Before The Chief Judge of the Maori Land Court
of New Zealand
Waikato-Maniapoto-District

A.20100001098

In the matter of	Harataunga 2C1 Block
and	
In the matter of	An application made by Dean Katipa pursuant to Section 45 of Te Ture Whenua Maori Act 1993 for the amendment of an order made on 2 July 1962 setting aside Harataunga 2C1 as a Maori Reservation under Section 439 of the Maori Affairs Act 1953

Second Submission on Behalf of
the Majority of Trustees of Rakairoa Marae
(concerning resolution of Hui on 10 November 2012)

Dated this 7th **day of** October **2013**

Corban Revell
Lawyers
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Counsel Acting: John Pera Kahukiwa

JPK-020318-2-81-V1

May it please the Chief Judge

Introduction

1. By letter received from the registry of the Court on 28 August 2013 counsel was advised as follows:

> *"The Court has also directed that counsel are to file submissions by the end of September 2013 setting our reasons (if any) that the Court not adopt the recommendation passed at that hui."*

2. On 27 September 2013, counsel sought a small extension of time to complete his instructions in respect of the said direction.

3. Counsel has completed his instruction, which is to make a submission, and therefore on behalf of the majority of the trustees of this marae reservation, this memorandum sets out counsel's submission.

Submission

4. It is submitted that the Chief Judge does <u>not</u> simply adopt the resolution passed at the hui.

5. There are two principal submissions in that regard:

   5.1 First, the Chief Judge is not able to, in this case, in that your Honour lacks the jurisdictional capacity to do so;

   5.2 Secondly, the said resolution itself is unreliable.

6. Counsel enlarges on each submission in turn:

   Lack of jurisdictional capacity

   6.1 It is submitted that the Chief Judge does not have the jurisdiction to simply adopt the said resolution in disposing of this application. This is for the following reasons:

(a) The application before the Chief Judge is made under Section 45 of the Act.

(b) The jurisdiction conferred on the Chief Judge to deal with a s45 application is by or under Section 44 of the Act. It is remedial in nature and extent.

(c) Section 44 of the Act provides that the Chief Judge's jurisdiction, which in material terms, includes the remedial power to cancel or amend the order in question, or (more widely) to make such other order, as in the opinion of the Chief Judge is necessary in the interests of justice to remedy the mistake or omission.

(d) But the power to remedy only arises only if the Chief Judge is satisfied that an order was erroneous in fact or in law.

(e) In that important respect, the jurisdiction, which again is remedial in nature, must therefore go to fixing the error of the Court, rather than say a circumstance of dysfunction that has arisen over time.

(f) Accordingly, it is submitted that absent the Chief Judge being able to be satisfied that the order in question is erroneous (ie there was a mistake or omission done by the Court), the jurisdiction under Section 44 is not raised, nor is it able to be raised. The finding of "an error" is therefore in the nature of a pre-requisite condition to the exercise of the s44/93 jurisdiction.

(g) At this juncture, and more critically, at the time of the Hui, your Honour has made no such finding, and it has been counsel's case so far that there is no basis for error to be found within the case advanced for the applicant.

The reliability of the said resolution

6.2 Secondly, there are, in any event real questions raised about the resolutions "passed". This is for the following reasons:

(a) First, the facilitator of the hui, namely Mr Johnson Raumati, appears from the transcript, to have promulgated an early view that it was a "given" that there was an error, in the sense contemplated by Section 44 of the Act, and that thus, a change was necessary for that reason. For example, at page 5 of the transcript he is recorded as saying:

> *"I am only stating you "there was an error of the Court" because it states quite clearly what should have happened. I am trying to say that the benefit could have been to the community as a whole but for that specific purpose it had to relate to the Act. It doesn't mean to say ... "look I've been chairman of several marae and there's quite a number of pakeha that are involved but, as far as the gazetting is concerned, it must conform with the Act. It doesn't mean to say that you can't have trustees on there that aren't. You can have Chinamen, you can whoever, you use the best. When you elect trustees, you elect the best people available that could help everybody. It doesn't matter what creed or colour or nation they are but in defining, I am just putting this out there, it's because I'm talking about the thing that we are guided by. So that's why I just wanted to ask that question."*

(b) It is submitted that the source, or reason, for a proposed change, was not however up for consideration. This was not what the hui was asked to do. Instead, the Chief Judge merely directed that there be a hui to consider whether the description of the beneficiaries should change, effectively by consent[1]. Accordingly it did not matter whether that change was motivated by a past error of the Court, or by present circumstances, just that if one were going to change it, what would such a change look like or entail? Submitted that in articulating the direction in that way, the Chief Judge was careful to avoid having the hui

[1] 2012 CJMB 396-7.

deliberate the very issue that was live before him, because it was sub judice, viz: whether there was a s44 error?;

(c) But, given Mr Johnsons open traverse of the matter, and vitally as an employee of the Court, it is open to be deduced that:

(i) To some attendees, this is the Chief Judge's view as well, which goes to usurping the judicial function of the Chief Judge; and

(ii) His comments were or could have been influential of the hui.

(d) If any of this was the case, and it is submitted there is a possibility that it was, then it is regretful. It is submitted that accordingly, Mr Johnsons statements made:

(i) Raises real questions about the reliability of the resolutions;

(ii) Risks being in contempt of the judicial process; and

(iii) Risks the appearance that the integrity of the legal process, which is clearly still in train, has been compromised

(e) Second, the voting was not unanimous. Mr Harangi Harrison is recorded as opposing the said resolution. But counsel is also instructed that some attendees chose not to indicate a vote at all;

(f) Third, rather than being inclusive in its capture, vis a vis a local marae for the local people, the said resolution, if advanced will have the unintended consequence of excluding some of those who currently clearly fall within the legal meaning of owner or Maori residents of Kennedy Bay.

7. For these reasons the resolutions should not be adopted.

Extension to special aid

8. In order to comply with the Chief Judge's direction, it is submitted that the grant of special aid is extended to cover counsel's reasonable costs for attendances in respect of the making and filing of this submission.

9. A note of counsels costs is attached hereto and marked "**A**".

Dated the 7th day of October 2013

John Pera Kahukiwa
Counsel for the majority of the respondent Trustees of Harataunga Marae

"A"

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The Trustees of the Rakairoa Marae
C/- John McLeod
1028 Kennedy Bay Road
Thames
Coromandel

Account no: 020318-2
Harataunga 2C1 - A20100001098

Dated: 07/10/2013
Tax Invoice: 30565
GST Number: 17-214-160

Our Fee for Professional Services including;

- Please refer to our detailed timesheet which is attached.

OUR FEE	$1,132.40
GST	$169.86
Office charges and expenses incurred (GST Inclusive)	
Office Charges	$112.70
Total	$1,414.96

E & O E
John Kahukiwa

Corban Revell Lawyers

(Total GST content included in this bill is $184.56)
This account is due for payment within 7 (seven) days of this invoice.
Please note that payment may be made by Eftpos at our reception counter or by Direct Credit.

✂ **Please detach this remittance advice and return with your payment**

Corban Revell Lawyers
PO Box 21-180
Henderson, Auckland 0650

Amount due: $1,414.96
Client: The Trustees of the Rakairoa M
Account No: 020318-2
Tax Invoice: 30565

Tick to indicate form of payment

☐ Enclosed is my/our cheque for $..... payable to Corban Revell Lawyers Trust Account
☐ Direct Credit your payment to our Bank Account, Number 02 0152 0080820 02, Reference: 020318-2
☐ Please charge my Visa or Mastercard Expiry Date Signature

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ ☐☐/☐☐ _____

Client Number: 020318 **The Trustees of the Rakairoa M**
File#
Matter Number: 2 **Harataunga 2C1 - A20100001098** **Taken By:**
Address: C/- John McLeod,1028 Kennedy Bay Road,Thames,Coromandel

Acting Solicitor:	**John Kahukiwa**	**Partner:**	**John Kahukiwa**	
Work Code:	**M3 LA Maori Land**			
Office Expenses:	**$0.00**	**Final Bill:**	**X**	
Disbursements:	**$0.00**	**Anticipated disb:**		**$204.40**
Trust:	**$0.00**	**WIP Balance:**		**$1,132.40**
A/R balance:	**$2,307.18DR**	**Dep balance:**		**$0.00**
		Credit limit:		**$1,500.00**
Matter balance:	**$2,307.18DR**			

Last Financial Transaction Number: **54** **Dated:** **05/06/2013**
Last Time Transaction Number: **100** **Dated:** **07/10/2013**

Unbilled Time Transactions

Date	Sol	Hrs-Min	Billed	Rate	Value	GST	Off Exp	Activity
14/08/2012	AMT	1-30		$0.00	$0.00		$0.00	Non-Chargeable to client Reading of Submissions and Documents Filed with MLC
15/08/2012	AMT	1-00		$0.00	$0.00		$0.00	Non-Chargeable to client Reading of Further Docments Filed for MLC Sitting on Friday 17 August 2012
15/11/2012	JPK	1-00		$149.00	$149.00		$0.00	Telephone from JMcL- discuss resolution
31/01/2013	JPK	0-42		$149.00	$104.30		$0.00	Telephone to John McLeod- discuss resolutions of hui- outcome: seek copy of x-script of hui proceeding
26/09/2013	JPK	1-24		$149.00	$208.60		$0.00	Perusing transcript of meeting on 10 November 2012 to consider a change to the description of beneficiaries of the marae reservation
26/09/2013	JPK	0-42		$149.00	$104.30		$0.00	Telephone to j McLeod- discuss submission to CJ
26/09/2013	JPK	0-18		$149.00	$44.70		$0.00	Emailing Cj for time extension
26/09/2013	JPK	0-18		$149.00	$44.70		$0.00	Drafting submission on whether the Nov hui resoluition is adopted
27/09/2013	JPK	1-30		$149.00	$223.50		$0.00	Drafting sub to CJ
27/09/2013	JPK	0-12		$149.00	$29.80		$0.00	Emailing draft sub to clients
04/10/2013	JPK	0-06		$149.00	$14.90		$0.00	Telephone to JM
04/10/2013	JPK	1-00		$149.00	$149.00		$0.00	Drafting sub to CJ
07/10/2013	JPK	0-24		$149.00	$59.60		$0.00	Checking submission to CJ (after final instructions over the weekend)
		10-06			$1,132.40			

	Fee Earner		Activity	Items	Units	Hrs-Min	Value
AMT	Alana Thomas	NCC	Non-Chargeable to clie	2	25	2-30	$0.00
				2	25	2-30	$0.00
JPK	John Kahukiwa	CHK	Checking	1	4	0-24	$59.60
JPK	John Kahukiwa	DFT	Drafting	3	28	2-48	$417.20
JPK	John Kahukiwa	EM	Emailing	2	5	0-30	$74.50
JPK	John Kahukiwa	PER	Perusing	1	14	1-24	$208.60
JPK	John Kahukiwa	TF	Telephone from	1	10	1-00	$149.00
JPK	John Kahukiwa	TT	Telephone to	3	15	1-30	$223.50
				11	76	7-36	$1,132.40

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Fee Earner	Activity	Items	Units	Hrs-Min	Value
	Total		101	10-06	$1,132.40