

Māori Law Review

A MONTHLY REVIEW OF LAW AFFECTING MĀORI

Ngā whakaturetanga – Legislation

Treaty Settlement legislation before the House of Representatives in 2022

Report by Dr Carwyn Jones

Whakataunga – Overview

The Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Bill, the Te Rohe o Rongokako Joint Redress Bill, the Ngāti Maru (Taranaki) Claims Settlement Bill, the Ngāti Rangitihi Claims Settlement Bill, the Maniapoto Claims Settlement Bill, and the Māori Commercial Aquaculture Claims Settlement Amendment Bill were enacted in 2022. The Ngāti Hei Claims Settlement Bill, the Ngāti Paoa Claims Settlement Bill, and the Ngāti Tara Tokanui Claims Settlement Bill were introduced to the House in 2022.

Kōrerorero – Discussion

Some significant pieces of settlement legislation progressed through the House in 2022.

Co-governance mechanisms continued to be an important of the legislation that was enacted this year. For example, the Ngāti Rangitihi bill establishes a statutory body called the Tarawera Awa Restoration Strategy Group to support the restoration of the mauri of the Tarawera River catchment; the Ngāti Maru bill establishes a joint management agreement to improve the health of the Waitara River; and, the Te Rohe o Rongokako Joint Redress Bill establishes the Wairarapa Moana Statutory Board to act as a guardian of Wairarapa Moana and the Ruamahanga River catchment.

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Editors

Carwyn Jones
Craig Linkhorn

Publisher

Māori Law Review Ltd
PO Box 25433
Wellington 6146
New Zealand

T +64 4 472 2667

W maorilawreview.co.nz

Associate Editor

Toni Love

Student Editors

Kaea Hudson
Stuart Leslie

Consultant Editors

Tom Bennion
John Borrows
Judge Craig Coxhead
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(Continued from p 1)

Notably, the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Bill was enacted in somewhat controversial circumstances. The third reading of the Bill took place only a matter of days after the Supreme Court issued a decision which referred the matter of remedies back to the Waitangi Tribunal (see *Wairarapa Moana Ki Pouākani Incorporation v Mercury NZ Limited* [2022] NZSC 142 to be reported). However, the enactment of the Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Bill settled all outstanding claims that were before the Wairarapa ki Tararua Tribunal, and removed the jurisdiction for the Tribunal to continue to hear the remedies proceedings.

Settlement legislation enacted in 2022

The Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Bill, the Te Rohe o Rongokako Joint Redress Bill, the Ngāti Maru (Taranaki) Claims Settlement Bill, the Ngāti Rangitihi Claims Settlement Bill, the Maniapoto Claims Settlement Bill, and the Māori Commercial Aquaculture Claims Settlement Amendment Bill were enacted in 2022.

Māori Commercial Aquaculture Claims Settlement Amendment Bill

Bill No.	322-1
Introduction	06/08/20
First Reading	08/12/20
Select Committee Report	Māori Affairs – 04/06/21
Second Reading	10/08/21
Third Reading	07/04/22
Assent	11/04/22

The Māori Commercial Aquaculture Claims Settlement Act 2004 (the Act) provides for a full and final settlement of Māori commercial aquaculture claims since 21 September 1992. The purpose of the Act is to provide for the allocation and management of aquaculture settlement assets. A summary of the Act can be found [here](#).

The Māori Commercial Aquaculture Claims Settlement Amendment Bill (the Bill) was introduced in August 2020. The Bill amends the sections of the Act that concern the allocation of settlement assets. The objective of this Bill is to improve the allocation and transfer process provided in the Act to better enable the allocation and transfer of aquaculture settlement assets to iwi. This will be facilitated by providing Te Ohu Kaimoana with a limited discretionary power to make determinations of aquaculture settlement allocation entitlements. This power is constrained to situations where Te Ohu Kaimoana is satisfied that the dispute resolution process set out in the Act has been unable to resolve the disagreement and it is clear that the relevant iwi are unable to reach a decision as to how the aquaculture assets should be allocated or where Te Ohu Kaimoana is satisfied that it cannot make a determination on aquaculture settlement allocation entitlements because it has been unable to recognise iwi aquaculture organisations for one or more iwi. Despite these changes, the fundamental elements of the Act are preserved.

The Bill had its first reading and was referred to the Māori Affairs Select Committee. During the first reading, Hon Meka Whaitiri emphasised that following extensive consultation, the Bill is widely supported by iwi and Te Ohu Kaimoana. The Bill provides a solution for many regions who are unable to access their aquaculture settlement assets due to a lack of unanimous agreement between iwi as to how those aquaculture settlement assets should be allocated. Currently, where an agreement cannot be reached, the assets remain held in trust and cannot be utilised by iwi to pursue their aquaculture aspirations. As explained in the Bill's general policy statement, the Bill will enable iwi to access their aquaculture assets in an appropriate time frame, improve the delivery of the Crown's aquaculture settlement obligations, protect the interests of iwi who do not wish to claim their aquaculture settlement assets and support iwi aquaculture aspirations whilst further supporting the growth of the aquaculture industry. This streamlined allocation and transfer process supports iwi to maximise opportunities arising from treaty settlements, develop their position in the aquaculture industry and accelerate sustainable growth in the aquaculture industry.

Select Committee report

The Māori Affairs Committee [reported](#) on the Bill on 4 June 2021. The Committee received 10 submissions and heard oral evidence from 6 submitters. The Committee noted that submissions on the Bill were supportive and considered that the Bill would allow iwi to advance their interests and aquaculture opportunities and progress their economic, cultural and social objectives. The Committee recommended that the Bill be passed without amendment.

Some submitters proposed further amendments to the Bill including that there should be wider recognition and involvement of hapū and whānau in the allocation process for settlement assets and that the Bill should include provisions that consider applicants who are before the High Court on the Marine and Coastal Area (Takutai Moana) Act 2011 or who are in negotiations with the Crown. The Committee did not recommend these amendments largely because they were outside the scope of the Bill.

The Bill received assent on 11 April 2022.

Ngāti Rangitihi Claims Settlement Bill

Bill No.	17-1
Introduction	24/03/21
First Reading	22/06/21
Select Committee Report	Māori Affairs – 17/12/21
Second Reading	01/03/22
Third Reading	15/03/22
Assent	18/03/22

The Ngāti Rangitihi Claims Settlement Bill gives effect to the Deed of Settlement between Ngāti Rangitihi and the Crown. The Bill will be the final settlement of all historical Treaty of Waitangi claims of Ngāti Rangitihi resulting from acts or omissions by the Crown before 21 September 1992.

Part 1 – acknowledgment and apology

The Bill includes a historical account and makes specific acknowledgements in relation to Ngāti Rangitihī's military service, the impact of native land laws on Ngāti Rangitihī, the Crown lease and purchase of land within Ngāti Rangitihī's territory, public works takings, pollution of the Tarawera River and a failure to actively protect te reo Māori. The Bill records a Crown apology for the many hardships and tribulations Ngāti Rangitihī have endured, and unreservedly apologises for the Crown's failure to fulfil its obligations under the Treaty of Waitangi.

Part 2 – cultural redress

The Crown offers a statutory acknowledgement over the following areas:

- Ash Pit Road Marginal Strip (Te Kauae)
- Lake Rerewhakaaitu Recreation Reserve
- Lake Tarawera Historic Reserve and part Lake Tarawera Scenic Reserve
- Ohinekoao Recreation Reserve
- Ohinekoao Scenic Reserve
- Rerewhakaaitu Conservation Area
- Tarawera River Marginal Strips

The Crown offers a statutory acknowledgement and deed of recognition over the following areas:

- Crater Block Crown Land
- Part Lake Tarawera Scenic Reserve
- Tarawera Cut Wildlife Management Reserve
- Tarawera River

The following properties are to be vested in fee simple to be administered as reserves, subject to conditions:

- Awarua
- Matata property
- Mihimarino
- Moura property
- Ngāheretā property
- Omanuhiri
- Ongarara
- Otaramuturangi
- Ōtūkapuarangi
- Pakipaki o Roohi
- Te Kahao o Rongomai
- Te Kaokaoroa
- Te Tapahoro Campground
- Te Tirohanga o Niheta
- Te Tūāhu o Rangiaohia
- Waimangu Volcanic Valley
- Whakapoukarakia

Te Tapahoro is to be vested in fee simple subject to a conservation covenant.

The cultural redress also includes a whenua rāhui, which acknowledges the traditional, cultural, spiritual and historical association of Ngāti Rangitihi with a site of significance. The Bill provides whenua rāhui over the Lake Tarawera Historic Reserve and Part Lake Tarawera Scenic Reserve. The whenua rāhui places obligations on the New Zealand Conservation Agency and relevant Conservation Boards to have regard to the protection principles for the area and consult the trustees prior to approving a strategy or plan that relates to the whenua rāhui area.

The Bill also provides for a joint advisory committee to be established for advising trustees on conservation matters affecting Part Matata property and Whakapoukarakia. The Bill also establishes a statutory body called the Tarawera Awa Restoration Strategy Group with the purpose of supporting, coordinating and promoting the integrated restoration of the mauri of the catchment.

Part 3 – commercial redress

The commercial and financial redress is not specified in the Bill. However, the Deed of Settlement included financial redress of \$11.3 million made up of a share of Crown forest land in the central North Island and financial redress. The Deed provided that Ngāti Rangitihi will also have the right to purchase within a deferred selection of two years and a first right of refusal over Matatā School site (land only) for a period of 178 years from the settlement date and a right of first offer over the Rotomahana Bay of Plenty Landcorp Farm.

Select Committee report

The Māori Affairs Select Committee [reported](#) on the Bill on 17 December 2021. The Committee received 20 submissions and heard oral evidence from 7 oral submitters. The Committee recommended that the Bill be passed with minor and technical amendments. The amendments related to altering clause 6(2)(g)(iv) to ensure that it is consistent with other current legislation and takes into account the changes Parliament made in the Trusts Act 2019 and further changes updating the descriptions and interests for whenua rāhui area and cultural redress properties in clause 63 and Schedules 2 and 3.

The Committee also considered concerns raised by submitters from Tūhourangi about cultural redress sites being offered to Ngāti Rangitihi (such as the Waimangu Volcanic Valley). Some submitters believed that Ngāti Rangitihi did not have the right to seek redress in the Tarawera region. These concerns led to an application for urgent inquiry in the Waitangi Tribunal which was ultimately declined. The Committee decided it was not appropriate to comment on the matter but sought to acknowledge the concerns from the submitters. If there are disagreements between iwi regarding specific items of redress, the Crown expects them to be resolved by agreement between the interested groups. The Committee acknowledged the agreement made between Te Mana o Ngā

Rangitihī and the Tūhourangi Tribal Authority relating to transferring the ownership of Ōtūkapuarangi in full and Waimangu in part to Tūhourangi. These sites will be jointly administered by the two iwi.

The Bill received assent on 18 March 2022.

Ngāti Maru (Taranaki) Claims Settlement Bill

Bill No.	36-1
Introduction	19/05/21
First Reading	06/07/21
Select Committee Report	Māori Affairs – 21/12/21
Second Reading	01/03/22
Third Reading	29/03/22
Assent	30/03/22

The Ngāti Maru (Taranaki) Claims Settlement Bill gives effect to the Deed of Settlement signed on 27 February 2021 between the Crown and Ngāti Maru. The Bill will be the final settlement of all the historical Treaty of Waitangi claims of Ngāti Maru resulting from acts or omissions by the Crown before 21 September 1992.

Part 1 – acknowledgement and apology

The Bill includes a historical account and acknowledges that Ngāti Maru's relationship with the Crown has been one characterised by loss of land, identity and autonomy. The Crown makes specific acknowledgements in relation to the wars in Taranaki, unfairly treating Ngāti Maru as being in rebellion, confiscation of land and failure to fulfil promises to return land. The Crown acknowledges that its breaches of te Tiriti o Waitangi undermined Ngāti Maru's traditional systems of authority and knowledge, and the rituals and art forms associated with their maintenance and development, compromised their economic capacity and threatened the physical, cultural and spiritual wellbeing of the iwi. The Bill records a Crown apology to the tūpuna, descendants, hapū, and whānau of Ngāti Maru for the many breaches of the Treaty of Waitangi and its principles, especially in relation to the wars in Taranaki in the 1860s, the Crown's confiscation of land, imprisonment of Ngāti Maru men without trial after they participated in protests at Parihaka, and the invasion and destruction of Parihaka.

Part 2 – cultural redress

The Bill vests 16 sites of cultural significance in Ngāti Maru as cultural redress.

The following properties are vested in fee simple:

- Tahora Railways property
- Former Matau School House property
- Former Tarata School House property
- Former Tarata School property
- Purangi Domain property
- Tarawai Property
- Te Kerikeringa - Toetoe Road property

The following properties are vested subject to conditions:

- Te Kerikeringa - River property (subject to scenic reserve status, with New Plymouth District Council as the administering body)
- Pūrangi property (subject to scenic reserve status, with New Plymouth District Council as the administering body)
- Tarata property (scenic reserve status, with New Plymouth District Council as the administering body)
- Tangarakau River property (subject to historic reserve status, with the Ngāti Maru governance entity as the administering body)
- Waitara River No 3 property (subject to historic reserve status, with the Ngāti Maru governance entity as the administering body)
- Whangamomona River property (subject to historic reserve status, with the Ngāti Maru governance entity as the administering body)
- Stratford Railway Strip property (subject to local purpose reserve status, with Stratford District Council as the administering body)
- Tarata Domain property (subject to the recreation reserve status, with New Plymouth District Council as the administering body)
- Tāngarākau Marginal Strip property (joint vesting with Ngāti Hāua subject to historic reserve status, with Ngāti Maru and Ngāti Hāua as the administering body)

The Crown offers a statutory acknowledgement over the following areas:

- Kirikiri property
- Part Tāngarākau Forest Conservation Area
- Tangarakau River and its tributaries within the area of interest
- Whangamomona River and its tributaries

The Crown offers a statutory acknowledgement and deed of recognition over the following areas:

- Matau Conservation Area
- Whetu Conservation Area
- Ngatoto Conservation Area
- Part Whangamōmona Forest Conservation Area
- Part Tāngarākau Forest Conservation Area
- Part Waitaanga Conservation Area
- Part Pouiatua Conservation Area
- Okau Scenic Reserve
- Mataru Scenic Reserve
- Part Rerekapa Falls Recreation Reserve
- Part Moki Conservation Area
- Jury Conservation Area
- Kerekeringa Conservation Area
- Autawa Road Conservation Area
- Kirai Scenic Reserve
- Marginal Strip — Waitara River
- Waitara River and its tributaries within the area of interest
- Manganui River and its tributaries within the area of interest
- Patea River and its tributaries within the area of interest

The cultural redress also includes the establishment of a joint management agreement to improve the health of the Waitara River by creating a role for Ngāti Maru on the Waitara River Committee. The Committee will be jointly made up of equal numbers of representatives nominated by Taranaki Regional Council and by iwi with interests in the river.

The Crown acknowledges the long-standing traditional, cultural and historical association of Ngāti Maru with the Maru Taiao area. The Bill calls for a Maru Taiao plan to be established to identify the values of Ngāti Maru in relation to the Maru Taiao area and the resource management issues of significance to Ngāti Maru in relation to the Maru Taiao area. In accordance with the Bill, local authorities must take the Maru Taiao plan into account when preparing or reviewing a policy statement or plan under the Resource Management Act 1991.

The Crown also recognises the long-standing cultural, historical and traditional association of Ngāti Maru with pākohe and pūrangi. The Bill provides for the governance entity to allow members of Ngāti Maru to search for and remove Crown-owned pākohe or pūrangi in the relevant area in accordance with a cultural materials plan agreed to by the trustees and the Minister of Conservation and without authorisation from conservation legislation or without a permit under s 8(1)(a) of the Crown Minerals Act 1991.

Part 3 – commercial redress

The commercial and financial redress is not specified in the Bill. However, the Deed of Settlement included financial redress of \$30 million and the right to purchase the following properties:

- Te Wera Crown Forest Licensed land on settlement date
- 31 Treaty Settlements Landbank properties on a deferred selection basis
- 3 school sites (land only) on a deferred selection basis, to be leased back to the Crown
- Stratford Police Station (land only) on a deferred selection basis, to be leased back to the Crown.

Ngāti Maru will also receive an exclusive right of refusal for 179 years from the settlement date over specific Crown-owned properties within Ngāti Maru's rohe and a shared right of refusal over specific properties in the area.

Select Committee report

The Māori Affairs Select Committee [reported](#) on the Bill on 21 December 2021. The Committee received and considered 35 submissions and heard 8 oral submissions. The Committee proposed some amendments.

The first amendment was in relation to the administration of the riverbed within the Whanganui River catchment area. The Bill provides for the transfer of three properties that are conservation land within the Whanganui River catchment area, one of which is shared redress with

Ngāti Hāua. These sites potentially contain riverbed owned by Te Awa Tupua but are managed by the Department of Conservation. Te Arawhiti sought the views of Ngāti Maru and other groups on how the riverbed should be administered. Ngāti Maru, Ngā Tāngata Tiaki o Whanganui (the post settlement governance entity for the Whanganui River settlement), Te Pou Tupua, and Ngāti Hāua agreed that it is no longer appropriate for the Department of Conservation to manage these sites and Te Pou Tupua should have these responsibilities instead. The Committee recommended that the Bill be amended to give effect to this agreement.

The second amendment related to the resource consent process relating to the joint management agreement for the Waitara River. Clause 87 discusses the process for considering resource consent applications under the joint management agreement. Clause 87(1)(b) states that the clause would also apply to specified resource consent applications made to territorial authorities which lead to New Plymouth District Council seeking clarification of its role under the agreement. Ngāti Maru have agreed that the joint management agreement was only intended to apply to applications for resource consent between the Taranaki Regional Council and Ngāti Maru. The Committee recommended removing the reference to territorial authorities in clause 87.

The third amendment related to the removal of resumptive memorials in Taranaki. The Bill would remove the memorials on land relating to Ngāti Maru's settlement redress and remove the Waitangi Tribunal's jurisdiction to order resumption in favour of Ngāti Maru. Generally, the Crown removes all remaining resumptive memorials on land once historical claims have been settled through legislation. Te Arawhiti considered whether to amend the bill to remove other resumptive memorials within fully settled areas of the Taranaki region. As this had not been discussed with Ngāti Maru, Te Arawhiti decided it would be more appropriate to remove the memorials at a later date. The Committee supported this approach.

The Committee recommended that the Bill be passed with these amendments.

The Bill received assent on 30 March 2022.

Maniapoto Claims Settlement Bill

Bill No.	104-1
Introduction	03/12/21
First Reading	14/12/21
Select Committee Report	Māori Affairs – 15/06/22
Second Reading	10/08/22
Third Reading	21/09/22
Assent	27/09/22

The Maniapoto Claims Settlement Bill gives effect to certain matters contained in the Deed of Settlement signed on 11 November between the Crown and Maniapoto. The Bill will be the final settlement of all the historical Treaty of Waitangi claims of Ngāti Maniapoto resulting from acts or omissions by the Crown before 21 September 1992. Ngāti Maniapoto's rohe includes the King County and the adjacent marine environment including part of the exclusive economic zone.

Part 1 – acknowledgment and apology

The Bill sets out a historical account of the relationship between the Crown and Ngāti Maniapoto and acknowledges that the cumulative effect of the Crown's breaches of the Treaty of Waitangi have affected the economic, physical, cultural and spiritual well-being of Ngāti Maniapoto. The Crown makes specific acknowledgements in the Bill in relation to the Taranaki and Waikato wars, unfairly labelling Ngāti Maniapoto as rebels, land confiscation, Te Ōhākī Tapu, the Native Land Court, 1890s Crown purchasing, contributions of Ngāti Maniapoto to New Zealand's war efforts and socio-economic issues among other matters. The Bill records a Crown apology to the hapū, whānau, tūpuna and mokopuna of Ngāti Maniapoto for its many breaches of the Treaty of Waitangi and its principles and especially apologises for failing to uphold Te Ōhākī Tapu through which Ngāti Maniapoto sought to establish a relationship with the Crown.

Part 2 – cultural redress

The cultural redress provided for in the Bill includes the placing of a pou whenua, protocols, statutory acknowledgements, a deed of recognition, the vesting of 36 sites of significance and provisions relating to interests in the exclusive economic zone. The Bill also sets out the natural resources redress including the requirements for a joint management agreement and the Crown's acknowledgement of the statement of significance of Ngā Wai o Maniapoto.

The following properties are vested in fee simple:

- Mangapehi Railway Station property
- Te Kūiti Pā Railway Yard carpark
- Te Puna o Te Roimata

The following properties are vested in fee simple to be administered as reserves, subject to conditions:

- Aratoro property
- Arorangi property
- Awaroa property
- Hangatiki property
- Hauturu West property
- Herekawe property
- Kahurewa property
- Kurukuru property
- Mangakahu property
- Mangaokewa property
- Mapara property
- Mokau Estuary property
- Mokau property
- Ngaherenga property
- Omaru Falls property
- Piropiro Ketemaringi site A
- Piropiro Ketemaringi site B
- Rākaunui property

- Ranginui property
- Tainui property
- Tapuae property
- Te Arero property
- Te Raumauku Caves property
- Te Umuroa property
- Waiharakeke property
- Whareorino site A
- Whareorino site B
- Whareorino site C
- Whareorino site D
- Whareroa property

The following properties are to be jointly vested in fee simple to be administered as reserves, subject to conditions:

- Hikurangi property
- Tangitu property
- Waihuka property

The Crown offers a statutory acknowledgement over the following areas:

- Coastal statutory acknowledgement area
- Huioteko Scenic Reserve
- Hutiwai Conservation Area
- Kahuwera Scenic Reserve
- Kawhia Harbour (Rakaunui) Scenic Reserve
- Kawhia Harbour (Waiharakeke) Scenic Reserve
- Mahoenui Conservation Area
- Marokopa Falls Scenic Reserve
- Part Matakana Conservation Area (area linked to Te Puta Spring)
- Moeatoa Scenic Reserve
- Mohakatino Conservation Area
- Mokau River Scenic Reserve
- Ngā Wai o Maniapoto
- Ngatamahine Scenic Reserve
- Ngutunui Stream Scenic Reserve
- Okahukura Scenic Reserve
- Puketapu Historic Reserve
- Rukuhia Domain Recreation Reserve
- Tapuae Scenic Reserve
- Taumatini Scenic Reserve
- Te Kauri Park Scenic Reserve
- Te Kuiti Aerodrome
- Te Nau Nau property
- Totoro Scenic Reserve
- Turaerae Scenic Reserve
- Waitewhena Conservation Area

The Crown offers a statutory acknowledgement and deed of recognition over the following areas:

- Kakepuku Mountain Historic Reserve
- Mangapohue Natural Bridge Scenic Reserve
- Part Pirongia Forest Park

Part 3 – commercial redress

The Bill also sets out the commercial redress including the transfer of commercial redress properties and deferred selection properties. The Deed of Settlement articulated that the commercial and financial redress totalled \$165 million.

Select Committee Report

The Māori Affairs Committee reported on the Bill on 15 June 2022. The Committee received 23 submissions and heard oral evidence from 3 submitters. The Committee recommended that the Bill be passed with minor and technical amendments.

The Committee recommended that clause 21 be amended, with a consequential amendment to clause 22. These clauses concern land subject to Te Awa Tupua (Whanganui River Claims Settlement) Act 2017. Small tributaries of the Whanganui River, of which ownership was transferred to Te Awa Tupua under that Act, may run through land that would be transferred under this Bill to Maniapoto. Maniapoto wishes for Te Pou Tupua (the “human face” of Te Awa Tupua) to assume landowner functions for the beds of these tributaries.

Since the introduction of this bill, the Minister for Treaty of Waitangi Negotiations and the Minister of Conservation have agreed to remove some of the conservation status declared by s 42 of Te Awa Tupua (Whanganui River Claims Settlement) Act. It will be removed from any part of the bed that would be transferred under this bill. The Committee believed that amending clauses 21 and 22 would reflect this Ministerial agreement and confirm that Te Pou Tupua will assume landowner functions for that riverbed.

The Committee recommended that the Bill be passed with these amendments.

The Bill received assent on 27 September 2022.

Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Bill

Bill No.	100-1
Introduction	04/02/22
First Reading	11/05/22
Select Committee Report	Māori Affairs – 11/11/22
Second Reading	22/11/22
Third Reading	13/12/22
Assent	16/12/22

The Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Bill gives effect to certain provisions of the Deed of Settlement signed between Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua and the Crown.

Part 1 – acknowledgement and apology

The Bill includes a historical account and acknowledges that Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua have long-standing grievances which have not been appropriately recognised. The Crown acknowledges the detrimental effect of Crown purchasing, the operation and impact of native land laws, and public works takings which left Ngāti Kahungunu virtually landless by 1900. The Crown acknowledges that its actions and omissions regarding the spit at Lake Ōnoke, the water level of Wairarapa Moana, and the lakes agreement were a source of distress and grievance for Ngāti Kahungunu. The Crown makes an acknowledgement regarding the distress suffered by Ngāti Kahungunu as a result of the loss or degradation of many of their culturally significant sites and taonga. Finally, the Crown acknowledges the harmful effects of a state education system that led to poor educational outcomes for Māori and failed to protect te reo Māori and encourage its use.

Part 2 – cultural redress

The Bill vests 27 sites of cultural significance in Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua as cultural redress.

The following properties are vested in fee simple:

- Akitio property
- Ngātamatea property
- Remutaka summit property
- Te Oroī site A

The following properties are vested subject to conditions:

- Aorangi property
- Awakura property
- Hikapu property
- Kahutara property
- Kākahimakatea property
- Mangatārera o Te Whakatūrākau site A
- Mangatārera o Te Whakatūrākau site B
- Ngā Rā-a-Kupe property
- Ōwāhanga property
- Pounui lagoon property
- Puketoi property
- Remutaka property
- Ruamahanga Cutoff property
- Te Hīwawā property
- Te Oroī site B
- Te Pouaruhe site A
- Te Pouaruhe site B
- Tuhirangi property
- Wairarapa Lake Domain property
- Wairarapa Lake Shore property
- Wairarapa Lake Shore Scenic Reserve property
- Whāwhānui White Rock property
- Te Kopi property

The Crown offers a statutory acknowledgement over eleven areas, ten of which are also subject to a deed of recognition:

- Coastal marine area within the area of interest (statutory acknowledgement only)
- Arete (hill)
- Carter Scenic Reserve
- Lowes Bush Scenic Reserve
- Mount Hector (peak)
- Oumakura Scenic Reserve
- Pahaoa Scientific Reserve
- Rewa Bush Conservation Area
- Remutaka Forest Park within the area of interest
- Rocky Hills Sanctuary Area
- Turakirae Head Scientific Reserve

Part 3 – commercial redress

The commercial and financial redress is not specified in the Bill. However, the Deed of Settlement included a total financial and commercial redress of \$115 million and the right to purchase the following properties:

- 2 properties including 70% of the Ngāumu Forest Crown Forest licensed land at settlement date
- 2 Landcorp Farming Limited farms (Wairio and Rangedale)
- 28 specific commercial sites from the Treaty Settlements Landbank and the Ministry of Education for up to 2 years after settlement date

The Deed of Settlement also specified that Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua will have a right of first refusal over specific surplus Crown-owned properties within their area of interest, for a period of 178 years from settlement date.

Select Committee report

The Māori Affairs Select Committee reported on the Bill on 11 November 2022. The committee received 173 submissions and heard oral evidence from 55 submitters in Wellington and via videoconference. The committee recommended that the Bill be passed with some minor and technical amendments.

The committee recommended a number of minor and technical amendments, including updating the legal description in Schedule 3 for the Ruamahanga Cutoff property to reflect the results of surveying that had been completed since the bill was drafted. The committee also recommended deleting clause 104(4)(c) as it makes an unnecessary reference to the Crown. Finally, the committee recommended inserting clause 103A to set out the process for the transfer of New Zealand units to the Settlement Trust, in connection with the transfer of Crown Forest Licensed (CFL) land. It thus recommended inserting definitions of 'Forestry Emission Unit Trust' and 'New Zealand Unit' in clause 92.

Opposition to the Bill

The committee report also provides an important summary of the opposition to the Bill.

The committee received submissions asking for the Wai 85 claim and the Wai 429 claim to be removed from the bill, or for the bill to be postponed until the claims were heard. These are claims involving land at Pouākani in Southern Waikato, sought on behalf of the Wairarapa Moana Incorporation, and Ngāumu Crown Forest Licensed (CFL) land in Southern Wairarapa, sought on behalf of a Ngāti Kahungunu hapū. The submitters believed the bill as introduced was interfering with the judicial process of appeals of these claims before the Supreme Court.

The Legislation Design and Advisory Committee (LDAC) recommended that the select committee ask Ministers to explain why the Crown considered it appropriate to legislate before the Supreme Court had the opportunity to deliver its decision, and before further litigation in the Waitangi Tribunal and High Court was complete. The LDAC said that if the committee, and subsequently the House, decided that the Bill should be progressed now, the reasons for this should be clearly articulated to the public. The committee was advised that the Minister had explained to the parties the reasons why the Crown considered it to be appropriate to proceed with the bill.

The committee received submissions disputing the inclusion of two hapū, Ngāti Hāmua and Ngāti Rangiwihakaewa, in the settlement as the two hapū have shared whakapapa with both Ngāti Kahungunu and Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-a-Rua. The committee understood that Ngāti Kahungunu and Rangitāne had already engaged with each other to address their overlapping interests and had decided that Ngāti Hāmua and Ngāti Rangiwihakaewa would be included in the claimant definitions for settlements of both iwi. The committee acknowledged the positions of members of both iwi and noted that the two settlements do not cancel each other out.

The Green Party of Aotearoa New Zealand, the New Zealand National Party, and Te Pāti Māori all expressed concern that the bill would affect the proceedings before the Supreme Court that had not yet been decided.

The Supreme Court decision, *Wairarapa Moana ki Pouakani Incorporation v Mercury NZ Limited* [2022 NZSC 142] was issued on 7 December 2022. The Supreme Court accepted key aspects of the appeal and determined that the Waitangi Tribunal ought to proceed with its iterative process to determine whether and how to exercise its resumptive jurisdiction in relation to these claims. However, the third reading of the Bill took place the following week, foreclosing the possibility of the Waitangi Tribunal making a binding recommendation for the resumption of the relevant lands.

The Bill received assent on 16 December 2022.

Te Rohe o Rongokako Joint Redress Bill

Bill No.	98-2
Introduction	03/02/22
First Reading	30/03/22
Select Committee Report	Māori Affairs – 30/09/22
Second Reading	15/11/22
Third Reading	06/12/22
Assent	12/12/22

The Te Rohe o Rongokako Joint Redress Bill gives effect to certain joint redress provided for in the deeds of settlement that settle the historical claims of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua and Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua.

Part 1 – preliminary provisions

This part sets out the purpose of the Bill, background to the Bill, when its provisions take effect, definitions of key terms in the Bill, and provides for the legal effect of the Bill.

Part 2 – joint cultural redress

Castlepoint Scenic Reserve is declared to be subject to an overlay classification.

The Bill provides for the Minister to recommend the making of regulations under section 186 of the Fisheries Act 1996 to provide for:

- The management of customary food gathering in Wairarapa Moana and the Ruamahanga River catchment by Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua and Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua;
- The issuing of customary authorisations as part of that management; and
- The management of customary fishing grounds in Wairarapa Moana and the Ruamahanga River catchment that are of special significance to Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua or Rangitāne o Wairarapa and Rangitāne o Tāmaki nui-ā-Rua.

The Bill jointly vests the Mataikona property in fee simple. The Bill jointly vests the Wairarapa Moana property in fee simple to be administered as Wairarapa Moana Reserve. The Bill vests the Mākirikiri property in fee simple in tipuna to be jointly administered as reserve.

Part 3 – Wairarapa Moana Framework

The Bill establishes the Wairarapa Moana Statutory Board to act as a guardian of Wairarapa Moana and the Ruamahanga River catchment. The Bill includes provisions about the Board's functions, membership, procedures, and committees.

The Bill provides for how disputes about matters under Wairarapa Moana framework are to be resolved.

The Bill provides for the preparation and approval of the Wairarapa Moana document. The document must have the following three parts:

- An overarching vision, and statement of desired outcomes, for Wairarapa Moana (the overarching vision and desired outcomes document);
- A reserves management plan for the Wairarapa Moana reserves (the reserves management plan); and
- A natural resources document for the Ruamahanga River catchment (the natural resources document).

The Bill provides for the legal effects of the Wairarapa Moana document.

The following conservation areas are declared reserves and classified as local purpose for the primary purpose of ecosystem and wildlife management and the secondary purpose of recreation:

- Diversion Conservation Area
- Lake Ōnoke (part of Lake Wairarapa Wetland Conservation Area)
- The Narrows dry lands (part of Lake Wairarapa Wetland Conservation Area)
- Parera Conservation Area

The following reserve is reclassified as a local purpose reserve for the primary purpose of ecosystem and wildlife management and the secondary purpose of recreation:

- Part of Matthews and Boggy Pond Wildlife Reserve

The Bill provides that the Wairarapa Moana Statutory Board is the administering body of the Wairarapa Moana reserves and the manager of the Wairarapa Moana marginal strips. A full list of the Wairarapa Moana reserves and marginal strips can be found in the legislation.

The Bill provides for existing interests, existing improvements, liability, and fishing relating to the reserves, and for operational management of the reserves and marginal strips.

Select Committee report

The Māori Affairs Select Committee reported on the Bill on 30 September 2022. The Committee received 28 submissions and heard oral evidence from 21 submitters at hearings at Pāpāwai Marae, Greytown. The Committee recommended that the Bill be passed with some minor and technical amendments.

The Committee recommended amending the definition of “working day” to include the new Matariki public holiday. The Committee also recommended updating the legal descriptions for some properties that would be declared local purpose reserves to reflect the results of surveying that was completed since the Bill was drafted.

The Committee also considered evidence provided regarding the vesting of Mākirikiri reserve in the tipuna Te Rangiwhakaewa. The Committee acknowledged the submitters’ concerns, but found that matters arose regarding active remedies litigation, which do not relate to this Bill.

The Bill received assent on 12 December 2022.

Settlement Bills introduced in 2022

The Ngāti Hei Claims Settlement Bill, the Ngāti Paoa Claims Settlement Bill, and the Ngāti Tara Tokanui Claims Settlement Bill were introduced to the House in 2022.

Ngāti Tara Tokanui Claims Settlement Bill

Bill No.	177-1
Introduction	25/10/22

The Ngāti Tara Tokanui Claims Settlement Bill gives effect to some elements of the Deed of Settlement signed between Ngāti Tara Tokanui and the Crown.

Part 1 – acknowledgement and apology

The Bill includes a historical account and acknowledges that Ngāti Tara Tokanui have long-standing grievances which have not been addressed in an appropriate manner. The Crown acknowledges that its actions left Ngāti Tara Tokanui virtually landless and that the alienation of Ngāti Tara Tokanui from their lands has profoundly affected their economic, social, and cultural development. The Crown acknowledges that the Native Land Court system had detrimental effects for Ngāti Tara Tokanui and contributed to the erosion of the traditional tribal structures of Ngāti Tara Tokanui. The Crown makes a specific acknowledgement regarding an ongoing grievance for Ngāti Tara Tokanui that their links with important urupā at Kotangitangi and Rauwharangi were destroyed when those urupā were awarded to other iwi. The Crown also acknowledges the distress caused for Ngāti Tara Tokanui as a result of environmental changes and pollution since the nineteenth century.

Part 2 – cultural redress

The Bill vests 9 sites of cultural significance in Ngāti Tara Tokanui as cultural redress.

The following properties are vested in fee simple:

- Kepa Place
- Ngā Ure Tara
- Tanners Point property

The following properties are vested subject to conditions:

- Ngāmarama
- Ngāti Koi Domain
- Tawhitiaraia
- Te Pou o Tiki Te Aroha
- Karangahake
- Mimitu Pā

The Crown offers a statutory acknowledgement over the following areas:

- Aongatete River and its tributaries
- Coastal Statutory Acknowledgement Area
- Conservation Area-Waikino
- Karangahake Walkway Conservation Area
- Ohinemuri River and its tributaries
- Opoutere Beach Recreation Reserve
- Owcharoa Falls Scenic Reserve
- Taingahue Stream and its tributaries (being Waitengaue Stream and its tributaries)
- Uretara Stream and its tributaries
- Victoria Battery Historic Reserve
- Waiau River and its tributaries
- Waimata Stream and its tributaries
- Waiorongomai (being part of Kaimai Mamaku Conservation Park)
- Wharekawa Burial Ground

The Bill provides for the establishment of a joint management body for Ngāti Koi Domain.

The cultural redress also includes a whenua rāhui, which acknowledges the traditional, cultural, spiritual and historical association of Ngāti Tara Tokanui with a site of significance. The Bill provides whenua rāhui over the Karangahake Scenic Reserve. The whenua rāhui places obligations on the New Zealand Conservation Agency and relevant Conservation Boards to have regard to the protection principles for the area and consult the trustees prior to approving a strategy or plan that relates to the whenua rāhui area.

Part 3 – commercial redress

The commercial and financial redress is not specified in the Bill. However, the Deed of Settlement included a total financial and commercial redress of \$6 million and the right to purchase the following property:

- The Paeroa College school site (land only) subject to its lease-back to the Crown

Ngāti Hei Claims Settlement Bill

Bill No.	218-1
Introduction	16/12/22

The Ngāti Hei Claims Settlement Bill gives effect to some elements of the Deed of Settlement signed between Ngāti Hei and the Crown.

Part 1 – acknowledgement and apology

The Bill includes a historical account and acknowledges that Ngāti Hei have well-founded and strongly felt grievances which, until now, have not been addressed in an appropriate manner. The Crown acknowledgements emphasise the impact that loss of land and resources had on Ngāti Hei. The Crown makes specific acknowledgements regarding the manner in which the Crown acquired land from the Purangi, Whenuakite, and Hahei blocks through pre-1865 purchases and its failure to investigate and

recognise the customary interests of Ngāti Hei in Ahuahu (Great Mercury Island) when it purchased the island from other Hauraki iwi. The Crown also makes acknowledgements about the impact of native land laws and the Native Land Court system on Ngāti Hei.

Part 2 – cultural redress

The Bill vests 20 sites of cultural significance in Ngāti Hei as cultural redress.

The following properties are vested in fee simple:

- Kohuamuri
- Purangi
- Rangihau
- Tapu Point property

The following properties are vested subject to conditions:

- Hereheretaura Pā
- Kaitoke/Pukekaroro
- Matarangi Pā
- Opuā
- Paparoa site A
- Paparoa site B
- Puke Pakira
- Pukeumu
- Te Pare Pā
- Te Puia
- Te Rerepiki
- Whitianga Pā
- Ahuahu/Great Mercury Island property
- Opera Point property
- Pauanui Tihi
- Opou

The Crown offers a statutory acknowledgement over the following areas:

- Coastal and Maritime Area
- Hikuai River Area
- Kapowai River Area
- Kuaotunu Recreation Reserve
- Otama Beach (including Otama Sand Dunes Recreation Reserve and Otama Beach Recreation Reserve)
- Punaruku Scenic Reserve
- Rivers, streams, and their tributaries within the Tairua Harbour catchment area
- Tapuaetahi (including Tapuaetahi Scenic Reserve)
- Te Karaka
- Whangapoua Forest Conservation Area
- Rivers, streams, and their tributaries within the Whangapoua Harbour catchment area
- Rivers, streams, and their tributaries within the Wharekawa Harbour catchment area

- Rivers, streams, and their tributaries within the Whitianga Harbour catchment area

The Bill provides for a joint management committee to be established for Paparoa site A, Paparoa site B, Te Puia, the Opera Point property, and Pauanui Tihi.

Part 3 – commercial redress

The commercial and financial redress is not specified in the Bill. However, the Deed of Settlement included financial redress of \$8.5 million and the right to purchase the following properties:

- An 85% share in Whenuakite Station
- The Coroglen School site (land only) for two years after the settlement date subject to its leaseback to the Crown
- The Tairua School site (jointly with Ngāti Maru) (land only) for two years after the settlement date subject to its leaseback to the Crown

Ngāti Paoa Claims Settlement Bill

Bill No.	215-1
Introduction	16/12/22

The Ngāti Paoa Claims Settlement Bill gives effect to certain provisions of the Deed of Settlement signed between Ngāti Paoa and the Crown.

Part 1 – acknowledgement and apology

The Bill includes a historical account and acknowledges that Ngāti Paoa have long-standing grievances for which recognition and redress is long overdue. The Crown acknowledges that the effects of its actions, including confiscation of land, the operation and impact of the native land laws, and continued Crown purchasing, has left Ngāti Paoa virtually landless and has undermined many aspects of their development. The Crown makes a specific acknowledgement regarding the invasion and occupation of land in which Ngāti Paoa had interests and for the deaths of Ngāti Paoa individuals caused by attacks from Crown forces. The Crown further acknowledges the distress caused to Ngāti Paoa as a result of environmental changes and pollution since the nineteenth century. The Crown also makes an acknowledgement of the detrimental effects of decades of Crown policies that strongly discouraged the use of te reo Māori in schools. Finally, the Crown acknowledges that the health of Ngāti Paoa has been worse than that of many other New Zealanders, and that they have not been afforded the same opportunities as many other New Zealanders.

Part 2 – cultural redress

The Bill vests 13 sites of cultural significance in Ngāti Paoa as cultural redress.

The following properties are vested in fee simple:

- Hine-nui-o-te-paua

- Kaiaua School property

The following properties are vested subject to conditions:

- Māwhitipana
- Omaru
- Paoa Ururoa
- Paoa Ururua
- Paoa Whanake
- Papakura Pā
- Pokai Wawahi Ika
- Tauwhare Koiora site A
- Tauwhare Koiora site B
- Te Iwi Rahirahi
- Te Waero Awe Houkura

The Crown offers a statutory acknowledgement over the following areas:

- Kiripaka Wildlife Scenic Reserve
- Mangatawhiri Forest Conservation Area
- Matietie Historic Reserve
- Mutukaroa / Hamlin Hill
- Ngahue Reserve
- Paparimu Conservation Area
- Pūkoro / Miranda Scenic Reserve
- Pūkoro / Miranda Scientific Reserve
- Richard Sylvan Memorial Scenic Reserve
- Ruapotaka Reserve
- Te Matuku Bay Scenic Reserve
- Te Morehu Scenic Reserve
- Vining Scenic Reserve

The Bill provides for the establishment of a joint management body for Tauwhare Koiora site A (being the part of the Tauwhare Koiora Recreation Reserve that is vested in the trustees), Sections 1, 3, 5 and 6 SO 504602 (the part of the Tauwhare Koiora Recreation Reserve that is owned by the Hauraki District Council), and Tauwhare Koiora site B (being the Tauwhare Koiora Historic Reserve).

Part 3 – commercial redress

The commercial and financial redress is not specified in the Bill. However, the Deed of Settlement included financial redress of \$23.5 million and the right to purchase the following properties:

- 71 Grafton Road, Grafton
- 136 Dominion Road, Mount Eden

Fourteen properties held in the Treaty settlements landbank were transferred to the Ngāti Paoa governance entity in December 2015.

Pare Hauraki Collective Redress Bill

Bill No.	220-1
Introduction	19/12/22

The Pare Hauraki Collective Redress Bill gives effect to the Pare Hauraki collective deed that provides for the collective redress of the Iwi of Hauraki.

Part 1 – preliminary matters, interpretation provisions, and miscellaneous matters

This part sets out the purpose of the Bill, background to the Bill, when its provisions take effect, definitions of key terms in the Bill, and provides for the legal effect of the Bill. This part also deals with the application of certain provisions of the Waikato Raupatu Claims Settlement Act 1995, Te Ture Whenua Māori Act 1993, and the Māori Fisheries Act 2004. The Bill provides for access to the Pare Hauraki collective deed and the use of electronic transmission.

Part 2 – cultural redress

The Bill vests the Moehau Area, the Moehau Tūpuna Maunga, and Urarima in the Pare Hauraki Collective Cultural Entity as a government purpose reserve, named the Moehau Tūpuna Maunga Reserve. The Bill provides for the establishment of a joint governance body, called the Moehau Tūpuna Maunga Board, to be the administering body for the Reserve.

The Bill vests Te Aroha Tūpuna Maunga in the Collective Cultural Entity as a local purpose reserve, named Te Aroha Tūpuna Maunga Reserve.

The Bill provides a statutory acknowledgement over the Kaimai Mamaku Range.

The Bill provides for the changing of a number of official geographic names, subject to provision for the naming of Great Barrier Island (Aotea) on a date to be appointed by the Governor-General.

The Bill provides for the establishment of a conservation framework for Pare Hauraki, including a review of the Waikato Conservation Management Strategy, the preparation of a conservation management plan for Pare Hauraki, and the transfer of decision making and review in relation to certain activities.

The Bill establishes the Waihou, Piako, and Coromandel Catchment Authority to provide for the co-governance, oversight, and direction of management of the taonga of those catchments. The authority will have seven members appointed by the trustee on behalf of the iwi, one member appointed by Te Mātāpuna, and six members appointed by the local authorities with jurisdiction in the area covered by the Bill.

The Bill establishes the Upper Mangatangi and Mangatāwhiri Catchment Authority to provide for the co-governance, oversight, and direction of management of the taonga of those catchments, including the preparation of a catchment plan.

The Bill also sets out a statement of the significance of certain natural features to the Iwi of Hauraki. It includes a description of the obligations of the Waikato River Authority to enable participation in the management of certain subcatchments and provides for joint management agreements to

be entered into with the Waikato Regional Council and the Waikato District Council.

Part 3 – commercial redress

The Bill provides for the Crown to transfer certain properties and sets out the transfer requirements.

The Bill sets out the arrangement for the transfer of licensed land and for access to protected sites over licensed land.

The Bill makes provision, in relation to the land vested or transferred, for the interest in certain Crown owned minerals in or on that land to vest or transfer with the land.

The Bill sets out the scheme that grants right of first refusal over certain land and provides for the operation of that scheme. The Bill also provides for a second right of refusal, which applies to specified Crown land within the meaning of section 7 of the Waikato Raupatu Claims Settlement Act 1995 that is available, but no longer required as redress under that Act.

Part 4 – amendments to other Acts

The Bill amends provisions of the Ngāti Pūkenga Claims Settlement Act 2017 and the Ngāi Tai ki Tāmaki Claims Settlement Act 2018 to provide that the minerals redress applies in relation to certain land vested or transferred under those Acts. The Bill also includes consequential amendments to the Crown Minerals Act 1991.

Ngā kupu āpiti – Note

The Acts and Bills reviewed here can be accessed at www.legislation.govt.nz.

Hinemoana Markham-Nicklin assisted with preparation of this article.

Te Kōti Matua – High Court

Legal Aid – litigation about Waitangi Tribunal decisions

Griggs v Legal Services Commissioner

[2022] NZHC 3001
16 November 2022

Report by Elizabeth Derby

Whakataunga – Overview and result

Successful appeal against a Legal Aid Tribunal decision declining the appellant legal aid for advice and representation in litigation about Waitangi Tribunal decisions.

Appeal – Legal Aid Tribunal – interpretation of Legal Services Act 2011 – judicial review proceedings of Waitangi Tribunal decisions	
Date	16 November 2022
Case	Griggs v Legal Services Commissioner (313 KB PDF)
Citation	[2022] NZHC 3001
Court	Te Kōti Matua – High Court
Judge(s)	Churchman J
Earlier/later decisions	Mercury NZ Limited v Waitangi Tribunal [2021] NZHC 654; <i>Wairarapa Moana ki Pouākani Incorporation v Mercury NZ Limited</i> [2021] NZSC 134; <i>Wairarapa Moana ki Pouākani Incorporation v Mercury NZ Limited</i> [2021] NZSC 183; <i>Re Griggs</i> [2022] NZLAT 003 and 004.
Legislation cited	Legal Services Act 2011, ss 11(1), 47.
Cases cited	<i>R v Legal Services Commissioner</i> [2019] NZHC 2117; <i>Legal Services Agency v Brown</i> (2005) 17 PRNZ 523 (HC); <i>Legal Services Agency v Fainu</i> (2002) 17 PRNZ 433 (HC); <i>Northland Milk Vendors Association Inc v Northern Milk Ltd</i> [1988] 1 NZLR 530 (CA); <i>New Zealand Māori Council v Attorney-General</i> [1987] 1 NZLR 641; <i>Huakina Development Trust v Waikato Valley Authority</i> [1987] 2 NZLR 188; <i>Barton-Prescott v Director-General of Social Welfare</i> [1997] 3 NZLR 179; <i>Haronga v Waitangi Tribunal</i> [2012] 2 NZLR 53; <i>Attorney-General v Haronga</i> [2017] 2 NZLR 394.
Overview and result	Appeal against a decision of the Legal Aid Tribunal (LAT), confirming decisions of the Legal Services Commissioner, denying the appellant legal aid. The appellant argued that the LAT "erred in law by concluding that s 47 of the Legal Services Act 2011 (the Act) applies only to proceedings in the Waitangi Tribunal, as opposed to proceedings in other Courts that arise from, and directly relate to, proceedings before the Waitangi Tribunal." The issue before the Court was thus the proper interpretation of s 47. The commissioner opposed the appeal, submitting that the Tribunal made no error of law. The appellant was in receipt of legal aid for a significant resumption claim before the Waitangi Tribunal. Legal aid was available for this claim pursuant to s 47 of the Act. Mercury NZ Ltd, the Crown, and the Raukawa Settlement Trust sought judicial review of preliminary determinations of the Waitangi Tribunal relating to this claim. Various parties then appealed the High Court's judicial review decision. The appellant sought legal aid to participate in these review proceedings. Having been advised that legal aid funding was unavailable for the judicial review proceedings, the appellant did not participate. The appellant did, however, participate in subsequent Court of Appeal and Supreme Court proceedings, for which the LAT

	declined her application for legal aid. The decision to decline that legal aid application was the subject of these proceedings. The funding was denied because the Commissioner believed that the judicial review proceedings and subsequent appeals were not 'in respect of proceedings before the Waitangi Tribunal', which is the wording used in s 47. The LAT upheld this decision. The Commissioner believed that s 47 applied only to proceedings in the Waitangi Tribunal and not "proceedings before other Courts that arise from, and are directly related to, those Waitangi Tribunal proceedings." The appellant submitted that the purpose of the provisions in the Act was to ensure that Waitangi Tribunal claimants received legal aid to pursue resumption claims. Thus, the Commissioner's interpretation of s 47 was inconsistent with this purpose. Held, appeal allowed. The Court did not agree with the respondents that the wording of s 47 was 'unambiguous', so turned to the purpose of the legislation to determine the best interpretation of s 47. The Court found that the purpose of the legislation supported the appellant's interpretation of s 47. As the only way of challenging a Waitangi Tribunal decision is by way of judicial review, the Court found it would be "inconceivable that, in enacting s 47 Parliament intended to provide Māori with a mechanism for legal representation in defending or asserting their Treaty rights in the Tribunal, but denying them the opportunity to do so when the Tribunal's decisions on their rights are challenged by way of judicial review and then by further appeal." The Court was satisfied that the LAT made an error of law, in that it adopted an interpretation of s 47 contrary to the purpose of the Act. Thus, the Court allowed the appeal, quashed the Commissioner's decision, and remitted the decision about the appellant's legal aid back to the Commissioner for determination in light of this decision.
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Te Kōti Whenua Māori – Māori Land Court

Trusts – trustee duties under tikanga

Pokere v Bodger – Ōuri 1A3

(2022) 459 Aotea MB 210 (459 AOT 210)
14 December 2022

Report by Craig Linkhorn

Whakataunga – Overview and result

Decision assessing whether trustees of an ahu whenua trust have duties under tikanga. The trustees of Te Hanataua Trust were alleged to have breached tikanga when they facilitated a decision to demolish a homestead (the whare) located on whenua vested in the trust.

This decision, reproduced below, is notable for being the first time the Māori Land Court has issued fully bilingual reasons for judgment in te reo Māori and English.

Trusts – trustee duties – tikanga duties – demolition of whare/homestead	
Date	14 December 2022
Case	Pokere v Bodger – Ōuri 1A3 (585 KB PDF)
Citation	(2022) 459 Aotea MB 210 (459 AOT 210)
Court	Te Kōti Whenua Māori – Māori Land Court
Judge(s)	Judge Warren, sitting with pūkenga Dr Ruakere Hond
Earlier/later decisions	<i>Warren v Ropitini – Ōuri 1A3 Block</i> (2020) 423 Aotea MB 193 (423 AOT 193).
Legislation cited	Te Ture Whenua Māori Act 1993, ss 19, 231, 237, 238, and 338; Trusts Act 2019, ss 4, 21, and 31.
Cases cited	<i>Clarke v Karaitiana</i> [2010] NZCA 486; Rameka v Hall [2013] NZCA 203; <i>Ellis v R</i> [2022] NZSC 114; <i>Baker – Tataraakina C Block</i> (1995) 11 Takitimu Appellate MB 50 (11 ACTK 50); <i>Adlam v Reihana Himetangai 1H1A</i> (2022) 447 Aotea MB 1 (447 AOT 1); Kusabs v Staite [2019] NZCA 420.
Overview and result	Decision assessing whether trustees of an ahu whenua trust have duties under tikanga. The trustees of Te Hanataua Trust allegedly breached tikanga when they facilitated a decision to demolish a homestead (the whare) located on Trust whenua. The applicants opposed the decision to demolish the whare, arguing that the whare was akin to a marae. The trustees, while accepting they have duties under tikanga, argued that it was whānau tikanga, and not hapū or iwi tikanga, that applied in this context. The trustees also disputed the applicants' claim that the whare was akin to a marae, saying that it had always been a homestead and had never been considered a marae "as that is understood in Māori terms".

	This decision addressed three separate applications. The first, an application seeking to review and challenge the trustees' decision about the whare, as well as orders terminating that part of the trust where the whare is situated. The second, an application seeking an order setting aside the whare, the land it sits on, and a nearby urupā, as a Māori reservation. Finally, the third, an application for an interim injunction to stop demolition of the whare. Held, the Court dismissed all three of the applications. The Court took the view that "the Whare was a hau kainga, a shared building of whānau identity of all the descendants of Taiteariki and Moetū, however, in recent times the purpose of the Whare was altered, now a whānau home". Essentially, the Court did not believe that the function of the whare was as a marae. As to whether the trustees had breached tikanga duties, the Court found that, if the whare was as a marae, then tikanga principles would dictate that a wider group with close connections to those who 'owned' the whare would need to be consulted in order for a proper decision to be reached. However, the Court found that this was not one of those situations and there was no breach of duties under tikanga. The Court further found that there had been no breach of trustee duties under the Trusts Act 2019. The review and enforcement application was dismissed. There was no basis to enforce the trustees' obligations. Although the Māori reservation application was dismissed, the Court suggested that a reservation trust could still be an option after the whare was removed, but that this would need to be the subject of further discussion and a proper application before the Court. The interim injunction application was dismissed as the Court found there was no serious question to be tried. The Court invited the trustees to consider convening wānanga for the purposes of "discussing the final tikanga and other practical steps to demolish the Whare with the mana in which it was built" and to discuss "aspirations of what might be put on the ground of the Whare once cleared, with an intent shown for future generations."
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Matua te pō, matua te ao, matua mai ai te one i toutoua ai te tangata. Ka mātua te whakaaro ki te wairua o Hēmi Pōkere e tāiri ana ki te whakataua nei. I a ia, otiā i a rātou katoa kua whenumi ki te pō, i pūmou ai he mana ki runga i te whenua o Ōuri 1A3, arā, ko Ōuri kāinga, ko Ōuri tangata, ko Ōuri whare. I tae ā-tinana mai, i tae ā- wairua a Hēmi, e te tauheke, ki te aroaro o te kōti, ki te tēpu o te Taratī, ki te whatitoka o te whare e kōrerotia nei ki te pīkau i ōna mahara, ki te whakatairanga tikanga, ki te tiaki taonga, ki te puaki kōrero tuku iho, ki te whāriki whakamārama. Waiho ake rā, kua tangihia ki te marae, kua mihia ki te kōti, māna e waha te utu o mouri mate. Mā ngā uri e waha te moemoeā o mouri ora. Tēnā tātou.^[1]

*Hei tīmatatanga kōrero**Introduction*

[1] E whiriwhiri ana tēnei whakataunga ā-Kōti i te take, he haepapa rānei tō ngā kaitaratī ahu whenua ki te hāpai i tikanga Māori. Kei ngā whakapae te kī kua takahi te Taratī o Te Hanataua (te Taratī) i ngā tikanga me ō rātou haepapa i runga i tā rātou whakataua ki te turaki i te kāinga o te whānau (te Whare) e tū ana ki tō rātou whenua. Ki tā ngā whakapae ā ngā kaitono^[2], he whare tēnei e rite ana ki ngā whare tū ki te marae, me te mea hoki e tohe ana rātou ki taua turakanga.^[3] Ka pakeke atu te take nei i te kuhunga mai o Ngāruahine Kaumātua Kaunihera ("te Kaunihera Kaumātua"). Ehara i te mea he mema whaipānga

[1] This decision assesses whether trustees of an ahu whenua trust have duties under tikanga. It is alleged that the trustees of Te Hanataua Trust ("the Trust") have breached tikanga and other duties in facilitating a decision to demolish a homestead located on Trust whenua ("the Whare"). The applicants^[2] argue that the Whare is akin to a marae and therefore they oppose the decision to demolish it.^[3] The situation has been complicated by the involvement of the Ngāruahine Kaumātua Kaunihera ("Kaumātua Kaunihera"), who are not beneficiaries of the Trust, but who

rātou ki te Taratī, erangi nā rātou i whakairi rāhui ki te Whare, hei aukati i te turakanga.

have placed a rāhui on the Whare to stop the demolition.

[2] E whakaae ana ngā kaitaratī ki ō rātou haepapa whai tikanga, erangi ki tā rātou, mā te whānau te tikanga e kawe, ehara i a te hapū, ehara i a te iwi ki tēnei horopaki.^[4] I te mutunga iho, e tohe nei rātou ki ngā whakapae i takahi rātou i ngā haepapa tikanga, whakataha rānei i te Trusts Act 2019 ("te Ture Taratī 2019").

[2] The trustees accept that they have duties under tikanga, but they say that it is whānau and not hapū or iwi tikanga that applies in this context.^[4] Ultimately, they refute that they breached any duties under tikanga or under the Trusts Act 2019.

[3] Nō roto anō i te kawenga o tēnei kōtinga, ka kupu taurangi atu ngā kaitaratī kia kaua te Whare e turakina, kia puaki rā anō he whakatau i a te Kōti.

[3] During the course of these proceedings the trustees gave an undertaking that they would not fully demolish the Whare until further order of the Court.

[4] Ka puakina e māua ngā kōrero mō te tikanga i te mea koia te tūāpapa ki ngā tono e kōwhirihia ana. Ka āta puakina e māua kia noho mai te tikanga ki tōna ake horopaki, kaua i te nohonga atu ki raro rawa i te maru o te aronga ture Pākehā.^[5] Kia eke rā taua whāinga ka whakatū te Kōti i a Dr Ruakere Hond hei Pūkenga ki tā te ture s 32A o Te Ture Whenua Māori Act 1993 ("te Ture 1993"), kāti e whakawhētai ana ki tana arataki.^[6]

[4] We address tikanga because tikanga underpins the applications we must determine. We do so in a careful manner to allow tikanga to speak in its own context, and not one cloaked exclusively by a western legal construct.^[5] To assist in achieving this level of care, Dr Ruakere Hond was appointed by the Court as a Pūkenga per s 32A of Te Ture Whenua Māori Act 1993 ("the Act"), and the Court is grateful for his expertise.^[6]

Ko ngā tono me te takanga hātepe

The applications and procedural history

[5] E toru rawa ngā tono motuhake hei whakatau. Ka tahi, ko te tono i tappingia ki ngā whiti s 231 me s 238 o te Ture 1993 ("the review and enforcement application").^[7] Hei tā te tono, he hia arotake, he whakatarā hoki i te whakatau a ngā kaitaratī mō te Whare, otiiā e hia tohutohu mai i a te Kōti e wāwāhi atu ai taua wāhanga o te whenua e tū nei te Whare, tae rawa ki te panoni i ngā takitaki o te Taratī e tohu ai i aua rerekētanga.

[5] There are three separate applications to determine. Firstly, the amended application filed per ss 231 and 238 of the Act ("the review and enforcement application").^[7] This application seeks to review and challenge the trustees' decision about the Whare, as well as orders terminating that part of the Trust where the Whare is situated, and to vary the terms of the Trust to reflect that change.

[6] Ka rua, ko te tono i tappingia ki tō te s 338 o te Ture 1993 ("the Māori Reservation application").^[8] E hiahia ana tēnei tono kia whiwhi ōta kia wāhia atu

[6] Secondly, the amended application per s 338 of the Act ("the Māori Reservation application").^[8] This application seeks an order setting aside the

ai te Whare, tōna tūranga whenua me te urupā e noho tata mai ana, hei whenua rāhui.

Whare, the land it sits on, and a nearby urupā, as a Māori reservation.

[7] Ka toru, ko te tono kia iri tārewa ngā mahi, kia mutu rawa te turakanga o te Whare (“the injunction application”).^[9]

[7] The third is an application for an interim injunction to stop the demolition of the Whare (“the injunction application”).^[9]

[8] Kua tuputupu ngā pae o tohe i a ngā kaitono e pīkau ana i tēnei kōtinga, mutu rawa atu ki ngā tāpaetanga whakakapi a Ms Thomas, nāna nei i rauhi ngā whakapae katoa mō te takahi takohanga a ngā kaitarati.^[10]

[8] The arguments advanced by the applicants evolved as the proceedings progressed, with the post hearing submissions of Ms Thomas capturing the final alleged breaches of trustee duties.^[10]

[9] I tukua atu e te Kōti he kupu arataki mō ngā ritenga whakamahi i te reo Māori ki ngā kōtinga, nā runga i te pānui ōkawa i tēpungia mai e Ms Thomas. Otiā, i whakatakotonga he ritenga hei whakaū i tā māua tukanga kia eke te whakatau ki reo Māori rāua tahi ko reo Pākehā.^[11] I whai wāhi mai ngā rōpū ki ngā kōrero mō aua ritenga, āpiti atu ko ā rātou ki ngā tapunga o ngā tukanga whakamāori ki ngā patonga kōrero ā-waha o te kōtinga.

[9] The Court issued a protocol about the use of te reo Māori in the proceedings, on the basis that a formal notice was filed by Ms Thomas, as well as a protocol to confirm our approach to delivering this decision in both Māori and English.^[11] The parties had input into these protocols, as well as input into amendments to te reo Māori translations in the hearing transcript.

[10] I tū te kōtinga o ēnei tono, me ōna kaikōrero tekau mā rua, ki Whanganui i te 1 me te 2 o Mahuru 2022.^[12]

[10] The applications were heard over two days in Whanganui on 1 and 2 September 2022, with the Court hearing from 12 witnesses.^[12]

Te hanganga o te whakatau

Structure of the decision

[11] Kua raupapa te hanga o tā māua whakatau kia pēnei:

[11] We have structured our decision as follows:

- a) Ko te whāriki mai i tētehi anga tikanga e āta takoto ai ā māua whakautu i ngā take tikanga i tāpaea;
- b) Ko ngā papa e hāngai ana;
- c) Ko ā māua wetewetenga haepapa o ngā kaitarati ki ngā tikanga Māori, me ngā whiringa nēi takahia;
- d) Ko ā māua wetewetenga haepapa o ngā kaitarati ki tā te Ture Tarati 2019, me ngā whiringa nēi takahia;
- e) Ko tā māua whakautu ki ngā tono e toru;
- f) Ko ngā whakaeaea ko ngā tohutohu; otirā

- a) Providing a tikanga frame of reference upon which we will respond to matters of tikanga before us;
- b) The relevant facts;
- c) Our analysis of trustee duties under tikanga and whether they have been breached
- d) Our analysis of the trustee duties under the Trusts Act 2019 and whether they have been breached;
- e) Our response to the three applications;
- f) Remedies/orders; and

g) Ko te Rāhui.

g) The Rāhui.

He anga ki te tikanga ("te anga tikanga")

A tikanga frame of reference

[12] Hei tīmatanga, ka whārikingia ngā wāhanga o te anga tikanga e whakaiho ana ki te kupu 'mana'. Ko tēwhea tūmomo mana te mana e kōrerotia ana i konei? He mana whenua, he mana tupuna, he mana tangata, he mana kāinga, he mana motuhake, he mana whakahaere, he mana whakatau, ā, koia ētehi mana i whaiwāhi mai ki tēnei whakatau. Kia whakatūria aua mana hei pou, hei tumu herenga mō ngā ritenga o te mana ki ēnei kōrero e aronui ana ki te tikanga. Arā, ko ēnei:

- a) Te ahunga mai o te mana: Ka whānau mai te mana i te take, ka whānau mai taua take i te taonga
- b) Te huanga atu i te mana: Ka whai uri te mana, ko kaitiaki, muri iho ko manaaki

[13] Ko ēnei ngā tumu e herea ai te mana, he anga ki ngā tū kōrero o tēnei whakatau. Ka whakamāramatia taua anga ki raro ake nei:

[14] **Taonga:** Me kī, he taonga tērā e whakaaro nuitia ana e te tangata, he whenua, he kai, he rawa, he tupua, arā atu, arā atu. Koia, ko tētehi mea e whai uara ana ki te hunga nō rātou taua taonga, e manakohia ana rānei e taua hunga. Me mārama ka tahi ko tēwhea taonga e kōrerotia ana.

[15] **Take:** Kia whai taonga te tangata, koia tērā hei papa mō te mana, arā, ka takea mai te mana i taua take taonga, he pūtake, he paiaka mō te mana. He aha i riro ai taua taonga, he tuku iho i te whakapapa, he hoko, he tautapa,

[12] An initial description of core tikanga elements is centred on the concept of 'mana'. Which form of mana is being referred to here? There is mana associated with land, with ancestors, with people, with homes, with authority, with management, and with decision-making that are all to some extent a part of this decision. These forms of mana are described separately as pou, each having their own lines of relationship to be able to respond to issues of tikanga. They are:

- a) The forming of mana: Mana is born of a firm relationship, and that firm relationship is founded in something that holds significant value.
- b) The outcomes of mana: Mana in turn has offspring, the role of guardianship, that gives rise to the ability to provide value.

[13] These are the lines of relationship within mana, used to give structure to this decision. That structure is now explained below:

[14] **Taonga:** It should be understood in terms of what holds significant value for a certain group of people that would include land, food supply, resources, a person of extraordinary ability, or similar things. It is up to that group who possesses or seeks to acquire that taonga to determine the substance of its value. It is therefore important in the first instance to clearly identify what taonga is being discussed

[15] **Take:** Should people possess taonga, it becomes a foundation for mana, that is, mana is based in their relationship with the taonga, the basis and genealogy providing that mana. Take includes the means by which

he tango, he kawhaki rānei. Mē ka take kore te mana, ka pāhekeheke te mana, ka tīkokikoki te mana.

the taonga became possessed, passed down through whakapapa, bought, nominated, acquired, or taken by force. If mana does not have a clear basis of relationship, that mana is diminished, it becomes unstable.

[16] **Mana:** He whai tūranga te mana, arā, he tūranga kōrero, he tūranga whakahaere, he tūranga tuku, he tūranga pupuru. Ka noho taua mana ki tētehi tangata, ki tētehi kāhui rānei, ki te hunga nō rātou taua momo taonga, he whenua, he takutai, he puna wai, he rawa, he karakia, he ingoa, he whakapapa, he tangata.

[16] **Mana:** Mana provides standing, for example, the prominence of a narrative, the authority to manage, the ability to gift and the right to retain. That mana can be held by a person or a group, by those who have taonga, in various forms such as land, water supply, a resource, karakia, a name, and genealogy as well as the people themselves.

[17] **Kaitiaki:** Nā whai, kei te hunga nō rātou taua mana ngā haepapa ki te tiaki i taua taonga. Nēi ko te āta tiakina te taonga ka tupu te mana, waihoki, ki te kore e tiakina ka pāhekeheke te mana, ka mimiti te mana, ka riro rānei. Ko ngā āhuatanga o te tiaki, he whakapūmou, arā, ka purutia, ka tukua iho, ka penapenangia, ka ngakina; he whakawhanake, arā, ka whāngaia, ka manaakitia, ka poiipoia taua taonga; he whakakanohi, arā, ka kōrerotia, ka pīkauria, ka tohea, ka pakangahia taua taonga.

[17] **Kaitiaki:** It holds also that the people who have that mana also have the responsibilities to protect that taonga. Should that taonga be well protected, the mana is enhanced, and at the same time, if that taonga is not well protected the associated mana becomes unstable and is diminished, or even taken away. The forms of protection given would affirm mana to be retained, to be bequeathed, to be carefully managed, to be cultivated; it would be developed, nourished, cared for and treated well; and that taonga would be represented, by being spoken about, by being carried, by being debated for, and by being fought for.

[18] **Manaaki:** Nā whai ā, he huanga tā te tiaki, ko te whakangungu, ko te atawhai, ko te whakahaumarū, ko te whakamana i te hunga e whaipānga ana, e whiwhi painga ana rānei i taua taonga, e whirinaki ana rānei ki taua taonga.

[18] **Manaaki:** Manaaki is the result of active protection; it is the strengthening, the caring for, the sheltering, and the validation of those who hold a direct connection to, who derive benefit from, or have the need to rely on that taonga.

[19] **He Tukanga Whakahaere Tikanga:** Kia āpiti atu ētehi whakamārama mō ngā tikanga whakahaere, mō ngā hautū tāngata e pā tata ana ki te taonga, e noho mōrearea ana ki te taonga, e hiahia riro rānei i te mana o te taonga. Ko ngā tikanga parepare i te mana o te taonga, i te taonga tonu rānei - he uta ki te

[19] **Process in practicing tikanga:** An additional point of explanation is given here regarding the practicing of tikanga, regarding guidance given to those who have close contact with taonga, who may be at risk in relation to taonga, or who intend to take possession of taonga with its associated mana. There are

tapu, ki te rāhui rānei; he whakatū whakaruru, whakatū wānanga, whakatū rūnanga rānei; he pānui i ngā ritenga o te tikanga ki te hui, ki te waiata, ki te karakia, ki te whakatauākī, ki te oati rānei.

tikanga used to protect mana linked with the taonga, or the taonga itself – through the placing of tapu or rāhui; through erecting shelter, running wānanga or establishing organisation, through proving information of principles of tikanga in hui, in waiata, in karakia, in whakatauākī, or in statements of commitment.

Te takenga mai o taonga ki te Kōtinga mō Ōuri kāinga

The relationship of taonga within the Court's analysis regarding Ōuri kāinga

[20] He taketake maunga, tū te ao, tū te pō, he pūtake i a Papa e takoto nei. He taketake tangata, ngaro noa, ngaro noa, takea mai i Hawaiki. He take whenua tēnei kōtinga. He take tangata tēnei kōtinga.

[20] There is foundation within the maunga, standing with permanence in the landscape. There is also foundation in the people, lost and mourned with permanence in Hawaiki. This case is founded in land. This case is founded in people.

Ka taonga i te whenua

Taonga founded in land

[21] He tongi a Ōuri, he awa a Ōuri, he mātāpuna a Ōuri.

[21] Ōuri is a geographical reference point, Ōuri is a waterway, Ōuri is a water source.

[22] Ka mātāpuna mai i te take o Panitahi, māturu iho i tōna tihi. Ka kōpua ki a Manga-o-Raukawa, i ngā hiwi o Te Ahi Tutukurua. Auheke iho ai ki te pūkāwa o Puketapu. Ko te tongi tērā mō Ngāruahine ki te tai whakarunga. He pāhuki i a Tītahi, i a Tamaahuroa, whakapapangia nei i Aotea, i Kurahaupō. Takawaenga ana i a Aotea i a Kurahaupō, he tongi whai mana a Ōuri.

[22] Its source is at the base of Panitahi, derived from its peak. It gathers depth at Manga-o-Raukawa lake and passes the peaks of Te Ahi Tutukurua. Flowing downward all the way to the reef of Puketapu. This is the northern reference point regarded by Ngāruahine. This is the boundary between the hapū of Tītahi and Ngāti Tamaahuroa, who link in whakapapa to Aotea and to Kurahaupō. It is located between Aotea and Kurahaupō, Ōuri is a reference point of significant status.

[23] Nō mai rā anō ēnei, heke iho i runga i ngā whakatupuranga o nāiane.

[23] These statements of old, passed down, are founded in the generations of today.

Ka taonga i te tangata

Taonga founded in people

[24] He tupua, he toa, he ariki a Te Rei Hanataua. Ka mātāpuna mai i Pūtake, te tū o Tāngāhoe. Ka hōpua ki a Te Ruaki, ka ea ki Ōrangituapeka. Auheke rā, kemo iho ra ki Kaipōpō, he pupunga ki Ōuri.

[24] Te Rei Hanataua, an extraordinary person, a fighter, a paramount leader. His source is at Pūtake, at the defence of Tāngāhoe. He became contained at Te Ruaki and found release at

Ōrangituapeka. He flowed north, and ended at Kaipōpō, his burial anchoring Ōuri.

[25] Ko te tupua tērā mō Ngāruahine, mō Ngāti Ruanui ki te tāi whakararo. He pāhuki ki Pīhama, hohou ana i a Aotea, ki Kurahaupō, a Kurahaupō ki Aotea.

[25] He is a prominent ancestor regarding Ngāruahine and regarding Ngāti Ruanui in the south. He is a reference point to Pīhama, the linking of Aotea to Kurahaupō, of Kurahaupō to Aotea.

[26] Nō mai rā anō ēnei, heke iho i runga i ngā whakatupuranga o nāianeī.

[26] These statements of old, passed down, are founded in the generations of today.

Ka takea ki te whenua

The relationship with land

[27] Ka noho ko Ōuri te tūranga whenua, ko Ōuri te awa, ko Ōuri te takotoranga o Te Rei Hanataua. E mou ana te mana o taua whenua i ngā uri o Hanataua, he mana whakaheke ki te whānau. E mou ana te mana o taua takiwā i a Tītahi a raro, i a Tamaahuroa a runga, he mana rangatiratanga ki ngā hapū. E mou ana te mana o taua rohe i a Ngāruahine, he mana uruwaka ki Aotea waka. Waihoki e mou tonu ana te ingoa o Te Rei Hanataua ki te whenua, he mana tupua ki Taranaki whānui.

[27] It is given that Ōuri is an area of land, Ōuri is a waterway, Ōuri is the location where Te Rei Hanataua is buried. The mana over the land is based among the direct descendants of Te Rei Hanataua, it is mana that has been inherited through whakapapa. The mana associated with the wider area is with Tītahi to the north and Tamaahuroa to the south, it is the authority of mana associated with hapū. The mana held in the wider region linked to Ngāruahine is also associated with the ancestral waka of Aotea. Furthermore, the name of Te Rei Hanataua is well recognised in this area of land, it is mana associated with his prominence in kōrero maintained throughout the wider Taranaki region.

[28] He take taratī whenua Māori a Te Hanataua Trust, kāti, he take whenua tēnei i whakatūria ki te Kōti Whenua Māori e te hunga whaipānga mā ngā uri. Kei ngā reo i puakina, kei ngā mata i kitea, kei ngā ringa i hīkina, kei ngā wae i whārōrōngia, he takenga atu o tangata ki whenua. Heoti anō rā, ka takea ki te whenua i a te Taratī.

[28] Te Hanataua Trust is the trust with direct relationship with the land that was established within the Māori Land Court by the shareholders for the descendants. Those voices heard, those faces seen, those hands raised, and steps taken are a relationship of people to land. As such, a relationship with land is shown in the Trust.

[29] Ahakoa e noho herekore Māori ana, ahakoa e pāmungia ana, ahakoa he pakihi tētehi āhuatanga o te whakahaere, ahakoa tērā, he whenua Māori, he kāinga tūpuna nō roto i ngā tau, he mana tō ngā uri ki runga i tēnei

[29] Although the land remains Māori freehold land, although the land is being farmed, although it is managed with business approaches, it remains Māori land, it has been lived upon over many years and descendants have a

wāhinga whenua. He kāinga, he urupā, he pāhuki, he hītori tō te whenua nei i mua i te wāhinga atu o te whenua i te Kōti.

direct connection with this specific area of land. It is a kāinga, it is an urupā, it is a boundary, it has history from before it was transferred under the jurisdiction of the Court.

Ka takea ki te tangata

The relationship with people

[30] Ko te ingoa o Te Rei Hanataua koia i te whenua o Ōuri, otirā ko tana irāmutu ko Hone Pīhama. Ka whanaunga mai a Tāngāhoe ki Tamaahuroa, ki Tītahi, ka whanaunga mai a Ruanui ki Ruahine, a Ruahine ki a Taranaki iwi. Ka matua tangata ki Oeo, ki Pīhama, heke iho, heke iho.

[30] The name of Te Rei Hanataua is upon the land of Ōuri, along with his nephew Hone Pīhama. The relationship forged from Tāngāhoe to Tamaahuroa and to Tītahi, the relationship forged from Ruanui to Ruahine and from Ruahine to Taranaki iwi. A firm whakapapa connection to Oeo and to Pīhama maintained through generations.

[31] Ko te takea atu ki te tokorima ā Taiteariki rāua ko Moetū, ko tamawahine, ko tamatāne. Ka tuākana mai, ka teina mai, ka tuahine mai, ka tungāne mai, Ka mātāmua mai, ka mātāmuri mai. Ka matua tangata ki te wāhinga whenua ki Ōuri, heke iho, heke iho.

[31] The relationship is founded with the five daughters and sons of Taiteariki and Moetū. Elder lines and younger lines, sisters and brothers, first-born and youngest, their descendants are acknowledged. A firm whakapapa connection to this section of land, maintained through generations.

[32] Ko te whakapūmau ki ngā kaitarati i ngā mema whaipānga, he uri whaipānga, he uri whai whakapapa. Ka hui mai, ka hui atu, ka whakarongo atu, ka whakarongo mai, ka whakatau atu, ka pānui, ka pātoro, ka pūrongo, ka pūkōrero atu ki ngā uri. Ka matua tangata a Ōuri 1A3, heke iho, heke iho.

[32] The relationship is affirmed with trustees among members holding shares, descendants who have shares, descendants who have whakapapa. Participating repeatedly in many hui, listening to discussion, making decisions, giving notices, communicating, reporting and delivering presentations to the descendants. A firm whakapapa connection to Ōuri 1A3, maintained through generations.

Te huanga o ngā mana

The expression of mana

He mana tupua – Te Rei Hanataua

The mana of an extraordinary leader – Te Rei Hanataua

[33] Kua pā te rongo o Te Rei Hanataua ki Taranaki whānui puta atu ki ngā takiwā. Whai mana ana a Hanataua ki ōna kāwai, whai mana ana ki te papa o Tū-ka-riri, o Tū-ka- nguha, he toa kaipakanga, he tētēkura, he mata-uraura nō Ngāti Ruanui. I ora a Ruanui i a ia ki te aroaro o te hoariri, he hohou

[33] The renown of Te Rei Hanataua is heard throughout Taranaki and beyond. Hanataua, who derived mana within his lineages, on the battlefields, as a commander of fighters, as a chief of high status, a leader among Ngāti Ruanui. Ngāti Ruanui survived through the actions of

rongo, nā whai, nā whai ā, ka hinga a ia i te pā o Kaipōpō i whakapaea e te Karauna. He tupuna, he tupua, otirā, hei tā ngā kaikōrero ki te Kōti, he ariki, heoti, mā koutou hei kōrero. Ko te mana tupuna, kei ngā uri. Ko te mana tupua, mā waho hei kōrero, kei ngā hapū, kei te iwi.

invaders, peace was formed, and then he fell when Kaipōpō was attacked by the Crown. An ancestor, a leader, and suggested by witnesses within the Court as supreme lineage, statements that are the people's right to make. This ancestral mana is with the descendants. This mana of an extraordinary leader is for those outside of the whānau to affirm, the role of hapū and iwi.

He tiaki i te mana tupua – Te Rei Hanataua

Protecting mana tupua – Te Rei Hanataua

[34] Kei ngā iwi nō rātou ngā kōrero tupua tuku iho te kaitiakitanga, kei a rātou ngā kupu ki te marae, ki te uhunga, ki te kawa, ki ngā minenga huhua noa. Ka whakahuatia kia tika, kia hāngai, ka tohea kia tika, kia hāngai, ka whakaakona kia tika, kia hāngai. Kei ngā uri anō ngā kōrero erangi ka nui atu nēi ka puakina e tangata kē atu i a rātou, mā ngā hapū, mā ngā iwi tērā hei hāpai. Kāti, mō Te Rei Hanataua, ko ia te punga whakawhenua mō Aotea ki te taiwhakararo. Ko ia tērā e tohu ana i te pāhuki, e tohea ana e Taranaki Iwi e mea nei ko Rāoa kē te pāhuki. Ko te mana tupua tērā e pupuru ana i te mana whenua, kia mana mai a Hanataua, ka mana mai a Ōuri ki te rohe o Aotea.

[34] Kaitiakitanga is among the people who carry the narratives of his exploits, who recite the kōrero on marae, at funerals, in rites, in a diversity of gatherings. Statements made correctly and appropriately, debates conducted correctly and appropriately, accounts learned correctly and appropriately. The descendants also hold these narratives, but status is increased further if uttered by those outside their lineage, it is the role of wider hapū and iwi. It must be said, Te Rei Hanataua is the anchor of stability for Aotea in the north. He marks a boundary, contested that it is by Taranaki Iwi saying their boundary is instead Rāoa. The mana tupua being spoken of holds mana within the land, held by Hanataua, held in Ōuri for the lands of Aotea.

He manaaki i a te tupua – Te Rei Hanataua

Support derived from tupua – Te Rei Hanataua

[35] Kei te mana o Hanataua te manaaki i ngā iwi. Nēi ko te pāhuki kau atu, tērā anō ka āta tohea, nēi ko ngā karangatanga o Tamaahuroa, o Tītahi, tērā anō ka āta tohea i te mea he whakapapa ki Aotea, he whakapapa ki Kurahaupō. Erangi a Hanataua, ko Aotea, he mana tupua, e kore e tohea, ki te tiakina, e kore e pāhekeheke tōna ingoa, he whai mana anō ki ō Taranaki tāhuhu kōrero. Ko te mana tupua o Hanataua e manaaki ana, e hohou tonu ana i te rongo i ngā waka e rua.

[35] The mana of Hanataua provides support to the people. If this was simply a boundary it may be open to challenge; if this was about the connections of Tamaahuroa and Tītahi it may be open to challenge because they hold whakapapa to both Aotea and Kurahaupō. Hanataua on the other hand is indisputably Aotea, a leader who cannot be challenged, and should this mana be appropriately maintained his name will not diminish, that status will remain central to the narratives of Taranaki. The mana tupua of

Hanataua gives support and calms potential storms for both waka.

He mana whenua – Rohe

[36] Kua utaina te ingoa o Hone Pīhama, irāmutu a Te Rei Hanataua, ki runga i te whenua, ko te taone o Pīhama. Ko Oeo, ko Tamaahuroa, ko Tītahi ngā kaupupuru i te mana ki taua whenua, ā uta, ā tai. Ki te rohe o Pīhama ko Tītahi, ko Tamaahuroa, i takea tēnei mana i tuawhakarere, i ngā kāinga o te hapū, ā, kua ture i te Paremata ki te whakataunga kerēme o Ngāruahine i te tau 2014.^[13]

He tiaki i te mana o te rohe

[37] Me mōhio te kāhui, te kāhui nō rātou te rohe, ngā kōrero mō ngā wāhi, he wāhi tapu, he tūranga kāinga, he tūranga kōrero, he mahinga kai, he rua taniwha, aha atu, aha atu. Kei tēnei takiwā te kōrero pāhuki, he kōrero urupā, he whenua tākoha, he whenua pākia e muru, pākia e te raupatu, he whenua whakawhanaunga i ngā iwi. E tika ana kia purutia ēnei tū kōrero mō te takiwā, kia tiakina kei wareware. E tika ana kia tiakina ngā rawa ki te takiwā, kei tūkinohia e mana kē, whēnei i a kaunihera, i a kāwana, i a kaupāmu, i a pakihi, i a wai atu rānei.

He manaaki i a te mana o te rohe

[38] Kei a Ngāruahine ngā kōrero mō te mana ki te rohe tae atu ki Waingongoro. Kei a Ngāti Tamaahuroa ngā whakahaere o ngā mana ki te takiwā nei hei manaaki i ngā whānau e noho mai ana i ngā wā o aituā, i ngā wā o uaua, i te āwhā, i te waipuke, i te whenuku, i te pakaroa, otirā he manaaki i ngā mouri i ngā tapu kei

The mana of the whenua – Rohe

[36] The name of Hone Pīhama, the nephew of Te Rei Hanataua, has been placed on the land, the township of Pīhama. At Oeo, the authority of Tamaahuroa and Tītahi is expressed as mana over those lands, reaching inland and to the coast. In the vicinity of Pīhama, that mana is with Tītahi and Tamaahuroa, traced back over centuries in living hapū communities, and then again, put into law by Parliament through the Treaty settlement of the iwi of Ngāruahine in 2014.^[13]

Protecting the mana of the rohe

[37] The grouping of people who hold mana within that area are compelled to know and speak about the places, about wāhi tapu, about former community sites, about historical statements, about food sources, about rua taniwha and such things. In this area there are accounts of boundaries, burial sites, lands gifted, lands confiscated, lands vanquished, and lands drawing communities together. These forms of accounts should be retained, or will otherwise be lost. The resources present within that area of land should also be protected, or will otherwise be open to abuse by external authorities such as councils, government, farming and commercial interests, or other groups.

Support derived from the mana of the rohe

[38] Ngāruahine is able to speak as to the mana within the rohe extending to Waingongoro. Ngāti Tamaahuroa is able to give practice to the mana present within the local area, to support whānau living within the area in times of tragedy and times of difficulty, of storms, of floods, of erosion, of extreme drought, and also give support of mouri and of tapu that

pā mai he tūkinotanga, he pānga mai ki te tangata.

may be subject to damage or inflict harm on people.

He mana tūranga – Wāhinga whenua

The mana of the location – Wāhinga whenua

[39] Nā te ture i uta te ingoa o Ōuri 1A3 ki te whenua, hāunga tērā, he whenua tēnei e mōhiotia ana e ngā whānau o te takiwā, he whenua nō te whānau Tito, he kāinga i roto i ngā tau. Ka kitea te whare he hokinga mahara ki aua wā. He mana whenua anō kei te whānau i whaipānga mai ki te whenua, ngā uri i roto i ngā whakatupuranga, otirā, he rua kōiwi i roto i ngā whakatupuranga. He tūranga waewae i konei e whanaunga atu ana ki te mana ki te tūranga waewae ki te pā o Oeo.

[39] The name Ōuri 1A3 was placed on this land, that aside, the land itself is well recognised by whānau from around the area as land belonging to the Tito whānau, as a place lived on over many years. The homestead can be seen, and the memories quickly return to times passed. The whānau members who hold connection with the section hold mana in this land as descendants through many generations further demonstrated in the gravesites of many generations. This is a site of identity that is closely aligned with another site of identity, Oeo Pā.

He tiaki i te mana tūranga

Protecting the mana of the location

[40] He mana whenua, he mana whakahaere, whakahaere hui, whakahaere mahi, whakahaere pakihi, whakahaere tikanga e pūmou ai taua whenua, he tiaki i taua whenua. Ahakoa komiti mai, mema mai, pōti whaipānga mai, uri mai rānei, he aronga tō ngā whānau whaipānga ki te tiaki i te whenua. E kitea ana i te kaha taetae mai o ngā whanaunga ki ngā hui mō te whenua, ahakoa he kore āhei pōti ka tae tonu atu, he tautoko, he hiahia mōhio, he hiahia mahi āwhina ki te tiaki i te whenua o Ōuri 1A3.

[40] Contained within the mana of this section there is the right to manage it, to hold hui, to manage workplans, to run commercial activity, to practice tikanga associated with that section of land, and to protect that land. Whether that be through committee, through members, through shareholder voting, or through descendants, there is a compulsion among connected whānau to look after the land. This is seen in the strong attendance of whānau members at hui about the land, whether or not they have the right to vote, they attend to support, wanting to know, wanting to assist in protecting the land of Ōuri 1A3.

He manaaki i a te mana tūranga

Support derived from the mana of the section of land

[41] Ka whai tikanga whakahaere te Taratī. Ka whakatau i ngā mahi hei tiaki i te whenua, i ngā tū whare, i te pakihi, i ngā wāhi kia purutia ai te ora ki te hunga whaipānga. Ko ngā mahi kia pūmou mō ngā whakatupuranga, kia whai oranga hoki e hua mai ana i taua wāhinga whenua. Ka āta wāhia mai a Ōuri

[41] The Trust has processes to manage. Decisions have been made to protect the land, the structures, the commercial interests, and the features of the land that sustain wellbeing for those connected to it. The activities undertaken for the generations, sustaining wellbeing, are derived from the land. The

1A3 kia āta mōhiotia ngā paenga o te manaaki, o te tiaki o te mana whakahaere.

section named Ōuri is clearly defined so that the full extent to which support can be provided is known and authority can be maintained.

He mana kāinga – Te whare me ōna papa whenua

The mana of the kāinga – The building and its grounds

[42] Kei konei kakati o te take, ā-taonga he tūranga whare; ā-mana he mana whakahaere. Ko te mana o taua kāinga he mana nō rātou i whakatūtū kainga nei i runga i tēnei whenua i mua.

[42] This is the crux of the issue, regarding taonga it is embodied in the Whare, regarding mana it is in the authority to manage. The mana present within the kāinga relates to those who erected it on this location in the past.

[43] I whakatūria ngā whare, ka nohoia, ka pākarukaru, ka hinga i te hau, ka tuarkina e te whānau, aha atu. Kotahi tonu te whare e tū tonu ana ki te kāinga i nāiane rangi, hāuanga ngā wharau, ngā miraka kau, ngā whakaruruhau; kotahi te whare nohoia e te whānau, moea e te whānau e tū ana i ēnei wā. He mana tō te Whare, takea ana i roto i tōna hītoria, i ngā whakaturupuranga i noho ki ōna taranga.

[43] Homes were built, lived in, deteriorated, fell to the elements or were demolished by whānau or similar circumstances. There is but one key building remaining on the site today, not including the sheds, milking-shed, or shelters, only one building has been lived in, and slept in by whānau and still remains. This building has its mana located in its history and the generations who have dwelt between its walls.

[44] Āpiti atu nei, ko roto o te Whare, ko te kopa o te whare, e mea ana ko te 'Māori Room' ("te Kopa Māori"). Ka ruru atu ngā raupō, ka purupurua ki ngā āputa o ngā pātū, ki ngā puare o ngā tara o te whare, tōpakingia atu ki te kākaho. Anō nei he whare motuhake, he tāhuhu, he heke, he heke ripi, he poupou, āpiti nei he whāriki ki te papa. He mana anō kei te motuhake o te hanga i te kopa rā. He mana nui e kitea ana i te taetae ā-tinana mai ki ngā hui, ki ngā whakatau, ki ngā taukumekume mō tēnei kāinga te take.

[44] Additionally, within the Whare there is a room referred to as the 'Māori Room' ("the Māori Room"). It is referred to as the Māori Room for various reasons; raupō bunched into the gaps in the walls, into the internal spaces in the walls, covered in by kākaho. It appears as an actual whare, with ridge beam, rafters, purlins and posts, with whāriki on the floor. There is mana in the unique design of the room. Its mana is seen in the attendance of hui, the decisions, the debates regarding this home.

[45] Ka takea mai te mana i roto i te whakapapa o te whānau, i ngā uri o te hunga nā rātou te whare i moemoeātia, nā rātou te Whare i hanga, nā rātou te Whare i tohu kia nohoia. Kāti he mana nui tō te whakapapa nei o te Whare.

[45] The relationship of mana is based in whakapapa of the whānau, of descendants from those who first envisaged this home, who built the home, who determined the home be lived in. This whakapapa connected with the Whare is significant.

He tiaki i te mana kāinga

[46] He mana nui ki te Whare, he mana nui ki te Kopa Māori, he mana nui ki te papa tūranga o te whare. Me whai wāhi mai te tiaki i aua taonga, ko te kāinga, me tiaki te tāhuhu kōrero mō te Whare me te Kopa Māori, me tiaki te whakapapa o te Whare, te tikanga ki te Whare me te hanganga i te Whare, ko te tiakina. Heoti, ka kōrerotia tēnei kei tētehi whārangi atu anō.

He manaaki e hua nei i a te mana kāinga

[47] Ko te mana o te kāinga, o te Whare me tōna Kopa Māori kei tōna whakamahinga, kei puehu noa, kei pūngāwerewere kau atu. Kia āta whakamahia, ka mārō atu te whakaaro kia tiakina, kia āta tiakina ka kaha atu tōna manaaki i te hunga e whai wāhi nei ki roto i a ia.

He mana tangata – He whānau, he whakapapa

[48] He mana nui tō te whānau nei e takea ana i a Taiteariki rāua ko Moetū Tito i kōrerotia ki runga rā. Tua atu i te mana tupua, he iwi kāinga te whānau, kitea ana ki ngā marae, pupuru i te whenua, tiaki i ngā wāhi he mana whenua ki te rohe. Kei ētehi anō te kawē ki muri, kei ētehi anō te kawē ki mua. Ehara i te whānau tē mōhio ki ngā kawē tikanga, ehara i te whānau kāore i te whai wāhi ki roto i ngā mahi o te hapū, o te marae, o te iwi. Kua rahi te whānau i roto i ngā whakatupuranga, e tika ana kia tū ki roto i taua mana tuku iho i ō rātou tūpuna.

Protecting the mana of the kāinga

[46] The homestead has significant mana, as does the Māori Room and the ground on which it stands. The role in ensuring the protection of these taonga, the kāinga, would be that central accounts relating to the Whare and to the Māori Room would be protected, including accounts of the founding rationale of the Whare, the protocols practiced in the Whare and process of construction of the Whare would be retained. This concept is examined further in later paragraphs.

Hospitality derived from the mana of the kāinga

[47] The mana associated with the home, the Whare and the unique feature of its Māori Room, is centred in its use, as it may otherwise decline and deteriorate. With active use, the intent to protect it is made more firm, and with continued protection, better able to continue to provide hospitality to those who use it.

The mana of people – Whānau and whakapapa

[48] This whānau directly connected with Taiteariki and Moetu Tito referred to earlier, has significant mana. Over and above the prominence of their tūpuna, they are locally active; active on marae, retaining land and caring for prominent sites as mana whenua within the area. Those among them have roles at the back and in the front. This whānau is not considered to lack knowledge of tikanga practice, not considered to be absent from hapū, marae, and iwi activity. The whānau is significantly large among their generations and therefore appropriately stand in the roles associated with their tūpuna.

He tiaki i te mana tangata

[49] Ko te hunga e whakaeke ana i te whenua, e noho ana rānei ki te Whare te ara e tangata mai ai te mana ki taua whenua, nō reira mē ka tairanga te whakatangata i te whenua, ka tairanga rā anō te mana ki te whenua me ngā uri o Taitearioki rāua ko Moetū. Āpiti atu, kei ngā pahake o te whānau rātou tahi ko ngā kaitaratī te mana tiaki i te iho o tō rātou taonga te tangata, he arataki i te tiaki, he whakaari i te tiaki, he whakamārama i te tiaki mana tangata, ki ngā whakahaere o Ōuri 1A3.

He manaaki i a te mana tangata

[50] Kia āta manaakitia i roto i ngā whakahaere, i roto anō hoki i ngā tikanga ko ngā uri, ko ngā pārangā whanaunga, ko rātou hoki e haere ana ki te whenua, hei reira te mana tangata ka tupu. Kei ngā hua o te mahi tahi me te whakawhanaunga o ngā uri e whaipānga ana, ka whai oranga ngā whakatupuranga ki tēnei whenua, ka kitea hoki i te hunga ka hokihoki mai, ka taetae ki ngā hui, ka hiahia whai wāhi atu. He tohu ēnei o te manaaki e takea ana ki te mana kāinga, ka whanake mai rā ko te mana tangata.

Ngā papa e hāngai ana

[51] Ki tō ngā tumu o te anga tikanga, ko te āta whakanohonoho māua i ngā papa ki te kōtinga e whaitake ana ki ngā tono, ko ngā papa i whakaaetia me ngā papa i tohea.

Ngā papa i whakaaetia

[52] E tū ana te Whare ki te rohe o Ngāti Tamaahuroa, o Tītahi. E kiia ana ko Ngāruahine te iwi me tōna marae ko Oeo te tūranga-waewae o aua hapū.

Protecting the mana of people

[49] It is by way of people who come on to the land, using it and the Whare, that mana tangata is realised in the whenua, and therefore when use and engagement with the land is prioritised there is a corresponding enhancement of mana in the land and in the descendants of Taiteariki and Moetū. Also, the elders of the whānau and the trustees have the status to protect the essential nature of their people, to guide the safe practices and maintain principles of care, to guide, model, and explain the value people have for Ōuri 1A3.

Support derived from the mana of people

[50] When descendants, connected relations, and those who go onto the land are provided safety through management and through tikanga, the enhancement of mana tangata is achieved. Benefits derived from collective engagement and connection for the descendants with shares and for close relations among generations connected with the whenua, is evident in return visits, in high attendance and in the desire to participate. These points all indicate benefit arising from mana kāinga; leading to derived benefit associated with mana tangata.

Relevant facts

[51] In light of this tikanga frame of reference (“the tikanga framework”) we set out the facts, both undisputed and disputed, relevant to the applications before us.

Undisputed facts

[52] The Whare is located on land within the rohe of Ngāti Tamaahuroa and Tītahi. The acknowledged iwi is Ngāruahine, and the operating marae for these hapū is Oeo Marae.

[53] I whakatūria te Taratī ki te ōta i te 4 o Hakihea, 1997. Tokowaru rā ngā kaitaratī e ora ana ki te Taratī, e tata ana hoki ki te 250 ngā mema whaipānga.^[14] He mema whaipānga anō ngā kaitaratī o te Taratī 'Ōuri Homestead Whānau' ("te Taratī Whare Ōuri") ki te Taratī o Hanataua. Ko Elaine Warren anō tētehi o ngā mema ki te Taratī, he uri o te whānau Tito, me tētehi o ngā kaitaratī o te Taratī Whare Ōuri, otirā, i te noho a Ms Warren ki roto i te Whare mō ngā tau 20 neke atu, ki tētehi kawē ā-waha noa mō te kainoho, waihoki, i tohutohu atu te Taratī kia puta a ia i te Whare i runga i tō rātou whakatau kia turakina, i tōna whakakeke hoki.

[54] Nō ngā kaitaratī te Whare, ā-ture nei.^[15] Kei roto rā i te Whare te Kopa Māori, ki ōna pātū kākaho, tuanui kākaho.

[55] Nō te 28 o Paengawhāwhā 2018 i whakaae ngā kaitaratī kia tohungia a James Pōkere hei kaumātua ki te Taratī. He hanga rite te mana o te tūranga kaumātua ki tērā o te heamana, he aronga matua ki ngā take ahurea o te Taratī, o te Whare tonu, te urupā, te whenua me ngā taonga o roto i te Whare.^[16]

[56] Nō waenga i ngā tau 2010 ki te 2020 ka whakatūria ētehi momo hui whānui, hui motuhake hoki, e te Taratī, ka whiriwhiringia ki reira te āpōpōtanga o te Whare.^[17] Ki ngā hui ōkawa e rua o te Taratī i te 2019 me te 2020 ka tautoko ngā mema whaipānga i te mōtini kia turakina te Whare. I whakaarangia ngā mōtini e tētehi mema whaipānga, kauā i a ngā kaitaratī

[57] Kei roto i ngā mineti o te hui whānui motuhake o te Taratī ("te SGM 2018") tētehi whakatau kia wāhia atu te Whare me ōna whenua tata hei whenua rāhui.^[18]

[58] Nō te Māhuru o te tau 2019 i whakaurungia he kaitaratī

[53] The Trust was created by order dated 4 December 1997. There are eight living trustees of the Trust, with close to 250 beneficiaries.^[14] The Ōuri Homestead Whānau Trust is a beneficial owner of the Trust ("the Homestead Trust"). Ms Elaine Warren, a beneficiary of the Homestead Trust and uri of the Tito whānau, lived in the Whare for the last 20 years under an informal arrangement, and was evicted from the Whare as a result of the decision to demolish it and due to her refusal to leave.

[54] The Whare is legally owned by the trustees of the Trust.^[15] Within the Whare is the Māori Room, which has kākaho ceilings and walls.

[55] At a Trust hui on 28 April 2018, the trustees resolved to appoint Mr James Pōkere as the kaumātua of the Trust. The kaumātua role was to have the same mana as the chairperson, with a focus on cultural aspects of the Trust, in particular the Whare, urupā, whenua and taonga in the Whare.^[16]

[56] Between 2010 and 2020 there were various general meetings and specific Trust meetings convened where the future of the Whare was addressed.^[17] At two formal general meetings of the Trust in 2019 and 2020, the beneficiaries of the Trust supported motions to demolish the Whare. These motions were moved by a beneficiary and not the trustees.

[57] Minutes of a July 2018 special general meeting of the Trust ("the 2018 SGM"), records a resolution to set aside the Whare and surrounding land as a Māori reservation.^[18]

[58] In September 2019, new trustees were appointed by the

hou e te Kōti whai muri i te hekenga iho o Donna Pōkere Phillips i te tūranga kaitaratī i te Paengawhāwhā o te 2019.

Court following the resignation of Ms Donna Pokere Phillips as a trustee in April 2019.

[59] I hua mai he whakaaetanga ki te tono ā-ture a Elaine Warren i te 2020 kia kati te turakanga o te Whare, ka puta tētehi whakataunga ki te hui takawaenga o te Tarati o Te Hanataua me te Taratī Whare Ōuri mō te tukanga o te turakanga (“te whakaaetanga takawaenga”). I mea atu taua whakaaetanga kia whai tikanga ngā kaitaratī i roto i ngā tukanga turaki i te Whare.

[59] Arising from legal proceedings brought by Ms Warren in 2020 to stop the demolition of the Whare, a settlement was reached at mediation between the Trust and the Homestead Trust (“the settlement agreement”). The settlement agreement stated that the trustees would follow tikanga in their processes to demolish the Whare.

[60] Nō te tīmatanga o te tau 2020 ka kuhu mai te Kaunihera Kaumātua ki te take nei, ka whakairihia ake he rāhui ki te Whare.^[19] Ahakoa ētehi kupu whakawhiti ki te Taratī me te Kaunihera Kaumātua nei, e iri tonu ana te rāhui.

[60] In early 2020, the Kaumātua Kaunihera became involved and placed a rāhui on the Whare.^[19] Despite some limited engagement between the trustees and the Kaumātua Kaunihera, the Rāhui remains in place.

[61] Nō te 29 o Paengawhāwhā 2022, ka tū te tohutohu tāria a Heritage New Zealand Pouhere Taonga (“Pouhere Taonga”) ki te aukati i ngā mahi katoa o te turakanga o te Whare kia oti rā anō tētehi tirotironga i tōna momo. Ka tonoa tētehi mātanga whare tawhito, i a Mr Reed, kia whakamātauhia te hanga o te Whare, kia tohungia mai nēi tū motuhake ana te Kopa Māori ki tērā o te Whare, me te tāpae pūrongo mō te pahake o te Whare. Hei tāna, ehara i te mea nō ngā 1800, otirā, ehara te Kopa Māori i te whare tū motuhake, na, i reira ka whakaae a Pouhere Taonga kia āhei te turaki i te Whare.

[61] On 29 April 2022, Heritage New Zealand Pouhere Taonga (“Heritage NZ”) ordered that all work to demolish the Whare cease while they did an investigation as to its status. Mr Peter Reed, a practising architect specialising in the conservation of heritage buildings, was engaged to undertake an assessment of the building to determine whether the Māori Room was a different structure to the rest of the Whare, and the date of construction of the Whare. As a result of this assessment, which confirmed that the Whare was not constructed in the 19th century and that the Māori Room was part of the Whare, Heritage NZ gave their permission for the demolition of the Whare to proceed.

[62] Nō te 30 o Paengawhāwhā 2022 i tukuna mai te tono tāria a Mr Pōkere me te tautoko o tana tamahine a Ms Pōkere Phillips. Nō muri mai ka tukua mai te toenga o ngā kōrero i ngā tono kei mua nei i te Kōti

[62] On 30 April 2022, the interim injunction application was filed by Mr Pokere and supported by his daughter Ms Pokere Phillips. This was followed by the filing of the balance of the applications before the Court.

[63] Ahakoa e noho tuahiwi kau ana te Whare ināianei, nā

[63] Despite the Whare being a shell today, given the Court’s

runga i te whakaae a te Kōti kia āhei te tīhorehore i te tēpoko, e tū tonu ana te Whare, ahakoa tērā e hiahia tonu ana ngā kaitono ki tētehi ōta kia kaua te Whare e tuarakina.

approval for the trustees to remove asbestos, it remains standing, and the applicants still seek an order that it is not to be demolished.

Ngā papa i tohea

Disputed facts

[64] E toru rawa ngā papa e āta tohea ana ki ēnei whiriwhiringa, kāti me whakatau:

[64] There are three important facts in dispute that require determination:

- a) Ahakoa kua puta te pūrongo me te kupu taunaki ā Mr Reed, e tohe tonu ana ngā kaitono ki te tau i hangaia ai te Whare, me te tū kē o te hanga o te Kopa Māori.
- b) E whakapae ana ngā kaitono ki te ritenga o te Whare ki tētehi marae, me te whakahē mai o ngā kaitaratī e mea ana he kāinga nō te whānau tēnei, kīhai i whakamahia kia rite ki tētehi marae, marae nei ki tō te tirohanga Māori.
- c) E whakapae ana ngā kaitaratī ko te tikanga whānau te momo tikanga e whaiwāhi ana ki ngā takohanga kaitaratī, he oti, he whakaaro kē tō ngā kaitono, arā, nō te hapū, nō te iwi ngā tikanga e hāngai ana.

- a) Despite the expert report by Mr Reed, the applicants dispute the date of construction of the Whare and whether the Māori room is a separate structure.
- b) The applicants claim that the Whare is akin to a marae, this is disputed by the trustees who claim it is has always been a homestead and was never considered a marae as that is understood in Māori terms.
- c) The trustees claim that it is whānau tikanga that applies to any duties of trustees, whereas the applicants argue that hapū and iwi tikanga applies.

Nōna whea te Whare i hangaia ai, otiā, he whare motuhake rānei te Kopa Māori?

When was the Whare built, and is the Māori Room a separate structure?

[65] Kāore ngā kaitono i kimi whakatau i ēnei papa mō te Whare i roto i ngā tāpaetanga whakamutunga, erangi i tonoa māua ki te whiriwhiri anahe i te tūranga o te Whare ki tō ngā āhuatanga Māori.^[20] Nā runga tonu i te hāngai o te papa o aua kōrero mō te pahake o te Whare me ōna taranga hei whakaari i ngā tikanga, ka noho ēnei take hei kōwhiringa mā te Kōti, ko reira tō māua hiahia ki te whakatau i ēnei take.

[65] In their final submissions, the applicants did not seek a determination of these issues, but rather invited us only to address the cultural significance of the Whare.^[20] Nonetheless, because the age of the Whare and its structures are relevant to its status under tikanga, we seek to determine these issues.

[66] I kaha whakahēngia ngā taunakitanga a Mr Reed e ngā kaitono ki ngā whakapae taimaha mō tana aro tahaki.^[21] Ki tō māua, e noho hāngai ana ngā taunakitanga a Mr Reed ki ōna

[66] The applicants are critical of Mr Reed's expert evidence, including the serious allegation of bias.^[21] In our view, Mr Reed's evidence was within his primary field of expertise, logical, clear,

pūkenga matua, i āta whakaraupapangia, he mārama, he tautika te aro. E mōhio nei māua kāore he tino taunakitanga ā-pepa hei whirinakitanga mō āna whiriwhiringa ki te pahake o te Whare, erangi ki te korenga o ētehi kōrero mātanga kē atu, ki te raupapa tonu, ki te mārama tonu o ngā kupu tauākī a Mr Reed, e whakaae ana māua kia mana ai ana taunakitanga.^[22] Me tōtika te kī atu kāore nei he taunakinga whaikiko, he take whaikiko rānei e whakahē atu ai i ngā wetewetenga a Mr Reed, i a ia e tohu ana kāore aua momo rawa hanga whare i tau mai ki Aotearoa i mua i ngā tau mutunga o ngā 1930, i konei ka mārō te whakakāhore i ngā tohe ā ngā kaitono e mea ana nō mua rā anō te hanganga o te Whare.

[67] I puta hoki te whakatau a Mr Reed kāore nei he taunakitanga e tohu ana ki te hanganga motuhake o te Kopa Māori.^[23] Ahakoa i mātoro atu a Mr Reed ki ngā whakapae mō te hūnukutanga mai o tētehi whare tawhito, ki taua tūāpapa i te wā e hangaia ana te Whare, kāore nei tētehi taunakitanga whaikiko i kitea, ki tā ngā momo papa rākau i whakamahia ki te kopa Māori, me te momo tapahanga o aua papa rākau, ka tauākī mai ia, kāore i rite ngā momo tapahi me ngā momo rākau ki ērā o taua rautau 1800.^[24] He oti rā ko te korenga o tētehi kaipuaki kōrero tuku iho anga rite mō te hanganga motuhaketanga o te Kopa Māori me te tawhito atu o tōna tū.

[68] Kei tōna otinga, ko tā māua whakatau e hua ana ki te pae o tika:

- a) Tērā i hangaia te Whare i te takiwā o 1938, muri iho rānei; otiā
- b) Tērā i hangaia ngātahitia te Kopa Māori hei wāhanga o te Whare, kauā i te tawhito atu rānei ki te rautau o 1800.

[69] Hei whakakōpani ake i te take, kāore nei he papa kia tohu i tītaha rānei te aro o Mr Reed, i

and balanced. We accept that there is little direct documentary evidence to support his conclusions as to the age of the Whare, but in the absence of a counter opinion (only the Trust filed expert evidence) and because of the logic and reasonings of Mr Reed's opinion, we accept his evidence.^[22] In specific terms, there was no credible evidence or sound basis to contradict Mr Reed's analysis that the materials used on the Whare were not available in Aotearoa before the late 1930s and therefore the Whare could not have been built much earlier as argued by the applicants.

[67] Mr Reed confirmed that there was no direct evidence to suggest that the Māori Room was a separate structure.^[23] Mr Reed conceded that it was possible that the Māori Room could have been lifted to the site at the same time as the Whare was built, but based on his physical inspection of the type of timber used for the Māori Room and the way it was cut, he concluded that it did not match timber and cutting methods from the 19th Century.^[24] Further, no fact witnesses could recount consistent kōrero tuku iho that the Māori Room was separate to the rest of the Whare and it being much older in origin.

[68] Overall, we find that on the balance of probabilities:

- a) That the Whare was constructed at the earliest in 1938; and
- b) That the Māori Room was constructed as part of the Whare and not in the 19th century.

[69] For completeness, there is no basis to conclude that Mr Reed

kukume rānei i ana tauākī, i ōna hua.

was biased, influencing his conclusions and opinions.

He aha rā te mana o te Whare ki tō te tikanga Māori?

What is the status of the Whare in tikanga terms?

[70] Me hoki ki te tumu here o te anga tikanga hei whakatatū i tēnei take.

[70] We return to the tikanga framework to determine this issue.

Mana kāinga

Mana kāinga

[71] E tika ana kia ngana ki te tohu atu i ētehi pekanga o te aro ki te whare, arā, he taonga. Anei e tohu ana i aua pekanga ki te takitaki o te reo haparangi i te tomokanga o tētehi whare whaimana. Te hia tikanga o te tomo whare ki ēnei urupounamu: Ka tahi, ko wai te whare nei? Ka rua, nō wai te whare nei? Ka toru mō wai te whare nei?

[71] It is appropriate to attempt to provide an approach to specifically identify the separate perspectives present in the Whare, as a taonga. They are set out here within a similar format to the questions asked at the formal opening of a whare of significance. Those questions are truly of huge significance in the process of opening: The first being, who is this whare? Then asking, to whom does this whare belong? Finally, for whom has this whare been built?

[72] Ko te rapu urupare tonu i a te minenga i te tānga o te kawa, katoa nei mō te whakapapa, mō te mouri, mō te kaitiakitanga me ngā kaupapa o te whare. Ka hāmama te waha ki te marea, kia rangona e te marea, kia mōhio te marea i rukuhia ngā pou o te whare, koia e tū nei, i uiuingia ngā tara o te whare, koia e tū nei, i whakairingia ake ngā kōrero tāhuhu o te whare, koia e tū nei. Kua tū marae te whare nei hei taonga mā te iwi, me tiaki. Kia pā mai he wero ki te mouri o te whare, mā aua urupounamu e hohou ngā kaha. He arataki nā māua ēnei ki te mouri o te Whare.

[72] The answers are requested of the community in the revealing process of opening, regarding the whakapapa connections of a whare, the mouri of a whare, the authority over it and the purpose of the whare. They are announced to everyone, for all to hear, and are the result of long and intense discussion, the result of which stands before them. They announce that agreement was reached and this will be how the whare will be made use of and maintained. Should disputes arise regarding the whare, these questions serve as a foundation for a resolution. We extend this process of questioning to the Whare.

Ko wai te Whare nei?

Who is this Whare?

[73] Kei te tapanga o te ingoa te papa mō te mana o te whare, ka toutoungia te whakapapa o te hunga kāinga nēi he tupuna te ingoa, he utu tērā i te pātai nō wai te whare, otiiā, nēi he huahua taukī te ingoa, he whakaari i ngā paiaka o tōna tū.

[73] In naming a whare, its mana can be imbedded within the whakapapa of a community when named after an ancestor implying who it belongs to, or it may be named after an intent often in the form of a metaphor implying the purpose of the whare.

[74] Kāore i āta kitea he ingoa e amo ana i ngā tumu here tikanga ki te Whare. Kia ahatia, i te kore ingoa here pērā, ko te para a huarahi kē. Ko te ingoa e mōhiotia nei e te tini, ko te 'Homestead', i konei ka takea mai he iho, he kāinga tonu e wātea ana ki ngā uri, he tūranga waewae.

[74] There is an absence of a name to carry a recognisable tikanga frame of reference for the Whare. This does not mean it is without a way to identify it. The name widely used for the Whare is the 'Homestead' which suggests the building as providing a centring of whānau gatherings and collective identity.

Ko wai te kopa Māori nei?

[75] Ki ngā whakarākei i tēnei kopa, anahe nei o te whare, kua toua he tikanga Māori ki tōna anga, e tū motuhake ana ki tēnei kāinga noho o te whānau. Kāore he ritenga ki Taranaki, ki whea atu rānei, hāunga ko ngā whare tūpuna ki ngā marae, pēnei i a Mahi Tamariki ki Ruapekapeka, i a Kumea mai te Waka ki Ngārongo, rāua tahi i hangaia i te rautau o 1800 hei whare. Ka hangaia kia rite tōna āhua ki aua momo whare tupuna. Kāore i puakina he kōrero e taea ai te kī marire nei he whare tupuna tūturu tēnei i kaha whai wāhi mai ki ngā arataki me ngā hāpai o te hapū, o te iwi. Ko te katoa te āhua nei i tautoko i ngā tāpaetanga e mea ana, he whare tēnei nō tēnei whānau ake. I anga atu pea ngā kupu e whakahua ana i te Kopa Māori hei whare tupuna me te mahara anō, he tupuna tonu te kopa nei i tōna hūmarie, i te huatau o te whakaniko, he whakatangata i te kopa nā ngā kaituku mihi. Me tārewa te pātai, ko wai te kopa nei, kia tae ki te pātai tuatoru ki raro nei.

Who is the kopa Māori?

[75] The setting aside of the Māori room is a unique creation within the Whare and overtly represents tikanga Māori within the dwelling of a home. There appears to be no similar structure of this style in Taranaki or beyond, except for stand-alone buildings on marae, as whare tūpuna such as Mahi Tamariki at Ruapekapeka marae and Kumea Mai te Waka at Ngārongo marae, both built in the 1800's as a distinct house. Their style has been reproduced in form for this room. There are no clear signs that the Māori room was specifically a whare tūpuna imbued with a high level of influence and engagement from wider hapū and iwi. All of the statements made mention of the tūpuna having built the wider house as a home for a particular whānau. Statements made regarding it being a whare tūpuna perhaps reflect the mana perceived within the truly unique style of the room, in its humble form and beauty, that it was indeed personified by speakers as a tūpuna. The question, who is this room, will be better answered by considering who was the room for, discussed below with the third question.

Nō wai te Whare nei?

[76] Tērā te ture me tana tohu i te hunga nō rātou te Whare, he tirohanga atu anō tō te tikanga mō taua pātai. Me hoki anō ki ngā tumu here o te anga tikanga e kōrero ana mō te 'mana' kia taea ai te poipoi whakautu ki taua pātai. He tikanga tērā kei te whenua e tū nei te Whare e kiia ai he 'taonga'.

To whom does the Whare belong?

[76] There is a perspective of who should be identified as the owner of the Whare based in law, and a perception of ownership that relates to tikanga. To respond to the question of 'nō wai te Whare' within a perception of tikanga, we need to return to the concept of 'mana' in the tikanga-framework.

Ka whānau mai i reira te 'take' i te ahi kā i ora mai i te nohonga ki te whare, hei whakapūmou i te whakapapa ki te hunga nā rātou te Whare i hanga. He tikanga anō i runga i te 'kaitiaki', kia tika te āhua o te whare, e kitea ai e atawhaingia ana te whare, e tiakina ana te whare, kia mārō tonu tōna tū, kia tū tonu mō ngā whakatupuranga, kia kore ai e noho mōrearea ana te hunga e hou atu ai ki roto. Kātahi ko ngā hua o te 'manaaki' i ahu mai i te Whare, kia āta tuhaina ai e ngā kaitaratī. He tohu ēnei e whakaari ana i te whakatinanatanga o te pātai, nō wai te whare nei

There is tikanga with regard to the status of the location, 'taonga', the land on which the Whare stands. That primarily relates to 'take' with the tikanga of ahi kā maintained within the Whare by living within it, to affirm the whakapapa connections with those who built the Whare. There is tikanga with regard to active protection, 'kaitiaki', for the Whare to be appropriately presented, for its care to be recognised, its structure maintained, its presence for the future generations, and safety for people using it. Then there are the benefits derived from the Whare, 'manaaki', that carry responsibilities for the owners to determine and share. These are all indications of how ownership is demonstrated in practice.

[77] Kāore te whare i āta tiakina, ki tērā e tika ana mōna. Kāore i āta whakatikatikahia ngā wāhanga o te whare e pirau haere ana, e ngahoro atu ana, e waikura haere ana. Atu i te tuanui i whakahoungia ki te rino i te wā i a Mr Moke Tito, ā, koia pea e tū roa tonu nei.^[25] Kāore i kohia he rēti e ea ai ngā nama, erangi i kutia ngā pātītī, kāore i rukea, ā, he utu ki aua momo mahi. Kāore he kaha whai rawa ngā kainoho, kāore i āta whai pūkenga e taea ai pea te whakatika.

[77] It is apparent that the Whare has not been suitably maintained. The areas of the Whare that were seriously deteriorating, parts falling off or rusting, were not repaired except perhaps for the roof, renewed with iron in the time of Mr Moke Tito, that has no doubt ensured the Whare has stood for this long.^[25] Rental payments were not collected to cover costs, yet the grass continued to be cut, the building was not overly unkempt, and they are a form of contribution. The residents did not have wealth or have the skills perhaps to make repairs.

[78] Ki ngā taratī, kāore i tuku utu whakatikatika, kāore i whakarite kirimana kainoho ki a Ms Warren ki ngā utu e tika ana māna hei utu, erangi i utua ngā reiti e ngā kaitaratī, i whakahaerengia ki ngā takohanga o te Taratī.^[26] Ka whakaari anō ēnei i ngā tohu o tētehi rōpū nō rātou te Whare.

[78] With regard to the trustees, payments were not made for repairs, a resident agreement with Ms Warren was not in place for an appropriate contribution but rates were paid by the Trust and managed within the scope of its trust responsibilities.^[26] These are also demonstrations of ownership in practice.

[79] Nēi i āta tiakina kua kaha kitea te hunga nā ratou i tiaki, ka kitea te ahikā, ka māmā atu te tohu i te hunga nō rātou te Whare. Nō reira e tārewa tonu nei te pātai nō wai te whare, kia taea te kī atu ka ea ngā tikanga a te kaitiaki.

[79] If the Whare had been well maintained, the sense of ownership in the Whare would have been easier to determine where the presence of ahikā could be seen. Therefore, the question remains unanswered to an extent

because of difficulties in maintaining tikanga of kaitiaki.

Mō wai te Whare nei?

[80] I tāpaea atu he kōrero taunaki, he mārama, mai i ngā kaumātua ki te tonga, mai te whānau Tito hoki e tohu ana i ngā wa i peka atu ngā iwi o Whanganui i a rātou e haere ana ki Parihaka, erangi i mutu tērā ki ngā 70 tau o mua. I kōrerotia anō hoki te pekanga atu o Te Atairangikāhu me tōna tira i tō rātou haerenga mai ki te tomo i a Rongorongo ki Oeo. He pērā te whakamahinga i te Whare i ōna wā, ngā whā tekau pea, heoi, e kore e kaha ki te kī atu mō taua kaupapa te Whare i hangaia ai.^[27]

[81] Kia kōrerotia i a wai te whare i roto i ngā tau i ngā kainoho i noho ki te whare, he mārena, he huritau, he ngahau, he hāhi, he puni, he tūmomo hui tahi o te whānau. Na, he pērā te hanga i ngā huihuinga i roto i ngā tau, o mua rā rā, ā, ka korekore haere tērā momo ki ngā tau tata, ka heke haere, ka heke haere. I te whakautunga pātai a Dr Hond, ka kī mai a Ms Warren, kore kau he hui ā-whānau ki te Whare i roto i ngā tau o tana nohonga atu, arā, he āhua rua tekau tau, ka mea mai, kua kore.^[28] Kāore i te whakamahia i aua tau, kāore i te nohoia, kāore i te moea e ngā tini peka o ngā uri o taua reanga o Pohe mā, o Pakitaura mā, o Waiata mā, o Ani mā. Nō reira e iri tonu nei te uinga 'mō wai te whare nei?', āpiti atu ko te Inoi mā wai te whare nei, arā, mā wai e āwhina, mā wai e whakatika, mā wai e utu, mā wai hoki e waha aua hāpai nui?

[82] I te kore whai whakautu ka iri tonu te whiu o te kupu, te pae o te tohe, te puna o te rikarika. I te aukatinga pea o te wānanga i aukati anō i te urunga mai o ngā mahara o te minenga, e eke tahi ai ētehi māramatanga ki ngā manga

Who is the Whare for?

[80] There were clear statements from kaumātua in the south and from Tito whānau members made about the purpose of the Whare in the past, such as providing accommodation for groups travelling from Whanganui to Parihaka, yet this ceased almost 70 years ago. It was said that Te Atairangikāhu with Waikato stopped into the Whare when they travelled to Oeo for the occasion of opening the dining room, Rongorongo. These were ways the Whare was used in its time, 40 years or more ago, and yet, it is not apparent that this was indeed the motivation for building the Whare.^[27]

[81] It is important, to discuss who made use of the Whare over the years, those who resided in the Whare, the marriages, the birthdays, the celebrations, the church services, the stay-overs, and various forms of gathering of the whānau. Such were the practices of gathering in the past, and in more recent times these activities became rare over time the decline occurred. In response to a question from Dr Hond, Ms Warren said that no other people had lived in the Whare for any long periods of time.^[28] It had not been used by others in those years, lived in by others, or slept in by the wider lineages descended from Pohe, from Pakitaura, from Waiata Campbell and from Ani Mason. Therefore, the question raised continues, who is the Whare for, and further, who will provide help, who will do the repairs, who should cover the costs, and who will ensure such a project progresses?

[82] Without answers there is a continuation of words being thrown, of positions being debated, and anger has a source. It is likely that the turning aside of in-depth discussion stopped inclusive sharing of views and

o te whānau. Ko te ia o te whakatau, me pēwhea e ea te wāhanga ki pākiki, e tau hoki te ngaungau taringa. E kī ana māua i konei, he rite tahi ngā pātai e hāmamangia ana ki te kuaha i te tomokanga o tētehi whare nui, ki ērā pātai tonu me hamumu nei ki tōna turakanga.

hindered the forming of a common understanding for all lines. In reaching a decision, have the questions and interests been explored, and the gnawing of ears abated? The point we make here is that the same questions that are called out at the door with the opening of a whare of significance, are one in the same as the questions murmured to ask should it be demolished.

Ngā whakatau mō te momo o te Whare

Our conclusions on the status of the Whare

[83] Ka uaua te kōrero i ngā take e pā ana ki te Whare ki te kore e tūtohungia atu tōna tūmomo mana, whare tupuna rānei, wharepuni rānei, wākainga rānei, kāinga noho rānei, whare kau atu rānei.

[83] It is difficult to respond to issues pertaining to the Whare having not addressed its status, as an ancestral house, as a marae meeting house, as a communal dwelling, as a shared residence, or simply as a house.

[84] E taukume ana ngā rōpū i ngā take me ngā aronga kētanga ki te Whare, ki ngā kaitono he rite ki te whare tupuna ki runga marae, ki ngā kaitarati e whakahē ana i taua whakaaro. E hiahia ana māua ki tētehi whakamārama hei whakairinga whakaaro ki ngā whiriwhiringa a te Kōti ki raro iho mō te hāngai o ngā takohanga ā-tikanga ki te Whare.

[84] There are differing positions between the parties regarding the status of the Whare, to the applicants it is akin to a marae as a whare tūpuna, and that is rejected by the trustees. We require an understanding as a basis for determinations on what duties under tikanga apply later in this decision about the Whare.

[85] Mō te ingoa hei tohu i te momo, kāore he tohu ingoa ki te pare o te kuaha, me te ingoa e tere ana i ngā waha kōrero, he ingoa karanga kē e tūtohu ana ki te kaupapa o te Whare me te Kopa Māori, ko te painga atu tērā. Ko te "Homestead" e tohu ana i te haukāinga, he tūranga kāinga nō te whānau. Ko te "Māori Room" e tohu ana i te kopa i whakaritea kia wātea ki ngā ritenga Māori a te whānau. Mō te kaupapa o te Whare, i mua, he whare huihuinga, he whare whakawhanaunga, he whare āhuru mā te whānau, erangi i roto i ngā tau ka rehurehu, ka panoni tōna kaupapa hei kāinga noho nō tētehi wāhanga o te whānau. Mō wai te Whare, kāore i kitea he whakautu, kāore i whai wāhi mai te whānau ki te wānanga, mō wai,

[85] Regarding the name of the Whare, to indicate its status, there is no name shown above an entranceway, and the name used is one of common usage, not formally acquired, more an expression of purpose, and this is helpful. 'Homestead' reveals meaning in the form of a location of communal gathering, shared space, for the whānau. The 'Māori Room' implies a place within the Whare set aside for Māori practices of the whānau. The Whare was formerly used for large gatherings, maintaining relationships, and a cultural place of comfort, however over time this blurred and its status changed informally in terms of use, to be the living residence for one line of the wider whānau. How the Whare should be considered going

mō te aha te whare nēi whakatikangia. Koia, ko tā māua ki konei, he hau kāinga te Whare i mua, he whare huihui mā ngā uri o Taiteariki rāua ko Moetū, erangi i nāiane rangi kua panoni, he whare noho te Whare, me ōna hītori. Me kawa anō te whare mē ka hiahia kia mana ake ai, rauora atu ai rānei tōna momo.

forward is difficult in the absence of agreement reached through wānanga on who should have the Whare and for what purpose if it were to be rebuilt or restored. In light of this, our view in this context is that the Whare was a hau kainga, a shared building of whānau identity of all the descendants of Taiteariki and Moetū, however, in recent times the purpose of the Whare was altered, now a whānau home, with its history. A formal process would be needed to recognise a restoration of high cultural status it may have originally held.

Ko tēwhea te tikanga e whai wāhi nei?

Which tikanga applies?

[86] E āhei ana ki te whakautu i tēnei pātai, ko tēwhea te tikanga e whai wāhi nei, he pātai ki te ture rānei, ki te papa whai pono rānei, erangi i whakaaranga taua pātai ki ngā taunakitanga i tukua ki a māua, nō reira ka kōrerotia ki konei. Kāore māua i te āta kite i ngā tino rerekētanga, ritenga kore rānei, o te tikanga i a te whānau ki te tikanga i a te hapū/iwi ki tēnei horopaki o Hanataua ki Ōuri. He ruarua noa ngā taunakitanga me ngā tāpaetanga mō taua take. E whakapae ana māua, i mātāmua mai tēnei take nā runga i te urunga mai o te Kaunihera Kaumātua, me te whakairinga o te rāhui ki te Whare.

[86] The question of which tikanga applies could be a question of law and/or one of fact, but it was raised in evidence before us, so we address it here. We are not sure what, if any, distinction there is between whānau tikanga and hapū/iwi tikanga within the Hanataua/Ōuri context. There was limited evidence and submissions on the point. We suspect that this issue arises due to the involvement of the Kaumātua Kaunihera and the placing of the Rāhui on the Whare.

[87] Ka hua māua i konei ki te pūtake o taua take, tuatahi mehemea ko te āta rerekē rānei ngā tikanga a te whānau ki ērā tikanga a te hapū/iwi, tuarua mehemea to te kōwhiri ko wai kē te hunga e tika ana ki te whakatau i te whakamahinga o te tikanga me te nohonga o te mana tika. Nēi ko te tika taua whakaaro, ehara i te take nui ki tēnei horopaki ki te kōwhiri ko tēwhea te tikanga e hāngai ana, ā-whānau rānei, ā-hapū/iwi rānei. I konei ka whakautu māua i ngā pātai mō te nohonga o te mana ki ā māua wetewetenga o ngā takohanga i te tikanga.^[29]

[87] We wonder whether it is not so much a distinction between whānau and hapū/iwi tikanga, but more an issue as to who determines how tikanga is to be applied and the location of the relevant mana. If that is right, then there is no need in this context to determine which tikanga applies as between the two. We will address the mana questions in our analysis of duties under tikanga.^[29]

*Ko te wewete takohanga a ngā kaitaratī ki tikanga**Analysis of trustee duties under tikanga*

[88] Ko ngā take ka utua i konei:

[88] The issues to address here are:

- a) Ko te horopaki ā-ture o te tikanga me te ture taratī.
- b) Ko ngā takohanga ki tikanga.
- c) Kua takahi rānei ngā kaitaratī i ngā takohanga ki tikanga.

- a) The legal context of tikanga and trust law.
- b) The duties under tikanga.
- c) Whether the trustees have breached duties under tikanga.

*Ko te horopaki ā-ture o te tikanga me te ture taratī**The legal context of tikanga and trust law*

[89] Ahakoa e whakaae ana ngā taratī nei kei a rātou ngā takohanga ki tikanga, ka tika me tātari te ahunga mai o aua takohanga me tōna tika ki te Kōti.^[30]

[89] Although the trustees here accept that they have duties under tikanga, it is necessary to assess the source of these duties and their justiciability.^[30]

[90] Ko tēnei Kōti te whakatinanatanga o te mana ture me te tūtohu atu o te Ture 1993 i te aro mai-waho, me te aro mai-roto ki ngā tohu i te “tikanga Māori”, i te mea ko tērā te hōmaitanga a te Paremata, ehara i te mea ko te Kōti te puna o te tikanga, i te waiho rānei ki te Kōti e mana ai te tikanga, waiho rānei ki te kōwhiringa o te mana ture.^[31] Tērā ētehi wā, ka mātāmua atu te tikanga, pēnei i tēnei kōtinga, he wā anō, ka noho whāriki mai te tikanga, hei mātāpono arataki e āwhina mai ai ki ngā whakatau i te uaua, ki te arataki rānei i ngā hautūtanga ki te Kōti. Ki te kōti o te ture, me maumahara atu māua ki te papa o te whakaaro, ko te ture tuatahi ki tēnei whenua, ko te tikanga.^[32]

[90] This Court is a creature of statute with the Act making explicit and implicit references to “tikanga Māori”, because that is what Parliament has provided, not because the Court is a source of tikanga or that tikanga is reliant on the Court or our governing legislation.^[31] On occasions, tikanga will be to the fore, as it is here, and in others, tikanga will exist as a whāriki, as guiding principles to assist in resolving disputes or to influence the Court procedures. As a court of law, we also need to consistently remind ourselves of the fact that tikanga is the “first law” of this land:^[32]

It developed from philosophies to do with the sacred and the interrelatedness of whakapapa between humans and between people and their lands and waters. It also draws upon the rituals, precedents, and customs that have been handed down through the generations. It recognises the need for sanctions when a hara or

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wrong was committed but stresses ethics and reconciliation rather than mere punishment. It puts wāhine Māori in our rightful place at the centre of the cosmos. The development and evolution of tikanga is very real proof that, like all societies, our tīpuna saw the need for guidelines to ensure that people could live in harmony with each other and the world. It too is a culturally specific construct reflecting the fact that we were never a law-less people.

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[91] Mō ngā taratī, he rite tahi nei ngā ritenga o te mana i tēnei Kōti ki tērā i a te Kōti Teitei ki s 237 o te Ture 1993, he tohu atu hoki ki te Ture Taratī 2019 me te mana kōtinga ki Kōti Teitei.^[33] I taua whakaaro me te whāinga matua o te Ture 1993 ka tukua mai i konei te tirohanga mārama ki te horopaki ā-ture e āhei ai te tikanga ki te whakamārama, ki te akiaki, ki te tohutohu hoki i ngā takohanga o ngā kaitaratī ki aua taratī i tō māua mana whakatau. E takea ana te Ture 1993 ki te whāinga kia noho mā tangata Māori ngā haepapa o te tiaki i te whenua Māori, me te whenua tonu te ahunga mai o te tikanga, mōna ake anō hoki. Ka tauira pai i a Ms Thomas:^[34]

The land is a source of identity for Māori. Being direct descendants of Papatūānuku, Māori see themselves as not only 'of the land' but 'as the land'. The living generations act as the guardians of the land, like their tīpuna before them. Their uri benefit from that guardianship, because the land holds the links to their parents, grandparents and tīpuna, and the land is the link to future generations.

[91] In relation to trusts, this Court has all of the same powers of the High Court per s 237 of the Act, including reference to the Trusts Act 2019 and the High Court's inherent jurisdiction.^[33] This fact, coupled with the scheme of the Act, provides arguably, the clearest statutory context for tikanga to inform, influence, and dictate the duties of trustees for those trusts within our jurisdiction. The Act is predominately premised on tangata Māori having responsibilities of caring for whenua Māori, with whenua Māori being a source of tikanga in and of itself. This point was well made by Ms Thomas:^[34]

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[92] Ehara i te mea me ngana nui te Kōti ki te kimi huarahi kia whai wāhi mai te tikanga ki ēnei ahua o te ture, ahakoa ko te noho muna rānei ki te Ture 1993, ki roto rānei i ngā kawenata taratī. Ki aua take i whārikihia i konei, ka whai tūranga pakeke te tikanga hei whakaahua i te wairua me te whānui o ngā takohanga kaitaratī me te whai wāhi mai aua takohanga ki ngā kōtinga o tēnei Kōti. Nō reira he aha rā te tūāpapa ā-ture ki tēnei whakaaro?

[93] He waiā te ture e mea ana he rite tahi ngā takohanga o ngā kaitaratī ki te Ture 1993 ki ērā takohanga e pīkauria ana e ngā kaitaratī o ngā taratī noa.^[35] Ehara i te mea kua aukatihia ngā takohanga ki tō te tikanga. E mārama pai ana te Ture Taratī 2019 ki te mea ahakoa kua toka ngā takohanga kaitaratī ki te ture, ehara tērā i te tokanga o te katoa, ka whai wāhi tonu mai ngā takohanga o te ture marea.^[36] Me te mea hoki, he whai wāhi tonu te tikanga ki te whanaketanga o te ture marea.^[37]

[94] Waihoki, e tuku ana a s 4 me s 21 o te Ture Taratī 2019, tōna āhua, i tētehi whāriki ā-ture me ngā āheinga kia whanake mai ai ngā takohanga tikanga ki waenga i ngā takohanga tūturu kua toka.^[38] Ko tā te s 4, tērā tētehi o ngā mātāpono o te Ture Taratī 2019 e tohu ana me hāngai ngā whakahaere o tētehi taratī ki ngā taki o ana kupu whakataki me ōna whāinga matua. Ko tā te s 21, e tohu ana i ngā takohanga me whai e ngā kaitaratī e aronui ana ki te horopaki me ngā whāinga matua o te taratī. Ka uaua rā te taukume kia kaua te tikanga e whai wāhi mai, nā te horopaki me ngā whāinga matua o ngā taratī whenua Māori.^[39]

[95] Ka mātua mai i konei ngā kupu a Kaiwhakawā Harvey:^[40]

While they are often comparable to their general law counterparts, in terms of operational

[92] This Court does not have the struggle of finding ways to fit tikanga recognition into the statutory rubric, even if the reference to it is not explicit in the Act or in the terms of trust. For the reasons outlined, there is a strong case for tikanga to play a role in defining the nature and extent of a trustee's duties, and for those duties to be justiciable in our Court. What then is the specific statutory basis for this?

[93] It is trite law that trustees appointed under the Act have the same legal duties as trustees of general trusts.^[35] This does not mean that duties under tikanga are shut out. The Trusts Act 2019 is very clear, that whilst trustee duties are now codified, it is not a complete code and common law duties still apply.^[36] And of course tikanga continues to form part of the development of the common law.^[37]

[94] Further, ss 4 and 21 of the Trusts Act 2019 provides, on its face, a statutory platform for tikanga duties to evolve within the 'orthodox' duties now codified.^[38] Per s 4, one of the principles of the Trusts Act 2019 is that a trust should be administered in a way that is consistent with its terms and objectives. Section 21 states that duties should be performed by trustees having regard to the context and objectives of the trust. It would be difficult to argue that tikanga would not be in the mix considering the context and objectives of Māori land trusts.^[39]

[95] Comments from Justice Harvey underscore this point:^[40]

While they are often comparable to their general law counterparts, in terms of operational

management, the principal difference is that the owners, often numbering in the hundred and thousands, are invariably connected by blood. Māori land trusts therefore remain kin-based organisations where the Act restricts ownership transfers to persons connected to the land and the other owners according to tikanga Māori. This fundamental difference, when compared to the owners of general land, sets apart the ethos inherent in the custodianship of Māori land.

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Te Wāhanga 12 o te Ture 1993

[96] Kāore he tohutohu ki te wāhanga tarati o te Ture 1993 e anganui ana ki ngā takohanga o ngā taratī ki tikanga, erangi kāore hoki he katinga. He nui tēnei i te mea ka riro mā māua ngā tohutohu o te Ture 1993 e whakamāori, e whakamahi hoki (āpiti atu ko ngā tohutohu ki te Wāhanga 12) ki te ia o ngā mātāpono i te Ture 1993, he mātāpono ērā e kitea ana ki te Kupu Whakataki (ki s 2 o te Ture).^[41] He mātāpono e whai tikanga ana.^[42]

[97] Kei ngā tohutohu motuhake o te Wāhanga 12 o te Ture 1993 e raupapa ana tētehi tukanga 'Māori' ki te whakatū, ki te whakahaere, me te arataki i ngā taratī whenua Māori katoa, e whirinaki nei te tūhonga mā te hāngai pū o te tikanga (ngā uara me ngā mātāpono ki tikanga) ki ngā whiriwhiringa whakamāori me ngā whakamahinga o Wāhanga 12 o te Ture 1993.^[43] He tāpiritanga atu anō, mō ngā momo whenua kei ngā ringaringa o ngā kaitaratī e kaha kitea ana ko ngā whenua tupuna ērā, nō rātou takitini nei, whai whakapapa whanaunga nei, whenua Māori herekore nei, koia e mōhio pai ana he mana nui tō te tikanga ki ā rātou

Part 12 of the Act

[96] There are no express provisions in the trust section of the Act with respect to trustee duties under tikanga, but importantly, there are no express limitations. Important, because we are required to interpret and apply the provisions of the Act (including the trust provisions in Part 12) in a manner that furthers the principles of the Act, principles found in the Preamble (per s 2 of the Act).^[41] Principles that include tikanga.^[42]

[97] The specific provisions of Part 12 of the Act set out a 'Māori' approach to the creation, operation and supervision of all Māori land trusts, supporting the view that tikanga (the underlying tikanga values and principles) is directly relevant to how we must interpret and apply Part 12 of the Act.^[43] Add to the mix that the land vested in trustees is invariably ancestral land, beneficially owned by a number of Māori related by whakapapa, with the land having the legal status of Māori freehold land, then there is little doubt that tikanga colours how trustees are to exercise their powers and responsibilities.

kawekawe whakahaere, pikau takohanga hoki.

[98] Kei s 223 o te Ture 1993 te taituara i taua whakaaro.

[98] Section 223 of the Act supports this position.

223 General functions of responsible trustees

Every person who is appointed as a responsible trustee of a trust constituted under this Part shall be responsible for—

[...]

(b) the proper administration and management of the business of the trust:

[...]

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[...]

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[...]

[99] Kei s 223(b) o te Ture 1993 ngā tohutohu ki ngā kaitaratī kia whai haepapa ngā tukanga tari, me ngā whakahaere ki ngā mahi pakihi o te taratī.^[44] Ko ngā kupu e takoto ana ki s 223(b) he whānui, arā, me aro matatini atu ki tētehi aro e anga mua ai ngā mātāpono o te Ture 1993, kia tōtika ngā tukanga o te tari, kia tōtika ngā whakahaere i ngā kawē o tētehi taratī Wāhanga 12, me uru marire ētehi hanga whakaaro haepapa ki tikanga.^[45]

[99] Section 223(b) of the Act requires trustees to be responsible for the “proper” administration and management of the business of the trust.^[44] Section 223(b) is broadly worded and when interpreted purposively and in a way that furthers the principles of the Act, then the “proper” administration and management of the business of a Part 12 trust must at some level include responsibilities under tikanga.^[45]

[100] Ki tēnei horopaki whai ture, ka tere te kitenga atu kua whai takohanga ki ngā tikanga ngā kaitaratī e whakatūngia ana ki maru o te Wāhanga 12 o te Ture 1993, ahakoa rā tērā e āta kitea ana aua takohanga ki te kawenata o te taratī, kāore rānei. Nō reira, he aha rawa aua takohanga?

[100] Within this statutory context, we have little trouble finding that trustees appointed under Part 12 of the Act have duties under tikanga, regardless of whether these duties are explicitly included in the terms of the trust or not. What then are these duties?

Ko ngā takohanga ki tikanga

The duties under tikanga

[101] Ki te ture whānui, ka kaha rerekē ngā momo takohanga ki ngā kaitaratī. Ka whānui ngā rerekētanga o ngā tikanga ki ngā arataki me ngā kawē i roto i te ao Māori, engari ū tonu ana te takenga mai o ngā mātāpono me

[101] At general law, trustee duties can vary considerably. Under tikanga, directives and practices can also vary considerably across te ao Māori, but the fundamental core principles and values of tikanga

ngā uara o te tikanga. Kei ēnei pūtake o ngā uara me ngā mātāpono te arataki matua i ngā whanonga.^[46] Koia e whakaae ana māua ko ngā uara me ngā mātāpono ngā take nui ki te horopaki o te tikanga, nui atu i ngā tohutohu noa, i ētehi ture motuhake rānei.^[47] Nā whai, mā ngā mātāpono me ngā uara hāngai ki ngā tikanga e whakaatu i te wairua me te whānuitanga o ngā takohanga kaitaratī ki tikanga.

are generally constant. It is these underlying values and principles that provide the primary guide to behaviour.^[46] In that sense, we agree that it is the values and principles that matter more in a tikanga context than the surface directives or specific rules.^[47] Therefore it is the relevant tikanga principles and values that will define the nature and extent of any trustee duties under tikanga.

[102] I rārangi atu a Ms Thomas i ngā mātāpono tikanga hāngai e whā, ki tāna ka toko ake ēnei i ngā takohanga kaitaratī, arā, ko te kaitiakitanga, te whanaungatanga, te rāhui me te whakamoe whare.^[48] Ko te tuatahi me te tuarua ērā e hāngai uara ana, hāngai mātāpono ana ki te tikanga, ko te tuatoru me te tuawhā tonu ērā e hāngai ana ki ngā tohutohu, ki ngā kawē rānei. E whakaae ana māua ko te whanaungatanga me te kaitiakitanga ētehi o ngā mātāpono waenga pū tonu hei arataki tāngata ki ngā tūranga whakahaere, kaitaratī hoki.^[49]

[102] Ms Thomas outlined four applicable tikanga that she argues underpin the duties of the trustees here, including kaitiakitanga, whanaungatanga, rāhui and whakamoe whare.^[48] The first two are clearly tikanga values or principles and the last two being customary directives or practices. We accept that whanaungatanga and kaitiakitanga are principles central to guiding persons in leadership roles, including trustees.^[49]

[103] Kāore hoki māua e ngana ana ki te tuku takohanga tikanga.^[50] Ko te tātari atu māua i ngā takohanga kua puakina mai ki konei, erangi mā te horopaki rawa e tohu he aha ngā mātāpono me ngā uara e hāngai ana, me ngā takohanga motuhake ka puea mai i reira. He rite ki te ture piripono, ki ngā takohanga me ngā whakaea e puea mai ana i te wairua o te whanaungatanga, o ngā kaitaratī ki te hunga whaipānga, kauā i te tohutohu noa o te ture, waihoki, he whanaungatanga tō te tikanga, he horopaki motuhake tō te tikanga.

[103] We do not seek to prescribe tikanga duties.^[50] We will certainly assess the ones pleaded here, but invariably it is the context that will determine what principles or values apply and the specific duties that arise as a result. Similar to fiduciary law, where the duties and remedies arise based on the nature of trustee/beneficiary relationship, as opposed to prescription, tikanga is also relational and context specific.

[104] Ka raupapa i a māua ki konei he whakarāpopoto mō ngā takohanga ki tikanga, e ai ki ngā kōrero i tāpaea ake, kua takahia e ngā kaitaratī ki te horopaki o te whakatau mō te Whare.^[51]

[104] We set out a summary of the duties at tikanga claimed to have been breached by the trustees in the context of the Whare decision.^[51]

Kaitiakitanga

Me matua aro ngā kaitaratī ki ngā kaitiaki o te Whare, arā, ngā uri o Pohe Tito, koia hoki ko Mr Pōkere rāua ko Ms Warren.

Me whai whakaaro atu ngā kaitaratī, me whai wāhi hoki ki te mana o ngā kaitiaki o te Whare me ā rātou whakatau mō te Whare.

Me tautoko atu, me āwhina hoki e ngā kaitaratī ngā kaitiaki ki te tiaki i te Whare.

Whanaungatanga

Me whai whakaaro atu ngā kaitaratī ki ngā tūranga i whakaaranga mō ngā kaupapa pēnei i te Whare, hei tauira, ko te tūranga o te pou tikanga i a Mr Pōkere.

Me whai rautaki atu ngā kaitaratī, kia mou tonu te here tāngata ki waenga i ngā rōpū.

Rāhui

Me ū ngā kaitaratī ki ngā kawē o te tikanga e whakaari ana ki te rāhui, pērā anō i te rāhui ki whakairinga ki te Whare.

E hāngai anō hoki taua ūnga ki te kawē tikanga ki te whiriwhiringa i te hīkinga o te rāhui, me te mea mā te hunga nā rātou i whakairi, mā rātou anō te rāhui e hiki.

Whakamoe whare

Me whaiwhai tukanga ngā kaitaratī kia tika i roto i ngā whiriwhiringa whakatau mō te turakanga o te Whare. He pērā i te

Kaitiakitanga

The trustees must consider the kaitiaki of the Whare; the uri of Pohe Tito including Mr Pōkere and Ms Warren.

The trustees must take heed of, and take into consideration, the authority of the kaitiaki of the Whare and their decisions about the Whare.

The trustees must support and assist the kaitiaki to care for the Whare.

Whanaungatanga

The trustees must consider the positions established for issues such as the Whare, for example, the pou tikanga position of Mr Pōkere.

The trustees must follow avenues by which relationships between parties are maintained.

Rāhui

The trustees must pay heed to rāhui, including the one placed on the Whare.

The obligation here is also to extend to the lifting of rāhui and the fact that those who placed the rāhui must be the ones to lift it.

Whakamoe whare

The trustees must follow the correct process prior to deciding to demolish a house. This to include calling a wānanga with the

karanga wānanga ki ngā tāngata e tika ana me te puaki i ō rātou hiahia ki te iwi.

correct people and giving notice of their intentions to the iwi.

Me hui rā anō ki te whakatau i te take he aha tērā e kī ai te whārua o te Whare mē ko te turakina.

The hui must be called to decide what will replace the house if the decision was made to demolish it.

Kia ea te whiriwhiringa mō te whakakīkī whāwhārua tērā a hui anō ki te whakatau i ngā hātepe o te turakanga ki tō te tikanga Māori.

Once the replacement is resolved, a further hui needs to be called to decide how to demolish the house in accordance with tikanga.

He takohanga atu anō

Other duties

[105] I roto i te tono arotake me te ākinga, e whakapae ana ngā kaitono, tē ū rā ngā kaitaratī ki ngā tikanga a Ngāruahine, me te arataki ā ngā mātanga, ā ngā mōhio ki Ngāruahine tikanga.

[105] In the review and enforcement application, the applicants also allege the failure of the trustees to adhere to Ngāruahine tikanga or seek guidance from those with the expertise and knowledge of Ngāruahine tikanga.

Kua takahi rānei ngā kaitaratī i ngā takohanga ki tikanga?

Have the trustees breached duties under tikanga?

[106] Kua whakarōpūngia atu ētehi o ngā wāhanga motuhake o ngā tono i te mea ka puea tahi i reira ētehi take ōrite.

[106] We have grouped some of the specific claims because they give rise to similar issues.

Ngā haepapa ki te “kaitiaki” me te “pou tikanga”

The obligations to “kaitiaki” and “pou tikanga”

[107] E whakaae ana māua me uru mai ngā hāpai me ngā whakaaro o te kaitiaki whakamana, o te pou tikanga kua kōwhiringia, ki ngā wetewetenga take e hāngai ana ki tō rātou mana, tūranga rānei. Ka ahu mai te wairua me te whānui o ēnei whiriwhiringa i te horopaki me te momo o te take e whiringia ana. He kōekenga pae hoki tō ēnei tohu e ekena ai e te tangata kia āhei te kī atu he kaitiaki, he pou tikanga rānei. Ki konei ka ara ake ngā pātai mō te tikanga.

[107] We agree that trustees should consider the role and views of any acknowledged kaitiaki and appointed pou tikanga in decisions that may impact on those roles and/or their mana. The nature and extent of these considerations will of course depend on the context and the take to hand. There is also a threshold issue of whether someone is in fact a kaitiaki or a pou tikanga. That in itself raises questions of tikanga.

[108] Ko te papanga matua o te mana, papanga tangata, ko tērā i te mana o aua tangata e pā tata ana ki te Whare me ōna whenua. Koia te papanga o te mana i takea

[108] The most significant layer of mana, at a tangata level, was the mana of those directly associated with the Whare and the related whenua. The relationship

ki te whakapapa o te whānau nā rātou te Whare i hanga, āpiti atu ko rātou i noho ki te Whare, ko ō rātou uri hoki. Ka mārama tonu i konei kei whea mai te mana, tae atu ki te mana o Ms Warren, o Mr Pōkere, o tō rātou whānau hoki. Nō reira, i pēwhea te ngana a ngā kaitaratī ki te tiaki me te manaaki i taua mana?

of mana is therefore based in the whakapapa of the whānau who built the Whare and those that have lived in it, and their uri. It is clear in this sense where the mana was located, and this included the mana of Ms Warren and Mr Pōkere and their whānau. How then did the trustees seek to protect and maintain this mana?

A Ms Warren hei 'kaitiaki'

Ms Warren as 'kaitiaki'

[109] Te kaha hono nei i a Ms Warren, rātou ko tōna whānau Tito ki te Whare. Ko Ms Warren te kainoho matua ki te Whare i ēnei tau 20 kua hipa. Erangi he korekore noa iho ngā taunakitanga e taea nei te kī atu ko Ms Warren tonu te kaitiaki i tohungia mō te Whare, ki tā ētehi i tāpae mai. Kaitiaki nei ki te āhua o tētehi i tohungia ki taua tūranga e te rahi o taua whānau, e ngā kaumātua, e ngā kaitaratī e tohu ana māna rawa te Whare hei tiaki. Kīhai i pērā, i noho a Ms Warren ki te Whare me te rehurehu noa o te whakaae.

[109] There is no doubt that Ms Warren and her Tito whānau had a strong connection to the Whare. It was Ms Warren's home for the last 20 years. But there was little evidence that Ms Warren was the acknowledged kaitiaki of the Whare as claimed. Kaitiaki, in the sense of being given a specific role by the wider whānau, kaumātua, or trustees to care for the Whare in a dedicated manner. Rather, Ms Warren resided in the Whare under an informal arrangement.

[110] Hāunga ko te nohonga o Ms Warren hei kaitiaki, kāhore rānei, i wāhi nui mai tōna mana ki te pūtaka o te tukanga whakatau, ka mutu, kua rarau ō māua whakaaro ki te ngana nui o ngā kaitaratī i ā rātou hātepe, ngana kia tika, ngana kia tiakina te pūtaka o ōna take, ki tēnei ara roa o taimaha. E kitea ana ki ngā taunakitanga, nga reta, ngā mineti o ngā hui i ngana ai te āta tiaki i a Ms Warren i ēnei taimaha.^[52] Tēnei ngana me te kore hiahia o Ms Warren, e hora ana ki ngā pepa, kia uru tahi atu me ngā kaitaratī ki ngā ritenga, me te ākiri i whakaaetanga whakatau i tatū i tōna whānau ake.^[53]

[110] Regardless of whether Ms Warren was a kaitiaki for the Whare or not, her mana was central to the Whare decision making process, and we are satisfied that the trustees conducted their role in a way that was tika in seeking to look after her interests throughout a challenging process. The evidence is replete with letters and minutes of meetings where consideration was given to looking after Ms Warren.^[52] This is despite there being clear evidence that Ms Warren refused to co-operate with the trustees, including rejecting the settlement agreement reached by her own whānau.^[53]

[111] Kia mārama rā, e whakatau ana māua kāore he tikanga hei tuku ki a Ms Warren te mana aukati e hinga ai ngā whakatau mō te Whare. Kāore e tau pai ana te mana aukati ki tēnei horopaki o te tikanga.

[111] For completeness, we find that tikanga did not give Ms Warren a right of veto over decisions about the Whare. Veto is not a concept that sits comfortably within this context of tikanga.

A Mr Pōkere hei 'pou tikanga'

[112] E tika ana te kī atu, kāore ngā kaitaratī o nāiane i mārama ki ngā hāpai o te tūranga i a Mr Pōkere hei pou tikanga, hei kaumātua ki te Taratī.^[54] Tērā te tūranga, kāore i āta whakaraupapangia kia mana āna mahi, tērā anō tōna kaha ki te kuhu tonu atu ki ngā tino hui mō te Whare, ā, ka nui ngā puare i wātea ki a ia kia puaki ōna whakaaro. Ehara i te mea e āwangawanga ana i pōhēhēngia ōna mahara e ngā kaitaratī, e ngā mema taetae mai, ahakoa tērā, ka pōtingia, ka ae atu ki te turakanga.

[113] E whai whakaaro ana hoki māua ki ngā kaitaratī e ngana ana ki te aro atu ki ngā taha katoa o ngā reo, me te mea e whakaae ana māua he uaua te whakahaere i ngā takohanga ki te whanaungatanga me ngā papanga maha o te mana. Koinei ngā wā e tika ana ki te whakahaere wānanga, te tiki kaiwawao mai waho (whai whanaungatanga tonu) rānei.^[55]

[114] Ahakoa kāore i kaha tiaki i te āhua o te tūranga o Mr Pōkere ki te Taratī, ehara i te mea i hiahia whakaiti i tōna mana, ā, ka whai wāhi tonu atu ia hei reo whaimana ki ngā ahunga o te tukanga. Hei tōna mutunga, e kī ana māua kāore i takahi i te tikanga.

Te hāpai i ngā reo o te hapū whānui, o te iwi whānui me ngā tikanga, pūkenga tikanga o Ngāruahine

[115] E whakaae atu ana māua ki te āhua o te horopaki o te whenua Māori i ngā takohanga e akiaki ana i ngā kaitaratī kia aro ki ngā hiahia o te hunga e whai whakapapa ana, ki te hunga e whaipānga ana ki te whenua taratī, ki te hunga kore kau ō rātou whaipānga. He mātāpono mana nui te whanaungatanga, e kitea ana i te whakatau o te Kōti Pīra.^[56]

Mr Pokere as "pou tikanga"

[112] To be fair, the current trustees did not fully understand the role of Mr Pokere as the pou tikanga/kaumātua for the Trust.^[54] Whilst there was a lack of clarity about the role, Mr Pokere was directly involved in the key hui about the Whare. He attended the mediation with the Homestead Trust and had considerable opportunities to express his views. There is no doubt that the trustees and those engaged beneficiaries understood his views, yet still voted to demolish the Whare.

[113] We also acknowledge that the trustees were doing their best to balance all views and we accept that managing whanaungatanga responsibilities and differing layers of mana can be difficult. This is where the use of wānanga and/or involving an independent (but related) voice may have been appropriate.^[55]

[114] Despite that lack of appreciation for the role Mr Pokere had within the Trust, his fellow trustees did not deliberately undermine his mana, and continued to include him as a key person throughout the process. On balance, we find that there is no breach of tikanga.

Obligations to the wider hapū/iwi and Ngāruahine tikanga/tikanga experts

[115] We accept that trustees in a Māori land context may have duties to consider the interests of those that may whakapapa to trust land or to the beneficiaries but may not be beneficiaries themselves. Whanaungatanga, is a powerful principle and as the Court of Appeal found:^[56]

Whanaungatanga does have its risks and they must be managed. But care is needed. If fiduciary duties are applied to Māori land administration without due regard to whanaungatanga, the former may frustrate the positive expression of the latter. This would be contrary to the underlying values of equity which, after all, developed as a response to the rigid formalism of the common law courts.

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[116] Ki te horopaki o te taratī, ka mana ngā takohanga o te whanaungatanga i te nuinga o ngā wā mē ka mārama te tohu nei a ngā kaitaratī i te wāhi e noho ai te mana, i te mea ka mārama, ka mōhio rā ngā kaitaratī ko wai te hunga e tika ana me uru mai ki ngā whakarite, he aha rānei te whainga o taua urunga mai. Ka hoki atu anō ēnei whiriwhiringa o te mana ki te horopaki, me te take, te taonga rānei e whāia ana. Ko tā māua i kitea ai, nō te whānau te rahi pai o te mana nei, te whānau e whakapapa tōtika ana ki te Whare.

[116] In a trust context, whanaungatanga duties will generally be achieved if the trustees are clear where the mana is located, because if that is clear, then the trustees will know who they need to involve and on what basis. The location of the mana will again come down to the context and the take or taonga at issue. As we have found, the mana was located for the most part in the whānau directly connected to the Whare.

[117] Tērā tērā, ki ngā taunakinga mō te whare, ruarua noa e kitea ana, tērā kāore te hapū whānui, kāore hoki te iwi i whai hononga kaha ki te Whare i mua, i te hanganga, i te tiaki hoki i te Whare i roto i ngā tau, tae noa ki nāiane, hāunga rā te whakamahinga ki te manuhiri whakaeke i te Whare, me te pērā te nuinga, he manuhiri. Nēi kua marae ki tikanga te Whare, me whai tikanga, he arataki tā te tikanga, he tohutohu tā ngā mātāpono i aua hunga whānui e whakapapa ana ki te rōpū nō rātou te whare ki ngā whakautu urupounamu i tōna tomokanga "nō wai te whare nei?". Nēi ko te pērā te whakapapa, ka tika me uru taua hunga ki ngā whakarite kia ea ai a whakatau, kia tika ai a tikanga. Ko tō māua nei, ehara tēnei i te kano marae, nō reira, kāore nei he

[117] In any case, there is limited evidence that the wider hapū and iwi had or maintained a direct role in the construction and protection of the Whare over the years, as distinct from being visitors to the Whare, as many were. If the Whare was as a marae, then under tikanga the principles would dictate that a wider group with close connections to those who 'owned' the Whare by way of response to questions asked at its opening, and if demonstrated, they would need to be consulted in order for a proper (tika) decision to be reached. We find that this was not one of those situations and there is no breach of duties under tikanga.

takahi i ngā takohanga o te tikanga.

Te arataki i te tikanga

[118] Me rapu arataki ngā kaitaratī, ahakoa tikanga mai, ture mai, tahua pūtea mai rānei, mē ko te akiaki mai te horopaki, me whai kōrero arataki. Ki tikanga, ko te hatepe noa, ko te kimi i te tika ki ngā āki o te horopaki. Kei ngā kaitaratī te whiriwhiri, mā wai e arataki, me pēwhea te arataki. He wā anō ka māmā te whakatau, he wā anō ka uaua atu nō reira me whiriwhiri te wā tika mō te arataki. He whiriwhiringa ēnei i ngā wā e whai whakaaro ana ki te āhuatanga o te take me te taonga.

[119] Kaore māua i te pātai atu ki te mātauranga o ērā kaumātua i uru ki ngā tukanga o te hui Taratī, kāore hoki i te pātaia aua kaumātua i tuku kupu arataki ki ngā kaitaratī mō ngā kawo o te tikanga ki te turaki i te Whare. Otiā, kāore māua i te tautoko i te tohutohu a te tikanga e mea ana ki ngā kaitaratī, me rapu kupu arataki rawa i a te Kaunihera Kaumātua.

Te whakahaere hātepe o te tikanga – Rāhui, whakamoe whare, me te wānanga

[120] I ara ake ētehi wero rerekē i ngā kaitaratī e whakahaere ana i ngā hātepe o te tikanga. E kitea ana ki ngā taunakitanga te kaha hiahia o ngā kaitaratī kia ū ki ngā ritenga o ngā tikanga ki te turaki i te Whare.^[57] Ka mārō atu taua takohanga ki ā rātou whakawhiti kōrero ki ngā mema whaipānga, arā, i te pūmou, i te mōhio.^[58]

Ko te Rāhui me te whakamoe whare

[121] Ka waiho atu te whakautu kōrero ki te rāhui ki te mutunga o tā māua whakatau. Erangi e whakaae ana māua i runga i te take o te mātāpono, i te horopaki o

Tikanga advice

[118] Trustees should get advice, whether tikanga, legal, or financial, if the context dictates that advice is necessary. Under tikanga, it is simply about doing what is right in the circumstances. Who and how that advice is given is a matter for the trustees. On occasions it will be an easy decision, on others it will be more difficult and a judgment call will need to be made. It comes back to the nature of the take and the taonga at issue.

[119] We do not question the knowledge base of those kaumātua who participated in the Trust hui processes and those who advised the trustees about the tikanga protocols to demolish the Whare. There is no basis to find that the tikanga advice was wrong or insufficient in any material way. Further, we do not accept that tikanga in this context specifically required the trustees to seek advice from the Kaumātua Kaunihera.

Managing tikanga processes – Rāhui, whakamoe whare, and wānanga

[120] Managing tikanga processes did give rise to some unique challenges for the trustees. The evidence reflects that the trustees were committed to following tikanga protocols in demolishing the Whare.^[57] The commitment to tikanga was cemented in communications to beneficiaries, which were consistent and considered.^[58]

Rāhui and whakamoe whare

[121] We address the issue of the Rāhui at the end of our decision. But we accept that as a matter of principle that trustees in a Māori land context should respect

te whenua Māori, me whai whakaaro atu ngā kaitaratī ki ngā hāpai me ngā ture e whaitake ana ki te tikanga. Ahakoa tērā, ko tō māua mōhio ki te uaua o aua whakatau mehemea ka tukituki ngā hāpai o ngā tikanga me ngā ritenga Māori ki ngā takohanga o te ture. Tēnei ake anō te āki matua ki te whakatū wānanga.

legitimate tikanga based protocols and laws. We however accept that this can prove difficult if the protocol or custom collides with other legal obligations. Again, this is where wānanga play an important role.

[122] Kāore nei ō māua whakatau ki te tohutohu i ngā kaitaratī kia kawē i ngā tikanga o te whakamoe whare ki tā ngā kōrero ā ngā kaitono. Ko te wāhanga ka whakatauhia e māua ko te hiahia kia kitea ngā kaitaratī e rapu ana i ngā arataki tikanga me te kite i te whakatinanatanga o aua arataki. Āpiti atu, kei ngā kaitaratī tonu ngā hātepe kia ea te wāhanga mutunga ki te tikanga whakamoe i mua i te turakanga o te Whare.

[122] We make no finding on whether the trustees were required to follow the whakamoe whare tikanga practice as articulated by the applicants. What we do find is that the trustees were getting appropriate tikanga advice and were following that advice. Further, they still have a chance to adhere to tikanga protocols in the final process towards full demolition of the Whare.

Te whakatū wānanga

Holding of wānanga

[123] I kitea te ngana nui o ngā kaitaratī ki te whakatutuki i ō rātou takohanga, erangi ka hua atu māua mē ka whakatū wānanga motuhake mō te Whare (kaua i te hui whānui ki ngā mema Taratī) ka whakatūria, ka whakahaerengia i mua i te tahuri ki te mōtini turaki.^[59]

[123] Despite the significant effort by the trustees, we did wonder whether specific wānanga (as opposed to general meetings of the Trust) could have been held in the lead up to the motion to demolish the Whare.^[59]

[124] Kei te wānanga te huarahi wherawhera, te huarahi whakaae ngātahi mō te tūmomo mana o te Whare ki tikanga, mō te nohonga ki whea o ngā tūmomo mana, ā haere ake, mō te mārama ki te huarahi tika kia whai whakatau tūturu, ā, me pēwhea e whakatutuki te mahi. E hua ana ki tētehi whakaae ngātahi mō te momo i te whakakī i te whārua o te Whare, me te hua atu ki ngā whakatau i tonu ki a wai mō ngā kupu arataki hātepe, ētehi pūkenga pea o waho atu i te kāhui whaipānga. E mārama ana māua he mahara kau atu tēnei mātoro kōwhiringa, ko wai ka hua, ko wai anō ka tohu i te whaikiko, he pōhewa tonu pea te riro o te ruku wānanga. Erangi rā ka mana rite tahi te kawē i te wānanga, ki take Māori, ki whakaaro Māori, ka rite

[124] Wānanga could have better explored and achieved a consensus about the status of the Whare under tikanga, the location of mana in its various forms, which in turn would have informed how to make the final decision, and once made, how to execute it. It may have led to a consensus on what might replace the Whare and addressed who needed to be involved in the process outside of the beneficiaries. We acknowledge that these propositions are ideas spoken in hindsight, whilst possible, outcomes of substance are never guaranteed, ideas may remain ideas even within the rigor of a wānanga context. But the process of wānanga, where take Māori and whakaaro Māori prevail, is just as important as the outcome.

tahi atu tōna mana ki tērā o te hauhake i te otinga.

[125] Ahakoa e kaha ana te tohu i te wānanga hei rautaki whaihua ki te whakatutuki whakatau, e kore e kaha te kī atu i te korenga o te wānanga i te otinga kua hē i ngā kaitaratī ngā takohanga ki tikanga. Kāti, kāore e tika ana kia kī atu te Kōti kore kau he painga ki ngā hui whānui o ngā mema Taratī i te mea kāore ōna tikanga. Kāore i tikanga kore.^[60] Ka mutu, kāore i kite atu i roto i ngā arataki i whiwhi nei ngā kaitaratī tētehi tohutohu e mea ana kia wānanga, ki te āhua kua kōrerotia atu ki konei, waihoki, e wātea tonu ana kia tū aua wānanga, kia rukuhia aua kaupapa, kia wetekia ngā take ki ngā tikanga i runga i te mea kāore anō kia turaki rawa te Whare.

He tātari i ngā takohanga ki te Ture Taratī 2019

[126] I tua atu i ngā takahi tikanga, e wero ana ngā kaitono i ngā kaitaratī mō tā rātou takahanga i ngā takohanga tūāpapa ki te Ture Taratī 2019.^[61] Koia tonu, ko te whakapae a ngā kaitono, kua takahi ngā kaitaratī i ō rātou takohanga kia pono ā rātou mahi, kia whakaaro pai, kia tautika hoki ngā kōwhiringa.^[62]

Kua takahia rānei ngā takohanga o te Ture Taratī 2019?

Takahi i te whakaaro pai, me te tautika^[63]

[127] Kāore māua e whakaae ana ki te whakapae poka noa ki ngā kaitaratī e mea nei kua huri kē ki tahaki ō rātou mata i ngā whakatau o te Taratī i te 2010 tae atu ki te Mahuru 2019.

[128] Ko tā māua i kite atu kua āhua tōtika tonu tā rātou whakahaere e pā ana ki te Whare. Kotahi kau tā māua tara i te wero ki ngā kaitaratī katoa ō mua me ngā mema whānui, koia ko te whakarere i te Whare kia pākarukaru, i whāiti mai ai ngā

[125] Although the holding of wānanga may have been helpful, it is a step too far to conclude that the trustees have breached their duties under tikanga by not holding specific wānanga. We consider it unfair for the Court to imply that the hui that were convened by the trustees were somehow tikanga deficient. They were not.^[60] Finally, we accept that the tikanga advice given to the trustees did not explicitly suggest the holding of wānanga in the way that we have described, and it is still possible for the trustees to convene wānanga to address some of the tikanga issues raised given that the Whare has not been fully demolished.

Analysis of duties under the Trusts Act 2019

[126] In addition to the tikanga breaches, the applicants argue that the trustees have breached “orthodox” duties under the Trusts Act 2019.^[61] Specifically, the applicants allege that the trustees have breached their duties to act honestly, in good faith and impartially.^[62]

Are there breaches of Trusts Act duties?

Breach of good faith and honesty^[63]

[127] We do not accept the broad allegation that the trustees ignored the decisions of the Trust from 2010 until September 2019.

[128] We find that the trustees were generally consistent in their approach to the Whare. Our only criticism, which is a criticism of all former trustees and the owners in general, is letting the Whare fall into such disrepair, limiting the options for the current trustees to

kōwhiringa ki te whakarauora, ki kia whaitangata anō. E kore a muri e hokia.

restore and retain it. Despite having some options, there is no going back.

[129] Mō te take rawa o te whakatau i pahure i te SGM 2018, i te kī atu i pahure tētehi mōtini (kāore i whakatinanangia) kia motuhia atu te Whare me ōna whenua hei whenua rāhui. Ko te take ki te mōtini rā, nēi i pahure rānei te mōtini me whakatutuki rawa e ngā kaitaratī i muri i te Hōngongoi 2018. Ko ngā mahara o Mrs Scott, tērā e tārewa tonu ana te kōwhiri i taua whakaaro mō te whenua rāhui, ā, kāore i eke te whakatau whakamutunga.^[64]

[129] On the specific issue of the “resolution” passed at the 2018 SGM, it is alleged that a motion was passed (and not actioned) to set aside the Whare and surrounding land as a Māori reservation. The issue is whether the motion was passed and required to be implemented by the trustees after July 2018. Mrs Scott’s recollection was that the reservation idea was still in the exploratory phase and that no final decisions had been made.^[64]

[130] I runga i tā māua arotake, te āhua nei, atu i te mōtini mō te whenua rāhui i pōtingia, kāore i ea rawa atu tērā mō te oranga o te Whare.^[65] Ko tā Mrs Scott, i eke te whakatau mō te hūnukutanga atu o Ms Warren, erangi mō ngā nekenekhehanga ki te Whare, kāore i tau.^[66]

[130] Based on our review it seems to us that despite the reservation motion, there was no clear decision on the future of the actual Whare.^[65] Mrs Scott advised us that the decision about Ms Warren leaving the Whare was decided, but that what was to happen to the Whare was not.^[66]

[131] Ka pupū ake te rangirua ki te hui ā- tau i te Mahuru o 2019, (“Hui ā-tau 2019”). Ki te pūrongo o te heamana o te Taratī, i a Brian Ropatini, ka kī atu ko tō ngā kaitarati hou (i rihaina a Ms Pōkere Phillips i mua i tēnei wā) kei a rātou te mana kōwhiri i ngā take mō te Whare, kāore ngā mineti ō mua o ngā hui Taratī me ngā hui ā-tau i tuku māramatanga mai.^[67] Ka tohu atu a Mr Ropatini ko te Hui ā-tau 2019, koia pū ko te hui i whakatau i te take mō te Whare, otiiā kia whai wāhi mai ngā mema katoa ki te hura i ō rātou whakaaro. I konei, i taua hui ā-tau, ka tū te mōtini kia turakina, ka 31 ki te 2 te pōti.^[68]

[131] The lack of clarity came to a head at the annual general meeting held in September 2019, (“the September 2019 AGM”). In his chairperson’s report, Brian Ropatini claimed that whilst the new trustees (Ms Pokere Phillips had resigned by this time) felt that they had a mandate to deal with the Whare, the previous minutes of the Trust and general meetings were not clear.^[67] Mr Ropatini noted that the September 2019 AGM was the day for a decision to be made about the Whare and that everyone would be given an opportunity to share a view. A motion was passed at that AGM to demolish the Whare; 31 votes to 2.^[68]

[132] Kāore i te kitea te take he aha i mahue atu te kōrero mō te wāwāhi whenua, mōtini atū rānei, he aha i kore ai te kōrero whakatau kia motuhia atu hei whenua rāhui ki te hui ā-tau 2019. Kia ahatia, kāore nei he taunakitanga hei tohu atu i te whakamoke a ngā kaitaratī ki te papare atu i taua take, he whakawai atu rānei i taua hātepe.

[132] It was not clear why the reservation trust idea or motion was not part of the September 2019 AGM discussions. Whatever the reason, there is no evidence to suggest that the trustees at that time rejected the idea out of hand or purposely tried to sidestep it. On that basis, there is no breach of the

Hei reira, kāore i te kitea he takahanga o ngā takohanga kia pono, o ngā takohanga kia whakaaro pai.

duty to act honestly and in good faith.

Takahi i te tautika^[69]

Breach of impartiality^[69]

[133] Kāore hoki māua e whakaae atu ki te whakapae motuhake i te hunahunga a ngā kaitaratī i ngā pitopito kōrero mō ngā kōwhiringa tonu tahua hei whakarauora i te Whare, me ā rātou tātari i ngā tū kōrero kia eke tō rātou hiahia turaki. Kāore i pērā, i kiko ai te kōwhiri ki te whakatau i a ngā tāngata ki tētehi hui tika i karangangia mō ngā mema tonu, ehara i te whakatau muna a ngā kaitaratī.

[133] We do not accept the specific allegation that the trustees failed to disclose information about funding options to restore the Whare and that the trustees were filtering information so as to retain the demolition outcome. In reality, the decision was made by the people at properly convened meetings of owners, as opposed to an in-house decision of trustees.

[134] He mea nui ki a māua te wāhi ki tukua ki a Ms Pōkere Phillips kia whakaaranga he mōtini e tahuri ai tērā whakatau ki te turaki i te Whare i te hui ā- tau 2019, te hui i matangaro ai ia. Ka whakaaranga e Ms Pōkere Phillips ngā mōtini e rua ki te hui ā- tau o te tau 2020 (“te hui ā- tau 2020”); ka tahi, ko te mōtini kia mukua te whakatau ki ngā mineti o te hui ā- tau 2019 kia turakina te Whare; ka rua, kia kaua te Whare e turakina. Ka hinga aua mōtini e rua.^[70]

[134] It is relevant that Ms Pōkere Phillips was given the opportunity to reverse the decision made at the September 2019 AGM to demolish the Whare, the meeting where she was not present. Ms Pōkere Phillips placed two motions to the floor at the November 2020 annual general meeting; firstly, that the resolution previously made at the September 2019 AGM to demolish the Whare be redacted from the minutes, and secondly, that the Whare is not be demolished. Both motions were rejected.^[70]

[135] Ko tā māua kāore nei he taunakitanga mō te tiro pītahi atu a nga kaitaratī ki ēnei take me tautika.

[135] We find that there is no evidence that the trustees crossed the fairness line.

Ngā kawē i te kaiponu^[71]

Acting in their own interests^[71]

[136] Kāore i kitea he taunakitanga i ngā kaitaratī e whakatau ana i ngā take mō rātou anō. Erangi rā, e āta whakaari mai ana ki ngā taunakitanga, ngā hiahia hōkai whakatonu a ngā kaitaratī kia tukua te whakatau ki ngā pīrangi o te minenga (ki ngā tautoko i ngā hui matua), e aro marire rā ki ngā moemoeā kē atu anō ki te whenua mō ngā mema whaipānga, āpiti atu ko ngā aro ki ngā tahua, āpiti atu ko te tiaki i te hauora o Ms Warren, hāunga i tōna whakakeke.

[136] There is no evidence that the trustees were making decisions for their own benefit. In fact, the evidence reflects the prudence of the trustees who were seeking to fulfil the will of the people (via the mandates at key hui), balancing other aspirations to develop their whenua for the beneficiaries, including fiscal implications, together with managing the wellbeing of Ms Warren despite her resistance.

[137] Kāore nei ngā kaitaratī i takitaki whakataū ki ō rātou ake hiahia i te kaiponu.

[137] The trustees have not acted in their own interests.

Ngā whakataū whānui ki ngā takohanga kaitaratī

Overall findings on trustee duties

[138] Hei kupu tōpaki mai, mō ngā whakahaere a ngā kaitaratī i ngā hautū whakataū ki te Whare, e whakataū ana māua i te whaitika me te mea kāore nei he takahi i ngā takohanga ki tikanga, ki ture rānei i te Ture Taratī 2019.

[138] In summary, we find that the trustees have administered and managed the take regarding the Whare in a tika/proper manner per s 223 of the Act and there are no breaches of their duties under tikanga or under the Trusts Act 2019.

He kupu whakahoki ki ngā kaitono

Response to applications

[139] Nā runga anō i ā māua whakataū ki runga, ka tukua e māua he whakahoki ki ia tonu, e toru nei.

[139] In light of our findings above, we respond to each of the three applications.

Te tonu arotake me te ākinga

The review and enforcement application

[140] E whakakāhore ana i tēnei tonu. Kāore he tūranga āki i tētehi takohanga mārō ki ngā kaitaratī kia tahuri te whakataū ki te turaki i te Whare. Kāore hoki he tūranga ki te tohutohu i tētehi arotake ōkawa o te Taratī ki s 231 o te Ture 1993 i runga i te whakataū mō te Whare, i te mea ko tēnei taua arotake ōkawa, ā, koia nei ā māua whakataū.

[140] This application is dismissed. There is no basis to enforce the obligation of the trustees to set aside the decision to demolish the Whare. There is no need for a formal review of the trust per s 231 of the Act as it relates to the Whare decision, given that we have now conducted that review and made our findings.

Te tonu whenua rāhui

The Māori reservation application

[141] E whakakāhore ana i tēnei tonu. Kāore māua e whakaae ki tērā i te pūrongo Kāinga i whakaritea e Ms Pōkere Phillips, ki te mōtini rānei i kōrerotia ki runga, kia tohutohungia atu ngā kaitaratī ki te pīkau atu i taua whakaaro. E wātea ana te kōwhiringa kia whakatūria he taratī whenua rāhui mō muri i te turakanga o te Whare, erangi me kōrero taua take, me hui taua take, me tika te tonu atu mō taua take ki mua i te Kōti.

[141] This application is dismissed. We do not accept that the Homestead report prepared by Ms Pokere Phillips, or the motion we discussed above, compelled the trustees to progress this idea. A reservation trust may still be an option after the removal of the Whare, but that will need to be the subject of further discussion, hui, and a proper application before the Court.

Te tonu tāria

The injunction application

[142] E whakakāhore ana i te tonu tāria wawe i te mea kāore i

[142] The interim injunction application is dismissed as there is no serious question to be tried.

konei he pātai pakeke hei whakatau.

Ngā whakaeaea me ngā tohutohu

[143] Nō te korenga o ētehi takahanga tūāpapa ki ngā takohanga o ngā kaitaratī, kāore nei he wāhanga e puta ai he whakaeaea i a te Kōti. Tērā tērā, ka mātua mai i ā māua kitenga mō te whaihua o te kawē wānanga, e whakahau ana māua kia whaiwhakaaro atu ki te whakatū wānanga hei hātepe hikumutunga i mua atu i turaki i te Whare. Ki tēnei whakahau kawē wānanga, kāore māua i te akiaki kia hoki rā anō ki ngā kōwhiri kia tuarua ngā whakatau mō te turakanga, kua puehuehu taua pātiki, ā, kāore he pātari i konei e hoki ai ki te whakatau, he pare ki tahaki rānei

[144] Ko tō māua e manako nei, ko te āwhina i ngā whānau o Hanataua, o Ōuri, o te hapū whānui anō kia eke te taumata o ea, kia ea i tēnei kōpanitanga. I whakamāramatia te aronga o ea ki te whakatau o inātata i a Ellis ki Te Kaiwhakawā Hōnore Williams e mea nei ki ēnei rārangi kōrero mō te hohou i ngā kaha o te whanaungatanga kia tina ai a oti.^[72]

The second is the concept of ea or — loosely — a state of balance. It is akin, perhaps, to common law ideas of justice and finality. In tikanga, ea is the point. It can be achieved by agreement or imposed by someone with the mana to impose it. Tikanga too, has no time for process without end.

[145] Tō te Māori tirohanga anō, ehara rā i te taonga whaimana ki te kore e tohea te mouri o te taonga, ki te kore e tohea te whakapapa o te taonga, ki te kore e ākina te takenga o te taonga, he pūkei ake te mana. Erangi i te pakanga, i te kāwhaki, i te hae i te taonga te take, he kome mā te ngutu.

Remedies/orders

[143] Given that there are no fundamental breaches of trustee duties, there is no need for the Court to grant remedies. That said, based on our observations about the value of wānanga, we invite the trustees to consider a proposal to hold wānanga as part of their final steps to remove the Whare. In making this proposal we are not asking the trustees to revisit the decision to demolish the Whare, that decision has been made and there is no basis to direct the trustees to revisit the decision or to set it aside.

[144] Our interest is in helping the Hanataua/Ouri whānau and wider hapū to achieve a sense of ea. The concept of ea was explained in the recent Ellis decision, by His Honour Justice Williams and it provides the appropriate line between repairing whanaungatanga and timely finality.^[72]

The second is the concept of ea or — loosely — a state of balance. It is akin, perhaps, to common law ideas of justice and finality. In tikanga, ea is the point. It can be achieved by agreement or imposed by someone with the mana to impose it. Tikanga too, has no time for process without end.

[145] There is also an inherently Māori perspective, that there is no depth of status accorded to a taonga that does not have its essence sought, its whakapapa interrogated with diligence, and its foundations weathered with intent, mana is cumulative. That said,

battles, seizure, and vengeance
founded in taonga tightens our lips.

[146] He pukenga tō Tū, pūkei ake, he pukenga anō tō Rongo, pūkei ake.^[73]

[146] The yield associated with Tū is cumulative, as is the yield of Rongo.^[73]

[147] Kāore māua i te hiahia kia utaina ō māua whakaaro i konei, erangi ka whakahau māhaki rā i ngā kaitaratī kia karanga he wānanga, mō:

[147] We do not seek to impose our proposal, but rather, we invite the trustees to consider convening wānanga, for the purposes of:

a) Te whakaraupapa i ngā hōkai o te tikanga hei hātepe ki te turaki i te Whare ki te mana i tu ai ia, e kotahi ai te whānau; me

a) Discussing the final tikanga and other practical steps to demolish the Whare with the mana in which it was built, to bring the whanau together; and

b) Te whakatinana moemoeā ki te papa e tahia, hei kapo ki te atakura o āpōpō me ōna whakatupuranga.

b) Discussing aspirations of what might be put on the ground of the Whare once cleared, with an intent shown for future

[148] Mā ngā kaitaratī anō e whiriwhiri nei tū ai he wānanga, mō āwhea, mō te hia nei o ngā wānanga, mō ngā tikanga hei whai mā te wānanga. E aro ana māua hoki ki te hapū whānui, ngā hapū atu rānei, kia āhei ai rātou peange ki te wānanga. E whakahau māhaki ana hoki māua kia whai whakaaro atu ki te anga tikanga i takoto mai ki ēnei whārangi, he āwhina pea ki ngā kawē i te wānanga. Ka wātea mai hoki i a te Kōti he kaiwhirinaki mō te wānanga mē ko te whai hua tērā.

[148] It will be up to the trustees to decide when the wānanga will be held, how many there will be, and the process for the wānanga. We recommend that the wider hapū associated with the whenua be allowed to share a view through these wānanga. We also invite the trustees to consider using the tikanga framework outlined in this decision to guide their tikanga discussions at the wānanga. The Court is also prepared to provide a facilitator for the wānanga if that would assist.

[149] Mehemea ka whāia tā māua e mea nei, e īnoi ana ki ngā kaitaratī kia tāiri tonu ai te whakaaro kia kaua te Whare e turakina, kia ea rā anō ngā ruku o te wānanga. Kia rongo te Kōti i te whakamaurutanga ki te wānanga, ka rite ai te kōkiri kia angamua. Kei pōhēhē noa, kāore rawa he here ki ēnei akiaki i ngā kaitaratī ki tēnei whakahau i te ngākaupai me te ngākaunui. Hāunga hoki ērā, e hiahia ana te Kōti kia rongo i ō koutou hiahia i runga i ēnei whakahau i roto i ngā rā e whitu mai i te putanga o tēnei whakatau.

[149] If the trustees adopt our proposal, we invite them to reconfirm their undertaking not to demolish the Whare until the wānanga are completed. Once the Court receives confirmation that the wānanga have been completed, then the undertaking can be revoked. To avoid all doubt, there is no obligation on the trustees to adopt this proposal. We do however, direct that the trustees advise the Court and the applicants of their decision about our proposal within seven days of the date of this decision.

[150] Ka tahuri māua ki ngā take mō ngā utu ki tēnei tukanga. Kia tau mai he karere mō ngā utu i a

[150] We will also address costs based on the following approach. Ms Hughes KC is to a file a

Ms Hughes KC i mua i te mutunga o Kohitātea 2023, me tētehi rua wiki atu anō i tērā kei a Ms Thomas ki te tuku whakahoki. Hei reira tā māua whakatau i ngā utu, ki tā ngā pepa korero ai.

Te Rāhui

[151] Kāore i a māua tētehi whakatau mō te tika, mō te whakapaparanga rānei o te rāhui, kāore hoki i a māua he whakahau ki te wā, ki te pēwhea rānei o te unuhanga. Ehara tērā i te kawē e hiahia nei mā māua e hāpai, kāore e tika ana. He ahakoa rā, e mōhio ana māua ko te rāhui tētehi take nui me whiriwhiri, me whakatau, me te pātai e iri tonu ana, me pēwhea.

[152] E mārama pai ana māua kua whakairinga atu te rāhui he tikanga haumarū te take. Ko te take rā, ki tō te Kaunihera Kaumātua tirohanga, e mea ana kia tū tonu te Whare, kia kōtingia, kia āta tirohia ngā tāpaetanga ā ngā kaitono.^[74] Kua kōtingia, kua tau ēnei kōrero i a māua mō ngā tono, kua ea rānei te pūtake i whakairinga te rāhui. I roto i te kōtinga i kōrerotia ētehi o ngā tikanga i te kawē o te rāhui e Dr Hond rāua ko te kaumātua a Mr Hooker, kāore i āta rerekē ngā whakaaro i a rāua. Kia āpiti rā he kupu anō, ko te kōrero a Dr Hond he hiahia nōna ki te whāriki i ētehi mahara ki tō Taranaki kawē i te rāhui, i roto anō i te hiahia kia ea te iho o te take ki te whānau e puta ai rātou ki te ara whaiora.

memorandum by the end of January 2023, with Ms Thomas to respond two weeks after that. We will then make a decision on the papers.

The Rāhui

[151] We have made no findings on the legitimacy of the Rāhui, nor do we direct when and how it should be lifted. This is not a role we want to play nor should we. However, we accept that the existence of the Rāhui is a matter that needs to be addressed, the question remains how.

[152] We accept that rāhui are placed for a specific protective purpose. That purpose here, from the Kaumātua Kaunihera's perspective, was to keep the Whare standing until the Court heard and determined the claims made by the applicants.^[74] We have now heard and determined those claims, and it follows that the purpose for which the Rāhui was placed no longer exists. During the hearing, Dr Hond discussed the process of rāhui with Mr Hooker, and there was little or no dispute between them on the matter. To add to that discussion, Dr Hond provides a Taranaki iwi perspective of rāhui in the hope that it may assist with the fulfilment of the Rāhui and the achievement of wellbeing.

[154 (sic)] Kāore tonu e āta rerekē atu te whakairi rāhui i tēnei rohe i ētehi atu rohe, atu i ngā karanga ka Tere ake, atu i te ruruku ka takina, atu i ngā poimanu ka tuara mai, atu i ngā mihi me ngā kauhau i te kupu ki te minenga, atu i te ehuehu wai, i te tahutahu ahi, i te whāngai hau, i te whāngai pātatai i a Maru, i te whāngai mouri, i te ope puehu, i te tā o te rau, i te takahi o te rekereke, i te pā o te ihu, i te rongo o te taringa, i te kakara o te kai whakanoa, kāti he rite tahi ngā rāhui i roto i ngā rerekētanga. Kāore i te hiahia kōrero mō ngā whakairi rāhui, mā tērā tohunga, mā tērā tohunga e kawē āna, me te mea, kua iri kē te rāhui ki Ōuri.

[155] E hiahia ana ki te kōrero mō te hīkinga, arā, ko te unuhanga i te tapu o te rāhui. Kei te tohunga nāna i whakairi, māna hei waha te kawa. Erangi mō te take ki te taonga, te kino i puea mai ai te rāhui, ka uru mai i

konei te kōrero mō ngā raru, ngā hara, ngā hē, ngā tara, me hoki ki taua take. Ka uru hoki ngā hiahia kia kite i ngā maru, ngā utu, ngā whakamauru, ngā here, ngā aukaha, ngā ārai, ngā whāinga, ngā rautaki me ngā hua e tau ai te take ki te taonga. Kātahi anō, ka kaha te kī atu kua ea, kua tutuki, kua mutu, kua rarau kia āhei ai te aro ki te unu, kia taea ai te whakatutuki te take i iri ai te rāhui. E whakaahua ana peange i te papa kōrero mō te take, kia aro mai te minenga, kia hoki mai te ora.

[156] Hei whakarāpopoto ake ka takoto ngā kōrero mō te kino, ka anganui ki ngā whakarata, ka ea ngā take, ka hīkina te rāhui, nā whai, nā whai ā, ka puta ki te whai ao, ki te ao mārama. He wānanga hoki tēnei ara ki te minenga, kia whānui te minenga, kia rahi te minenga ka manā te rāhui. Otiā, he whaiora i roto i te rāhui, he manaaki i roto i te rāhui, he mana i roto i te rāhui.

[157] E toru ngā kōrero e toko ake ki konei, ki te hiku o ēnei whiriwhiringa. Ka tahi, mā te Kaunihera Kaumātua o Ngāruahine, ki ā rātou ritenga e whiriwhiri whakatau i runga i te iho o te take i whānau mai ai te rāhui. Ka rua, me whaiwhakaaro ki ngā hiahia me ngā wawata o te hunga nō rātou taua taonga, arā, i konei ko ngā uri o Taiteariki rāua ko Moetū, nō rātou a inanahi, mō rātou a āpōpō, nō ngā reanga anō te iho o te take. Ka toru, ka tika ngā kupu i puta ki te Kōti mō Te Rei Hanataua, he tupua, he taniwhā, mā te iwi hei kī he ariki. Nēi ko te uru mai ēnei tūmomo kupu mō te kāwai o Te Hanataua ki roto i ēnei tikanga o te rāhui, me whaiwhakaaro ki ōna karangatanga, karanga hapū, karanga uru waka, ki rātou e wātea ana kia uru mai, ā-tinana, ā-reo, ā-mana ki te iho o te take. Te mutunga iho, he ora ki te rāhui, he manaaki ki te rāhui, he mana ki te rāhui, ki te whaiāo ki te ao mārama.

[158] Kāti, he kupu mihi ērā i te kupu wāwāhi, me tuku mihi anō i te tuku kia kapi. He kōrero ka takoto ki te pepa, he hiahia ka tiketike ki te rangi.

[158] Turning now to the tribute in opening this decision, it is appropriately supported with a similar acknowledgement to close. These statements made on paper, these aspirations lifted to the sky.

Takea mai Hawaiki, takea i Hawaiki nui, ki tua o paerau, ko hihiri, ko pupuke, ko mahara, ko te hiringa ngā ingoa tupuna, ingoa hapū, ingoa iwi, ingoa waka, ingoa mouna, ingoa muriwai, ingoa kāwa, ingoa tongi e takoto nei ki ēnei rau whārangi, otiā, e takoto tonu nei ki te whenua, ko Ōuri. Kia pao atu i konei. *Kimi mai e Rarau tēnei tō Hawaiki i roto i tē wā o te motu nei, e rīwaru.* Tēnei tūranga o Hawaiki, ko Hawaiki tautau, kauā i a Kōti, kauā i a ture, erangi i a tikanga, i a tapu, i a mouri, poupoua ki te whenua, tiritiria ki te tangata, ko Ōuri tonu.

Ngā kupu āpiti – Notes

[1] The Court's mihi to acknowledge the passing of kaumātua and co-applicant Mr James Pokere.

[2] The original applicant was Mr Pokere, he was then joined by the co-applicant being his daughter Ms Donna Pokere Phillips. Technically the applicant is solely Ms Pokere Phillips, given the passing of her father, but we continue to refer to both as the applicants in our decision as a sign of respect for Mr Pokere.

[3] Affidavit of Teoiora Te Amo Te Kehu Joyce Malcolm Luke (22 June 2022). Alana Thomas “Further Submissions on behalf of the Applicants” (English translation) (16 September 2022), at [9].

[4] “Second Affidavit of Caroline Tapuone Scott in Opposition to the Applicant’s Request for Mediation and Further Delay” (26 May 2022), at 1.

[5] We are also mindful of the cautionary words of the majority in the Supreme Court decision in *Ellis v R* [2022] NZSC 114, at [22], for courts not to exceed their function when engaging with tikanga.

[6] 450 Aotea MB 128 (450 AOT 128).

[7] Alana Thomas, “He tono whakahou kia meinga ngā kaitiaki ki te whakaū ki a rātou takohanga me tētahi tono kia arotakehia te tarahiti (Amended Application)” (22 June 2022).

[8] Alana Thomas, “He tono kia whakatū i tētahi whenua rāhui Māori” (7 June 2022).

[9] Application for Interim Injunction (undated).

[10] In the further submissions of Ms Thomas dated 16 September 2022, counsel refined the tikanga duties including, kaitiakitanga, whanaungatanga, rāhui, and whakamoe whare. The Trusts Act 2019 duties include the duty to act honestly and in good faith; and the duty to act impartially.

[11] 459 Aotea MB 124 (459 AOT 124).

[12] John Henry Te Urikore Katene Hooker, Hori (George) Tama-kite-Rangi Manuirirangi, Wharehiahia Wineera, Betty Tane Robinson, Aroha Moeroa Rangiwhaiao Houston, Elaine Warren, Donna Pokere- Phillips, Peter Reed, Maraea Wharehoka, Peeti Wharehoka-Watene, John Puti Rukutai Watene, Caroline Tapuone Scott. We also undertook a site visit to the Whare after the hearing.

[13] Ngāruahine Deed of Settlement 2014, enacted by the Ngāruahine Claims Settlement Act 2016.

[14] Brian Trevor Ropitini, Caroline Tapuone Scott, Hokipera Ruakere-Papuni, Jacqueline Aroha Feehan, James Pokere (deceased, but not replaced formerly by the Court as yet), Kiki Ruakere, Moetu Agnes Tonga, Patricia Maria Bodger and Roina Graham.

[15] *Warren v Ropitini - Ouri 1A3 Block* (2020) 423 Aotea MB 193 (423 AOT 193), at [6]. Referencing here Te Hanataua Trust.

[16] Te Hanataua Trust, Trustee Hui (28 April 2018), at 4.

[17] Te Hanataua Trust, Annual General Meeting (26 August 2017); Te Hanataua Trust, Trustee Hui (28 April 2018); Te Hanataua Trust, Special General Meeting (21 July 2018); Te Hanataua Trust, Special General Meeting (13 April 2019); Te Hanataua Trust, Annual General Meeting (7 September 2019); Te Hanataua Trust, Annual General Meeting (21 November 2020).

[18] There is an issue as to the status of the resolution which we address later in our decision.

[19] Letter from the Kaumātua Kaunihera to the Trust dated 12 February 2020.

[20] Alana Thomas “He tono kia whakatū i tētahi whenua rāhui Māori” (7 June 2022).

[21] Alana Thomas “He tono whakahou kia meinga ngā kaitiaki ki te whakaū ki a rātou takohanga me tētahi tono kia arotakehia te tarahiti (Amended Application)” (22 June 2022), at 3-5.

[22] As to the allegation that he did not take into account cultural matters, we find that this was misplaced, given that Mr Reed is clearly no expert in tikanga. He was not engaged to provide that type of assessment nor should he be expected to provide an opinion on tikanga. Mr Reed appropriately kept to his lane and rightly so.

[23] 456 Aotea MB 100-215 (456 AOT 100-215), at 114.

[24] 456 Aotea MB 100-215 (456 AOT 100-215), at 121.

[25] 456 Aotea MB 1-99 (456 AOT 1-99), at 88.

[26] 456 Aotea MB 1-99 (456 AOT 1-99), at 88.

[27] 456 Aotea MB 100-215 (456 AOT 100-215), at 103.

[28] 456 Aotea MB 1-99 (456 AOT 1-99), at 88.

[29] 456 Aotea MB 1-100 (456 AOT 1-100), at 45-63. Mr Hooker argued that there is an ariki tikanga because the Trust carries the tūpuna name Te Hanataua who was of the ariki lines. We offer no view on the ariki tikanga concept, as this should be left for wānanga, but we do not deny the significance of Te Hanataua in locating mana.

[30] Closing submissions on behalf of the respondents dated 7 October 2022. Ms Hughes KC submitted that, while it is accepted that the Trust was created through the provisions of the Act, an Act which imported established concepts of tikanga, it is not accepted that there has been any breaches of tikanga which undermines or invalidates the decisions of the Trust.

[31] For examples of references to tikanga, see Te Ture Whenua Māori Act 1993 ss 7, 26E, 32, 32A, 62, and 114A (non-exhaustive list).

[32] Annette Sykes “The Myth of Tikanga in the Pākehā Law” (2021) 8 Te Tai Haruru Journal of Māori and Indigenous Issues, quoting Ani Mikaere “Tikanga as the First Law of Aotearoa” (2007) Yearbook of New Zealand Jurisprudence 24.

[33] Te Ture Whenua Māori Act 1993, s 237. See also *Clarke v Karaitiana* [2010] NZCA 486.

[34] Alana Thomas “Further Submissions on behalf of the Applicants” (English translation) (16 September 2022), at [36], referring to the Ministry of Justice report, *He Hinātore ki te Ao Māori A Glimpse into the Māori World* (2001), at 44.

[35] *Rameka v Hall* [2013] NZCA 203, at [78].

[36] Lindsay Breach *Nevill's Companion to the Trusts Act 2019* (1st ed, Lexis Nexis, Wellington, 2020) at 1.

[37] *Ellis v R* [2022] NZSC 114, at [106-110].

[38] Pursuant to s 4(a) of the Trusts Act 2019, every person or court exercising a power under the Act must have regard to the principle that a trust should be administered in a way that is consistent with its terms and objectives. Pursuant to s 21 of the Trusts Act 2019, in performing their mandatory duties, a trustee must have regard to the context and objectives of the trust.

[39] We do not need to consider the common law or the Trusts Act 2019 to assess trustee duties under tikanga in this context, given that the Act provides, in our view, a clear statutory basis. But as noted, the common law and the Trusts Act 2019 may also provide a legal basis in the right circumstances.

[40] Robert Joseph and Richard Benton *Waking the Taniwha: Māori Governance in the 21st Century* (1st ed, Thomas Reuters, Wellington, 2021) at 725.

[41] *Baker – Tātaraakina C Block* (1995) 11 Takitimu Appellate MB 50 (11 ACTK 50), at [10]-[11]. “There are a number of areas, for example on the constitution of trusts or Māori reservations (under Part XII, Part XVII) where it is not specifically provided that tikanga Māori shall be taken into account. **Mindful of the principles set out in the Preamble, it is nevertheless incumbent on the Court in the exercise of its jurisdiction to have regard to tikanga Māori should the issue arise in the course of the proceedings.**” (Emphasis added).

[42] See, for example: *Adlam v Reihana Himetangai 1H1A* (2022) 447 Aotea MB 1 (447 AOT 1), at [34]-[40], *Baker and others v Trustees of Tātaraakina C Block – Tātaraakina C Block* (1995) 11 Takitimu Appellate MB 50 (11 ACTK 50). We also refer to the helpful analysis by Her Honour Justice Glazebrook in *Ellis v R* [2022] NZSC 114, at [98]-[102].

[43] For example, various hui that are held (and at times directed) to establish trusts, set the terms of trust and to select trustees. With many hui being held on marae.

[44] Noting that the word “tika” has been translated as “proper” in the H.M. Ngata *English-Māori Dictionary* (Learning Media, Wellington, 1996) at 361.

[45] As Ms Thomas argues, both rangatiratanga and the concept of taonga tuku iho as found in the Preamble invites tikanga to be considered.

[46] Natalie Coates and Isaac Hikaka “Tikanga and Trusts” (Trusts Conference 2021), quoting Justice Joseph Williams, *He Aha Tikanga Māori* (unpublished paper for the Law Commission, 1998), at [3.1].

[47] A point made by His Honour Justice Joseph Williams in “Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law” (2013) 21 Waikato Law Review 1.

[48] Alana Thomas “Further Submissions on behalf of the Applicants” (English translation) (16 September 2022), at 42-49. We also note that whilst the four tikanga duties were listed, a fifth principle of manaakitanga was referenced at paragraph 53, but not specifically applied as such.

[49] Alana Thomas “Further Submissions on behalf of the Applicants” (English translation) (16 September 2022), at 42. We acknowledge the way in which the definitions of whanaungatanga and kaitiakitanga have been articulated by the applicants. Whanaungatanga is explicitly captured in the tikanga framework and explained in terms of the various relationships to land, people, and the relationships between the various layers of mana. Kaitiakitanga is also expressed in terms of responsibilities for protecting the interrelated layers of mana.

[50] That said, the tikanga framework is an appropriate construct that helps us assess the relevant tikanga principles and values.

[51] Alana Thomas “Further Submissions on behalf of the Applicants” (English translation) (16 September 2022), at 46-51.

[52] For example, the letter from the Trust to the Homestead Trust dated 31 August 2020, and the email to Ms Warren dated 15 September 2020.

[53] In our view, tikanga cuts both ways, and duties under tikanga do not just fall on trustees.

[54] For example, during the hearing Caroline Scott confirmed that she was not specifically aware of the kaumātua role when she took office (456 Aotea MB 100-215 (456 AOT 100-215), at 204.)

[55] As we have done here by using s 32A of the Act in appointing Dr Hond who is Taranaki iwi and is familiar to the parties before the Court.

[56] *Kusabs v Staite* [2019] NZCA 420, at [124].

[57] As confirmed in the settlement agreement at mediation and in the notes for Te Hanataua Trust & Ouri Homestead Whānau Trust Meeting (22 August 2022).

[58] Letter from Brian Ropitini (Chair of Te Hanataua Trust) to beneficiaries dated 17 September 2020.

[59] When referring to wānanga, we are talking about marae based wānanga of the tikanga kind.

[60] Following the terms of trust and the Act, as the trustees did here, can also be considered tika/proper.

[61] It is fair to say that the focus of the claims by the applicants were more on the side of claimed breaches under tikanga, rather than the allegations under the Trusts Act 2019.

[62] Specific allegations include ignoring the decisions of the beneficiaries, specifically the one passed at the SGM in 2018 for the reservation trust, the preparation and process from the September 2019 AGM were wrong, and a failure to provide a platform for the applicants to express their views. See Alana Thomas "Further Submissions on behalf of the Applicants" (English translation) (16 September 2022), 85-104.

[63] See Lindsay Breach *Nevill's Companion to the Trusts Act 2019*, above n 32, at 10.

[64] 456 Aotea MB 100-215 (456 AOT 100-215), at 191.

[65] Te Hanataua Trust, Special General Meeting (13 April 2019). Where there was discussion about finding alternative housing for Ms Warren and the taonga, pending a decision about the Whare. There were also questions from the floor as to why so much money was going to the Whare, with the response being that no decisions had been made about the future of the Whare.

[66] 456 Aotea MB 100-215 (456 AOT 100-215), at 192.

[67] Chairman's report, regarding Te Hanataua Trust, Annual General Meeting (7 September 2019).

[68] Te Hanataua Trust, Annual General Meeting (7 September 2019).

[69] See Lindsay Breach *Nevill's Companion to the Trusts Act 2019* above n 32, at 14, "This duty requires a trustee to act impartially in relation to the beneficiaries, and to not be unfairly partial to one beneficiary or group of beneficiaries to the detriment of the others. It is often a difficult duty to discharge, since trustees may face pressure from beneficiaries to favour them. The concept of fairness lies at the heart of this duty."

[70] By the trustees and by a majority of those beneficiaries present.

[71] Trusts Act 2019, s 31, which enacts the common law rule in *Keech v Sanford* (1726) Sel Cas T King, 25 Eng Rep 223 (ch). This is also known as the "self-dealing" rule.

[72] *Ellis v R* [2022] NZSC 114, at [253].

[73] The yield of Tū refers to the 'heaped' outcomes (pukenga) of sustained conflict, violence, and animosity in contrast to the yield of Rongo, with outcomes of sustained consensus, good will, tolerance and co-operation.

[74] 456 Aotea MB 1-99 (456 AOT 1-99), at 59.

Injunction – incorporated society – jurisdiction of the Court

Allan v Thomas – Lot 1 Deposited Plan 64773

(2022) 255 Taitokerau MB 288 (255 TTK 288)
13 December 2022

Report by Elizabeth Derby

Whakataunga – Overview and result

Application for an urgent injunction to prevent newly appointed members of the committee which administers Kaitaia Marae Incorporated, an incorporated society, from acting in that role.

Injunction – jurisdiction of the Court – Incorporated Society – Māori reservation	
Date	13 December 2022
Case	Allan v Thomas – Lot 1 Deposited Plan 64773 (260 KB PDF)
Citation	(2022) 255 Taitokerau MB 288 (255 TTK 288)
Court	Te Kōti Whenua Māori – Māori Land Court
Judge(s)	Judge Armstrong
Earlier/later decisions	
Legislation cited	Te Ture Whenua Māori Act 1993, s 19; Incorporated Societies Act 1908, ss 6, 10, 25, and 26; Incorporated Societies Act 2022, s 6.
Cases cited	<i>Antunovich v Dalmatinsko Kulturno Drustvo Inc</i> [2001] NZAR 229; <i>Churton v Trustees of Mangapou Trust – Mangapou Trust</i> (2003) 132 Aotea MB 219 (132 AOT 219); <i>Gardiner v Gorringer – Tauwhao Te Ngare Block</i> (2008) 93 Tauranga MB 63 (93 T 63); Kotahitanga Log Haulage v Forest Distribution Limited – Mangaroa and Other Blocks Inc (2015) 121 Waiariki MB 149 (121 WAR 149); Taueki v Horowhenua Sailing Club – Horowhenua 11 (Lake) Block [2014] Māori Appellate Court MB 60 (2014 APPEAL 60).
Overview and result	Application seeking an urgent injunction. The applicant was a member of a committee which administers the incorporated society, Kaitaia Marae Incorporated. This society owns the land involved in this application, Lot 1 Deposited Plan 64773, which is a Māori Reservation. Earlier in 2022, a special general meeting of the committee was held with the intention of removing the applicant and other members of the committee and appointing new members. The applicant sought

	an injunction to prevent the new committee from acting in that role, as the applicant argued that the meeting was not properly convened and thus the resolutions passed were invalid. The injunction also sought to remove Margaret Amani and Amani Amani from the reserve, as they were occupying a building on the land. The issue was whether the Court had the jurisdiction to grant the orders sought given that the applications involved an Incorporated Society. Ordinarily, matters of this nature would be decided by the High Court. Held, the Court dismissed the application. Although the application indirectly related to a Māori reservation, the Court found that it did not have the jurisdiction to determine this issue. The Court noted that such a proceeding would have to be brought before the High Court. As for the application for an injunction to remove Margaret Amani and Amani Amani from the reserve, the Court found that it did have the jurisdiction to grant this injunction, but it could not do so on the evidence before it.
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Hakihea 2022 – additional content online

Te Kōti Whenua Māori – Māori Land Court

[Injunction](#) – building on trust land without consent – *Motu v Rapihana – Pukepoto 8B15B3B Residue* (2022) 256 Taitokerau MB 190 (256 TTK 190) – Elizabeth Derby

[Māori incorporations](#) – committee of management – unmeritorious allegations – *Norman v Pohatu – Te Hapua 42* (2022) 256 Taitokerau MB 1 (256 TTK 1) – Elizabeth Derby

Te Rōpū Whakamana i Te Tiriti o Waitangi – Waitangi Tribunal

[Tino Rangatiratanga me te Kāwanatanga – Te Paparahi o Te Raki Inquiry](#) – Elizabeth Derby

[Waikanae](#): Report on Te Ātiawa/Ngāti Awa claims – Elizabeth Derby