

ANDERSON CREAGH LAI

9 March 2020

ANDERSON CREAGH LAI LIMITED

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By email: dan.bidois@parliament.govt.nz

Dan Bidois
MP for Northcote

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Ref: AWA3.016_155

Dear Mr Bidois

Awataha Marae

1. We are the solicitors for Awataha Marae Society Incorporated (**Society**) and have been provided by our client with a copy of your letter of 20 February 2019 to the Hon Eugenie Sage, copied to other Ministers.
2. We are writing to you because your letter contains fundamental inaccuracies and misunderstandings, is arguably defamatory of readily identifiable members of the Wilson family, and requires correction.
3. Paragraph 3 of your letter refers to some unspecified feedback that the Awataha Marae is failing to achieve its original purpose. There is then the arguably defamatory statement that the Awataha Society is run by and for the benefit of a select few. It is quite obvious from the context that you are referring to the Wilson family. Dr Arnold Wilson and his wife Mrs Rangitina Wilson were the instrumental movers in the establishment of Awataha Marae, in or around 1983, and Mr Anthony Wilson is present CEO and his partner Ms Amoamo is Chairperson. The family (along with others) have continuously since 1983 provided their services for the benefit of Awataha Marae and its community on a largely unpaid basis. Far from benefiting from the Awataha Marae, they provide substantial benefits to the Awataha Marae. For example, in addition to numerous unpaid services they provide to the Awataha Marae, the CEO and Chairperson personally guarantee various contracts and creditors providing services to the Society.
4. Your comment that the Marae is not fulfilling its original purpose is ironic as you personally recently benefitted from the Awataha Marae's community outreach. You were a guest at the recent Awataha Marae Waitangi Day celebrations, involving over 5,000 members of the local community, and are videoed profusely complimenting the Awataha Marae and its management on putting on, to quote your own words in the video, "a fantastic event" (see Facebook Awataha Marae@ tekorekore: Summervibes@summervibesnz).
5. Against that background, you sending a letter to the Minister a mere 2 weeks later wanting to effectively sack that same management team you just publicly complimented on running an outstanding event, is difficult to understand.
6. Our client instructs us that your comments suggest that you have been captured by a dissident local group who are affiliated with a tenant of the Society (the Health Tenant) with whom the Society has had a troubled relationship for some time. This group, many closely affiliated with the Health Tenant is understood have been directly and financially sponsored by the Health Tenant, and has aspired for some time to see the Health Tenant undertake a larger scale development on the Awataha Marae land, expanding its

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present footprint on the Awataha Marae for commercial purposes relating to provision of healthcare services. The Marae's Board has made it clear it will not agree to this and has other development proposals for the Marae land, with the result that this group has for some time been agitating to effectively "take over" its landlord.

7. There is no "long standing stalemate between the community and the family who run Awataha", but rather a dissident group who have attempted to join the Marae Society despite the quite clear conflict of interests they have by virtue of their membership or close association with the Health Tenant. It is therefore incorrect of you to suggest that the governance and management of the Awataha Marae needs to be placed back in the hands of the community. It is already in the hands of the community, so far as that is possible given its present structure as an incorporated society.
8. Since 2012 on advice from Deloitte and this firm, the Society has been attempting, and has taken initial steps, to establish a more fit for purpose governance structure than its present incorporated society structure. To that end, as you are aware, Te Whanau o Awataha Trust has been incorporated as a Charitable Trust Board with a view to providing exactly that fit for purpose governance structure. Operating as an incorporated society, under archaic 1908 legislation and with the attendant need for regular users or friends of the Marae to go through a cumbersome membership application process, is simply unworkable, and the recommended governance model is a charitable trust structure. Members of the dissident group have been invited several times to participate in the governance migration process, and even to appoint a Founding Trustee, but have refused to participate.
9. The Trust Deed is publicly available for search, and you will see that the governance structure fulfils the acknowledged well-intentioned result you are seeking, namely a wider governance group representing stakeholders. For example, direct community involvement is welcomed through the holding of a public Annual Hui of the Trust. Awataha Marae welcomes steps that can be taken to complete this necessary modernisation, particularly LINZ giving approval to the Marae Lease assignment to the Trust with any necessary updates.
10. Perhaps if you look into the Trust more deeply, you will be able play a bridging role to assist the dissident group to understand the benefits to them, and any legitimate concerns they may have, of getting on board with and involved with the Trust rather than senselessly opposing it.
11. In relation to the alleged breaches of lease, your information is incorrect. These are mischievous allegations and to the extent there is anything in the allegations of building related non-compliance the offender is the Health Tenant itself! I attach a copy of my letter of 27 July 2017 to LINZ rebutting these allegations and providing useful background as to the real issues here.
12. The one that the Society takes most issue with is the culturally insulting and incorrect proposition that the site has not been operating as a functioning Marae by its required date of 1993. What you have been told is completely untrue: the site does operate as a functioning marae, it does hold tangihanga, and the reasons why the Awataha Marae has not yet been fully completed and developed with a "fully dressed" wharenui were explained quite clearly to the Crown's (LINZ) Kaumatua Apanui Williams. Mr Williams visited the Marae as part of a LINZ inspection visit in August 2017 and accepted the Marae was functioning appropriately as a marae in accordance with applicable tikanga.

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13. In relation to your proposition that the Society was dissolved on 31 January 2020, please note this was an error on the part of the Companies Office and has been corrected by that Office. The Society is lawfully registered.
14. In relation to the proposition that a select few individuals are preventing others from having a say in how the Marae is run, again this is arguably defamatory, and in view of the strong desire of the Society since 2012 to move to the new inclusive charitable trust structure, completely misinformed.
15. In relation to the lease, there is no renegotiation of the lease with the Crown proposed because the current lease contains a right of renewal exercisable by the Society, and this will be exercised in accordance with its terms. The Society has no interest in negotiating a new lease agreement, except in the context of LINZ agreeing to an assignment of the current lease to the Trust. Awataha accepts it would be reasonable for LINZ to approve the new governance entity to ensure it is fit for purpose and provides for inclusive governance.
16. On a broader matter, you may be aware the Society and Mrs Wilson senior have a current Waitangi Tribunal Claim, Wai 187, which dates back to the early 90s and relates to the Society's claim that the Crown is under an obligation to give it the right to freehold the Awataha Marae land. The reason for Wai 187 being lodged, and now being actively pursued, is something parliamentarians could usefully take into account in relation to Crown funding, or rather lack of funding, of Māori organisations focussed on delivering cultural, spiritual and community services, that have great societal value but are not Crown funded.
17. Health and education sector initiatives and other more tangible services receive Crown funding, while there is no general Crown funding available for organisations such as Awataha Marae which provide essential cultural and spiritual services for the benefit of Māori. The result is that from 1983 when the Marae was established it has had no sources of funding other than self-generated funding from limited activities. The operating costs of Awataha Marae, and the funding and upkeep of its building improvements, have been entirely met at its own initiative, and hence some level of commercial return from the Marae land, from activities consistent with the Marae purposes and its zoning, is vital. The present perpetually renewable leasehold interest does not provide an adequate asset base to enable financially feasible development to be carried out, which is necessary to provide sources of cash flow to fund upscaling the Marae activities.
18. This is the true problem with Awataha Marae: no government funding and otherwise minimal funding only possible from commercial activities, and an inability to benefit from its leasehold interest, except in minor part at present. No changes to the governance model or to those governing the Marae will make any difference to these hard economic realities.
19. The two initiatives therefore the Society Board has been focussed on over the past many years are: achieving reliable long term income streams, in the absence of Crown funding (arguably in breach of the contemporary duty of the Crown to provide for and support Māori) and secondly modernising the governance structure to better manage the Marae.
20. The Society would welcome meeting with you to discuss any of these matters further if you would find this useful.

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Yours faithfully
ANDERSON CREAGH LAI LIMITED


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enclosure

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27 July 2017

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Dear Mr Fraser

Awataha Marae Incorporated

Introduction

1. We are in receipt of your letter of 14 July 2017. In some ways your letter is disappointing. It seems that your client (**the Commissioner**) has been actively lobbied by a dissident group Awataha understands to be represented by barrister Mr Kit Littlejohn and his instructing solicitor Mr Young, has had communications with them in relation to the dissident group's complaints, but has yet had any meaningful dialogue with Awataha, which, had this occurred, would have corrected many of the misunderstandings and factual inaccuracies in your letter.

Request for Official Information

2. In view of this, on behalf of Awataha, we require the Commissioner to provide a full copy of the LINZ, Colliers and DTZ New Zealand files held in relation to Awataha and/or the Awataha Marae, within the date range commencing 1 January 2010 to the date of this letter. This is a request for the provision of official information under the provisions of the Official Information Act 1982 (**OIA**). Please confirm this is accepted as a request for the purposes of section 12 of the OIA.
3. Please ensure that the official information provided includes copies of all correspondence, file notes, reports, advice and other documents, in any way related to the Commissioner's dealings with TPH, the dissident group, or any member or legal representative of any of the TPH and the dissident group. Awataha's view is that the provision of this information will provide much needed transparency as to the matters involved.
4. Before addressing the specific matters raised in your letter, and as the Commissioner has not to date consulted with Awataha over any of this, we are instructed to draw the Commissioner's attention to two important propositions.

The role of Te Puna Hau Ora

greater footprint on the Marae, as this would limit the future development potential of the Marae and its ability to leverage provision of a broader range of services than just health services and to be a fully functioning marae.

11. There is indisputable evidence that senior officers and figures in TPH are behind and sponsors of this dissident group. On 12 March 2012, a Henderson legal firm, Smith and Partners, wrote advising that they represented both TPH and 36 affiliated individuals then seeking membership of Awataha. Smith and Partners even stated, quite baldly, that TPH was meeting all legal costs in relation to Smith and Partners' involvement for the individuals concerned. The latest membership applications on behalf of the dissident group have, we are instructed, been arranged by individuals closely associated with TPH, meetings in relation to this have been held in TPH's premises, and there remain a number of applicants in the most recent group who were applicants back in 2012.
12. The point of providing this information is that the Commissioner should be very cautious about any allegations or statements made by or on behalf of this group. Your letter seems to indicate that the Commissioner has unfortunately "bought into" their narrative, and as Awataha will explain to the Commissioner, that narrative is not correct or factually based, but is being promoted for a collateral purpose that in the view of the Governing Board is not in the interests of Awataha or consistent with its objects.

Funding issues

13. The second point that must be made, and which the Commissioner may not be aware of, is that the Awataha Marae receives no external funding at all for any of its activities, outgoings, costs, building maintenance expenses, etc. Because the Marae is not affiliated with any iwi, no iwi funds it. The Marae has not received government funding. The revenue streams it derives to meet all its costs are confined to revenues from its sublicensing to TPH (the only lease/licence occupier), revenues from use of part of its facilities for teaching purposes by Northland Polytechnic, and income it earns through its cultural outreach programmes, for example to schools, other learning institutions and tourists, all of whom use the Marae to gain cultural familiarity and experience.
14. This fundamental funding problem is at the core of what the Governing Board has been looking to do for the 7 years we have been representing it. Over that period, commencing in 2010, the Governing Board has sought advice both from us and Deloitte's Maori advisory unit, as to how the Marae can be placed in a situation where it is able to be better and permanently funded. This is pressing because the Marae buildings were built back in the 1992 – 1993 period and need substantial ongoing maintenance. More concerning to the Governing Board is that the wharenuī (meeting house) has never been able to be finally completed and properly opened for all purposes, because this would take a further sum of between \$500,000 - \$1 million, which is simply unavailable at the present time. We deal in more detail with the wharenuī in the context of tangihanga below.
15. Based on the advice it has received, the Governing Board, at least 5 years ago, determined that the only way forward to improve the present situation, must involve the raising of capital and the establishment of revenue streams for the

Awataha itself, and it seems ironic that, following the termination of his involvement as solicitor for the Marae, he would now apparently complain about the grant of a long term sublicense he himself was responsible for preparing and to the very party he, in substance, now represents.

23. Another occupancy arrangement is effectively to the Crown itself in right now of Housing New Zealand, under a bare ground licence established in 1989 where the now Housing New Zealand licensee had provided relocatable dwellings onsite which are agreed to be chattels to provide kaumatua housing. Again this has been long since approved by LINZ and its predecessors.
24. Finally Northland Polytechnic uses some of the marae buildings to provide education services to students. These are part of the current marae buildings and facilities which are in the possession of Awataha.
25. So there is no breach of clause 2 of the lease as you suggest.
26. Para 5(b) – the proposition that the site as a whole is not operating as a functioning Marae or was not so by 31 December 1993 is astonishing. Here the Commissioner appears to have bought in to a false assertion made by or on behalf of the dissident group. These appear to have their foundation in the letter of 24 February 2016 from Mr Littlejohn where he alleges that the land is not used a functioning community Marae and facilities to enable tangihanga.
27. This tangihanga issue is a complex issue involving the need for a deep understanding of Maori cultural rules and protocols, and we note the Commissioner has made no endeavour to investigate this at all. The issue surrounds the present unavailability of the uncompleted wharenuī for the holding of tangi. In all other respects the wharenuī fully serves its purpose as the core building of the Marae. Tangi however are currently and have long been held in the Marae headquarters building in a suitable auditorium area. In fact a tangi has been held in the last month in this very place.
28. The reasons why the wharenuī may not presently be used for tangi are deeply cultural, have to do with the tapu placed on the wharenuī when it was first constructed, and a rahui that was placed on it at the time to the effect that until the wharenuī is finally completed and commissioned, no person may have their tangi in the wharenuī. This extended even to Dr Wilson himself on his death in 2012. His own tangi was held in the auditorium and not the wharenuī for this reason. Completion of the wharenuī requires all of the carvings that have been designed and are partly but not fully completed, being erected, and the Marae formally blessed with the tapu and rahui lifted for it to be opened.
29. Again, the Commissioner should be extremely cautious not to be dragged into an argument over a cultural requirement or practice to which the Governing Board is subject, and in respect of which he can have no knowledge without having held discussions with the Governing Board. In any event, it must be obvious that the Marae has been operating as a marae, with the consent of LINZ, for approaching 25 years, LINZ has never at any time during this period ever alleged the Marae is not a functioning marae, despite numerous inspections by its agents, and the proposition that the site is not operating as a Marae is simply nonsense. There is no breach of the lease here.

paragraph 9 of your letter below. No applications at all from anyone have been accepted or invited since 30 June 2016.

37. While you have not expressly said that the special meeting requested by the Commissioner is to comply with the obligations of clause (q) of the lease, we take it that this is what the Commissioner requires, and Awataha will of course comply. The procedure by which Awataha intends to comply with this requirement is as follows:
- (a) Awataha is holding its next scheduled Governing Board meeting on 1 August 2017. At that Board meeting, by recommendation of the Chairperson and Chief Executive, the Board intends to resolve to reopen applications for membership for approximately a 3 month period commencing the day after the Governing Board meeting and terminating on 31 October 2017 when memberships will again be closed until after an SGM is called.
 - (b) Because of the significant concerns held by the Governing Board as to the inherent conflict of interest that will arise with representatives of Awataha's sub licensee TPH seeking membership, a new standard application form has been prepared which now includes a section where all applicants must disclose any "interest" they have for the purpose of entry in Awataha's interests register.
 - (c) Awataha will provide the new standard membership application form to Mr Littlejohn and Mr Young, advise them of the reopening of membership applications at LINZ's insistence, and invite them to obtain new signed application forms from the parties they represent. Awataha is not prepared to proceed on the previous application forms which are, in view of the time that has passed, stale in any event.
 - (d) Awataha will itself invite other interested parties to apply to become members as well. It would not be fair or reasonable to proceed to consider the 82 stale applications made back in 2016, where membership applications have not been accepted since 30 June 2016, without reopening the opportunity for all interested parties to apply for membership.
 - (e) A special general meeting will then be held in November 2017 in compliance with para (q) of the lease to consider whether all or any applicants may be elected as members. The Commissioner or his representative is invited by the Governing Board to attend, but purely as an invited guest, and with no speaking or other rights. Nor will the applicants themselves have any right to attend. Only current members have the right to attend and vote at meetings. Awataha's obligations under the lease will be fully complied with if properly completed membership applications received by the closing date, considered individually or collectively by classes, are put to the meeting for approval or otherwise.
 - (f) Per clause (q), unless two-thirds or more members entitled to vote do vote in favour of a membership acceptance, the application is not

43. The selection of a charitable trust structure followed advice given both by this firm and Deloitte, to the effect that the incorporated society structure was not suitable or appropriate for the ownership and operation of a Marae that is intended to be widely open to and used by person who may or may not at various times be members.
44. Typically as you know the incorporated society vehicle is used for member owned clubs. Some such clubs are very large, e.g. the Automobile Association which is understood to have over 600,000 members. The key feature of an incorporated society is that the use of the society's assets and access to its services are typically restricted to members only. This means persons who are formally signed up as members, and entered in the register of members of the relevant society. If you want to access the services of the Automobile Association you must be a member.
45. The core difficulty with this as the governing structure for a marae is that by its very nature a marae is intended to be welcoming and inclusive of a wide range of persons who may be regular users of the marae facilities, or may be infrequent and periodic users. In the case of Awataha it is impracticable to rigidly enforce a procedure that all Marae users, apart from merely casual visitors, should be signed up to and become members of a society to be able to utilise facilities and services. Should Awataha for example decline to hold a tangi for a group wishing this unless relevant family are signed up as members? What is the legal status or persons who use the facilities on more than a casual basis but are not members?
46. Most iwi and marae organisations are set up as trusts or Maori Authorities. The reason for this is because Maori organisations represent an understanding of common ownership. Although the Marae is not a traditional marae in the sense of ties to a specific iwi and ownership of the whenua, the purpose of the marae is still the same; to be a shared space for the benefit of the community. By its membership based nature, an incorporated society is exclusive, whereas a charitable trust structure is inherently inclusive and will better enable community participation and commitment.
47. Para 9(c) – in practice the beneficiaries of the charitable trust are all those who will benefit by the Trust undertaking the objects of the trust deed. We **enclose** for your reference a signed copy of the trust deed. We note that the Trust Deed is subject to review by the Charities Commission and the Inland Revenue Department, as charitable status is being sought.
48. The operation of the Trust will be undertaken by the trustees incorporated as a Board. Clause 10.2 of the trust deed provides that, with the exception of the Founding Trustees, the Trustees shall be appointed and removed from time to time by the Governing Board of the Marae in accordance with the trust deed. Clause 10.5 limits the tenure of the trustees to three years, and with reappointment for no more than 4 consecutive terms (clause 10.6).
49. Further, although not typical for a charitable trust, clause 12 provides for an annual hui of the trust where beneficiaries of the trust will be provided an