

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

A20140009643

UNDER Sections 18(1)(c) and 67 of Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Horowhenua 11 (Lake) block – determination
of sewerage issues

BETWEEN PHILLIP TAUEKI
Applicant

AND HOROWHENUA DISTRICT COUNCIL
Respondent

Hearings: 225 Aotea MB 188-190 dated 20 January 2009
237 Aotea MB 286-305 dated 23 July 2009
240 Aotea MB 265-277 dated 25 September 2009
246 Aotea MB 96-97 dated 28 January 2010
249 Aotea MB 271-273 dated 30 April 2010
264 Aotea MB 250 dated 14 April 2011
270 Aotea MB 212-213 dated 1 September 2011
282 Aotea MB 172-181 dated 21 March 2012
282 Aotea MB 182-289 dated 22 March 2012
283 Aotea MB 108-109 dated 2 May 2012
293 Aotea MB 182-198 dated 20 November 2012
293 Aotea MB 180-181 dated 6 December 2012
295 Aotea MB 271-309 dated 17 December 2012
294 Aotea MB 236-266 dated 18 December 2012
297 Aotea MB 211-220 dated 18 February 2013
298 Aotea MB 159-185 dated 20 February 2013
298 Aotea MB 263-266 dated 28 February 2013
303 Aotea MB 138-149 dated 23 April 2013
303 Aotea MB 261-265 dated 17 June 2013
304 Aotea MB 288-299 dated 16 July 2013
330 Aotea MB 85-94 dated 4 December 2014
337 Aotea MB 68-76 dated 21 May 2015
340 Aotea MB 176-183 dated 14 August 2015
340 Aotea MB 184-186 dated 14 August 2015
342 Aotea MB 102-132 dated 17 September 2015

Appearances: P Beverley and M Mulholland, for the Horowhenua District Council

Judgment: 3 June 2016

RESERVED JUDGMENT OF JUDGE M J DOOGAN AS TO STANDING

[1] Lake Horowhenua is a taonga of the Muaupoko iwi. It is in a much degraded state.

[2] Philip Taueki is of Muaupoko descent. He is a beneficial owner in the bed of the lake, the Hokio stream and immediate surrounds. This Māori freehold land is vested in the trustees of the Horowhenua 11 Part Reservation Trust.

[3] Mr Taueki alleges that discharges into the lake from the Horowhenua District Council's sewerage treatment plant and from its drains, constitute trespass and nuisance. He seeks declarations to that effect and injunctive relief.

[4] The Council challenges Mr Taueki's standing. They say he does not have sufficient possession of the lands to sustain a claim in trespass or nuisance. Mr Taueki disagrees.

[5] A question of standing goes to the capacity or right of a person to be heard in a court or tribunal.

[6] I heard argument on 17 September 2015. I reserved leave for further submissions to be filed. Submissions were filed on behalf of the Council on 12 October 2015 and by Mr Taueki on 13 October 2015. I regret the delay in the issue of this decision.

The claims and relevant procedural history

[7] The claims about which it is said that Mr Taueki lacks standing are as follows:¹

- l. The passing of drains through the 1 chain strip and the dewatered area, together with the discharge of drainage water therefrom into the Lake, amounts to trespass and / or nuisance to the underlying land and its owners;
- m. An injunction accordingly in respect of those stop drains and a direction authorising the Lake trustees to up and fill in any drains running through their land for which they have not given permission; (...)
- p. A declaration that the entry of treated or untreated sewage through, into or onto, the bed of Lake Horowhenua from HDC's sewage plant, including its holding ponds, whether

¹ 4th Amended Notice of Application, 25 May 2012.

through groundwater or surface water flows or through water, amounts to trespass and/or nuisance to the underlying land and its owners;

- q. An injunction accordingly in respect of the sewage plant prohibiting the creation of any such further trespass or nuisance (...)

[8] These claims were commenced by Mr Taueki in 2009. At that time they were part of a much broader set of claims brought by Mr Taueki against the Council. Other aspects have been dealt with and these claims were separated into this application in 2014.

[9] In 2013 Judge Harvey declined an application to strike out the claims concerning discharge of sewerage. Judge Harvey did not accept that the proceedings were frivolous, vexatious, or an abuse of process. He observed that Mr Taueki's right to be heard may be shared by the trustees who are the legal owners of the land. That entitlement would include a right for the current trustees to oppose Mr Taueki and reject his claim to have standing to bring the proceedings. The trustees must act for the benefit of all beneficiaries. As legal owners of the land they will always have a right over and above those of the beneficiaries to administer the land in accordance with their decision making processes. It was also noted that while it may have been correct at the time of filing of the amended application in 2012 to refer to the support of the trustees, that position may have changed given a subsequent change of trustees.²

[10] There has recently been a further change of trustees, with appointments made on 19 May 2016.

[11] Mr Taueki had earlier applied unsuccessfully to obtain an injunction compelling the Rowing Club to vacate buildings adjacent to Lake Horowhenua. The Māori Appellate Court concluded that as a beneficiary of the trust which owns the Māori land on which the Rowing Club is situated, Mr Taueki had an interest greater than that of an ordinary member of the public and therefore had standing to bring the application for an injunction. He could not, however, obtain that remedy because he did not have actual possession or exercise exclusive control of the land.³

² *Taueki v Horowhenua Sailing Club Ltd – Horowhenua Lake 11 (Lake) Māori Reservation* (2015) 337 Aotea MB 68 (337 AOT 68).

³ 2014 Māori Appellate Court MB 60.

Does Mr Taueki have standing to bring these claims?

[12] Mr Beverley argues that Mr Taueki lacks sufficient possessory rights at Lake Horowhenua to sustain a claim in nuisance or in trespass. Reliance is placed on findings of the Māori Appellate Court and the Supreme Court that Mr Taueki did not have sufficient possession or control.⁴

[13] Mr Beverley says that “while a person may bring an application, he or she must also have and maintain the requisite standing to sustain and succeed in a claim.”⁵

[14] Mr Beverley concedes that Mr Taueki was entitled to make the application but says he lacks the requisite standing to sustain the claims. Even if Mr Taueki had the support of the trustees (and there is no evidence of this), it is argued that this would not be sufficient, as the trustees (as holders of the possessory rights) would either have to bring the claims, or adopt Mr Taueki’s claims as a party.

[15] These are reasonable arguments, but they go to the merits rather than standing. Mr Taueki’s standing was substantially addressed in Judge Harvey’s dismissal of the strike out application. Judge Harvey noted that while Mr Taueki may only have minority support amongst owners, this does not diminish his right (or that of his supporters) to have their say and to seek to use legal process to advance their views. It is a right that is shared by the trustees as legal owners of the land. The Māori Appellate Court has also recognised Mr Taueki’s standing to apply for an injunction. I see no reason to take a different approach.

[16] Mr Taueki does have standing to bring these claims in trespass and nuisance. Whether or not Mr Taueki is able to sustain a claim in trespass, public or private nuisance and obtain some form of relief are matters of fact and law to be tested at hearing. The extent to which Mr Taueki is able to establish a sufficient possessory interest will be a key issue. The stance of the trustees will be important. These matters may present Mr Taueki with barriers to relief but they do not, of themselves, deny him the right to be heard.

[17] I also have regard to the fact that while these are conventional tort claims in trespass and nuisance, they are made by an owner of a beneficial interest in Māori freehold land. In light of the preamble, ss 2, 17 and 18 of Te Ture Whenua Māori Act, I resolve the benefit of

⁴ Taueki v R (2014) 1 NZLR 235 (NZSC).

⁵ Submissions for Horowhenua District Council, 17 September 2015, at [20].

any residual doubt about standing in Mr Taueki's favour. I decline the Council's application to dismiss the proceedings on the grounds that Mr Taueki lacks standing.

Matters arising and next steps

[18] The future conduct of these proceedings will be the subject of further directions following a judicial conference. A judicial teleconference will be convened at the earliest convenient date to address the following matters:

- (a) Do the Lake trustees support, oppose or take a neutral position with respect to this proceeding?⁶
- (b) An update from the Horowhenua District Council as to the status of its resource consents to operate the Levin wastewater treatment plant and any related resource consent applications or renewals underway. What is the position of the Lake trustees on any such resource consent application or renewal?
- (c) The status of proceedings commenced in the High Court at Palmerston North by Mr Taueki and others concerning the validity of the 1973 agreement signed by trustees (but not by the Levin Borough Council), and subsequent attempts by the Horowhenua District Council to ratify the agreement. The agreement purports to authorise the Council to lay stormwater drains through Māori land adjacent to the lake;⁷
- (d) In October 2013 solicitors for the Council submitted to the Court the original agreement between the Levin Borough Council and the Lake trustees dated 3 May 1973 requesting that a certificate of confirmation of alienation be endorsed on the document. A notation executed by the mayor of the Horowhenua District Council and dated 3 October 2013 records that on 2 October 2013 the Council, the successor to Levin Borough Council, resolved to execute the May 1973 agreement. The Registrar has declined to confirm the instrument in accordance with Rule 11.10 and has referred the matter to me. I wish to hear from the parties on the question of

⁶ New trustees were appointed on 8 April 2016. The judicial conference will be scheduled at a time to enable the trustees to meet and discuss these proceedings.

⁷ A proceeding CIV 2013 454/441 copy of the draft application for declaratory judgment was provided to the Registrar in November 2013.

whether the 1973 agreement should be confirmed in accordance with Rule 11.10(6) of the Māori Land Court Rules 2011. I also wish to hear from the current Lake trustees on this issue;

(e) I wish to hear from the parties on whether the Court should amend the application to also include an application pursuant to s 18(1)(d) of Te Ture Whenua Māori Act (a proceeding founded in tort where the damage relates to Māori freehold land);

(f) What steps are now required to set the matter down for hearing? What, if any, further evidence is required?

[19] The Registrar is to liaise with the parties to set a date for a judicial teleconference to address these matters. The Lake trustees are to be joined and the date set to enable the trustees to consider the contents of this judgment prior to the teleconference.

Pronounced at 12.30 pm in Wellington on this 3rd day of June 2016

M J Doogan
JUDGE