

**IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIKATO MANIAPOTO DISTRICT**

A20130010252

UNDER Section 338 of Te Ture Whenua Māori Act 1993

IN THE MATTER OF PARISH OF KOMAKORAU LOT 240B 2
BLOCK an application for recommendation to
set apart a Māori reservation for the purpose of a
burial ground

MARIA LEEANN GRAHAM AND MANIA
HOPE
Applicants

Hearing: 20 February 2014 (73 Waikato Maniapoto MB 77-107)
26 June 2014 (82 Waikato Maniapoto MB 106-147)
2 July 2014 (80 Waikato Maniapoto MB 260-279) - Reserved
Decision Number 1
21 November 2014 (90 Waikato Maniapoto MB 8-9)
9 December 2014 (90 Waikato Maniapoto MB 227-233)
31 August 2015 (105 Waikato Maniapoto MB 99-106)
19 October 2015 (108 Waikato Maniapoto MB 290-337)
9 November 2015 (109 Waikato Maniapoto MB 173-201)
23 November 2015 (110 Waikato Maniapoto MB 161-175) -
Reserved Decision Number 2
(Heard at Hamilton)

Judgment: 29 July 2016

RESERVED JUDGMENT (NO 3) OF JUDGE S R CLARK

Copies to:

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Introduction

[1] The applicants seek to set aside 0.1075 hectares being part of Parish of Komakorau Lot 240B 2 Block as a Māori reservation, specifically for the purpose of a burial ground (“urupā”).

[2] This application has been the subject of two reserved decisions to date, 2 July 2014¹ and 23 November 2015². The background to the application, the various hearings and the evolving nature of the application can be gleaned from those two decisions.

[3] The outcome of those decisions is that I have been prepared to make a recommendation that an urupā be set aside subject to being satisfied about certain conditions. In my reserved decision of 23 November 2015 I imposed various conditions relating to survey, construction of an entranceway to the block, screening and the preparation of a draft trust order.

[4] I directed that those conditions were to be complied with by 30 June 2016, with the applicants to file a memorandum by 4.00pm, 8 July 2016 addressing the issue of compliance. I also indicated that I intended to carry out a final site inspection after the memorandum was filed.³

[5] On 8 July 2016 an affidavit was filed by one of the applicants, Mānia Ōrīwia Hope addressing the conditions I had imposed. On the same day the Court received an e-mail from Gudrun Jones, counsel for Waikato District Council responding to the entranceway issue.

[6] In addition on Thursday 28 July 2016, I attended a final site inspection of the proposed urupā.⁴

¹ *Graham – Parish of Komakorau Lot 240B 2* (2014) 80 Waikato Maniapoto MB 260 (80 WMN 260).

² *Graham – Parish of Komakorau Lot 240B 2* (2015) 110 Waikato Maniapoto MB 161 (110 WMN 161).

³ *Ibid* at [50]-[52] inclusive.

⁴ My observations from the site visit will be contained in a separate minute.

[7] I will now review the performance of those conditions and then consider whether a recommendation and orders can be made.

The conditions

Survey

[8] In my decision of 23 November 2015 I indicated that the survey plan filed with the Court was in order with one exception, that being that the ML Plan had yet to be approved by LINZ. Attached and marked “MH 1” to the affidavit of Mānia Hope is ML Plan 491579 which was approved as to survey on 12 January 2016. That plan refers to a proposed area of urupā being 0.1075 hectares, the parcel to be called the “Kereama Whānau Urupā Block”.

[9] The survey condition is satisfied.

The entranceway

[10] In my decision of 23 November 2015 I directed the applicant to construct a dual width entranceway to the Waikato District Council TSG-E3 standard. Once formed the applicants were to supply the Court with a report from the Waikato District Council confirming that the entranceway had been constructed to that standard.

[11] Attached to the affidavit of Mānia Hope is evidence from CEW Ltd indicating that construction of the entranceway was carried out earlier this year. There are also a number of photographs evidencing construction.

[12] In addition the Court also received an e-mail from Gudrun Jones dated 8 July 2016 confirming that engineers from the Waikato District Council had recently inspected the entranceway and that it was constructed to the Waikato District Council’s TSG-E3 standard.

[13] The entranceway condition is now satisfied.

Planting and Screening

[14] At paragraph [45] of my 23 November 2015 decision I imposed two conditions relating to screening. The purpose behind those conditions was to provide immediate screening of the majority of the urupā, particularly when viewed from the MacPherson/Stevens property.

[15] The first condition was that the section of ponga fence, which was then 2.10 metres in height, situated on the proposed eastern boundary of the urupā was to be lowered to a height of 1.8 metres. In addition the top of the ponga fence, along its entire length, was to be framed in timber by the trustees at their own cost.

[16] I confirm from having carried out a site inspection on Thursday, 28 July 2016 that that section of the fence has been lowered to 1.8 metres. A number of measurements were taken of the height of the fence at various points. The height of the fence is 1.8 metres in height or if not, only a centimetre or two lower than that, which is acceptable. It has also been timber framed in accordance with the condition.

[17] The second condition was that the trustees were to erect a living ponga fence along the proposed southern boundary of the proposed urupā at their cost. I also directed that section of the fence to be 1.8 metres in height and topped by a timber frame consistent with the ponga fence erected on the proposed eastern boundary.

[18] Again, I confirm from my inspection carried out on Thursday, 28 July 2016 that a living ponga fence has been erected along the proposed southern boundary where directed. Measurements confirm that section of the fence is 1.8 metres in height, where it is not it is short only by three or four centimetres, which again is acceptable. I also confirm that it is topped by a timber frame consistent with the ponga fence erected on the proposed eastern boundary.

[19] I am satisfied that the screening conditions have been met.

Appointment of trustees

[20] It is intended that the trustees for the urupā are to be the same as the trustees of the Kaiahi Whānau Trust.⁵

[21] I propose to make an order appointing the trustees of the Kaiahi Whānau Trust to also be the trustees of the urupā. The applicants will need to note however that any such order is conditional upon the Court receiving notice of publication of the recommendation in the *New Zealand Gazette*.

Trust order

[22] At paragraph [53] of my decision of 23 November 2015 I directed that a draft trust order be filed with the Court no later than 30 June 2016. I indicated that the trust order must include conditions relating to the maintenance and repair of the ponga fence and a suitable traffic management plan.

[23] Included as exhibit “MH 7” to the affidavit of Mānia Hope is a draft trust order. I have reviewed it. There is no need for me to constitute any trust order until such time as the trustees are finally appointed. In the intervening period of time it would be useful if the proposed trustees of the reservation consider the following amendments to the draft trust order.

[24] The title section of the draft trust order refers to lands set out in Schedule A. There is no Schedule A in the trust order. The draft trust order needs to be specific in that it applies to that land which is to be set aside as an urupā. According to ML Plan 491579 that is 0.1075 hectares to be known as the “Kereama Whānau Urupā Block”.

[25] The title section of the draft trust order refers to the trust being known as the “Kereama Whānau Trust”. For the sake of consistency with ML Plan 491579, I suggest that the name of the trust be the “Kereama Whānau Urupā Block Trust”.

⁵ In addition to Parish of Komakorau Lot 240B 2, a number of other Māori land interests are also vested in the trustees of the Kaiahi Whānau Trust – see 72 Waikato Maniapoto MB 41-42 (72 WMN 41-42).

[26] The third paragraph of the draft trust order refers to a Schedule C. There is no Schedule C in the draft trust order that has been filed.

[27] The reference to the word “Annual” in clause 3.1 should be deleted. A clause 3.2 should also be added to the draft trust order which reads as follows:

3.2 To maintain the 1.8 metre high living ponga fence erected along eastern and southern boundaries of the urupā, in accordance with the urupā maintenance plan.

[28] As I read the affidavit of Mānia Hope, the traffic plan has yet to be approved by the Waikato District Council. I urge the applicants to continue to press that issue with the Waikato District Council so that a traffic management plan can be included in the final trust order.

[29] The references to “Annual” in the heading to clause 6, should be deleted.

[30] Clause 6.2 is confusing. There is reference to a “Kereama Whānau Urupā Maintenance Annual General Meeting” called in accordance with the Kaiahi Whānau Trust deed. I assume what is being attempted is to provide for a mechanism allowing for the notification and calling of that hui. Clause 6.2 can be simplified and could easily read as follows:

6.2 If the urupā requires maintenance, the trustees shall call a hui of the beneficiaries. At least fourteen (14) days notice is to be given prior to any such hui. The purpose of the hui will be to advise the beneficiaries of any work required to maintain the urupā and the estimated cost.

[31] I also suggest an additional sentence to be added to clause 6.3 which reads as follows:

In addition to the annual working bee, nothing prevents the trustees from carrying out maintenance to the urupā as and when needed.

[32] At clause 6.5 the word “Trust” should be deleted and replaced with the word “Trustees”.

[33] Finally, there are some spelling and typographical errors which need to be attended to by the applicants in the current draft.

[34] I reiterate that the appointment of the trustees is conditional and must await receipt of confirmation of the gazettal of the urupā. There is therefore time between now and then for the trustees to finalise the terms of the draft trust order for final approval by the Court.

Recommendation

[35] The Court makes a recommendation pursuant to ss 338(1) and (3) of Te Ture Whenua Māori Act 1993 that an area of 0.1075 hectares being part of the land known as Parish of Komakorau Lot 240B 2 Block, be set aside as a Māori reservation for the purposes of a burial ground for the common use and benefit of Ngā uri o Peata rāua ko Hōri Te Raika Graham. The Māori reservation is to be called the “Kereama Whānau Urupā Block Trust”. The area comprising the urupā is as delineated in ML Plan 491579 which was approved as to survey on 12 January 2016. The Māori reservation is to be dealt with as a non-primary parcel. The reservation will be provisionally registered under the Land Transfer Act 1952.

[36] The Case Manager is directed to immediately attend to the drafting of the recommendation for sending to the Chief Executive of Te Puni Kōkiri. The applicants should note that a copy of ML Plan 491579 will need to be attached to that recommendation and sent to Te Puni Kōkiri. The only version the Court currently has is that attached to the affidavit of Mānia Hope. The applicants need to file a clean unmarked copy of the plan prior to the recommendation being signed off by me.

[37] Thereafter the Chief Executive of Te Puni Kōkiri is responsible for publishing any notice in the *New Zealand Gazette* concerning the recommendation. There should be no further burial of any tūpāpaku in the urupā until that event occurs.

Orders

[38] The Court makes an order pursuant to s 338(7) of Te Ture Whenua Māori Act 1993 appointing Doreena Patricia Graham, Georgina Barrett, Haupai Ray Graham, Lorraine Tuatahi Hetet, Mania Oriwia Hope and Tuaroha Michael Graham as responsible trustees and vesting the land to be set aside as a reservation, in them in their capacity as trustees.

Pursuant to s 73 of Te Ture Whenua Māori Act 1993 this order is conditional upon the Court receiving notice of publication of the recommendation in the *New Zealand Gazette*.

[39] The Court makes an order pursuant to s 338(8) of Te Ture Whenua Māori Act 1993 constituting the Kereama Whānau Urupā Block Trust. Pursuant to s 73 of Te Ture Whenua Māori Act 1993 this order is conditional upon the applicants filing a trust order for final approval by the Court.

Pronounced in open Court at 4.00 pm in Hamilton on the 29th day of July 2016.

S R Clark
JUDGE