

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

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

**AP-20250000001258
APPEAL 2025/3**

WĀHANGA
Under

Section 58, Te Ture Whenua Māori Act

MŌ TE TAKE
In the matter of

Tōrere Pa Reserve and Others

I WAENGA I A
Between

GARRY WATSON, RACHELL MIO, HEKE
COLLIER AND KATENE WILLIAMS
Ngā kaitono pīra
Appellants

ME
And

TANIA VAN DER BROEK, BRENT DAY,
DIANA ANDERSON, RAWINIA MARINER,
NGAROMA REWI, AND RANGI WILLIAMS
Ngā kaiurupare pīra
Respondents

Nohoanga:
Hearing

13 May 2025, 2025 Māori Appellate Court MB 226-248
23 September 2025 – 2025 Māori Appellate Court MB 460-469
(Heard at Rotorua and online)

Kooti:
Court

Deputy Chief Judge C T Coxhead (Presiding)
Judge A H C Warren
Judge A M Thomas

Kanohi kitea:
Appearances

J Gear and J Koning for Appellants
S Northey and A Grant for Respondents

Whakataunga:
Judgment date

3 October 2025

TE WHAKATAUNGA Ā TE KOOTI
Reserved Judgment of the Court

Hei tīmatanga kōrero*Introduction*

[1] Since 1999, four separate but related Māori reservation trusts set aside whenua at Tōrere and have been managed as one single trust with one set of trustees. Recent attempts have been made to get these trusts onto a proper legal footing due to internal dysfunction. These attempts culminated in orders made by the Lower Court, which replaced and appointed new trustees and set down a single terms of trust to cover all four Māori reservations. The orders were granted on the back of strong support of beneficiaries who attended a court-directed and facilitated annual general meeting held on 24 August 2024 (“AGM”).

[2] The appellants – Garry Watson, Rachell Mio, Heke Collier and Katene Williams – attended the AGM and the subsequent hearing which led to the orders being made, and now say that several errors of law have been made. They now appeal all orders and seek that the matter be returned to the Māori Land Court for a fresh determination on a proper basis.

Te horopaki o tēnei pira*Context of this appeal*

[3] The four Māori reservations relevant to this appeal are described below (collectively referenced as “Tōrere Reservations”):

Te rohe District	Te poraka Block name	Te tohutoro LINZ LINZ title reference
Waiariki	Tōrere Reserve No. 4 (Tōrere and Manakiao)	372043
Waiariki	Tōrere Pa Reserve	458490
Waiariki	Tōrere Reserve No.2 (Beach, River and Stores Depot)	518517
Waiariki	Tōrere Urupas (Hanoa, Te One, Owainene and Opeperu)	372025

[4] In 1999, the Tōrere lands were set aside as four Māori reservations and vested in one set of trustees.¹ At no stage did the Court set any terms of trust. It therefore follows, as a matter of law, that the Tōrere Reservations were governed by the Māori Reservations Regulations 1994 (“MRR”). The Tōrere Pa Reserve, which is a marae reservation, was required to have a charter.² A charter was adopted on 21 April 2018 (“the Charter”) and has

¹ 73 Opotiki MB 155–156 (73 OPO 155–156).

² Māori Reservations Regulations 1994, reg 7.

effectively been used across all Tōrere Reservations as their “constitution”, even though that is not its legal status.

[5] We address who were/are trustees at the relevant times in the substance of our decision, given it is in dispute. For current purposes, the Charter stipulated that there would be nine trustees for the Tōrere Reservations.

[6] On 19 March 2024, trustee Rachell Mio filed an urgent application seeking directions for a review of the Tōrere Reserves Trust and an inquiry into the administration of the Tōrere Reservations (“Mio application”). The Mio application for directions was filed per s 67 of the Act and reg 8(c) of the MRR. The Mio application raised several issues including:

- (a) A split in the trustees.
- (b) An issue of compliance with the Charter or the MRR.
- (c) The status of retired/resigned trustees.
- (d) The refusal of some trustees to attend meetings.

[7] The Mio application was granted in the sense that a judicial conference was convened on 18 June 2024 (“June JC”).³ As a result, directions dated 1 August 2024 were issued noting that the Tōrere Reservations is “plagued with issues regarding both process and personalities” and referred the Mio application, by agreement, to Judge Wainwright for mediation (“Mio application direction”).⁴ At that point, no decisions had been made about whether the Lower Court would consider an investigation per reg 21 of the MRR, which was the primary objective of the Mio application.

[8] During the June/July 2024 period, the parties were in constant contact with the Court, seeking directions about the AGM and related matters. By email dated 2 August 2024, Deputy Registrar Carol Smith advised the parties that given the timing of the AGM, the

³ 320 Waiariki 53–75 (320 WAR 53–75).

⁴ 318 Waiariki MB 1–2 (318 WAR 1–2). The mediation never took place as the AGM proceeded it, despite the appellants asking Judge Wara for the mediation to occur first.

proposed mediation would need to occur after the AGM.⁵ That suggestion was not recorded in the Mio application direction. The AGM had already been advertised by this point, on 1 August 2024, in the Ōpōtiki News (“first AGM advertisement”). The first AGM advertisement included reference to the election of three trustees, but no reference to the Charter as becoming the terms of trust.

[9] By a memorandum dated 5 August 2024, Mr Gear for the appellants requested a deferral of the AGM until after mediation. A judicial conference was also suggested.⁶ On 9 August 2024, Mr Gear filed a further memorandum specifically seeking a judicial conference. By directions dated 14 August 2024, the Lower Court responded to Mr Gear’s memoranda (“August directions”). The relevant parts are set out in full below:⁷

[9] From the evidence already before the Court, it is clear that the Trust has failed to present a unified position since the beginning of 2024. As previously signalled, at the heart of the issue is process and procedure, and whether the trustees are governed by the Charter, or the Reservation Regulations. This has led to apparent personality conflicts, power struggles and division. These are all good reasons for the annual general meeting to proceed, so that the people of Ngai Tai can elect new trustees to fill the existing vacancies and that the governance of the reserves outside of the marae can be addressed.

[10] I am mindful of the safety issues that have been raised by Mr Watson, Ms Mio and Mr William and Mr Collier. While they declined the assistance of a facilitator, this is a measure to alleviate safety concerns, and therefore I will appoint a facilitator to run the meeting. In addition, as per the advertisement, the people of Ngai Tai, including any trustees with safety concerns, can attend this meeting remotely if desirable. A zoom link will be posted onto the Tōrere Marae Facebook page, and this link is to be forwarded to Mr Watson, Ms Mio and Mr William and Mr Collier by way of email with confirmation sent to the court.

[11] In response to the matters raised, I issue the following directions:

- a. Jimi McLean of the Māori Land Court is to facilitate the meeting in accordance with the advertised agenda, subject to some variations that I will address below.
- b. Agenda is amended as follows:
 - i. Karakia / Mihimihi
 - ii. Introduction from the facilitator as to his role and why he has been appointed
 - iii. Apologies

⁵ Email from Carol Smith to trustees (2 August 2024).

⁶ Memorandum of Counsel on Behalf of the Applicant, J Gear (5 August 2024).

⁷ 318 Waiariki MB 72–75 (318 WAR 72–75) at 73–74.

- iv. Confirm minutes from last AGM
- v. Terms of Trust
 - 1. Whether the people of Ngai Tai support the adoption of the current charter as the terms of trust for all the reserves?
- vi. Annual reports (if any)
- vii. Financial report (if any)
- viii. Election of trustees
 - 1. Voting by way of ballot.
 - 2. For those attending online, they are to email their ballot to the Pae Tukutuku no later than **5:00pm, 27 August 2024.**

[12] I direct the registrar to prepare an urgent report as to who is required to retire by way of rotation. There are five trustees who were appointed more than five years ago, some of whom have retired. However, I'm not clear as to whether these trustees were re-elected within the last five years. I also note that the Charter also allows for up to nine trustees.

[13] The request for a judicial conference is declined.

[14] If the parties desire is to stop the annual general meeting, they ought to initiate the appropriate proceedings.

[10] The next day, a further advertisement appeared in the Ōpōtiki News ("second AGM advertisement"). The second advertisement referred to the election of four trustees and confirmed that under "[g]eneral business" that there would be a "[d]iscussion regarding the terms of Trust."⁸

[11] On 24 August 2024, the AGM was held at Tōrere Marae. It was facilitated by Mr McLean, as directed. Deputy Registrar Smith also attended.

[12] In a report dated 29 August 2024, Deputy Registrar Smith provided the presiding judge with a summary of the outcomes of the AGM, including the decision to adopt the Charter as the terms of trust and the results of the trustee election ("DR report").⁹ That same day, the Deputy Registrar completed and filed two applications at the direction of the presiding judge ("DR applications"):¹⁰

⁸ Email from Tania van den Broek to Carol Smith regarding "AGM Advert" (31 July 2024).

⁹ 328 Waiariki MB 263–287 (328 WAR 263–287) at 274–275.

¹⁰ At the appeal hearing on 13 May 2025, there was no evidence as to who directed Deputy Registrar

- (a) an application per s 239 of Te Ture Whenua Māori Act 1993 (“the Act”) 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 Tōrere Reservations; and
- (b) an application per s 338(8) of the Act seeking to set out the terms of trust for the Tōrere Reservations Trust as the terms of the Tōrere Reserves Trust Charter.

[13] The presiding judge issued further directions via Deputy Registrar Smith on 6 September 2024:

....

- 3. The 3 [applications] are fixtured for hearing [at] Torere Marae on 10 December.

...

- 6. Facilitator’s Report & Report on voting to be distributed to the trustees

[14] By email dated 3 September 2024, the Deputy Registrar served a copy of the DR applications on the appellants. The DR applications were heard on 10 December 2024 at Tōrere. Judge Wara issued her written judgment on 20 December 2024, in which she made orders:¹¹

- (a) setting out terms of trust in accordance with the terms currently contained in the Charter, pursuant to s 338(8) of the Act;
- (b) 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, pursuant to s 239(1) of the Act; and

Smith to file the DR applications. After the appeal hearing, internal court directions were located where it was very clear that the presiding judge had issued directions for the DR applications to be lodged by the deputy registrar. These directions included confirmation of setting the DR applications down for hearing and notifying the current trustees and the secretary of this fact. These directions were the subject of further legal submissions and an online hearing on 23 September 2025.

11 *Mio – Torere Reserves & Others* (2024) 328 Waiariki MB 78 (328 WAR 78).

- (c) 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 Tōrere Pa Reserve, Tōrere Reserve No 2 (Beach, River and Stores Depot), Torere Reserve No 4 (Tōrere and Manakiao), and Tōrere Urupas (Hanoa, Te One, Owchainene and Opeperu), pursuant s 239(3) of the Act.

[15] These orders were not made for immediate release.

Ko ngā take mō te pīra nei
Grounds of appeal

[16] The appellants argue that there was no basis to replace Garry Watson and Heke Collier as trustees nor to set the terms of trust using the Charter, and advance their appeal on the following grounds:

- (a) Judge Wara was wrong to conclude that the Tōrere Reservations were aggregated.
- (b) The DR applications were improperly filed and Judge Wara lacked jurisdiction to make the orders as a result, primarily because Her Honour failed to follow the requirements of s 37(3) of the Act.
- (c) The conduct and validity of the AGM was such that the Court should not have relied on its outcomes in making its orders. The primary error argued was the Court’s reliance on the Charter as a basis to run the election of trustees. Further, the Court made errors in assessing the status of two trustee meetings held in June and July 2024.

[17] This is an appeal under s 58 of the Act. We agree with Mr Koning that our powers on appeal are as confirmed in *Taueki – Horowhenua X1B 41 North A3A and 3B1* and *Nicholas v Te Amo*.¹²

¹² *Taueki – Horowhenua X1B 41 North A3A and 3B1* (2008) 16 Aotea Appellate MB 30 (16 WGAP 30) at [46]; and *Nicholas v Te Amo* [2023] NZCA 22 at [7]–[8].

Kua whakahiatonga a Tōrere Reservations?*Are the Tōrere Reservations aggregated?*

[18] In the judgment, it states “[t]hese reservations, set aside for the benefit of the people of Ngāi Tai, were aggregated under the administration of the Torere Reserves Trust.”¹³ There is no order of the Court brought to our attention to suggest that the four Tōrere Reservations are anything but separate and distinct reservation trusts. It was therefore wrong for the Lower Court to conclude that they were aggregated under the administration of the Tōrere Reserves Trust, if that was what was meant. There is no such entity as the Tōrere Reserves Trust. That said, this error has no bearing on the other issues in the appeal and is not a basis to set aside the orders in of itself.

I tukuna tikatia ngā tono ā-kairēhita tuarua?*Were the DR applications appropriately filed?*

[19] Mr Koning argues that s 37(3) was the only lawful avenue available to the Lower Court to exercise jurisdiction to make her orders based on the DR applications. If that is right, he argues that the parties needed to be notified that s 37(3) powers were going to be engaged and that this did not happen.¹⁴

[20] We agree with the appellants regarding the natural justice requirements arising from the use of s 37(3) of the Act, even though the presiding judge took a different view at the December hearing.¹⁵ We however disagree that s 37(3) was the only power available to hear and make the orders based on the DR applications.

[21] All courts, including the Māori Land Court, have inherent powers to exercise the functions, powers, and duties conferred to them by statute.¹⁶ In short, the inherent powers of a court are ‘ancillary’ or incidental to the Court's jurisdiction.¹⁷

¹³ *Mio – Torere Reserves & Others*, above n 11, at [1].

¹⁴ *Matchitt v Matchitt – Te Kaha* 65 [2015] Māori Appellate Court MB 662 (2015 APPEAL 662) at [19], citing *Maxwell v Parata – Maruata* 2B2 (1994) 4 Taitokerau Appellate MB 18 (4 APWH 18); *Tito – Mangakahia* 2B2 – No 2A1A [2011] Māori Appellate Court MB 86 (2011 APPEAL 86) at [48]–[49], also citing *Maxwell v Parata*.

¹⁵ 328 Waiariki MB 263-297 (328 WAR 263-297) at 283–284.

¹⁶ *McMenamin v Attorney-General* [1985] 2 NZLR 274 (CA) at 276.

¹⁷ Rosara Joseph “Inherent jurisdiction and inherent powers in New Zealand” (2005) 11 *Canta* LR 220. See for example *Tahere v Trustees of Rangihimana X3A – Rangihamama X3A and Omapere Taraire E* (2015) 118 Taitokerau MB 194 (118 TTK 194).

A court's ancillary powers are those that the court exercises when exercising its primary jurisdiction. Many of these ancillary powers are conferred by statute or by rules of court, but where they are not so conferred, they only exist because they are necessary to enable the courts to act effectively within their jurisdiction in their primary sense. The statutory function must exist for the necessary power to be implied.

[22] The Act gives the Māori Land Court broad supervisory powers over trusts (where jurisdiction exists) and the necessary powers to regulate its own procedures as it relates to trusts.¹⁸ This, sensibly, must include the ability of the Court to direct the filing of applications and to hear and determine such applications, especially where it is actively engaged in a supervisory role, as it was here. Further, ss 239(1) and 338(7) of the Act do not specify or limit who may lodge an application to appoint or replace trustees. In that sense, the Act did not prevent the approach taken by the Court in this context.

[23] We agree nonetheless that natural justice still prevails, but it does not extend to specifically advising the parties that the Court is exercising its inherent powers, as is the requirement when exercising s 37(3). The appellants were notified of the DR applications upon service by the Deputy Registrar on 3 September 2024 and, of course, all appellants attended the December hearing.¹⁹

[24] We do not accept that the presiding judge erred when directing the filing of the DR applications and then hearing and determining them.²⁰

He tika tā Kaiwhakawā Wara whakawhirinaki ki ngā whakataunga a te Hui ā-tau?
Was Judge Wara able to rely on the AGM outcomes?

[25] There is no dispute that the Lower Court relied on the outcomes of the AGM in determining the DR applications. Ms Northey for the respondents argued that the key resolutions (elections and terms of trust) were well-supported by the beneficiaries, and whilst the processes may not have been perfect and the timing of the August directions were tight,

¹⁸ See *Te Ture Whenua Māori* 1993, s 237.

¹⁹ 328 Waiariki MB 263 (328 WAR 263) at 284. The appellants surprisingly argued at the December hearing that the Court failed to serve a copy of the applications on the appellants. That is not right, and we find that the Court did not breach natural justice on this issue and had the power to direct the filing of the DR applications and then to hear them as it did.

²⁰ For completeness, we disagree with Mr Koning that it is inappropriate as a general proposition for applications within a trusts context to be filed by a deputy registrar of the Court, even in a contested context. The appropriateness will depend in part on the nature of the application and the specific statutory language as to who has standing to file the application.

the Court was trying to be pragmatic, which is consistent with s 17 of the Act.²¹ While we agree with some of the respondents' arguments, we ultimately find that conduct and validity of the AGM was such, that it was an error of law to rely on them to make the impugned orders. We expound on this in detail below.

Jurisdiction

[26] A significant argument raised by the appellants to challenge the reliability of the AGM's outcomes is that there was no jurisdiction to issue the August directions (which, as previously outlined, pertained to the conduct of the AGM).²² We disagree, and find that the August directions fall within the Court's supervisory jurisdiction over trusts, as argued by the respondents.²³ The existence of these broad supervisory powers is settled law.²⁴ Nonetheless, these powers must be exercised reasonably, within the confines of the law itself and natural justice. Further, and relevantly here, ensuing directions must be clear and unambiguous.²⁵ As a starting point, nonetheless we find that there was jurisdiction to issue the August directions, and agree with counsel for the respondents that they were necessary given the issues facing the Tōrere Reservations leading into the AGM.

[27] With respect to the status of the other directions issued by the Court on 5 August, 9 August and 6 September 2024, which was the subject of the further hearing on 23 September 2025,²⁶ we question whether the relevant directions were necessarily issued under s 67 of the Act or in the context of the Lower Court's supervisory powers or inherent powers. We come to this view because the Mio application was a request for directions about an investigation. The Lower Court heard the s 67 application and then adjourned matters for directions to be issued. The directions were subsequently issued and related to the agreed mediation process. When the mediation did not proceed as planned, the approach changed and further directions continued to be issued by the Lower Court to reflect the change in approach. In our view, it is at this point where the basis upon which the Lower Court was continuing exercising jurisdiction became unclear. Was it still deciding whether to

²¹ 2025 Māori Appellate Court MB 226–248 (2025 APPEAL 226–248) at 229–230.

²² Synopsis for Appellants (29 April 2025) at [97].

²³ Submissions on behalf of the Second Respondents (6 May 2025) at [32].

²⁴ *Clarke v Karaitiana* [2011] NZCA 154 at [36].

²⁵ *Proprietors of Mangakino Township v Maori Land Court*, CA65/99, 16 June 1999 at [28].

²⁶ See [12]–[13] and footnote 10 of this judgment.

investigate the Tōrere Reservations or were they now under the supervision of the Court given the state of dysfunction as identified in the Mio application direction?

[28] It seems to us that the Lower Court was now supervising the Tōrere Reservations and whilst it ought to have made that clearer to the parties, when issuing directions, there is no error of law, by failing to explicitly state that fact or the internal staff memorandum referencing s 67 of the Act. The context here was clear to this end, especially, when considered in light of the August directions, which we now address.

Clarity of the August directions

[29] As mentioned at [26] above, in exercising its broad supervisory powers, the Court must ensure that directions pursuant to these powers are clear. The clarity of the August directions was challenged by the appellants at the AGM and the December hearing. There is merit to some of those challenges, but ultimately, the August directions were sufficiently clear and did not individually amount to errors of law per se. Given the appellants focus on the status of the Charter as to the basis for the election and the resolution to set the terms of trust, we only address the direction regarding the prepared report on the status of the trustees.

[30] The presiding judge directed the Deputy Registrar to prepare an urgent report as to who was to retire for the purposes of the election at the AGM. This direction was very explicit. We therefore find it concerning that this was not followed because it was determined that Mr McLean had already undertaken this assessment. Mr McLean was not directed to undertake this work: his role was to facilitate, not to make factual assessments about the trustees. It is worth repeating what the direction specifically was:

[12] I direct the registrar to prepare an urgent report as to who is required to retire by way of rotation. There are five trustees who were appointed more than five years ago, some of whom have retired. However, I'm not clear as to whether these trustees were re-elected within the last five years. I also note that the Charter also allows for up to nine trustees.

[31] The direction was sufficiently clear, but not complied with, which does place into question the results of the AGM. We address the effect of this at [32]–[42] below.

The Charter's status

Elections process and replacing and appointing the trustees at the AGM

[32] The main validity argument for the appellants is that, because the elections at the AGM were conducted under the provisions of the Charter, the results could only ever relate to the marae reservation and not the three other reservations. They also say that there was no basis to use the Charter to determine who was to retire for the purposes of the election at the AGM, because it did not cover all four Tōrere Reservations. If correct, then there was no basis for the Lower Court to use the results of the election to make the s 239 orders.

[33] Prior to the election of trustees at the AGM, the Charter was discussed and approved as the terms of trust by way of majority resolution of the beneficiaries in attendance at the AGM, but, obviously, there was no order of the Court at that point, which was required per s 338(8) for the terms of trust to have legal effect. The appellants argue that the Lower Court sought to remedy a potential defect in the process by firstly making the order setting the terms of trust, followed by the trustee replacement orders.

[34] The appellants have a point here. What should have occurred was for the Court to give clear direction in advance of the AGM as to who was to retire and be replaced before the AGM took place, together with a clear process to be followed for the election of new trustees. Given the status of the Charter, this should have included a clear direction as to whether the AGM was operating under the Charter, the MRR, or a bespoke direction. That lack of clarity created uncertainty in an already fraught context.

[35] We agree with the appellants that the Charter could not be used as a basis to confirm retirements for the three non-marae reservations unless directed by the Court. There was no such direction, even when this was raised as an issue at the June JC. This issue could have been discussed and resolved at a further judicial conference. The presiding judge was alive to the fact that there were issues with who was required to retire at the AGM and the number of trustee appointments to be made, because there was a direction that the Deputy Registrar was to prepare an urgent pre-AGM report on the issue. Unfortunately, that report was not done.

[36] At the AGM, Mr McLean took the view that, because the beneficiaries had already approved the Charter (as the terms of trust) earlier in the AGM, the Charter could then be

used as a basis to confirm who was to retire and how many trustee seats would need to be filled. In the absence of a Court direction to that end, that assumption was wrong.

[37] His assessment had not been discussed or checked off by the presiding judge, and those affected by the assessments – the appellants – did not get a chance to assess them before the AGM. The only chance that the appellants had to challenge these matters was at the December hearing – after the fact, and with the weight of the AGM votes against them.

[38] The error of law had its genesis in the failure to follow the direction and to prepare the report as to the status of the trustees for the elections. That failure manifested in the fact the issue of the status of the Charter and who was to retire was not revisited before orders were made. In context (dysfunction, coupled with several requests for clarity and an audience with the presiding judge) significantly more direction on these key issues was required to ensure a fair and clear election process. Therefore, we must agree with the appellants that relying on the Charter as a basis to run the election of trustees was wrong and the subsequent orders based on that mistake amounts to an error of law.

[39] The order of trustee appointments per s 239 of the Act cannot stand.

[40] We accept that the Lower Court is not bound by the views of the beneficiaries when appointing trustees or indeed setting terms of trust. But there is no denying the fact that the presiding judge took those results as the basis for the orders made.

[41] Further, upon our review of the Charter, simply adopting the Charter as the terms of trust, based on beneficiary support, without legal advice or some form of review was problematic. The trustees (whoever they were at the time) needed, at the very least, time to conduct a proper review of the Charter to assess whether it was fit for purpose, or whether specific amendments were required, before orders were made. Issues on this score were being raised by the appellants before and after the AGM. The Charter was a solid starting point, given that it was already supported by beneficiaries, as a Charter, but for it to be appropriate as formal terms of trust, it needed work, at least from our review, as supported in some respects by Ms Northey.²⁷

²⁷ 2025 Māori Appellate Court MB 226–248 (2025 APPEAL 226–248) at 230.

[42] Given the confused state of affairs, our view is that the election results and the Charter as the terms of the trust are linked and both orders need to be revoked.

The status of the June and July 2024 hui

[43] Given our findings about the status of the AGM and the validity of the Charter as a basis to make the impugned orders, there seemed little utility in responding to the findings about the status of 10 June 2024 and 20 July 2024 trustee hui. Yet, their outcomes do assist in determining who the current trustees are, which is necessary, given our decision will be to uphold the appeal and the parties need to know who the extant trustees now are. Further, it will allow us to respond to the argument that retiring or resigned trustees of a Māori reservation do not require an order of the Court to be relieved of their duties as a trustee, as is the position with respect to Part 12 trusts – an issue not yet directly addressed by the Māori Appellate Court. We start by setting out the relevant facts.

[44] The first hui was held on 10 June 2024, which the appellants argue was inquorate because several trustees who attended had already resigned/retired (“10 June trustee meeting”).²⁸ The second trustee meeting was held on 20 July 2024, which the respondents argue was inquorate (“20 July trustee meeting”). At the 20 July meeting, Mr Watson was elected Chairperson of the Tōrere Reservations and resolved to defer the AGM.

[45] The Lower Court’s decision sets out Judge Wara’s interpretation of these meetings:²⁹

[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.

[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. 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.

[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

²⁸ Torere Reserves Trust Executive Committee Minutes (10 June 2024). We note that Mr Koning had referenced this meeting in his submissions as taking place on 20 June 2024. That is clearly wrong.

²⁹ *Mio – Torere Reserves & Others*, above n 11, at [31]–[34] (emphasis added).

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.**

[46] The Lower Court relied on two authorities to support her conclusions, *Wall v Karaitiana* and *Donnelly v Tuala*.³⁰ Mr Koning submits that the *Tuala* decision did not refer to reg 3 of the MRR, which provides:³¹

3 Trustees

Any trustee for the time being appointed, by order of the court, in relation to any reservation,—

- (a) shall, subject to paragraphs (d) to (f), hold office, pursuant to, and in accordance with, the relevant order of the court, from the date of the order or from such other date as is specified in the order:
- (b) shall have, during the trustee's term as trustee, in addition to any powers and obligations at law, the powers and obligations contained in these regulations, except to the extent that such powers and obligations are varied by order of the court made at the time of the trustee's appointment, or at any later time:
- (c) shall exercise personally the office of trustee and shall have no power to delegate the office of trustee to any other person:
- (d) /Revoked/
- (e) may retire from the office of trustee upon giving notice to that effect to the court or to the other trustees:**
- (f) may be removed from office by order of the court made at any time and shall cease to hold office from such time as the order shall specify:
- (g) shall, upon ceasing to hold the office of trustee, comply with any directions of the court in relation to the reservation and the trustee's office:
- (h) shall be eligible for reappointment unless removed from office by order of the court.

[47] The effect of reg 3(e) of the MRR was explored by Mr Gear during the December hearing.³² There, the Lower Court expressed a view on the law, which was that trustees

³⁰ *Wall v Karaitiana – Tauhara Middle 15 Trust* (2008) 87 Taupo 107 (87 TPO 107) at [88]; *Donnelly v Tuala (Rongohaere Marae)* (2007) 78 Ruatoria MB 55 (78 RUA 55) at [31].

³¹ Māori Reservations Regulations, reg 3 (emphasis added).

³² 328 Waiariki MB 263–287 (328 WAR 263–287) at 286.

remain trustees until removed by order of the Court.³³ Mr Koning argues, as did Mr Gear, that this orthodox position does not apply to resigning trustees of a Māori reservation, because the MRR provides for a different legal position.

[48] Ms Northey argues that reg 3(e) should be read in conjunction with reg 3(f), which states that a trustee may be removed from office by order of the Court and ceases office from the date ordered. Accordingly, trustees who have resigned are still included in the total number of trustees, and quorum is assessed on that number.

[49] Mr Koning submits that:

- (a) Ripeka Mihaere ceased to hold office on 25 August 2023.
- (b) Jackie Mihaere ceased to hold office on 26 August 2023.
- (c) Kimberley Enoka ceased to hold office on 19 February 2024.

[50] There is no known authority to support Mr Koning's argument that a Māori reservation trustee in this context does not require an order of the Court before it can be said that they no longer hold office. Given this, we are required to return to first principles, including an exercise of statutory interpretation.

[51] The starting point is that s 338(15) of the Act allows for regulations to be made, to give full effect to the provisions of s 338 of the Act. Of course, the MRR are in place and are binding on the Lower Court as secondary legislation. Section 338A of the Act is also relevant to our assessment, which states:³⁴

338A Regulations relating to trustees of Maori reservations

- (1) Regulations made under section 338(15) may, in relation to the trustees of Maori reservations generally or in relation to the trustees of any specified Maori reservation or of any specified class of Maori reservations,—
 - (a) specify—

³³ At 286–287.

³⁴ Te Ture Whenua Māori Act 1993, s 338A (emphasis added).

- (i) terms for which those trustees or any of them are to be appointed:
- (ii) **circumstances in which those trustees or any of them cease to hold office:**
- (iii) **circumstances in which those trustees or any of them may be removed from office by the court:**

[...]

(2) Nothing in subsection (1) limits—

- (a) the powers of the court under section 338(8); or
- (b) the generality of section 338(15).

[52] Section 338A of the Act clearly draws a distinction between circumstances of ceasing to hold office as a trustee following retirement and removal from office by the Court. That distinction manifests in regs 3(a), (e) and (f) of the MRR because the retirement clause (sub-reg (e)) does not require a Court order, whereas removal and appointment by the Court does, under sub-reg (f). Our interpretation is that sub-regs (e) and (f) are disjunctive clauses, with separate processes and outcomes. One by Court order, the other by operation of the law without needing a Court order.

[53] When reading regs 3(e) and (f) together, the MRR’s clear language and context suggest that Mr Koning’s interpretation has merit. A retiring trustee no longer holds office as a trustee from the date that trustee retires. As a matter of fact, the retirement takes effect from the time the retiring trustee notifies their fellow trustees or the court of their decision to retire. Therefore, as a matter of law, per reg 3(e) the trustee is no longer in office upon giving notice, but like all trustees of a reservation trust, they are still subject to any directions of the Court, per reg 3(g).

[54] Regulation 3(e) of MRR uses the term “retires” and we find that there is no material difference between that term and “resignation”. The facts here are that Ripeka and Jackie Mihaere “resigned” before the end of their term of office, whereas Kimberly Enoka “retired” because her term in office came to an end by reference to the term of office stipulated by the Charter. As long as there is some form of notice to the trustees or the Court, then it is semantics whether it was a retirement or a resignation.

[55] In the context of a compulsory retirement, by virtue of a charter or terms of trust, the trustee ceases to hold office at the time that trustee is required to retire (for example, at the general meeting called to replace that trustee or a date given in a governing document). That is notice to the trustees, because the trustees have a duty to know their terms of trust.³⁵ Even if that is wrong or if the facts are different, ceasing to hold office would be triggered when notice of retirement is filed with the Court, and not when the order is made. It is when the Court is notified as per reg 3(e). The relevance of the Court order in terms of timing is the commencement of the term of office of any replacement trustee per reg 3(a), and not with respect to a retiring or resigned trustee.

[56] We therefore agree with Mr Koning that the orthodox position adopted by this Court that Part 12 trustees no longer hold office only when removed by Court order³⁶ does not apply to Māori reservations, when reg 3(e) of the MRR is factually engaged and complied with.

What then does this all mean?

[57] Having clarified the legal effect of reg 3 of the MRR, we now determine the status of the trustees before the AGM. We find that Ripeka Mihaere ceased to hold office as a trustee on 25 August 2023 and that Jackie Mihaere ceased to hold office on 26 August 2023. Both gave notice to their fellow trustees on those dates. By operation of reg 3(e) of MRR, they no longer held offices at those dates.

[58] Kimberley Enoka ceased to hold office on 19 February 2024. In the absence of a direction from the Court, upon lodging her resignation or upon retiring, she would not have the right to attend and be counted as a trustee at any meeting of the Tōrere Reservations.

[59] The 10 June trustee meeting was attended by Wency Rewi, Tania van der Broek, Kimberly Enoka, Diana Anderson, Jackie Mihaere, and Ripeka Mihaere. Given our findings, the only trustees who were eligible to attend and participate as trustees were Wency Rewi, Tania van der Broek and Diana Anderson. At that time, there were six eligible trustees and,

³⁵ Trusts Act 2019, s 23.

³⁶ *Witana v Cutforth – Kohewhata* 27C2A (2021) 238 Taitokerau MB 150 (238 TTK 150).

therefore, per reg 17(d) of the MRR, the quorum was three trustees. On that basis, the 10 June trustee meeting was quorate.

[60] After the 10 June trustee meeting, Kimberly Enoka attempted to rescind her resignation. There was no legal basis to do this, and we find that upon her resignation she no longer held office as a trustee.

[61] On 27 June 2024, Katene Williams was appointed by the Court as an additional trustee.³⁷ That order was needed as per reg 3(a) of the MRR.

[62] Turning then to the 20 July trustee meeting: Garry Watson, Katene Williams, Rachell Mio and Heke Collier attended, who were trustees. Again, there was quorum per reg 17(d) of the MRR and, like the 10 June trustee meeting, they could in principle transact business.

[63] It was therefore wrong to conclude that Mr Watson was not appointed the Chairperson of the Tōrere Reservations at the 20 July trustee meeting and that the decision to defer the AGM was improperly made. Whilst the Court may still have proceeded to make the August directions and direct that the AGM proceed – despite the legitimate trustee decision defer the AGM, under the broad supervisory powers – the fact of the matter is that there was a failure to properly address these issues before the AGM, despite them being raised by Mr Gear, and then when confronted with the same arguments at the December hearing, Her Honour misinterpreted the status of retiring Māori reservation trustees and dismissed the arguments raised by the appellants. Arguments that we have found to be correct as a matter of law. We acknowledge the common assumption that Māori reservation trustees were to be treated in the same manner as Part 12 trustees, especially when orders have been and here were made under ss 239(1) and 239(3) of the Act. We also note that there was no specific s 239(3) application before the Lower Court.³⁸

³⁷ 316 Waiariki MB 248–249 (316 WAR 248–249).

³⁸ On this last point, we did wonder whether the order under s 239(3) of the Act vesting the Tōrere lands in the trustees was appropriate. Although we had no argument on the point, it seems to us that a vesting order ought to be made per s 338(7) of the Act when the Court appoints new trustees to a Māori reservation. Our initial view is that a vesting under s 239(3) may have a materially different legal effect to that provided for in s 338(7) of the Act. The former being a vesting in “land”, the latter being a vesting in the “Māori reservation”. We make no final determination on this point and will leave it to the Lower Court to address this issue if required. For reference, see *Winitana – Mokau Reserve Block* (2018) 77 Tairawhiti MB 187 (77 TRW 187) at [5].

Ae rānei, me whakataha mātou i ngā ota kua tukuna?*Should we set aside the orders made?*

[64] Given our findings above, we must uphold the appeal and revoke all orders.

[65] In coming to this view, we are mindful of the significant beneficiary support for the decisions made at the AGM, and normally we would be reluctant to disturb decisions based on that level of support. But many would have been unaware of what decisions were being made, the legal issues at play and the fact that they were being raised with the Lower Court before the AGM. We are equally mindful that we want to ensure that the Tōrere Reservations and the people of Ngāi Tai move from the current state of dysfunction to a proper footing, when the processes to achieve that end are tika, which was the aim from the outset. To achieve that there must be a reset of the processes.

[66] On that basis, all orders made by the Lower Court are annulled per s 56(1)(b) of the Act. This means that the result of the election and the vote about the Charter becoming the terms of trust are of no effect. We make no finding on whether other matters discussed at the AGM stand, and we leave that to the presiding judge to resolve, if required.

[67] We direct that the Lower Court convene a judicial conference per s 67 of the Act, whereby directions can be discussed and determined to reset the election process and the process to determine a terms of trust. To assist, we also invite the presiding judge to discuss with the parties whether mediation remains an option to address some of the issues that have created this dysfunction. Whether mediation is viable is a matter for the parties.

[68] Acknowledging that there are issues with the status of the Charter across the Tōrere Reservations and therefore a lack of real clarity as who is and is not a current trustee, we find on balance that the following individuals, are to remain as current trustees, until further order of the Lower Court, i.e. until a new election process is held and orders made.

(a) Diana Grace Anderson.³⁹

(b) Garry Watson.⁴⁰

³⁹ Appointed at 304 Waiariki MB 205-212 (304 WAR 205-212) on 2 Nov 2023.

⁴⁰ Appointed at 87 Waiariki MB 164-173 (87 WAR 164-173) on 7 Nov 2013.

(c) Heke Collier.⁴¹

(d) Lawrence Paratene Williams.⁴²

(e) Ngaroma Wency Rewi.⁴³

(f) Rachell Vivian Mio.⁴⁴

[69] We have been advised by counsel for the respondents that Tania Lee van den Broek resigned as a trustee on 4 June 2025. In line with our decision on the law as to status of resigning trustees, Tania is no longer a trustee.

[70] On the basis that parties were in receipt of special aid, our strong view is that there should not be an award of costs. If the parties see things differently, then memoranda of no more than six pages, firstly by the appellants within 10 working days of this decision and then the respondents 10 working days later. We will then make a final decision as to costs on the papers.

I whakapuaki i te 1:00pm i Rotorua, te tuatoru o ngā rā o Ōketopa i te tau 2025.
Pronounced at 1:00pm in Rotorua on this 3rd day of October 2025.

C T Coxhead
Presiding Judge

⁴¹ Appointed at 87 Waiariki MB 164-173 (87 WAR 164-173) on 7 Nov 2013.

⁴² Appointed 316 Waiariki MB 248-249 (316 WAR 248-249) on 27 June 2024.

⁴³ Appointed 152 Waiariki MB 152-157 (152 WAR 152-157) on 14 Nov 2016.

⁴⁴ Appointed 266 Waiariki MB 115-122 (266 WAR 115-122) on 2 Nov 2021.