

**IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIARIKI DISTRICT**

A20120001377

UNDER Section 239 Te Ture Whenua Māori Act 1993
IN THE MATTER OF Torere Reserves Trust
BETWEEN Christine Mary Davis
Applicant

Hearing: 9 May 2012, 54 Waiariki MB 223-241 (Heard at Opotiki)
12 September 2012, 61 Waiariki MB 278-297 (Heard at Opotiki)
8 November 2012, 67 Waiariki MB 48-49 (Heard at Opotiki)
24 April 2013, 74 Waiariki MB 145-146 (Heard at Gisborne)
7 March 2013, 72 Waiariki MB 109-120
(Heard at Opotiki)

Appearances: M Insley, counsel for the applicant

Judgment: 17 September 2013

RESERVED JUDGMENT OF DEPUTY CHIEF JUDGE C L FOX

Copies to:
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[1] This matter concerns the appointment of trustees to the Torere Reserves Trust. The Trust administers four blocks of Māori land at Torere that have been set aside as Māori reservations for various purposes including for a marae, for reserves and recreation purposes, as places of historical significance and as an urupā.

The Application

[2] Following a Special General Meeting held on 2 July 2011, this application was filed by Christina May Davis on 22 December 2011, for an order replacing Anthony Steel and Arapeta Geoffrey Mio (as both had resigned) as trustees of the Torere Reserves Trust and appointing Lawrence Williams, Allan Wilkinson and Germaine Te Moana Flowers in their stead. Mr Allan Wilkinson subsequently withdrew his name for appointment by way of letter dated 4 March 2012.

[3] A further meeting held on 12 January 2012 and chaired by retired Māori Land Court judge, Ken Hingston, was also relied upon in support of the application.

Māori Land Court Hearings

[4] Unfortunately, the first hearing in the Māori Land Court was not able to be advertised, due to the fact that the file was sent late for directions from the case manager.

[5] At the Māori Land Court hearing held on 9 May 2012, the following people considered the appointment of Mr Williams and Ms Flowers should be delayed pending further discussion at the marae in Torere:

- Doris Vercoe;
- Christina Peters;
- Te Ahuru Davis;
- Hinerua Coates; and
- Heke Collier.

[6] After hearing from all the parties on 9 May 2013 at 54 Waiariki MB 223-241, I adjourned this application for four months for a meeting to be held at Torere and I directed that the Registrar advertise the meeting with the following agenda items:

- A report from the current trustees;
- The election of trustees;
- A review of the Charter of the reservation.

[7] I also made an order under s 40 for a report on the outcome of the meeting and I directed the case manager to approach Tuwhakairiora Williams. That meeting was delayed, but the direction I issued was reconfirmed by His Honour Judge Harvey on 12 September 2012. Mr Shane Gibbons was ultimately appointed to facilitate this meeting.

[8] The application for the appointment of trustees was before the Māori Land Court again on 12 September 2012. His Honour Judge Harvey heard the matter and directed that the meeting take place in accordance with the directions of the Court dated 9 May 2012 and the matter was adjourned to November 2012.¹

[9] During the intervening time between the two Māori Land Court hearings held in May and September, an application for Leave to file an Appeal was filed on 5 June 2012. However, an appeal was not actually filed until 12 October 2012. That appeal was accompanied by an application for leave to appeal out of time. A number of people including some trustees of the Torere Reserves Trust, opposed the application for leave to appeal out of time.

[10] When the matter came before me again in November 2012, I adjourned the application to March 2013 pending the outcome of the appeal.²

Outcome of the Appeal

[11] In its judgment dated 7 December 2012, the Māori Appellate Court found that this Court did not make any final orders on 9 May 2012, nor any provisional or preliminary determinations. It simply issued directions that were interlocutory in nature and which were not susceptible to appeal. In addition, to that “fatal defect”, the appellants did not satisfy the Māori Appellate Court that leave to appeal out of time should be granted and thus the appeal and the application for leave to appeal were dismissed.

¹ 61 Waiariki MB 278 (61 WAR 278).

² 67 Waiariki MB 48 (67 WAR 48).

Final Māori Land Court Hearing

[12] The final Court hearing for this application was not held until 7 March 2013.³ At that hearing it was noted that the Hui-a-Iwi was held on Saturday, 6 October 2012.

[13] It was well advertised in the Daily Post and Opotiki News on the 22 and 25 September 2012. Approximately 50 people were present throughout the meeting. The report from the Registrar in relation to the election records that:

EVIDENCE AND INFORMATION GATHERED

The meeting was advertised in the Daily Post on Saturday, 22 September 2012 and in the Opotiki News on Tuesday, 25 September 2012.

The Hui-a-Iwi occurred on Saturday, 6 October 2012 with the following people to assist:

| | |
|--------------------------|-----------------------------------|
| <i>Shane Gibbons</i> | <i>Independent Chairperson</i> |
| <i>Steven Dodd</i> | <i>Court Services Manager</i> |
| <i>Debbie Grapl</i> | <i>Court Services Team Leader</i> |
| <i>Rover Waiapu</i> | <i>Court Services Team Member</i> |
| <i>Te Aruhe Robinson</i> | <i>Court Support</i> |

The Agenda for the meeting was advertised as follows:

- 1. A report from the current trustees;*
- 2. The election of trustees; and*
- 3. A review of the Marae charter.*

...

The election of trustees

Robyn Collier current trustee discussed as she now resides in Australia.

Advised by chair, that she cannot be removed unless she has been in contravention of Charter or Māori Reservation Regulations.

Letter from Ms Collier read to the hui, stating that she does not wish to be removed.

Discussion had regarding amount of trustees to be elected. Resolution made and passed that four (4) new trustees be elected.

Eleven (11) nominations put forward, 10 nominees accept.

The two original proposed replacement trustees, Lawrence Paratene

³ 72 Waiariki MB 109 (72 WAR 109).

Williams and Germaine Te Moana Flowers, were re-nominated and accepted their nominations.

Each nominee was given 2 minutes to speak to the hui about their suitability and credentials for the role of trustee.

Voters made secret ballot.

Court staff – vote scrutineers.

The four (4) successful nominees were: (announced at end of meeting)

Gary Watson

Linda Steel

Jodi Porter

Heke Collier

...

CONCLUSIONS

Overall the meeting was informative for all beneficiaries in attendance.

Issues were highlighted and discussed.

Review of charter was productive and began the process to review over a longer period of time with beneficiaries.

Approximately 50 beneficiaries attended the meeting.

Four (4) additional trustees elected by the beneficiaries.

RECOMMENDATIONS

- *That orders be made pursuant to section 239 of Te Ture Whenua Māori Act 1993 appointing Gary Watson, Linda Steel, Jodi Porter and Heke Collier as additional trustees of the Torere Reserves Trust, conditional on the outcome of the Appeal application.*
- *All trustees – who have not yet completed the trustees training workshop – attend the next available workshop offered by the Māori Land Court.*
- *The Court direct the Torere Reserves trust to provide the Māori Land Court with an annual trustees report.*

[14] The Court also received a copy of the Ngaitai Iwi Marae and Reserves Trust Charter. That Charter stipulates for the election of trustees that:

- Only Ngaitai beneficiaries are eligible to be Trustees;

- Nominations shall be received on the floor at a Special General Meeting;
- Nominations are to be seconded and agreed to by the person nominated;
- There are to be a maximum of 9 trustees and a minimum of 7.

[15] The Charter also provides that the trustees' term of office shall be for life and that should a trustee die or tender their resignation, a Special Meeting will be called to hold elections for a replacement trustee. Following the selection of new trustees, an application must be made to the Māori Land Court to register the new trustees.

[16] Other than the original applicant, and those she identified for appointment in the original application, there was only limited support for Ms Flowers or Mr Williams to be appointed. Rather Ms Flowers and Mr Williams had both put their names forward during the election in October 2012 and neither were elected by the majority present.

[17] After hearing from all parties, I reserved my decision. Since this case was heard in March, my personal assistant attempted three times to extract information regarding my reserve decision and have the file referred to me in Chambers. It was not finally received from the case manger until 23 July 2013.

Decision

[18] After hearing from all parties, and after giving the applicant the opportunity to be heard, and after hearing from counsel Ms Insley and those who support the applicant, I consider that her application should be dismissed for the following reasons:

1. Mr Williams and Ms Flowers no longer hold sufficient support from the beneficiaries of the Torere Reserves Trust.
2. I do not consider that the two previous meetings held in July 2011 and January 2012, should assume some primacy over the election that was conducted on 6 October 2012. Nor do I consider my decision to be an outcome that contravenes due process as both of these candidates were given the opportunity to stand for election again in October 2012. The fact is that there was some concern over their appointment and that is why the matter was sent back to Ngaitai Iwi to decide the issue once and for all;

3. They stood for election on 6 October 2012 but were not elected by the majority present;
4. The well advertised meeting for an election of trustees held on 6 October 2012 resulted in the following people being elected:
 - Gary Watson
 - Linda Steel
 - Jodi Porter
 - Heke Collier
5. The meeting on 6 October 2012 was independently facilitated and I am satisfied it was conducted in a manner that allowed all those who attended to present their views on the relevant issues concerning the election of trustees, including the appeal to the Māori Appellate Court.

Final Order & Direction to Registrar

- This application is dismissed.
- A new application is to be filed for the appointment of those people elected on 6 October 2012. I direct the Registrar to file that application and to advertise the hearing in the Panui as a Special Hearing to be heard in November 2013 in Opotiki. It should also be advertised in the Daily Post and Opotiki News and I direct notice should be sent by the Registrar to as many beneficiaries/owners as possible.

Pronounced in Open Court in Gisborne on the 17th day of September 2013.

C L Fox
DEPUTY CHIEF JUDGE