

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

A20180004504

UNDER Regulation 7, Māori Reservation Regulations
1994

IN THE MATTER OF Horowhenua 11B 36 2L 4A Block

BETWEEN JAMES RANGI BROUGHTON AS A
TRUSTEE OF THE HOROWHENUA 11B36
2L4A MĀORI RESERVATION (KAWIU
MARAÉ)
Applicant

Hearing: 19 July 2018, 388 Aotea MB 117-127

Appearances: James Broughton in person

Date: 7 December 2018

JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] James Broughton, a trustee of Horowhenua 11B 36 2L 4A Māori Reservation (Kawiu Marae), sought an injunction to prevent what he alleged was the interference by one of the trustees with the changing of locks at the marae. A dispute had arisen as to control over the marae in terms of access and entry and the need for proper management of the marae keys by the trustees.

[2] The application was heard on 19 July 2018 and the parties agreed on a resolution without the need for an injunction to issue.¹ This involved a proper process for the use and management of the marae keys as well as clear procedure for authorisation of changes to the lock as and when the need arises and with the authority of the trustees as a whole. The application was accordingly concluded at that hearing.

¹ 388 Aotea MB 117-127 (388 AOT 117-127)

[3] However, questions were raised regarding the proper process for filling casual vacancies on the trust. An annual general meeting for the marae was looming at the time and some beneficiaries were concerned that trustees should be elected. After directing the parties to their marae charter, it became apparent that the charter does not address casual vacancies and does not contain comprehensive details for the calling of a special general meeting.

[4] At the end of the hearing, I confirmed that a direction or decision would issue regarding the process for effecting amendments to the marae charter.

Background

[5] Horowhenua 11B 36 2L 4A was set aside as a Māori Reservation on 10 March 1949 for the common use of the members of the Muaūpoko Tribe as a site for a meeting house.² The current trustees are James Broughton, Marokopa Matakatea, Deanna Rudd, Harvey Tukapua, Melarni Tukapua and Mariana Williams.³

The marae charter

[6] The existing marae charter makes the following provisions regarding the election of trustees and their term of office:

2.2.1 Election of trustees' process

- Nominations shall be received in writing by the secretary for the trustees no later than three days before the Annual General Meeting.
- Nominees are to provide a resume to the AGM to include skills, experience and abilities that they offer to the trust.
- Nominations are to be seconded and voted on.
- There are to be a maximum of 7 trustees

2.2.3 Term of office

- Trustees' term of office shall be 3 years, unless directed otherwise by the Māori Land Court, from the AGM date of election until the 3rd AGM when the trustee may or may not stand for re-election.
- If the situation arises where a large majority of the Trustees are due for re-election at the same time, a rotation (by lot or agreement) process will be implemented to ensure that no more than one-third of the Trustees are replaced each year. This is to be determined by the Trustees prior to the AGM each year.

² "Setting Apart Māori Land as a Māori Reservation" (10 March 1949) 15 *New Zealand Gazette* 702

³ 378 Aotea MB 93-97 (378 AOT 93-97)

- Following the AGM, application is to be made to the Māori Land Court to register the new trustees.

[7] The only other provision relating to the election of trustees is contained in the clause relating to the removal of trustees:

5.0 Removal of trustees

A Special General Meeting is to be called for the purposes of discussing the removal of a Trustee from office. With the Trustee in attendance, the meeting shall try to facilitate a resolution in regard to the concern based on:

- The ability of the Trustee to continue to undertake the required duties satisfactorily; or
- The Trustee has been absent from three consecutive meetings without reasonable explanation.
- The commitment of the Trustee to attend and participate fully in future Trustee business. **Where a Trustee vacancy results, the Chairperson at the time shall call for nominations to fill the vacancy(ies) and proceed following the election process.**

(Emphasis added)

[8] As I noted at the hearing, there is no provision to deal with the situation where a casual vacancy arises. For example, where a trustee either resigns or passes away prior to the end of their three-year term. This should be addressed with an appropriate provision in the charter and more detail regarding when a vacancy arises would also be helpful.

[9] At the hearing, I also noted that the provision regarding the calling of a special general meeting lacks detail. The current provision states:

3.2 Special General Meeting

- A Special General Meeting of the Marae Trustees can be called for a specific purpose as and when required by the Trustees or beneficiaries.
- 14 clear days notice shall be given.
- A quorum of 15 beneficiaries, including the Trustees, is required at any Special General Meeting.

[10] In these types of provisions, there is usually a threshold requirement that must be satisfied before such a hui can be called, including a requisition signed by not less than 15 beneficiaries. This then ensures that a general meeting is not called without a legitimate reason and without support from a minimum number of trust beneficiaries.

[11] Accordingly, the marae charter needs to be amended to provide clarity on the election of trustees for a vacancy arising in the normal course of trustee rotation, and one by way of casual vacancy, along with additional threshold requirements for a special general meeting.

[12] The trustees should also turn their minds to a more detailed process for the resolution of disputes so that alternatives to involving the Court are available to ensure that litigation is a last resort. That said, often one of the more efficient processes for seeking to resolve actual or anticipated difficulties is for the trustees to seek directions from the Court. This can sometimes minimise the risk of more adversarial litigation.

Decision

[13] The trustees are directed to present the following proposed amendments to the marae charter at the next AGM for consideration by the beneficiaries:

- (a) Adding a provision to deal with the situation where a casual vacancy arises. An example of such provision is as follows:

2.2.4 Casual vacancies

Where a trustee resigns or dies prior to the end of their term of office, a casual vacancy arises. An election of trustees may be held either at the next AGM or an SGM called for that purpose. In either case, notice must be given in accordance with the relevant provision for the type of meeting and must specify that an election of trustees will be held for a casual vacancy. The replacement trustee, subject to their appointment by the Court, will serve out the remainder of the original trustee's term of office.

- (b) An amendment to the first part of cl 2.2.3 to replace it with the following:

2.2.3 Term of office

- Trustees' term of office shall be 3 years, unless directed otherwise by the Māori Land Court. The term runs from the AGM date of election until the 3rd AGM following. At the end of a trustee's term, a vacancy arises and an election shall be held at the AGM to nominate a replacement trustee. Notice that an election of trustees is to be held must be included in the notice of the AGM. All trustees retiring by rotation are eligible for re-election.

- (c) An amendment to cl 3.2 as follows:

3.2 Special General Meeting

- A Special General Meeting of the Marae Trustees can be called for a specific purpose as and when required by the Trustees or beneficiaries. A written notice requesting that a Special General Meeting be held, signed by at least 15 beneficiaries, shall be sufficient for the calling of such meeting.
- The trustees must give 14 days clear notice of a Special General Meeting by way of advertisement published in a newspaper circulating in the area where the land is located. The notice must include the agenda for the meeting and such meeting will be confined to that agenda.
- The quorum for the meeting will be 15 beneficiaries, including the trustees, present in person throughout the meeting.

[14] If any amendments to the marae charter are approved by the beneficiaries at the next general meeting and the marae charter is then altered in accordance with cl 8, I direct the trustees to file a copy of the amended charter with the registrar.

[15] Leave is reserved for any of the trustees to apply for directions at any time.

[16] No issue as to costs arises.

Pronounced in open Court in Rotorua at 4.55pm on Friday this 7th day of December 2018.

L R Harvey
JUDGE