss 2 and 17, must be taken into account.
- (e) Despite the amendments to s 240 in 2020, the earlier principles concerning removal of trustees continue to apply, including:
 - (i) Removal is a serious step and is not undertaken lightly;
 - (ii) The trustee(s) at risk must be properly notified in advance;
 - (iii) Technical breaches of trust and governance instruments may not lead to removal unless the trust assets have been put at risk or there has been serious loss or malfeasance; and
 - (iv) Generally, the Court must be satisfied that there is evidence of real abuse, failure or malfeasance and the absence of any tenable defence.

[50] These principles, derived from the earlier case law (aside from the notice requirement at (e)(ii) above), were recently endorsed by the Court of Appeal in *Henderson v Brooking*.⁹

[51] In this case reg 3 of the Regulations is also relevant in that regs 3(f) and 3(h) make it clear that when a trustee is removed from office by order of the Court, they will not be eligible for reappointment. Accordingly, this further emphasises the point that the decision to remove a trustee is a serious step and should not be made lightly.¹⁰

[52] Starting with the conduct of the trustees, counsel for the applicants submits that the trustees' conduct since the filing of the application in 2023 is illustrative of their non-suitability, as is the 18-month delay in responding to matters, compiling the missing Trust documentation or having the financial accounts for the previous five years completed. Further, it is submitted that the trustees initially opposed the application, and maintained that position until hearing of the application on 7 April 2025, when at the outset of the hearing they conceded significant breaches of the Regulations and their duties

[53] In addition, counsel for the applicants submits that certain behaviours, as confirmed by Mr Green's own evidence, also go to the issue of conduct. This includes an autocratic style of leadership; the trustees reliance on the Waikato-Tainui roll to limit the class of

⁹ *Henderson v Brooking* [2025] NZCA 368, [2025] 3 NZLR 187 at [99].

¹⁰ *Perenara v Pryor – Matata 930* (2004) 10 Waiariki Appellate MB 233 (10 AP 233) at 241.

beneficiaries; selectiveness as to notice; and dismissiveness as to beneficiaries concerns as to administration.

[54] As to the proper execution of trust, counsel for the applicant submits that trustees' conduct has had a significant impact on the administration and proper execution of the Trust, particularly through their fundamental failures to be transparent and accountable, to promote the primary purpose of the Marae, and to consult with and act in the best interests of the beneficiaries.

[55] It is submitted that the trustees have admitted to significant breaches of the Regulations and their trustee duties and obligations. Those breaches are serious and relate to matters fundamental to the role of Trustees and their obligations to promote the purpose of the Marae as a place for beneficiaries to meet, connect to the whenua and practice their tikanga.

[56] Finally, counsel for the applicants submits that removal of Trustees under s 240 of the Act and reg 3(h) of the Regulations will operate as a permanent disqualification from reappointment, to ensure there is adequate accountability and to make it explicit that resignation does not serve as a pathway back to governance for such serious breaches.

Can the trustees be removed for cause?

[57] Ordinarily, the issue is whether the trustees *should* be removed for cause, however in the present case, the issue is whether the trustees *can* be removed for cause.

[58] Returning to the hearing of 7 April 2025, not only did the trustees concede on their breaches of the Regulations and other matters, through Mr Green as the chairman of the trust, it was confirmed that all trustees would resign, and that the resignation would take effect at the upcoming AGM. Initially that AGM was to take place in May, however it was postponed until 8 June 2025.

[59] Those trustees were replaced on 10 August 2025 pursuant to s 239, giving effect to their resignations. While trustees remain liable for any losses arising from their office, s 240 differs from the issue of liability as it is not retrospective. A trustee must be in office to be

removed for cause. Given that the trustees are no longer in office, there is a jurisdictional issue that arises, and I cannot remove a trustee for cause when they have already been replaced.

[60] Even if the trustees had not been replaced pursuant to s 239, I take the view that the conduct would not have met the threshold as to the level of seriousness in any event. Clearly there were technical breaches of trust, but the precedents are clear that technical breaches need to be accompanied with a finding that the trust assets have been put at risk or there has been serious loss or malfeasance. The threshold is heightened by reg 3(h) and the permanency of disqualification.

[61] While there is no doubt that harm was caused to some of Ngaa Haapu Toko Toru through the actions of the trustees and their approach to governance, the test for removal goes to the trust's assets, rather than examining the impact the actions of the trustees have had on the beneficiaries.

[62] First, there is no evidence of serious loss or malfeasance, nor have submissions been advanced on this basis, therefore the inquiry must be whether the assets were put at risk. The trustees, as accepted, failed to produce financial reports for a prolonged period of time. It was submitted that this put the trust at risk, not only in terms of Waikato-Tainui potentially requiring the funds to be returned but in continuing to seek further funding knowing of the non-compliance in respect of their reporting obligations.

[63] Given the seriousness of permanent disqualification that arises from removal, the risk needs to be more than hypothetical. There is simply no evidence that Waikato-Tainui sought or threatened to seek to return of funds, and therefore I cannot find that there was real risk to the assets of the trust.

Kupu whakatau

Decision

[64] Pursuant to section 238, trustee obligations are enforced as to those matters listed at paragraph 46.

[65] The request to remove trustees for cause is declined.

I whakapuakina i te 10:00 am i Rarotonga, i tuawha i o ngā rā o Ākūhata i te tau 2026.
Pronounced at 10:00 am in Rarotonga on Tuesday this 4th day of August 2026.

T M Wara
KAIWHAKAWĀ