I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TĀKITIMU
In the Māori Land Court of New Zealand
Tākitimu District

AP-20230000021421

WĀHANGA *Under*	Section 67, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Tapapa 3B 1 and others
I WAENGA I A *Between*	PETER BLOOR Te kaitono *Applicant*
ME *And*	CLINTON JOHN KAIMANAWA ELLIS, MARK MOHOAONUI ROSS, MATIU HEPERI NORTHCROFT, HEEMI JAMES BIDDLE AND NGAHERE TE POHE WALL AS TRUSTEES OF THE EAST TAUPŌ LANDS TRUST Ngā kaiurupare *Respondents*

Nohoanga: *Hearing*	10 December 2024, 116 Tākitimu MB 95-110 1 July 2024, 111 Tākitimu MB 267-287 (Heard at Hastings)
Whakataunga: *Judgment date*	13 June 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ D H STONE
Judgment of Judge D H Stone

Kei ngā mate kua tīwhaia ki te pō, whakangaro mārire ki te rua tapoko o mate. Haere, haere, haere atu rā

Kōrero tīmatanga
Introduction

[1] The East Taupō Lands Trust ("ETLT") is a major ahu whenua trust that manages numerous Māori land blocks in the Heretaunga - Taupō region. One of those blocks is the Tapapa 3B 1 block. There is a proposal to withdraw the Tapapa 3B 1 block from the ETLT, through a partial termination of the ETLT, and establish a new ahu whenua trust over the Tapapa 3B 1 block. I must decide whether to grant the partial termination and establish the new trust.

Whakarāpopototanga
Summary

[2] The Court declines to partially terminate the ETLT. The Tapapa 3B 1 block remains part of the ETLT.

[3] There is no order as to costs.

Kōrero whānui
Background

[4] The ETLT was created in 1970. It administers 21 separate Māori land blocks, which together comprise over 29,700 ha. One of those blocks is the Tapapa 3B 1 block, comprising 1,297 ha. As such, the Tapapa 3B 1 block represents approximately 4% of the land area administered by the ETLT.

[5] The application to withdraw Tapapa 3B 1 block from ETLT was first filed by Mr Peter Bloor on 19 November 2022. It was filed per s 241 of Te Ture Whenua Māori Act 1993 ("the Act"), which allows the Court to partially terminate trusts. It was accompanied shortly thereafter by an application to constitute a new ahu whenua trust over the Tapapa 3B 1 block per s 215 of the Act. There is a letter on file from the Deputy Registrar, undated, that rejects these applications for filing. The applicant sought a reconsideration. Ultimately, on 21 March 2023 Mr Bloor filed an application for a judicial conference per s 67 of the Act in relation to the rejected applications.

[6] The judicial conference was held on 1 July 2024. At that conference, Mr Bloor confirmed that the owners of the Tapapa 3B 1 block sought to withdraw from the ETLT. The ETLT trustees appeared at the judicial conference and opposed the application. On 2 July 2024, I issued directions. In summary, I directed:

(a) The ETLT to prepare and provide, to the applicant and the Court, an information pack containing the details of any leases or other arrangements over the Tapapa 3B 1 block, together with the annual income and expenses attributable to that block.

(b) The applicant to convene a meeting of the owners of the Tapapa 3B 1 block. The agenda was to include the withdrawal of the Tapapa 3B 1 block from the ETLT, the establishment of a new ahu whenua trust over the block and the appointment of trustees to this new trust.

(c) The applicant to prepare and provide, to the ETLT and the Court, an information pack containing all relevant information from the meeting of owners of the Tapapa 3B 1 block.

(d) If the meeting of owners of the Tapapa 3B 1 block resolved to withdraw the block from the ETLT, the ETLT to include as an agenda item at a special or general meeting of the ETLT the issue of withdrawal of the Tapapa 3B 1 block from ETLT. Following this meeting, the ETLT was directed to provide all relevant information relating to the meeting to the applicant and the Court.

[7] These directions were complied with and the substantive applications to partially terminate the ETLT by removing the Tapapa 3B 1 block and establish a new trust over the Tapapa 3B 1 block were heard on 10 December 2024.

Kua ahatia?
What has happened?

[8] The question of whether the Tapapa 3B 1 block should remain within the ETLT is a long-standing one. It was first discussed at the ETLT annual general meeting held on 17 September 2022. This hui was properly notified and well-attended. Although there was no

specific agenda item dealing with the Tapapa 3B 1 block, the hui discussed whether it should be withdrawn from the ETLT. No resolution to this effect was passed at this hui. The parties disagreed as to why. Nigel Baker indicated that a resolution was not needed, as the hui clearly endorsed the proposal and the ETLT trustees said at the meeting that they would leave it for the Court to decide. The ETLT trustees did not agree with this summary and relied on the minutes of the hui to confirm that no resolution was passed.

[9] Following the 2022 ETLT annual general meeting, a hui of the owners of the Tapapa 3B 1 block was held on 30 October 2022. It too was properly notified. It was not well attended. Only 6 of the 609 owners of the block attended that meeting. The meeting resolved to remove the Tapapa 3B 1 block from the ETLT, establish a new ahu whenua trust over the Tapapa 3B 1 block and adopt a new trust order, and elect trustees. After this meeting, a requisition was signed on 15 November 2022 by 8 owners in the Tapapa 3B 1 block supporting the outcomes of the 30 October 2022 meeting.

[10] These events were the basis for the original (but rejected) applications filed in 2022 to withdraw the Tapapa 3B 1 block from the ETLT and create a new trust over it. Instead of seeking the proper registration of these applications, as noted the applicant sought a judicial conference, which was held on 1 July 2024. My 2 July 2024 directions followed. In effect, these directions required further meetings to be held to ascertain the views of the affected owners.

[11] In accordance with my directions, a hui of the owners of the Tapapa 3B 1 block was held on 11 August 2024. It was properly notified. 12 owners attended this hui. Discussion was robust. Some of the ETLT trustees attended this hui and provided information on the operations of the ETLT. As expected, they advocated for the Tapapa 3B 1 block to remain a part of ETLT. They focussed on the history and purpose of the ETLT, the various blocks it manages and the associated economies of scale, and its proven track record. The general response of the owners of the Tapapa 3B 1 block was that they had not enjoyed real and substantive benefits from their shareholdings and that they wanted to exercise direct control over their whenua. When the resolution proposing to withdraw the Tapapa 3B1 block from the ETLT was put to the hui, 18 owners supported the resolution, none opposed it, and one owner abstained. The hui then approved a new trust for the Tapapa 3B 1 block, including a new trust order, and elected trustees.

[12] Again, in accordance with my directions, the outcomes of the 11 August 2024 hui of the Tapapa 3B 1 block owners were presented to a special general meeting of the ETLT on 19 October 2024. This hui was properly notified. 38 of the over 19,000 beneficiaries of the ETLT attended. The sole purpose of the special general meeting was for the ETLT beneficiaries to express a view on whether the Tapapa 3B 1 block should be withdrawn. Again, discussion was robust. In terms of voting, six (6) beneficiaries supported the withdrawal of the Tapapa 3B 1 block from the ETLT, 29 did not support this outcome and there were three (3) invalid votes.

[13] Following these Court directed hui, additional owners of the Tapapa 3B 1 block provided support for its withdrawal from the ETLT through signing a requisition to that effect. The applicant says that 33 individual owners of the Tapapa 3B 1 block, plus 11 whānau trusts, signed this requisition.

[14] These matters returned to Court on 10 December 2024. After considering the details of the hui held on 11 August and 19 October 2024, and despite some initial submissions on the robustness of the voting processes at those respective hui, the parties prudently agreed that the Court could rely on the voting outcomes. All parties acknowledged that participation was low at each hui, thereby making any arguments about voting eligibility largely redundant. In terms of the substantive issues, the applicant impressed on the Court that, although turnout was low, there is a clear desire among the participating owners of the Tapapa 3B 1 block to manage their own whenua. The ETLT trustees impressed on the Court the history and composition of the ETLT, its collective ethos, the benefits that accrue from the collective management of the lands controlled by the ETLT and the specific benefits available to the owners of the Tapapa 3B 1 block. They also raised a floodgates argument – that if one of the 21 blocks managed by the ETLT is withdrawn, others will inevitably follow.

[15] All parties referred to the whakapapa associated with the Tapapa 3B 1 block, although they each placed different emphasis on it. The applicant emphasised the Ngāti Hinerau and Ngāti Hineure connections. The ETLT trustees acknowledged those connections but indicated that not all of Ngāti Hinerau and Ngāti Hineure are owners in the Tapapa 3B 1 block (the membership of these hapū is much broader than the ownership list for the Tapapa 3B 1 block) and that other hapū of Ngāti Tūwharetoa have connections to this area.

Ngā take
The issues

[16] The issues to determine are:

(a) Should the Tapapa 3B 1 block be withdrawn from ETLT?

(b) If so, should a new trust be established over the Tapapa 3B 1 block?

Ngā ture
The law

[17] Section 241 of the Act deals with termination of trusts. It provides:

> (1) The court may at any time, in respect of any trust to which this Part applies, terminate the trust in respect of—
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> (a) the whole or any part of the land; or
>
> (b) the whole or any part of any interest in land subject to the trust, —
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> by making an order vesting that land or that part of that interest in land in the persons entitled to it in their respective shares, whether at law or in equity, or in such other persons as the beneficial owners may direct.
>
> (2) Where a trust terminated under subsection (1) is a whanau trust, the court shall, notwithstanding anything in subsection (1), make an order vesting the land or the part of the land or the interest in the land in the persons entitled to it in their respective shares, whether at law or in equity, which persons are—
>
> (a) the persons who were, at the creation of the trust and are at the date of the order, the beneficial owners of the land or the part of the land or the interest in the land; and
>
> (b) any persons who, at the date of the order, are successors of any of the persons who were, at the creation of the trust, the beneficial owners of the land or the part of the land or the interest in the land.

[18] The leading case on how s 241 of the Act should be applied is *Larkins v Kaitaia – Waihou Hutoia D2A Block*.[1] It confirms the following approach: [2]

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[1] *Larkins v Kaitaia – Waihou Hutoia D2A Block* [2013] Māori Appellate Court MB 159 (2013 APPEAL 159).

[2] See also *Rata – Te Rongoroa A7 Block* (1991) Aotea Appellate MB 223 (13 APWG 228) at 244; *Morgan – Tautuku Block XIII Section 5 and Section 13* (1998) 83 South Island MB 290 (83 SI 290) at 296; *Lake v Taylor – Ngarara West B3B* (2003) 134 Aotea MB 20 (134 AOT 20) at 26.

(a) A change of mind is usually an insufficient ground for termination unless there is an absence of opposition.

(b) Termination should be refused where it is likely to result in detriment or create unreasonable disadvantage to affected parties.

(c) Evidence of trustees failing to adhere to the terms of trust and core accountabilities may be sufficient grounds for termination.

[19] Relying on previous decisions, the Court in *Chambers v Keepa – Te Hinau A Pura Whānau Trust* stated that "the power to allow a trust's partial termination is discretionary and should be invoked cautiously. The applicant has no automatic right to withdraw and must establish that the discretion to refuse termination should not be exercised."[3]

[20] In exercising its discretion, the Court should consider the following factors:[4]

(a) The Preamble, s 2, and other matters listed in s 17 of the Act, including the extent to which termination achieves better retention, use, development and control of the land in accordance with the fundamental principles and purposes of the Act;

(b) The purposes of the trust;

(c) The extent of beneficiary and trustee consent;

(d) The impact of any termination on the remaining beneficiaries and the trust; and

(e) Any evidence of dysfunction among the trustees to justify the Court's intervention.

[21] If the Tapapa 3B 1 block is withdrawn from the ETLT, it will vest in the persons entitled to it in their respective shares. The applicants then wish to create a new ahu whenua

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3 *Chambers v Keepa – Te Hinau A Pura Whānau Trust* (2016) 350 Aotea MB 74 (350 AOT 74).
4 Above, n 3.

trust over it. The Court must be satisfied that the constitution of this new trust will promote and facilitate the use and administration of the Tapapa 3B 1 block in the interests of the persons beneficially entitled to it. The Court must also be satisfied that the owners have had sufficient notice of the application and sufficient opportunity to discuss and consider it, and that there is no meritorious objection among the owners, having regard to the nature and importance of the matter. If a trust is to be established, trustees will need to be appointed.

Tātaritanga
Analysis

[22] The starting point is that the discretion to terminate a trust should be invoked cautiously. Ordinarily, the Court is reluctant to terminate trusts and the Court's discretion is usually exercised against such an outcome. The Court has previously said that an applicant must therefore establish that the discretion to refuse termination should not be exercised.

[23] I now turn to the factors that the Court applies when considering whether to terminate a trust.

Is there evidence of the trustees failing to adhere to the terms of the trust?

[24] One of the grounds on which the Court usually terminates trusts is that the terms of the trust are not being adhered to. Importantly, that is not the case here. There is no evidence to indicate that the ETLT is failing to adhere to the terms of the trust. Nor do the applicant and supporters argue otherwise, although some of them express discontent at how the Tapapa 3B 1 block is used and the nature and extent of the benefits to them arising from that use. A common message arising from the minutes of the various hui is that the current management of the Tapapa 3B 1 block is not the real issue, rather the owners of that block simply want to manage it themselves. Accordingly, one of the usual grounds that the Court invariably relies on to terminate trusts is not established here.

Is there dysfunction among the trustees?

[25] Another ground that the Court has relied on previously to terminate trusts is dysfunction among the trustees. There is no evidence of dysfunction here. Indeed, the ETLT trustees have presented a united and consistent position – that it would be detrimental to the

ETLT beneficiaries and the owners of the Tapapa 3B 1 block for it to be withdrawn. Thus, there is nothing in the evidence or submissions of the parties that would justify the Court's intervention here due to dysfunction among the ETLT trustees.

What is the history and purpose of ETLT?

[26] The history of the ETLT is relevant. Limited evidence and submissions were filed on this point. However, it is clear that the ETLT was established in 1970 to administer various blocks and has remained largely intact since then. Even the trust order for the ETLT has remained unchanged since 1970. The ETLT is somewhat of an institution. It has been operating successfully for over 55 years. Therefore, in addition to the caution that the Court ordinarily invokes when considering applications to terminate trusts, further caution should be exercised in the present case because of the unique and long-standing operations of the ETLT.

[27] The purpose of the ETLT is also relevant. It is an overarching trust managing 21 Māori land blocks. The overall land area managed by the ETLT is significant, comprising over 29,700 hectares. In many ways, its size is its strength. Reducing its size by granting a partial termination will reduce that strength.

[28] The lengthy period of continuous and largely unchanged operations of the ETLT also cuts the other way, in the sense that it is understandable that the owners of the Tapapa 3B 1 block may now want to manage the block themselves. They have not had direct management over their block for 55 years and it is not unreasonable for them to want change now. Ordinarily, the Court has viewed this type of situation as a change of mind among the beneficiaries, which is usually insufficient grounds to terminate a trust. Although I consider the application to represent a change of mind (in the sense that some of the owners of the Tapapa 3B 1 block want a change in the management of the block), this is a case where a change of mind should not be viewed as insufficient grounds for termination. Put another way, a change of mind in the present case is understandable and should not be fatal. However, nor is it enough on its own. The Court must take into account all relevant factors.

[29] Overall, taking into account the history and purpose of the ETLT and the understandable desire of some of the owners of the Tapapa 3B 1 block to change its

management structure, I consider these factors point to the preservation of the ETLT as it is currently formulated.

The extent of beneficiary and trustee consent

[30] Turning now to the views of the beneficiaries and trustees. First, the trustees of the ETLT are unanimously opposed to the withdrawal of the Tapapa 3B 1 block. There is also some support for that position, based on the vote at the ETLT special general meeting on 19 October 2024. However, in the broader scheme of the ETLT and its over 19,000 beneficiaries, the participation rate of 35 valid votes is paltry. It is nothing more than a general indication from a minute fraction of the beneficiaries of the ETLT.

[31] The participation rate for the owners of the Tapapa 3B 1 block is much better. The applicant says that 33 individual owners and 11 whānau trusts support the withdrawal. This represents about 7% of the ownership base. In context, this is not insignificant. But it is still relatively low. Mr Bloor reiterated how difficult it is to encourage greater participation of owners in these matters. I have some sympathy for this position. The various hui have been publicly and, where possible, privately notified and it is difficult to identify any further steps that could have been taken to encourage broader owner participation.

[32] Despite the relatively low turnout, there is general support among the owners of the Tapapa 3B 1 block for it to be withdrawn from the ETLT. Although there is opposition from the ETLT beneficiaries, it is insufficient to draw any conclusions from. Overall, the extent of beneficiary and owner consent is not determinative in this case and is insufficient on its own to meet the threshold to partially terminate the ETLT.

What are the effects on the affected parties?

[33] Withdrawing the Tapapa 3B 1 block from the ETLT will allow the owners of that block to manage and control it. This is an important outcome that, if achieved, recognises the importance of owners of Māori land being responsible for its management, use and development. I take this into account.

[34] At the relevant hui and in submissions to the Court, the trustees of the ETLT argued that withdrawing the Tapapa 3B 1 block would be detrimental, both to the owners of that block and to the beneficiaries of the ETLT generally. They pointed to the existing leases over the blocks managed by the ETLT and the benefits, by way of grants, that accrue to its beneficiaries. I accept that the existing leases would be adversely affected if the Tapapa 3B 1 block is withdrawn from the ETLT. That said, the applicant and supporters confirmed that they would honour and be bound by those existing leases until they expired. Accordingly, no detriment arises in relation to these leases. Further, it is not clear that the existing benefits available to the owners of the Tapapa 3B 1 block will outweigh any future benefits they may accrue if the block is withdrawn from the ETLT. It is possible that the owners of the Tapapa 3B 1 block will be able to extract more benefits from managing the block themselves. I take this possibility into account.

[35] The trustees of the ETLT pointed to another potentially significant detriment if the Tapapa 3B 1 block is withdrawn – it may lead to other blocks following that path. Given the lengthy and relatively stable operations of ETLT, this concern is understandable. I take this into account. I also take into account that the owners of the blocks managed by ETLT should be permitted to entertain this outcome, particularly if they are dissatisfied with how their land is managed. Put another way, the floodgates argument, while relevant, should not prevent blocks from being withdrawn from the ETLT. Each such request should be considered on its merits.

What about the principles and purposes of the Act?

[36] In considering whether to terminate trusts, the Court has considered the Preamble, s 2, and other matters listed in s 17 of the Act, including the extent to which termination achieves better retention, use, development and control of the land in accordance with the fundamental principles and purposes of the Act.

[37] As a basic proposition, it is consistent with the principles and purposes of the Act for the owners of the Tapapa 3B 1 block to manage it. That said, it is not inconsistent with those principles and purposes for the block to be managed by the ETLT. Both outcomes are justified on a plain reading of the Preamble and s 2 of the Act, which both speak to the retention of land in the hands of its owners, their whānau and their hapū and the use,

development and control of that land for the benefit of those people. Both outcomes are also consistent with the primary objectives of the Court as set out in s 17(1) of the Act, being the retention of Māori land in the hands of the owners and its effective use, management, and development by or on behalf of those owners.

[38] Two aspects of s 17(2) of the Act are particularly relevant here, because of the unique nature of the ETLT. First, s 17(2)(d) requires the Court to seek to protect minority interests in any land against an oppressive majority, and to protect majority interests in the land against an unreasonable minority. In terms of the ETLT, which manages over 29,700 ha for over 19,000 beneficiaries, there is potential for the majority to oppress and the minority to be unreasonable. Fortunately, neither of those circumstances exist presently. Neither the applicant nor the ETLT trustees raised arguments based on oppression or unreasonableness, meaning neither retention of the status quo nor change will fall foul of this objective. Second, the Court must seek to ensure fairness in dealings with the owners of any land in multiple ownership. The sheer size of the ETLT (both in terms of land area and beneficiaries) means that ensuring fairness here is complex and multifaceted. Fortunately, again, fairness was not raised by the parties, meaning neither retention of the status quo nor change in the management structure for the ETLT will result in unfairness.

Conclusion

[39] Overall, most of the factors that the Court usually takes into account when deciding whether to terminate a trust point towards the status quo and against partial termination of the ETLT. The only factor that would support such a termination is the general indication, based on a relatively low participation rate, that the owners of the Tapapa 3B 1 block wish to withdraw it from the ETLT, which itself is not determinative. Accordingly, the applicant has not established that the discretion to refuse termination should not be exercised. In these circumstances, I decline to partially terminate the ETLT.

[40] As the Tapapa 3B 1 block will not be withdrawn from the ETLT, there is no need to consider the establishment of a new trust over it.

Whakataunga
Decision

[41] I decline to partially terminate the ETLT by withdrawing the Tapapa 3B 1 block. The Tapapa 3B 1 block remains managed by the ETLT. The application to partially terminate the ETLT is therefore dismissed.

[42] As the Tapapa 3B 1 block remains within the ETLT, there is no need to establish a new trust over it. Accordingly, these aspects of the application are also dismissed.

[43] The trustees of the ETLT were unrepresented. There is no order as to costs.

I whakapuaki i te 1.00 pm i Te Whanganui a Tara, i te 13 o ngā rā o Hune i te tau 2025.

D H Stone
JUDGE