

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O AOTEA**

*In the Māori Land Court of New Zealand
Aotea District*

AP-20240000002904

WEHENG <i>Under</i>	Sections 18(1)(a), 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Hauhungaroa 1C Incorporation
I WAENGA I A <i>Between</i>	CARMEN TE REREHAU HANSEN GAGE AND RAWIRI ANDREWS Ngā Kaitono <i>Applicants</i>
ME <i>And</i>	THE COMMITTEE OF MANAGEMENT OF THE HAUHUNGAROA 1C INCORPORATION Ngā Kaiurupare <i>Respondents</i>

Kōtitanga:
Hearing 17 March 2026
11 December 2025, 529 Aotea MB 160-218
10 December 2025, 529 Aotea MB 80-159
29-30 October 2024, 520 Aotea MB 193
10 May 2024, 486 Aotea MB 281-297
(Heard at Tūrangi)
15 August 2024, 492 Aotea MB 60-66
(Heard at Whanganui via Zoom)

Kanohi kitea:
Appearances K Katipo and T Prendiville-Stowers for Applicants
J Savage for Respondents

Whakataunga:
Judgment date 11 September 2026

TE WHAKATAUNGA A KAIWHAKAWĀ A M THOMAS
Judgment of Judge A M Thomas

Kupu Whakataki

[1] Ko Te Raina¹ te ingoa o tētahi whare me tētahi pātaka kai (“Te Raina”) e tū nei ki runga i ngā eka 2.5 o Hauhungaroa 1C, ko tētehi poraka whenua e rahi nei ki te 4328.1129 heketā (tōna 10,695 eka). Ko te Koporeihana o Hauhungaroa 1C (“te Koporeihana”), mā tana Kōmiti Whakahaere (“KW”), e whakahaere i tētahi pāmu tia ā-ohanga ki runga i te toenga o te poraka, arā ko tōna 10,692.5 eka tōna rahinga o te poraka katoa.

[2] Kua wehea noatia a Te Raina i te toenga o te poraka mai rānō i tana hangahanga e Arekatera Mariu (“Arekatera”) i ngā tau tīmata o 1920. Hēoi anō, kei roto tonu a Te Raina i te poraka o Hauhungaroa 1C, kei raro hoki i te mana pupuri whenua o te Koporeihana.

[3] Ko Ngāti Parekawa te hapū e whakapapa nei ki te whenua.

[4] Ko Ms Carmen Gage rāua ko Mr Rawiri Andrews ngā kaitono. Kei Te Raina a Mr Andrews e noho ana i tēnei wā tonu. E mea ana rāua, ko te whānau Gage ngā kaipupuri whare e tika ana mō Te Raina, i

Introduction

[1] Te Raina¹ is the name of a whare and pātaka kai (“Te Raina”) situated on approximately 2.5 acres of Hauhungaroa 1C, a land block comprising 4328.1129 hectares in total (which is approximately 10,695 acres). The Hauhungaroa 1C Incorporation (“the Incorporation”), by way of the Committee of Management (“COM”), operates a commercial deer farm over the remainder of the block, that being approximately 10,692.5 acres of the total block.

[2] Te Raina has been informally separated from the balance of the block since the whare was built in the early 1920s by Arekatera Mariu (“Arekatera”). However, it remains on the Hauhungaroa 1C block, the legal ownership of which is vested in the Incorporation.

[3] Ngāti Parekawa is the hapū associated with the whenua.

[4] Ms Carmen Gage and Mr Rawiri Andrews are the applicants. Mr Andrews currently resides at Te Raina. They say that the Gage whānau, beginning from Arekatera and his wife, Makarena, are the

¹ The term “Te Raina” is used throughout this decision when referring to the whare, the pātaka kai and the whenua (approximately 2.5 acres) on which they sit collectively. When referring to them separately, each specific term is used.

tīmata i a Arekatera rāua ko tana hoa rangatira, ko Makarena. E tono ana ki te Kooti kia whakatauhia tō rāua pānga ki aua hanganga me tō rāua mōtika ki te noho ki te whenua. Hei whakamārama, ko ngā whakataunga o tēnei whakataunga e pā ana ki te whare me te pātaka kai i Te Raina anake.

[5] Kāhore te KW e tono ana i ētahi ōta e whakatau ana i te mana pupuri mōna ake, hēoi, e whakahē ana rātou kia whakamanahia e te Kooti ngā ōta e tonohia nei e ngā kaitono, waihoki, e tono ana rātou i tētahi ōta tāria tūturu e whakahau ana kia tangohia atu te whare me te pātaka kai i te whenua.

Ngā Take

[6] E toru ngā take matua hei whakataunga i tēnei take:

- (a) He tautara, he rawa nekeneke rānei te whare me te pātaka kai i Te Raina?
- (b) He pānga tōkeke rānei tō ngā kaitono ki te whare me te pātaka kai i Te Raina e ai ki w 18(1)(a) o Te Ture Whenua Māori Act 1993 (“te Ture”)?

rightful owners of Te Raina. They seek orders from the Court determining their interest in those structures and their right to occupation over the land. For clarity, the determinations made in this judgment concern the whare and pātaka kai at Te Raina only.

[5] The COM do not seek separate ownership orders of the whare and pātaka kai themselves, however, they oppose the Court granting the orders sought by the applicants and seek a permanent injunction requiring removal of the whare and pātaka kai from the land.

The Issues

[6] There are three main issues for determination in this matter:

- (a) Are the whare and the pātaka kai on Te Raina fixtures or chattels?
- (b) Do the applicants have an equitable interest in the whare and pātaka kai at Te Raina under s 18(1)(a) of Te Ture Whenua Māori Act 1993 (“the Act”)?

(c) Ki te whakaae atu ki tō ngā kaitono pānga tōkeke, he aha te whakaoranga tika kia tukua?

(c) If the applicants do have an equitable interest, what relief should be granted?

Kōrero whānui

Te Raina

[7] I ngā tau tīmata o 1920, i hanga a Arekatera rāua ko Makarena i te whare ki Te Raina. E whakaae ana ngā hunga katoa, nā Arekatera i hanga anō hoki te pātaka kai i taua wā. I roto i ngā tau whai ake, nā ngā uri o Arekatera rāua ko Makarena i whakatū ētahi anō hanganga (pērā i ngā wharau etc).

[8] Kei reira hoki tētahi rākau e tiakina nei e te whānau Gage e tū ana hoki hei tohu mō ngā pito kua tanumia ki raro i a ia. I te wā o te takahi whenua, i whakamōhiohia hoki mai te Kooti, kua nehua tētahi pēpi o te whānau Gage ki Te Raina.

[9] Nō reira, kei Te Raina tētahi whare, tētahi pātaka kai, ētahi wharau me tētahi wāhi tapu. E ai ki ngā kōrero o runga, ko te whare me te pātaka kai i Te Raina anahe ngā hanganga e whakaarohia ana i tēnei whakataunga. E arotahi ana ngā tāpaetanga a ngā taha ki aua hanganga e rua, ā, me tuku tonu motuhake mō ētahi atu “hanganga whai pānga”.

Background

Te Raina

[7] Arekatera and Makarena built the whare at Te Raina in the early 1920s. It is agreed by all parties that the pātaka kai was also built by Arekatera around the same time. Over the years, various outbuildings (such as sheds etc) have been added to Te Raina by the descendants of Arekatera and Makarena.

[8] There is also a tree that has been used by the Gage whānau to bury their pito beneath it. During the site visit, the Court was also informed that a pēpi of the Gage whānau is buried at Te Raina.

[9] Te Raina therefore includes a whare, a pātaka kai, associated outbuildings and a wāhi tapu. As stated above, this judgment considers the whare and pātaka kai at Te Raina only. The parties’ submissions are squarely focussed on these two structures and further applications for “associated buildings” will need to be made separately.

[10] I noho a Arekatera rāua ko Makarena ki Te Raina mai rānō i te tau 1920 tae noa atu ki 1969, i mua i te matenga o Arekatera i te tau 1970.

[11] Ko Anna Te Rerehau Gage (“Anna”) rāua ko Ripeka Mariu, ngā tamāhine a Arekatera rāua ko Makarena i whānau mai ai ki Te Raina, ā, i noho hoki rāua ki reira i ō rāua tau whakatupu. I mate tōmua a Ripeka. Kāhore āna tamariki.

[12] I moe a Anna i a Tame Punua Gage, ā, i whāngai ā-ture rāua i ngā tama tokotoru: a Thomas Gage (“Tamati”), a William Toha Gage (“Toha”) me Arekatera Gage (“Alec”). Kua mate katoa ngā tama tokotoru. Kāhore ā Tamati tamariki. Tokorua ngā tamariki a Toha, ko Carmen rāua ko Sean Gage, ā, kotahi te tamaiti a Alec, ko Corrina Gage. I muri mai, ka hoki a Toha ki Te Raina noho tūturu ai.²

[13] I ngā tau waenga i te 2010 me te 2022, i noho tāmutumutu a Carmen Gage (ko tā Toha tamahine) ki Te Raina, engari kāhore ia i noho tūturu ki reira i taua taima katoa. Nō Hānuere 2024, i noho a Rawiri Andrews (ko te tamaiti a Carmen) rātou ko

[10] Arekatera and Makarena lived at Te Raina from 1920 up until 1969, before Arekatera’s passing in 1970.

[11] Anna Te Rerehau Gage (“Anna”) and Ripeka Mariu, the daughters and only children of Arekatera and Makarena Mariu, were born at Te Raina and resided there during their childhood years. Ripeka passed away young and did not have any children.

[12] Anna married Tame Punua Gage and legally adopted three sons; Thomas Gage (“Tamati”), William Toha Gage (“Toha”) and Arekatera Gage (“Alec”). All three sons have since passed away. Tamati had no children. Toha had two children, Carmen and Sean Gage, and Alec had one child, Corrina Gage. Toha later returned to live permanently at Te Raina.²

[13] Between 2010 and 2022, Carmen Gage (the daughter of Toha) stayed at Te Raina for periods of time, but not permanently for that entire period. Since January 2024, Rawiri Andrews (Carmen’s son) and his whānau have lived at Te Raina

² Toha’s exact term of residence is disputed. The applicants’ position is that Toha lived permanently at Te Raina from 1991 until his death in 2009. The COM accepts that Toha returned to Te Raina in 1991, but characterises his access as personal to him and based on whanaungatanga and the goodwill of the Committee.

tana whānau ki Te Raina, waihoki, kua whakapaitia nuitia e ia te whare me te wāhi.

[14] Mō ngā tau 1970 – 1990 me ngā āhuatanga o Te Raina i aua wā, e rerekē ana ngā tūranga o ngā taha e rua. Ka whakawhānuitia ēnei tūranga ki raro iho nei.

Te poraka o Hauhungaroa 1C me te Koporeihana

[15] Kei tētahi hanumi o ngā poraka whenua tūpuna Māori te orokohanga tīmatatanga mai o Hauhungaroa 1C. I whakatūria te Koporeihana ite rangi 11 o Mei 1959,³ kia pai ai te whakahaere kotahi nei i te whenua me te whai ōhanga hei painga mō ngā kaipupuri whenua me āna uri. E 880 ngā kaipupuri whenua o te poraka ināianei.

[16] Koinei ngā mema KW o te Koporeihana ināianei: ko Walter Kingi (Hea) rātou ko William Konui, ko Matthew Doyle, ko Paul Te Heuheu, ko Kahi Katea Dickinson, ko Anthony Karaitiana, ko George O Connor Patena.

[17] Hei toai noa i te kōrero o runga, kei te takiwā o te 10,695 eka (tae rā anō ki Te Raina) te rahinga o poraka Hauhungaroa

and have undertaken major improvements to the property.

[14] Both parties have different positions with respect to what occurred at Te Raina during the years 1970-1990. These are addressed in more detail below.

Hauhungaroa 1C block and the Incorporation

[15] The Hauhungaroa 1C block has its origins in the consolidation of ancestral Māori land blocks. The Incorporation was constituted by order of incorporation on 11 May 1959,³ to enable collective management and commercial use of the land for the benefit of the owners and their descendants. There are currently 880 owners in the block.

[16] The current COM members of the Incorporation are: Walter Kingi (Chairperson), William Konui, Matthew Doyle, Paul Te Heuheu, Kahi Katea Dickinson, Anthony Karaitiana and George O Connor Patena.

[17] As noted above, the Hauhungaroa 1C block comprises approximately 10,695 acres (including Te Raina) and the

³ See Order of Incorporation at 38 Aotea MB 72-74 (38 ATK 72-74).

1C, waihoki, kei a te pāmu o te Koporeihana te 1,500 o ngā tia, 120 ngā kau whakatupu, te 1,300 o ngā hipi me ētahi huanga kai e nui ana.

[18] Kei te noho a Te Raina i te pokapū o te pāmu me te pāka tia.

Te taratī ā-whānau o William Toha Gage

[19] I tō Arekatera matenga, i takoha ai ia i ana pānga whenua Māori (tae rā anō ki ana hea i te Koporeihana o Hauhungaroa 1C) ki tana tamahine, ko Anna, rātou ko āna mokopuna, ko Toha, ko Tamati, ko Alec; he rereke ō rātou ōwehenga. I tāpiri hoki ia i tētahi wāhanga ki tana wira e takoha nei i te whare o Te Raina ki tana hoa wahine, a Makarena. I mate wira mai a Makarena, engari i waha ngū ia mō te take o tētahi anō takohanga i te whare o Te Raina. I te matenga o Anna, i whakaūngia ko ana tama tokotoru te hunga e āhei ana te whiwhi i ngā pānga whenua Māori. I whakamanatia ngā ōta e tuku ōrite nei i aua pānga ki a Tamati, Toha me Corrina Gage, arā ko ia te tamaiti anahe a Alec. Kāhore he whakataunga i mahia mō te whare me te pātaka kai.

[20] I te tau 2001, i whakatūria ai e Toha te Taratī ā-Whānau o William Toha Gage (“te Taratī Whānau”) me tana tuku i ngā hea i tukua ihotia ai e ōna mātua (tae rā anō

Incorporation’s farm includes around 1,500 head of deer, 120 head of breeding cattle, 1,300 head of sheep and a substantial amount of cropping.

[18] Te Raina sits in the middle of the farm and deer park.

The William Toha Gage Whānau Trust

[19] When Arekatera died, he left his Māori land interests (including his shares in the Hauhungaroa 1C Incorporation) to his daughter Anna and his grandsons Toha, Tamati and Alec, in different portions. He also included a clause in his will leaving the whare at Te Raina to his wife, Makarena. Makarena died with a will, but she was silent on any further gifting of the whare at Te Raina. When Anna passed away, her three sons were deemed entitled to succeed to her Māori land interests. Orders were made vesting those shares, in equal portions, to Tamati, Toha and Corrina Gage, being the only child of Alec. No determinations were made with respect to the whare and pātaka kai.

[20] In 2001, Toha created the William Toha Gage Whānau Trust (“the Whānau Trust”) and vested the interests he had inherited from his parents (including

ki ngā hea ki roto i te Koporeihana o Hauhungaroa 1C) ki roto i te Taratī Whānau. Ko ngā uri a William Toha Gage te hunga whai pānga.

[21] Ko Carmen rāua ko Sean Gage ngā tarahitī o te Taratī Whānau. Ko te kaupapa o te Taratī Whānau, ko te tiaki i ngā pānga o te whānau me te whakahaere i aua pānga i ia wā hei whakatairanga i te hauora, me te oranga ā-pāpori, ā-ahurea, ā-ōhanga hoki o ngā kaiwhiwhi, i tō rātou mātauranga me ngā kaupapa whakangungu tae atu ki ngā mahi tiaki i te mauri o te hunga whai pānga.

Hātepe kua takahia

[22] I te 1 o Oketopa 2024, i tū ai tētahi takahi whenua kia mātaihia te whare. I tukua mai ki te Kooti tētahi pūrongo whakamutunga, nō te 1 o Oketopa 2024.

[23] I tētahi kōtitanga ki Tūrangi, he rua-rā te roa, i te 10-11 o Tīhema 2025, i whakatakotohia e ngā taha e rua ngā taunakitanga me ngā tāpaetanga.

[24] I te rā 14 o Apereira 2026, i tukuna mai ai ngā tāpaetanga whakamutunga ā-tuhi.

He rawa, he tautara rānei?

shares in the Hauhungaroa 1C Incorporation) into the Whānau Trust. The beneficiaries are the descendants of William Toha Gage.

[21] The trustees of the Whānau Trust are Carmen and Sean Gage. The purpose of the Whānau Trust is to preserve the interests of the whānau and facilitate the administration of the interests from time to time for the purposes of promoting health, social, cultural and economic welfare, education and vocational training and advancement in life of the beneficiaries.

Procedural History

[22] A site visit was held on 1 October 2024 wherein a building inspection occurred. A final building report dated 1 October 2024 was provided to the Court.

[23] A two-day hearing was held in Tūrangi on 10-11 December 2025 wherein both parties called evidence and provided submissions.

[24] Final written closing submissions were filed on 14 April 2026.

Chattel or Fixture?

[25] E mea ana ngā kaitono kia whakamanahia rātou e ai ki w 18(1)(a) o te Ture hei kaupupuri o te whare me te pātaka kai i Te Raina. I *Moetara v Rakete – Pakanae 2W1B*,⁴ i whakaū te Kooti Pira Māori e rua ngā wāhanga o te aromatawai e ai ki w 18(1)(a) mō te tūnga me te mana pupuri o tētahi whare.⁵ Tuatahi, me whakatau te Kooti pena he tautara, he rawa nekeneke rānei te hanganga. Kia oti taua pātai te whakatau, kātahi anō ka taea te whakaaro ko wai te kaupupuri o te hanganga. Ki te whakatauhia he tautara te hanganga, ka noho taua hanganga hei wāhanga o te whenua, ā, ka whai tōna mana pupuri ā-ture i te mana pupuri ā-ture o te whenua. Heoi, ka āhei tonu taua mana pupuri ā-ture kia noho i raro i tētahi pānga tōkeke motuhake.

[26] Nō reira, ko te wāhanga tuatahi, me whakatau te Kooti pena he tautara, he rawa nekeneke rānei ngā hanganga i Te Raina. Hei toai noa i ngā kupu a Kaiwhakawā Milroy i *Ngā Uri a Maata Ngapo Charitable Trust v McLeod – Harataunga West 2B2A1*,⁶ ko te kēhi matua mō te take o tētahi rawa e tū nei hei tautara, hei taputapu rānei, ko *Auckland City Council v*

[25] The applicants say that they should be recognised under s 18(1)(a) of the Act as the owners of the whare and pātaka kai situated on Te Raina. In *Moetara v Rakete – Pakanae 2W1B*,⁴ the Māori Appellate Court confirmed that a determination under s 18(1)(a) concerning the status and ownership of a dwelling involves a two-stage test.⁵ First, the Court must make a finding of fact as to whether the structure is a fixture or a chattel. Only once that question has been determined can the Court decide who owns the structure. Where the structure is a fixture, it forms part of the land and its legal ownership follows the legal ownership of the land. That legal ownership may nevertheless be subject to a separately recognised equitable interest.

[26] The first stage therefore requires the Court to determine whether the structures at Te Raina are fixtures or chattels. As set out by Judge Milroy in *Ngā Uri a Maata Ngapo Charitable Trust v McLeod – Harataunga West 2B2A1*,⁶ the leading case on determining a fixture is *Auckland City Council v Ports of Auckland*,⁷ which adopted the approach set

⁴ [Moetara v Rakete – Pakanae 2W1B \[2026\] Māori Appellate Court MB 39.](#)

⁵ At [32].

⁶ *Ngā Uri a Maata Ngapo Charitable Trust v McLeod – Harataunga West 2B2A1* (2012) 49 Waikato Maniapoto MB 223 (49 WMN 223) at [41].

⁷ *Auckland City Council v Ports of Auckland* [2000] 3 NZLR 614.

Ports of Auckland,⁷ me tana tahuri ki te ara nā te House of Lords i *Elitestone Ltd v Morris and Anor*.⁸ Ko ngā take matua hei whakaaro noa, ko te taumata me te aronga o taua piringa.

[27] Ka whai ahau i te huarahi i whakatakotohia ai e Kaiwhakawā Milroy.

Te taumata o te piringa

[28] E mea ana ngā kaitono he tautara te whare i Te Raina. Ahakoa kāhore ā rātou tāpaetanga mō te take o te “hanganga” hei tautara, hei rawa nekeneke rānei e tino whakamārama ana i te pātaka kai, e mārama ana i ā rātou tāpaetanga whānui ka uru te pātaka kai ki tā rātou tonono. E mea ana rātou kua roa ngā hanganga e tū ana ki reira, ā, kua tino tau ki taua wāhi, ā, mō te whare ake, e mea ana rātou ki te ngana kia hikina, kia tangohia, kia hūnukuhia rānei te whare, ka rangona te uaua i te whai i tērā mahi, ā, tērā pea, nā taua whai ka tūkinotia ai te whare.

[29] E mea ana te KW he rawa nekeneke te whare me te pātaka kai i Te Raina, nō reira, ki tā rātou, kāhore he mana o te Kooti e ai ki w 18(1)(a) o te Ture. Heoi, e arotahi ana ā rātou tāpaetanga taipitopito mō tēnei take ki te whare ake. Hei tautoko i tā rātou

out by the House of Lords in *Elitestone Ltd v Morris and Anor*.⁸ The main indicators for consideration are the degree and purpose of annexation.

[27] I adopt the approach set out by Judge Milroy.

Degree of annexation

[28] The applicants say the whare on Te Raina is a fixture. Although in their submissions relating to whether the “buildings” are chattels or fixtures, the applicants do not expressly articulate their arguments to include the pātaka kai, they make clear throughout their submissions that their application extends to include the pātaka kai. They submit that the buildings are well-established and have been in place for some time and, in relation to the whare specifically, they say that any attempt to lift, remove or relocate the whare would be logistically difficult and likely to cause physical damage to the structure itself.

[29] The COM say the whare and pātaka kai at Te Raina are chattels, with the result that the Court has no jurisdiction under section 18(1)(a) of the Act. Similarly, the respondents’ submissions on this issue are squarely focussed on the whare itself. In

⁸ *Elitestone Ltd v Morris and Anor* [1997] 1 WLR 687, [1997] 2 All ER 513.

kī he rawa nekeneke te whare, ka hāngai rātou ki *Stock v Morris – Wainui 2D2B*,⁹ i reira i kōrerotia te papa raima o te whare, me tā rātou kī ake, hei tohu nui mō te tū hei tautara. E mea ana te KW kei runga te whare i Te Raina i ngā pou rākau, nō reira kāhore i herea, i riringihia, i whakaurua pūmau rānei ki te whenua.

[30] Hei whakamutu ake, e mea ana te KW kāhore tētahi mana ā-rohe i tuku whakaaetanga mō te whare ki Te Raina.

[31] I whai wāhi te Kooti ki tētahi tirotirohanga whānui o te whare i whakahaeretia e Mr Ian Muir o Beta Property Compliance. Ko te aronga matua o tā Mr Muir ripoata, ko te arotake i te whare nā runga anō i ngā tautukunga Healthy Homes. Ahakoa kāhore te ripoata i te kōrero mō ngā take hanganga, i whakaūngia te āhua o tā te whare noho ki ngā papa rākau me te āheinga kore kia pā i ngā pou papa. I whiwhi te whare i ngā pāhi tautukunga e toru, mō ētahi atu wāhanga e toru, e tika ana me whakaoti i ētahi anō mahi kia whiwhi ai i ngā tautukunga.

[32] E whai whakaaro ana ahau ki ngā tāpaetanga a te KW mō te take o te pūtake o te whare, arā, tā rātou kī he papa rākau

submitting that the whare is a chattel, they refer the Court to *Stock v Morris - Wainui 2D2B*,⁹ which discussed the foundation of the dwelling being a concrete slab which they considered to be a significant indicator of fixture status. The COM say the whare at Te Raina sits on wooden piles and is therefore not bonded to, poured into, or permanently integrated with the land.

[30] Finally, the COM say the whare on Te Raina has not been consented to by any local authority.

[31] The Court has had the benefit of a full inspection of the whare conducted by Mr Ian Muir of Beta Property Compliance. The main purpose of Mr Muir's report was to assess the whare for Healthy Homes compliance. While the report did not touch on structural matters, it was noted that the whare sits on wooden piles and had inaccessible subfloors. The whare received three passes of compliance and three areas that required further work in order to receive compliance.

[32] While I take into account the submission made by the COM concerning the whare's foundation being wooden piles

⁹ *Stock v Morris – Wainui 2D2B* (2012) 41 Taitokerau MB 121 (41 TTK 121).

tōna, kāhore tōna papa raima, engari kāhore au e whakaae ana ko te tino take tēnei me whai wāhi mai ki te whakataunga, ā, e hoki ana ki *Auckland City Council v Ports of Auckland*, me ngā kōrero mō te kauwhau o Lord Lloyd, me tana kī ake:¹⁰

and not concrete slabs, I do not consider this point to be the determining factor and refer back to *Auckland City Council v Ports of Auckland*, and the comments provided with respect to the speech of Lord Lloyd, when he indicated:¹⁰

...that each case will depend on its particular facts and that a common sense approach, consistent with the broad test, must be taken in considering the indicators

[33] I taua kēhi, i whakatau te Kooti Matua, ina herea tētahi kārewa ki ngā poutoka, ka noho taua kārewa hei wāhanga tūturu o te hanganga tauranga poti.¹¹

[33] In that case, the High Court found in that case that once a pontoon is attached to the piles it becomes an integral part of a composite jetty structure.¹¹

[34] I whakamahia anō ngā rerenga kōrero, “becomes an integral part” me te “forms part of the realty” i *Elitestone*,¹² i tahuri ai te House of Lords mō te whakataunga a te Kooti Matua o Ahitereiria, ki *Reid v Smith*. I taua kēhi, he whare rākau i tau noa iho i runga i ngā pou pereki i raro i tōna ake taumaha, ā, kāhore i herea ki aua pou i tētahi atu āhua. I whakatauhia e te Kooti Mana Nui o Queensland, he rawa nekeneke tonu te whare, engari i hurihia taua whakataunga e te Kooti Matua o Ahitereiria, me tana whakatau, ahakoa kāhore he herenga ā-tinana, ehara tērā i te ārai i te noho o te whare hei wāhanga o te whenua tūturu.

[34] The phrases, “becomes an integral part” or “forms part of the realty” were also used in *Elitestone*,¹² where the House of Lords referred to the High Court of Australia’s decision in *Reid v Smith*. In that case, a wooden dwelling whare rested by its own weight on brick piers and was not otherwise attached to them. The Supreme Court of Queensland had held that the whare remained a chattel, but the High Court of Australia reversed that decision, holding that the absence of any physical attachment did not prevent the whare forming part of the realty.

¹⁰ *Auckland City Council v Ports of Auckland*, above n 7 at [71]-[72].

¹¹ *Auckland City Council v Ports of Auckland*, above n 7 at [71].

¹² [*Elitestone*](#), above n 8.

[35] I whakahua a *Elitestone* i ngā kupu a Parker J i *Snedeker v. Warring*,¹³ nāna i kī:

A thing may be as firmly fixed to the land by gravitation as by clamps or cement. Its character may depend upon the object of its erection.

[36] Ki te whakamahi i aua mā tāpono, kāhore au e whakaaro ka aukatia te whare kia noho hei tautara nā te mea kāhore i herea ki tētahi papa raima. Kua tū te whare me te pātaka kai ki Te Raina mō tōna 100 tau. I roto i taua wā, he nui ngā mahi whakapai kua mahia ki te whare, ā, kua whakaurua aua mahi hei wāhanga o tōna hanganga. E marama ana kāhore ngā mahi whakapai a ngā kaitono me tō rātou whānau i mahia i runga i te whakaaro kia hūnukutia, kia turakina rānei te whare. I whakatūria te pātaka kai i te wā tata tonu ki te hanganga o te whare, ā, e ai ki ngā taunakitanga kei mua i te Kooti, koia tētahi o ngā pātaka e toru i whakatūria i ngā poraka o Hauhungaroa hei pupuri kai. Koia anahe o aua pātaka e toe tonu ana ki te poraka.

[37] Ahakoa taku mōhio e taea ana te hiki i te whare me te pātaka kai inā hoki e takoto ana rāua ki ngā papa rākau kaua ko ngā papa raima, e tahuri ana ahau ki te tūranga o te kaitono e mea ana, he

[35] *Elitestone* also quoted Parker J in *Snedeker v. Warring*,¹³ who said:

[36] Applying those principles, I do not consider that the absence of a concrete slab attachment prevents the whare from being a fixture. Both the whare and pātaka kai have stood at Te Raina for approximately 100 years. Over that period, significant improvements have been made to the whare and incorporated into its structure. It is clear that the improvements undertaken by the applicants and their whānau were not done with an intention of relocation or demolition. The pātaka was erected at approximately the same time as the whare and, on the evidence before the Court, was one of three pātaka originally established across the Hauhungaroa blocks for the storage of kai. It is the last of those pātaka remaining on the block.

[37] While I note that logistically the whare and pātaka kai could be uplifted, as they rest on wooden piles rather than being set in concrete slabs, I take into account the applicant's position that the potential

¹³ *Snedeker v. Warring* 2 Kernan 178.

mōreareatanga tūturu te tūkinotanga tērā pea ka tau ki tētahi whare 100 tau tana kaumātua, ki te ngana kia hunukuhia te whare me te pātaka kai mai i te whenua tuatahi i nohia ai ia.

[38] Ahakoa taku mōhio ki te tūranga o te KW e mea ana kāhore tētahi i tuku mai i ētahi taunakitanga pūkenga mō te pātai, āe rānei ka whai oranga tonu te whare pena ka hunukuhia, e waimarie ana ahau i tāku ake kite i te whare me te pātaka kai. Ehara tēnei kēhi i te kēhi mō tētahi whare taupua, mō tētahi whare nekeneke rānei. Kua whakaritea te rawa hiko, te rawa wai me te rawa parakaingaki mō te whare. E whakatau ana ahau, nā runga anō i te āhua o te whare me te pātaka kai, tērā pea ka rongoi i tētahi tūkinotanga ki te whāia kia turakina, kia whakatūria anō rānei. E mea ana a *Elitestone*.¹⁴

damage that could occur in attempting to remove a 100-year-old dwelling and pātaka kai from its original site is a real risk.

[38] I take the point of the COM that technical evidence was not submitted on the issue of whether the whare would survive a removal. Fortunately, I have had the advantage of seeing the whare and pātaka kai myself. This is not a case where we are dealing with a mobile home or removable type unit. Electricity, water, and sewerage facilities have all been connected to the whare. I consider that the construction and condition of the whare and the pātaka kai, as observed on the site visit, indicate a real risk of damage if it were to be taken down and re-erected elsewhere. As stated in *Elitestone*.¹⁴

If a structure can only be enjoyed in situ, and is such that it cannot be removed in whole or in sections to another site, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at that site, and therefore cease to be a chattel.

Te aronga o te piringa

[39] E mea ana ngā kaitono, i whakatūria e Arekatera te whare o Te Raina hei kāinga mō tana whānau, nā konā, e mārāma ana te kite i te aronga o te

Purpose of annexation

[39] The applicants say Arekatera built the whare at Te Raina as a home for his family and therefore the purpose of annexation was clear; to provide a permanent dwelling on the block.

¹⁴ *Elitestone*, above n 8, at 690-691.

piringa; kia whakatūria tētahi whare tūturu ki runga i te poraka.

[40] E mea ana te KW, i whakatūria te whare nā runga i tētahi horopaki ake, arā te mahi topatopa rākau me te noho taupua noa i tētahi wāhanga o te poraka, nō reira, ko tana aronga noa, ko te tū hei whare tahi ruma taupua. E mea ana rātou, tino kore nei rātou i hiahia kia tino piri te whare ki te whenua mō te ake tonu atu, nā, i taua wā rā, he taputapu te whare.

[41] E tāpae ana anō ngā kaiurupare, kāhore ngā āhuatanga i puta i ngā tau o muri mai e āhei ki te panoni i tētahi rawa nekeneke hei tautara, ina whakaarohia te aronga o te piringa. Ka hāngai rātou ki te hiahia o Arekatera i muri mai kia wāwāhia te whenua. I te tau 1964, i tono a Arekatera ki te KW kia whakaaetia te wāwāhitanga o te whenua, kia noho ko ia anahe te kaipupuri o Te Raina. I whakaae te KW ki taua tono mā tētahi mōtini, engari kāhore te wāwāhitanga i whakatinanahia. Ka kōrerohia anō taua mōtini i raro iho nei i tēnei whakataunga.

[42] E mea ana te rōia mō te KW, ko te pātai matua ko te wā e whakatauhia ai te hiahia, ā, pena ka taea e tētahi hiahia kia wāwāhia te whenua ā tōna wā te panoni i tētahi rawa nekeneke hei tautara. Ki taku whakaaro, kāhore e tika kia tautuhia tētahi

[40] The COM say the whare was established in circumstances connected with forestry work and temporary occupation of that part of the block and therefore, it was only intended as a one-bedroom temporary dwelling. They say there was never an intention that the structure become permanently affixed to the land and, at this point, it was a chattel.

[41] Furthermore, the respondents make the submission that events that occurred over the years cannot convert a chattel into a fixture when considering the purpose of annexation. They refer to Arekatera's later intention to partition the land. In 1964 Arekatera sought approval from the COM to partition so that he would be the sole owner of Te Raina. The COM passed the resolution approving the partition, however it never eventuated. The issue of this resolution is discussed further below in the decision.

[42] Counsel for the COM submit that the critical question is when intention is to be fixed, and whether an expression of intention to partition at some future time can transform a chattel into a fixture. I do not consider it necessary to pinpoint a

wā motuhake i panoni ai ngā hanganga mai i te rawa nekeneke ki te tautara. Ko te pātai, he tautara rānei aua hanganga ināianei. Heoi, e whai take ana te wā o te piringa hei horopaki, tae atu ki te whakaaro ki te aronga o taua piringa. I tēnei kēhi, ko te wā whai take rawa mō taua horopaki ko te wā i whakatau ai a Arekatera ki te hanga i te whare i te tau 1920.

[43] E tika ana me āta tūpato tātou i a tātou e titiro ana ki ngā taunakitanga ki mua i a tātou mō te hiahia o Arekatera i taua wā. Kāhore tētahi i tuku mai i ngā taunakitanga e whakaatu nei i tō Arekatera hiahia kia mahi pūmau rawa ki te ao topa rākau me te noho pūmau rawa ki te whare. Kāhore hoki tētahi i tuku mai ngā taunakitanga e whakaatū nei i tana hiahia kia tū te whare hei whare taupua noa i a ia e mahi rangitahi noa iho nei ki reira.

[44] E mea ana ngā taunakitanga kei mua i a tātou, nā Arekatera ake te whare i hanga. Nāna tonu i whakarite atu ngā taputapu hanga whare. Ka mutu, i hunuku ia i tana whānau kia noho ki te whare, he whare i nohia pūmautia ai e ia. Kihai ia i noho ki tētahi anō whare i taua wā. Pena ka tirohia te katoa o ngā taunakitanga, e whakaatuhia ana tētahi hiahia nō Arekatera, kia tū te whare ki runga i a Te Raina hei kāinga.

particular moment at which the structures ceased to be chattels and became fixtures. The question is whether they are fixtures now. The timing of annexation is relevant as context, including when considering its purpose. In this case, the most relevant point of time for that context is when Arekatera decided to build the whare in 1920.

[43] We must be careful with the evidence we have on Arekatera's intention at that time. There was no evidence provided to the Court that showed Arekatera's intention to continue working in the forestry matters permanently and therefore live permanently at the whare. And neither was there evidence provided that he intended the whare to only be a temporary dwelling while he worked there.

[44] The evidence we do have, is that Arekatera built the whare himself; he provided the materials and tools himself; and that he moved his family into the whare, a whare which he lived in permanently. He did not live in any other dwelling at the time. Taken as a whole, the evidence suggests that Arekatera intended the whare on Te Raina to be his home.

[45] Hei tāpiri ake, i a au e whakatauhia ana te aronga taketake o te piringa, kāhore ahau e whakaae ana, me whai whakaaro ahau ki te pātai āe rānei i panoni a Arekatera me te whānau i tō rātou hiahia i roto i ngā tau whai muri. Ahakoa tērā, e marama ana te kite atu i ngā taunakitanga, kāhore a Arekatera me tana whānau i panoni whakaaro e kīa ai kāhore rātou i te hiahia kia noho tonu ki reira, ki te hiahia kē kia turakina te kāinga me te pātaka kai. Hei tā rātou, mai anō taua whare e noho nei hei kāinga ā-whānau ā mohoa noa nei.

[46] Ko tāku e whakatau nei, nā runga anō i te taumata o te piringa me te aronga o te piringa, he tautara te whare me te pātaka kai e tū nei ki Te Raina.

[47] Ka oti i tēnei te wāhanga tuatahi o te aromatawai i tautuhia i *Moetara*.¹⁵ Nā te mea he tautara te whare me te pātaka kai, ka whai tō rāua mana pupuri ā-ture i te whenua, ā, kei te Koporeihana taua mana pupuri ā-ture. Ka tahuri au ināianei ki te wāhanga tuarua: pena kei raro taua mana pupuri ā-ture i tētahi pānga tōkeke motuhake ki aua tautara.

He pānga tōkeke tō ngā kaitono ki te whare me te pātaka kai i Te Raina?

[45] Furthermore, whether the intention of Arekatera and his whānau changed in the following years is not a matter I need to take into consideration when determining the original purpose of annexation. In any event, the evidence is clear that Arekatera and his whānau did not have a change of intention, such that they no longer wanted to live there and would dismantle the home and pātaka kai. They have considered the whare to be their family home and proclaim so today.

[46] I am satisfied that the degree of annexation and the purpose of annexation indicate that the whare and pātaka kai at Te Raina are fixtures.

[47] That determines the first stage of the inquiry identified in *Moetara*.¹⁵ As the whare and pātaka kai are fixtures, the presumption is that their legal ownership follows the land and rests with the Incorporation. I now turn to the second stage: whether that legal ownership is subject to an equitable interest in those fixtures.

Do the applicants have an equitable interest in the whare and pātaka kai at Te Raina?

¹⁵ *Moetara*, above n 4, at [32].

Te Ture

[48] E ai ki *Moetara*, ina whakatauhia he tautara tētahi hanganga, ka noho taua hanganga hei wāhanga o te whenua, ā, kei te kaupuri ā-ture o te whenua tōna mana pupuri ā-ture; i tēnei kēhi, ko te Koporeihana.¹⁶ Heoi anō, ka āhei te ara ake o tētahi pānga tōkeke ki taua hanganga, hei tauira mā tētahi taratī whai oranga, mā te aukati āheinga tōkeke rānei, ā, ka āhei te Kooti ki te whakamana i taua pānga mā tētahi ōta e ai kiw 18(1)(a) o te Ture.¹⁷

[49] E ai ki te wehenga 18(1)(a) o te Ture, kei te Kooti nei te mana ki te whakatau i tētahi o ērā pānga tōkeke, tae rā anō ki tētahi puritanga tautara, ara ko tētahi whare. E kīia nei:

18 General jurisdiction of court

- (1) In addition to any jurisdiction specifically conferred on the court otherwise than by this section, the court shall have the following jurisdiction:
 - (a) to hear and determine any claim, whether at law or in equity, to the ownership or possession of Maori freehold land, or to any right, title, estate, or interest in any such land or in the proceeds of the alienation of any such right, title, estate, or interest:

[50] Kua kitea te aronga o tēnei wehenga e mea nei, ko te āhua o tō te Kooti mana, he mana whakapuaki. Ka āhei te Kooti te tuku whakapuakanga mō ētahi mōtika puritanga whare ā-ture, ā-tōkeke

The Law

[48] As *Moetara* confirms, once a structure is found to be a fixture, the starting presumption is that full legal ownership of the structure rests with the legal owners of the land, in this case, the Incorporation.¹⁶ Notwithstanding this, an equitable interest in individuals can arise, for example, by way of constructive trust or equitable estoppel, which may be recognised by way of order under s 18(1)(a) of the Act.¹⁷

[49] Section 18(1)(a) of the Act provides the Court with the jurisdiction to determine any such equitable interests, including in fixtures such as houses. It states:

[50] This section makes clear that the Court's jurisdiction is declaratory in nature. The Court may declare existing ownership rights at law or in equity but

¹⁶ *Moetara*, above n 4 at [32]; and *Nicholas v Te Amo* [2023] NZCA 22 at [48]-[49].

¹⁷ *Stock v Morris*, above n 9, at [22]; and *Nicholas v Te Amo*, above n 16, at [49].

rānei mena kua puta kē aua mōtika, kāhore e āhei ana te tuku, te hanga mai rānei i ētahi mōtika puritanga hou.¹⁸

[51] I *Nicholas v Te Amo*, i whakamārama te Kōti Pīra i te rerekētanga i waenga i te mana pupuri ā-ture o tētahi tautara me tētahi pānga tōkeke motuhake ki taua tautara. I taua kēhi, nā te mea he wāhanga te whare o te whenua, ko ngā taratī ngā kaupupuri ā-ture o te whare, engari i raro taua mana pupuri i tētahi pānga tōkeke ka taea e Mrs Nicholas te whakaū. I tana arotake i te kitenga a te Kooti Whenua Māori ko Mrs Nicholas te “owner” o te whare, i kī te Kōti Pīra, hei whakamāoritanga.¹⁹

cannot transfer or create new ownership rights.¹⁸

[51] In *Nicholas v Te Amo*, the Court of Appeal drew the distinction between legal ownership of a fixture and a separate equitable interest in that fixture. There, because the house formed part of the land, the trustees were the legal owners of the house, subject to any equitable interest established by Mrs Nicholas. In considering the Māori Land Court’s finding that Mrs Nicholas was the “owner” of the house, the Court of Appeal observed:¹⁹

“Although the Judge used the word ‘ownership’ it is probably more apt to say that Mrs Nicholas had an equitable interest.”

[52] I hoki anō te Kōti Pīra ki taua rerekētanga i [43], ā, i whakamārama i taua pānga hei pānga tōkeke ki te whare i ara ake i raro i tētahi taratī whai oranga. I [52], i whakamahia e te Kōti ngā kupu “equitable ownership” me “equitable owner”. Ka whai ahau i taua rerekētanga i roto i tēnei whakataunga. Ki te kōrero ahau mō te pānga tōkeke ki te mana pupuri o ngā uri ki te whare me te pātaka kai, e mea ana ahau ko te pānga tōkeke i ara ake i raro i te

[52] The Court returned to the same distinction at [43], describing the relevant interest as an equitable interest in the house through a constructive trust. At [52], the Court referred to such an interest as “equitable ownership” and to the holder as the “equitable owner”. I adopt that distinction in this judgment. Where I refer to the descendants’ equitable ownership interest in the whare and pātaka kai, I mean the equitable interest arising through the

¹⁸ See also *Nga Uri a Maata Ngapo Charitable Trust v McLeod*, above n 6, at [34]-[35].

¹⁹ *Nicholas v Te Amo*, above n 16, at [26].

taratī whai oranga; kei te Koporeihana tonu te mana pupuri ā-ture o aua tautara.

Taratī Whai Oranga

[53] Mō ngā taratī whai oranga e pā ana ki ngā rawa i runga i te whenua Māori, kua whakamahia e tēnei Kooti ngā mātāpono i whakatakotohia i *Lankow v Rose* [1995].²⁰ I reira, i tautuhia e te Kōti Pīra ngā āhuatanga e whā; mēnā ka whakaūngia aua āhuatanga, kāhore e tōkeke kia whakakahoretia e te kaupupuri ā-ture tētahi pānga o te kaitono ki te rawa. Me whakaatu te kaitono:

- (a) he takoha hāngai, autaki rānei ki te rawa e whai take ana;
- (b) he tūmanako kia whai pānga ki taua rawa;
- (c) he whaitake taua tūmanako; ā
- (d) e tika ana kia tūmanako te kaupupuri ā-ture me tuku ia i tētahi pānga ki te kaitono.

[54] Nō reira, ko te pātai kē kei konei, ae rānei kei raro te mana pupuri ā-ture o te Koporeihana i tētahi pānga tōkeke ki te

constructive trust; legal ownership of the fixtures remains with the Incorporation.

Constructive trusts

[53] With regards to constructive trusts in relation to property on Māori land, this Court has identified the principles set out in *Lankow v Rose* [1995]²⁰ as applicable. There the Court of Appeal identified four features which, if demonstrated, would mean it was unconscionable for the legal owner to deny the claimant an interest in a property. The applicant must show:

- (a) Contributions, direct or indirect, to the property in question;
- (b) The expectation of an interest therein;
- (c) That such expectation is a reasonable one;
- (d) That the defendant would reasonably expect to yield the claimant an interest.

[54] The question is therefore whether the Incorporation's legal ownership of the whare and pātaka kai is subject to an

²⁰ *Lankow v Rose* [1995] 1 NZLR 277 at 294.

mana pupuri mō ngā uri o Arekatera rāua ko Makarena, i ara ake i raro i tētahi taratī whai oranga?

equitable ownership interest in favour of the descendants of Arekatera and Makarena arising through a constructive trust?

Te tūranga o ngā hunga

Parties' positions

[55] E mea ana ngā kaitono, kei a rātou tētahi pānga tōkeke ki Te Raina. E mea ana rātou kua ara ake tētahi taratī whai oranga, ā, e tika ana kia whakamanahia tētahi pānga tōkeke ki te mana pupuri mō rātou. E kī ana rātou:

[55] The applicants claim an equitable interest in Te Raina. They say that a constructive trust is made out and that warrants a declaration of equitable ownership in their favour. They say:

(a) Nā Arekatera i hanga te whare me te pātaka kai e noho nei ki Te Raina; he 100 tau koni atu te kaumātua;

(a) The whare and pātaka kai on Te Raina were built by Arekatera and are over 100 years old;

(b) Kei a Arekatera rātou ko ngā mema o tana whānau me āna uri tētahi mōtika piki tūranga ki te puritanga whare, ā kua noho rātou i te whare rā mai rānō i tonā waihanga;

(b) They have a right to succession of ownership and Arekatera and members of his whānau/descendants have occupied the whare since it was built;

(c) He nui ā rātou takoha ā-pūtea ki te whare.

(c) They have made significant financial contributions to the whare.

[56] Kāhore te KW i te kimi whakapuakanga puritanga whare, kāhore hoki rātou i te whakahē i tā ngā kaitono kerēme. E whakaae ana rātou, ko ngā uri a

[56] The COM do not seek declarations of ownership and neither do they oppose the applicants claim of ownership. They accept that the whare and pātaka kai are

Arekatera Mariu te hunga e tika ana kia puritia te whare me te pātaka kai.

[57] Heoi anō, e mea ana te KW, kua whāiti taua whakaaetanga ki te mōtika kia hunukuhia ngā hanganga, kāhore e tae atu ki tētahi whakaaetanga mō te taratī whai oranga, mō tētahi pānga tōkeke rānei ki te whenua Māori herekore ake i tukuna ai ki te Koporeihana.²¹ E mea ana rātou, kāhore tētahi puritanga whare e haere ngātahi me tētahi mōtika kia noho ki reira a haere ake nei. Aini hoki mai ahau ki te take o tētahi nohoanga.

Kōrerorero

[58] Kua whakatauhia e au he tautara te whare me te pātaka kai, ko te tūnga ā-ture tuatahi, he wāhanga aua hanganga o Hauhungaroa 1C, ā, kei te Koporeihana te mana pupuri ā-ture o aua hanganga.²² Ko ngā kōrero a ngā taha e kī ana ko ngā uri o Arekatera rāua ko Makarena ngā kaipupuri tika o te whare me te pātaka kai, me mārama i roto i te horopaki o te pānga motuhake o te whānau e kerēmehia ana ki aua hanganga. Ko te take hei whakataunga, pena ka whakamanahia taua pānga i raro i te tika tōkeke.

owned by the descendants of Arekatera Mariu.

[57] However, the COM state that concession is strictly limited to the right of removal of the buildings and does not extend to a recognition of a constructive trust or any equitable interest in the underlying Māori freehold land that has been vested in the Incorporation.²¹ They say ownership of the buildings does not carry with it a right to permanently occupy those buildings. I return to the matter of occupation shortly.

Discussion

[58] Having found that the whare and pātaka kai are fixtures, the starting legal position is that they form part of Hauhungaroa 1C and are legally owned by the Incorporation.²² The references by the parties to the descendants of Arekatera and Makarena as the rightful owners of the whare and pātaka kai must therefore be understood in the context of the separate whānau interest claimed in those structures. The issue for determination is whether that interest is recognised in equity.

²¹ See Closing Submissions on behalf of the Committee of Management dated 8 April 2026 at [66].

²² *Moetara*, above n 4, at [32].

[59] Inā hoki, kāhore tētahi e whakahē ana i te kerēme mō te mana pupuri o te whare me te pātaka kai, ā, e whakaae ana ngā taha katoa ko ngā uri o Arekatera rāua ko Makarena Mariu ngā kaipupuri tika o te whare me te pātaka kai i Te Raina, e whakaae ana ahau kia tukuna he whakapuakitanga e whakamana ana i taua tūnga. E whakaae ana kua ara ake tētahi pānga tōkeke i raro i tētahi taratī whai oranga, ā, ko ngā uri o Arekatera rāua ko Makarena Mariu ngā kaiwhaipānga. I taku whakatau i tēnei, ka whai whakaaro ahau ki ēnei take:

- (a) Te hītoria: i ngā tau 100 koni atu ki muri, waihoki, i mua i te whakatū mai o te Koporeihana, nā Arekatera te whare me te pātaka kai i hanga;
- (b) I tukua ngā hea puritanga whenua o Arekatera i roto i te poraka o Hauhungaroa 1C ki tana wahine, ki Makarena ka tuku ai ki ā rāua uri. Inaiānei, kei a te Taratī ā-Whānau o William Gage ngā hea i roto i te Koporeihana, nā kona, kei a ngā kaitono ngā hea;

[59] Given there is no opposition to the claim of ownership of the whare and pātaka kai, and all parties agree that the rightful owners of the whare and pātaka kai at Te Raina, are the descendants of Arekatera and Makarena Mariu, I am prepared to make declarations as such. I am satisfied that an equitable interest has arisen through a constructive trust for which the descendants of Arekatera and Makarena Mariu are the beneficiaries. In reaching that conclusion, I take into account the following matters:

- (a) The history: Arekatera constructed the whare and the pātaka kai himself over 100 years ago, before the establishment of the Incorporation;
- (b) The shares held by Arekatera in the Hauhungaroa 1C block were vested in his wife, Makarena, and then subsequently vested in their descendants. The applicants currently hold shares in the Incorporation by way of the William Gage Toha Whānau Trust;

- | | |
|---|--|
| <p>(c) Nō te whakatū mai o te whare, ka noho ngā kaitono ki te whare, ka whakapaitia e rātou, ka tukua anō hoki te pūtea nui ki te whare, e rārangitia nei ki 2.14 o ngā tāpaetanga whakakapi a ngā kaitono;²³</p> | <p>(c) The applicants have occupied the whare since it was built, made improvements and significantly invested in the whare, as set out in the applicant's closing submissions;²³</p> |
| <p>(d) Kāhore anō kia whakaputaina tētahi ōta e tuku nei i te puritanga o te whare, o te pātaka kai anō hoki e noho nei ki Te Raina;²⁴ waihoki</p> | <p>(d) There have been no prior orders granted concerning ownership of the whare and pātaka kai on Te Raina;²⁴ and</p> |
| <p>(e) Kāhore tētahi e whakahē ana i te kerēme puritanga whare a ngā kaitono, kāhore hoki tētahi kaipupuri whenua i tuku kerēme pānga ki te whare me te pātaka kai.</p> | <p>(e) There is no opposition to the applicants claim of ownership and neither has any other owner in the block claimed an interest in the whare and pātaka kai.</p> |

[60] E whakaae ana ngā hunga katoa, kua tukuna tōtikahia e ngā kaitono ngā mahi nui ki te whare. Nā runga anō i te mahi whakarite me te mahi whakapai a ngā kaitono, e mea ana ahau e tika ana tō ngā kaitono whakaaro kei a rātou tētahi pānga ki te whare. Nā runga anō i te hitoria, koni atu i te 100 tau, o tā Arekatera me ana uri noho, e whakaae ana ahau he whaitake taua

[60] It is uncontested that the applicants have contributed directly and significantly to the whare. Given the maintenance and upkeep provided by the applicants, it is clear they would reasonably expect an interest in the whare. Based on the history of over 100 years of mostly consistent occupation by Arekatera and his descendants, I am satisfied that expectation

²³ *Stock v Morris – Wainui 2D2B* (2012), above n 9. See also *Anderson – Te Raupo* (2015) 99 Taitokerau MB 206 (99 TTKO 206).

²⁴ *Pomare v Pomare – Utakura No 8* (2016) 140 Taitokerau MB 39 (140 TTK 39) at [15].

tūmanako. Nō reira, ka whakatauhia e au, ahakoa kei te Koporeihana te mana pupuri ā-ture o ngā tautara, kei raro te whare me te pātaka kai i Te Raina i tētahi taratī whai oranga, ā, ko ngā uri o Arekatera rāua ko Makarena Mariu ngā kaiwhiwhi o taua taratī. E ai ki ngā kupu kua whakamāramatia ake nei, ka kī ahau ko taua pānga he pānga tōkeke ki te mana pupuri o te whare me te pātaka kai i Te Raina.²⁵

He aha rā te whakaoranga e tika ana kia tukua?

Te ture

[61] I *Ratu v Marshall*,²⁶ i whakatakotohia e te Kooti Pīra Māori ngā kōwhiringa matua e toru e wātea ana mō ngā whakaoranga e ai ki ngā whakapuakanga w 18(1)(a), e pēnei nei:²⁷

- (a) tētahi ōta kia hīkina te whare mai i te whenua;
- (b) he utu paremata; ā
- (c) he mōtika nohoanga.

was reasonable. I therefore find that, although legal ownership of the fixtures rests with the Incorporation, the whare and pātaka kai at Te Raina are subject to a constructive trust for which the descendants of Arekatera and Makarena Mariu are the beneficiaries. Consistently with the terminology explained above, I refer to that interest as their equitable ownership interest in the whare and pātaka kai at Te Raina.²⁵

What further relief should be granted?

The Law

[61] In *Ratu v Marshall*,²⁶ the Māori Appellate Court set out the three main options available for relief with respect to s 18(1)(a) determinations, being:²⁷

- (a) the right to remove the whare from the land;
- (b) monetary compensation; or
- (c) a right of occupation.

²⁵ As per *Nicholas v Te Amo*, above n 16, at [24]-[26]; and *Moetara*, above n 4, at [29]-[31].

²⁶ *Ratu v Marshall - Whangape Lot 65B Sec 2A* [2023] Māori Appellate Court MB 115 (2023 APPEAL 115).

²⁷ At [58]. This arises from the observations of the Court of Appeal in *Nicholas v Te Amo*, above n 16, at [52], which noted that where a constructive trust is made out in respect of a house, the Court would first consider whether compensation or removal are possible or appropriate, before deciding whether a beneficial owner may be able to enjoy occupation rights.²⁹

Hikinga whare

[62] Mō te take o te hikinga whare, e noho ana te whare me te pātaka kai ki ngā papa rākau, nā, e whakaaetia whānuitia ana “e taea ana” te hiki. E mea ana ngā kaitono, e kore te whare, te pātaka kai rānri, e puta ora nei i tētahi hunukutanga. I kī rātou, kei a rātou tētahi hononga tuku iho ki Te Raina inā hoki, ehara i te mea he wāhi noho noa te whenua, he tūrangawaewae kē ki tō rātou whānau. Mō aua take, e mea ana rātou kāhore e tika ana tētahi hikinga whare.

[63] Kāhore te KW i te whakaae. Hei tā rātou, e tika ana tētahi hikinga whare, e tika ana hoki kia whakaarohia e te Kooti tēnei kōwhiringa. E mea ana rātou ka taea te hiki i te whare me te pātaka kai kia hunukuhia ki tētahi atu poraka e noho nei ki te Poukura Marae Māori Reservation Trust e whai whakapapa ana hoki ki te hapū.

[64] Ehara tētahi o ngā kaikōrero i te pūkenga hiki i ngā whare. Kāhore tētahi o ngā taha i tuku taunakitanga pūkenga mō te take o te hiki i te whare, i te pātaka kai rānei. Heoi, hei tāku i kōrero ake nei, i whai wāhi ahau ki te toro ki Te Raina, ā, i kite i te āhua me te whānuitanga o te piringa o aua hanganga ki te whenua.

Removal

[62] With respect to removal, the whare and pātaka kai are on wooden piles, and it is generally accepted they are “capable” of removal. However, the applicants suggest that the whare and the pātaka kai, would not survive being relocated. They further say they have an enduring connection to Te Raina because it is not just a physical occupation site, it is a tūrangawaewae for their whānau. For these reasons, they say removal would be inappropriate.

[63] The COM suggest otherwise. They say removal is appropriate and the right option for the Court to consider. They say the whare and pātaka kai can be relocated to another block connected with the hapū which currently sits in the Poukura Marae Māori Reservation Trust.

[64] None of the witnesses have expertise in dwelling removal matters. No expert evidence was led by either side on whether the whare and pātaka kai could be relocated. However, as noted above, I was fortunate to visit Te Raina myself and noted the extent of the attachment of the structures to the whenua.

[65] Ahakoa e whakaae ana ahau, ae, “e taea ana” te hiki i te whare, kāhore au e whakaae ana he tika tana hiki nā runga anō i te mōreareatanga tērā pea ka pā kino nei ki te whare me te pātaka kai; nā runga anō hoki i te hononga a ngā uri o Arekatera ki te whenua. Ka aro kore tātou ki taua hononga pena ka whakaaetia te hunuku noa i te whare ki whenua kē atu.

[66] Nō reira, ki taku nei whakaaro, kāhore te tango i te whare me te pātaka kai e tika ana hei whakaoranga i tēnei kēhi.

Utu paremata

[67] I te nuinga o te wā, ka tika pea te utu paremata mena ka noho tonu te whare i te whenua, engari kāhore te tangata whai pānga tōkeke ki taua whare e whai mana ki te noho ki reira.²⁸ I aua āhuatanga, ka ngaro taua tangata i te wariu o āna takoha i tukuna ai e ia ki te whare. Ka riro mā te kaipupuri whenua ngā painga o aua whakahoutanga, nō reira ka tika kia utua he paremata mō taua pānga tōkeke ki te whare.

[68] Kihai tētahi o ngā taha i tuku tāpaetanga hei tautoko i tēnei kōwhiringa. E kimi ana te KW kia hikina te whare, e kimi ana ngā kaitono kia noho tonu te

[65] While I agree that the whare and pātaka kai would be “capable” of removal, I do not consider removal to be appropriate given the potential damage, which I agree is a risk to the whare and the pātaka kai; and the connection the descendants of Arekatera have with the whenua. Simply relocating the whare to another piece of land would disregard this connection.

[66] I therefore consider the right to remove the whare and pātaka kai, in this case, an inappropriate form of relief.

Compensation

[67] Generally, compensation may be appropriate where the whare and pātaka kai is to remain on the land and the person who has an equitable interest in it is not entitled to occupy it.²⁸ In those cases, the affected person loses the value of the contributions he or she made to the whare. The landowner receives the benefit of those contributions and so is required to pay compensation for the equitable interest in that whare.

[68] Neither party has made submissions in favour of this option. The COM seek removal and the applicants seek for the whare and pātaka kai to stay on the

²⁸ *Ratu v Marshall*, above n 26, at [78].

whare me te pātaka kai ki te whenua me tā rātou whiwhi i ngā mōtika noho. Ki te whai ahau i tēnei kōwhiringa me te mea atu ki te KW me tuku ētahi utu paremata ki ngā kaitono hei utu i ngā mahi whakahoutanga i roto i ngā tau kua pahure, ka pērātia nā runga i te whakaaro ka wātea te KW ki te whakamahi ki te whiwhi pāinga anō hoki mai i te whare me te pātaka kai. Kāhore te KW i te hiahia ki tērā.

[69] Kāhore au e whakaae ana he tika tēnei kōwhiringa, ehara hoki i te whakaoranga e tika ana tā te mea kāhore ngā taha e rua e kimi pēnā ana.

Nohoanga

[70] Mō ngā take kua kōrerotia ake nei, kua whakatauhia e au, kāhore ngā kōwhiringa tuatahinga e rua, arā, te tango me te utu paremata, e taea, e tika rānei i tēnei kēhi. Nō reira, ka tahuri ahau ki te pātai, pena raini me whakamana tētahi mōtika noho. I taku whakatau i tēnei, me whai whakaaro ahau ki ngā mātāpono i whakatakotoria e te Kōti Pira i *Nicholas v Te Amo*.²⁹

- (a) pena rānei, nā te KW, hei kaipupuri ā-ture o te whenua, i whakatō, i whakakaha rānei i tētahi whakaaro, i tētahi

land with occupation rights. If I were to consider this option and require the COM to pay compensation to the applicants for the costs associated with the improvements they did over the years, it would be on the basis that the COM could use and benefit from the whare and pātaka kai. The COM do not want that.

[69] I do not consider this option is applicable and neither is it an appropriate form of relief given it is not sought by the parties.

Occupation

[70] For the above reasons, I find that the first two options, removal and compensation, are neither possible nor appropriate in this case. I therefore turn to whether an occupation right should be recognised. In doing so, I must consider, following the principles laid out by the Court of Appeal in *Nicholas v Te Amo*.²⁹

- (a) whether the Incorporation, as the legal owner of the whenua, created or encouraged a belief or expectation that the

²⁹ *Nicholas v Te Amo*, above n 16, at [34] and [40]. See also *Ratu v Marshall*, above n 26, at [93].

tūmanako rānei e mea nei kei a
ngā uri o Arekatera tētahi
mōtika kia noho ki Te Raina;

descendants of Arekatera would
have an ongoing right to occupy
the whare at Te Raina;

(b) pena rānei, i whakawhirinaki
atu ngā uri a Arekatera ki taua
whakaaro, ki taua tūmanako
rānei, ā, i pā he mate ki a rātou
nā taua whakawhirinakitanga; ā

(b) whether the descendants of
Arekatera have relied on that
belief or expectation to their
detriment; and

(c) ki te whai whakaaro ki ngā
āhuatanga katoa, kāhore rānei e
tōkeke ana kia whakakorehia e
te KW taua mōtika noho?

(c) whether, in all circumstances, it
would be unconscionable for the
COM to deny that right of
occupation?

Te tūranga o te kaitono mō te noho whenua

The Applicants position on occupation

[71] E tono ana ngā kaitono kia
whakamanahia tētahi mōtika noho ki Te
Raina, e mea ana rātou, nā te Koporeihana
i whakatō tētahi whakaaro whitake mō te
noho, ā, i whakawhirinaki atu te whanau
Gage ki tērā whakaaro. Inā hoki:

[71] The applicants seek a right to
occupy Te Raina and say the Incorporation
created a reasonable belief of occupation
that was relied upon by the Gage whānau.
This is because:

(a) Mai i te hanganga mai o te
whare me te pātaka kai e
Arekatera, kāhore i
whakahēngia te noho a
Arekatera (me āna uri) ki reira;

(a) Since the whare and pātaka kai
was built by Arekatera, his (and
his descendants) occupation has
been uncontested (until
recently, in this dispute);

(b) I te tau 1964, i pāhi te KW o te
wā i tētahi mōtini e whakaae nei
ki tā Arekatera inoi kia

(b) In 1964, the then COM passed a
resolution to approve a request

wāwāhitia te whenua o Te Raina, mōna ake;³⁰

by Arekatera to partition the land at Te Raina, in his favour;³⁰

(c) I mua i te tau 2017, kāhore te Kōporeihana, mā te KW, i whai whakaaro anō ki Te Raina me te take o tā te whānau Gage noho ki te whenua;

(c) It was not until 2017 that the Incorporation, by way of the COM at the time, began to revisit matters relating to Te Raina and the Gage whānau occupation;

(d) I te wā ka tīmata anō ngā kōrerorero, ka hāngai aua kōrero ki te pātai ae rānei me kuhu ki ngā whakaritenga mō te noho whenua, kua mō te hiki whare;

(d) When discussions began, the focus was not on removal but rather it concerned whether occupation arrangements might be entered into;

(e) Mō ngā tau 100 kua hipa, mai i te hangā mai o te whare me te pātaka kai, tae atu ki te tau 2024, kāhore tonu te Kōporeihana i whai kia hīkina ngā whare.

(e) Since the whare and pātaka kai were built, and up until 2024, there have been no attempts by the Incorporation to remove the structures.

Te tūranga o te KW mō te noho whenua

The COM's position on occupation

[73] E whakahē ana te KW i tētahi tukunga mōtika kia noho i te whenua, waihoki e mea ana rātou kāhore rātou i whakatō i tētahi whakaaro, i tētahi tūmanako rānei mō te noho.

[73] The COM oppose the grant of any occupation right and say the COM has not created or encouraged a belief or expectation of occupation.

[74] E mea ana rātou, nā te mōtini i te tau 1964 i whakaputa tētahi hiahia kia

[74] They say the 1964 resolution expressed an intention to allow for an

³⁰ “that provision be made for the partitioning of the House property for Arekatera Mariu”. The resolution required the Committee to make provision for the partition; however, the partition did not take any steps to legally do this.

whakaaetia tā Arekatera tuku i tētahi tono kia wāwāhi i te whenua, engari kāhore rātou i whakaae ki te wāwāhitanga. Ka mutu, he here anō tō taua mōtini o 1964, ā, kāhore i whakatinanahia. E mea ana rātou, kāhore te mōtini i te tuku ki te whānau Gage tētahi mana e noho mātāmua ana ki ngā mōtika me ngā pānga o ērā atu o ngā kaipupuri whenua katoa.³¹

[75] Waihoki, e mea ana te KW, ki te puta tētahi whakaaetanga i roto i ngā tau, kua whakakorehia tērā ināianei e te nuinga o ngā kaipupuri hea, i te rā 23 o Hune 2018 ki tētahi Hui Motuhake, ki te marae o Pukawa.³² E whakapae ana te KW, he whakataunga tēnei e aro nei ki te hiahia manapori o te hunga whai pānga whānui.

Tikanga

[76] I tā ngā taha e rua tahuri ki te take o tētahi mōtika pea kia noho ki tētahi whenua Māori herekore, kua tautuhia e rāua ētahi tikanga, e mea ana rātou, e whai take ana ki taku whakataunga. Ka rārangi atu ahau i aua tikanga ki raro rā,³³ me taku whakawhirinaki atu ki ngā whakamāramatanga me ngā kōrero a ngā pūkenga tikanga, a Ahorangi Tā Pou Temara rātou ko Ahorangi Tā Hirini Moko

application for partition to be made by Arekatera, but it did not approve a partition. The 1964 resolution was also conditional and was never given effect. They say the resolution does not provide the Gage whānau with an irrevocable entitlement that overrides the rights and interests of all other owners.³¹

[75] Furthermore, the COM say that any consent to partition has now been formally withdrawn by the majority of shareholders at the 23 June 2018 Special General Meeting held at Pukawa Marae.³² The COM suggest this decision reflects the democratically expressed will of the wider beneficial ownership group.

Tikanga

[76] In addressing the matter of a potential right to occupy a whare on Māori freehold land, parties have identified tikanga that they say are relevant to my decision. I set out those tikanga concepts below,³³ and rely on the definitions and descriptions provided by experts in tikanga, Professor Sir Pou Temara, Professor Sir Hirini Moko Mead and

³¹ Brief of evidence of Walter William Kingi for the Respondents, dated 8 October 2024, referring to an appendix of the 1964 resolution marked as “029”.

³² Walter William Kingi, above n 31, referring to an appendix of the 2018 resolution marked as “067”.

³³ Law Commission *He Poutama* (NZLC SP24, 2023) app 1 (“Appendix 1: Tikanga”).

Mead, ko Ahorangi Wiremu Doherty i tā rātou pepa i tuhia ai mō te kaupapa o *He Poutama*.³⁴

Professor Wiremu Doherty in the paper they have produced for *He Poutama*.³⁴

Whakapapa.³⁵

Whakapapa.³⁵

The term ‘whakapapa’ is commonly used to describe genealogical connections between people. However, my argument is that, from a mātauranga ā-iwi perspective, whakapapa maps epistemologies (including tribal concepts, principles, ideas and related practices) and locates them within a particular context. Whakapapa will map the inception of a concept, identifying the reason and purpose for the idea, and track its changes that have occurred to date. Whakapapa links people and the landscape together within and through concepts or ideas.

[77] E whakaae katoa ana ngā taha e rua ki te hītoria o te whare me te pātaka kai. Koni atu i te 100 tau ki muri i tīmatahia ai e Arekatera, ā, ko ana uri nahe nei ka noho ki te whare mai i taua wā. Nā konā, ka kī ake ngā kaitono, i a tātou e whakaaro nei ki tō rātou motika noho, e noho matua ana tō rātou hononga ā-whakapapa ki te whare me te pātaka kai. E mea ana rātou, kāhore ā tētahi atu he hononga ā-whakapapa ki Te Raina pērā i ngā kaitono.

[77] The whakapapa of the whare and the pātaka kai is undisputed. It began over 100 years ago with Arekatera, and it has been only the descendants of Arekatera that have occupied the whare throughout this period. The applicants say that the whakapapa connection they have to the whare and the pātaka kai is paramount when considering their right to occupy. The applicants say no-one else has the whakapapa connection they have to Te Raina.

[78] I tā rātou whai whakaaro ki te take o te whakapapa, he rerekē te tūranga o te KW. Mātua rā, e mea ana rātou ehara i te mea e tū ana ngā kaitono hei māngai mō uri katoa a Arekatera rāua ko Makarena Mariu. Ka kī ake ratou, kāhore tātou i te

[78] In considering the matter of whakapapa, the COM take a different perspective. In the first instance, they say the applicants do not exclusively speak for the descendants of Arekatera and Makarena Mariu. They say there is no

³⁴ The following tikanga definitions are taken from *He Poutama*, above n 33, which I adopt for this case.

³⁵ *He Poutama*, Above n 33, at 1.45.

kite i tētahi taunakitanga e whakaatū nei i te tautoko o ētahi atu o ngā mema o te whānau Gage i tā rātou tonono.

[79] Tuarua ake, e mea ana te KW me whai whakaaro ki te whakapapa ake o te Hauhungaroa 1C poraka me tana hononga ki ngā tātai whakapapa maha, ehara i te mea ko te heke a Arekatera rāua ko Makarena Mariu anahe. Ka kī rātou, me taurite te titiro ki ngā pānga o ngā kaipupuri whenua katoa o te poraka, nā runga anō hoki i ā rātou whakapapa ki te whenua .

[80] Kāhore au e whakaae ana ki tēnei tohenga. Kāhore i te tautohetia te whakapapa o ngā kaipupuri hea katoa o te Koporeihana ki te whenua. He whakapapa tō ngā kaipupuri hea katoa, me te hapū o Ngāti Parekawa (me ētahi atu hapū pea), ki te katoa o te poraka o Hauhungaroa 1C. Heoi, kāhore he taunakitanga kei mua i te Kooti mō tētahi atu rōpū kaipupuri hea e whakapae ana he hononga whakapapa whakataetae tō rātou ki te whare me te pātaka kai i Te Raina, e rite ana ki tō ngā uri o Arekatera. Ki te kī me taurite te taumata o te whakaaro ka tukuna ki ngā pānga o ngā kaipupuri hea 880 katoa, kāhore nei ō rātou hononga whakapapa ki te whare me te pātaka kai, ki te taumata o

evidence that the other members of the Gage whānau support their application.

[79] Secondly, the COM say the whakapapa of the Hauhungaroa 1C block itself must be taken into consideration and that the block's whakapapa flows through many lines, not only the line of Arekatera and Makarena Mariu. They say that the interests of the other owners of the block, who also have whakapapa to the whenua, must be weighed equally.

[80] I am not persuaded with this argument. The whakapapa of all shareholders in the Incorporation to the whenua is not in question. All of the shareholders and also the hapū of Ngāti Parekawa (and potentially other hapū) have whakapapa to the entire Hauhungaroa 1C block. However, there is no evidence before the Court of another shareholder group asserting a competing whakapapa connection to the whare and the pātaka kai at Te Raina comparable to that of the descendants of Arekatera. To suggest that the interests of all 880 shareholders, who do not have that whakapapa connection to the whare or pātaka kai, should be given equal weight to that of the descendants of Arekatera, is flawed.

te whakaaro ka tukuna ki ngā pānga o ngā uri o Arekatera, he whakaaro hē tēnā.

[81] E whakaae ana ahau me whai whakaaro ki te whakapapa o te whenua me ngā kaupupuri hea i te wā e whakaarohia ana tētahi mōtika noho. Heoi, i tēnei horopaki, ki taku whakaaro ka whai take te whakapapa i te wā e aromatawaihia ana pena mā te whakamana i tētahi mōtika noho ka whakaparahakotia tētahi hononga whakapapa o ētahi atu kaupupuri hea ki te whare. Kāhore au e kite ka pēnā i tēnei kēhi, nā te mea, i tua atu i ngā uri o Arekatera, kāhore he kaupupuri hea kē atu e whai hononga whakapapa ana ki te whare. Nō reira, pena rainika noho tonu ngā uri o Arekatera ki reira, kāhore taua noho e motu ai te hononga o ērā atu kaupupuri hea. I te mutunga iho, mō te take o te mōtika noho, ko te whakapapa o te whare ake me te hunga e hono ana ki taua whare taku tino whakaaro.

[82] Ahakoa e mārama ana ahau ki tā te KW tāpaetanga, e mea ana kāhore ērā atu uri a Arekatera, atu i ngā kaitono, i tuku tautoko mō te tono, ka kī hoki ahau kāhore he taunakitanga kua whakahē ētahi atu uri i te tono. Ahakoa tērā, i taku whakaaro ki te tikanga o te whakapapa ki te whare, kāhore au e whakaae ana he take tēnei mō te tautoko, te whakahē rānei. E tino

[81] I agree that the whakapapa of the whenua and the shareholders should be taken into account when considering an occupation right, however, in this context, I consider the matter of whakapapa comes into play when assessing whether an occupation right would disregard any whakapapa connection other shareholders may have to the whare. I do not see that it does in this case because no other shareholders, outside of Arekatera's descendants, has a whakapapa connection with the whare and therefore there would be no disconnection for their fellow shareholders if they were to continue to occupy it. Ultimately, I find that it is the whakapapa of the whare itself and those connected with it that is my primary consideration with respect to the issue of occupation rights.

[82] While I take into account the COM's submission that other descendants of Arekatera, separate to the applicants, have not given their support to their application, I also note that no one has opposed the application either. In any event, in considering the tikanga of whakapapa to the whare, I do not consider this to be a matter that requires an

mārama ana tātou ki te whakapapa o te whare, ahakoa te tūranga o ētahi atu mema o te whānau Gage, e kore rawa te whakapapa e panoni.

assessment of support or opposition. The whakapapa of the whare is clear and whether or not other members of the Gage whānau support the application will not change that whakapapa.

Ahi Kā.³⁶

Ahi Kā.³⁶

Implicit in the concept of ahikā and being seen as playing your part in the upkeep and functioning of the whare and marae is the notion of obligation. As members of a collective, we each have an obligation as individuals to ensure we are supporting the collective. A key part of this obligation is to ensure connections are maintained and enhanced – connection to each other, to the past, to the environment, to the knowledge system and to the gods. Through the practice of whakapapa, the familial connections to the whare are maintained and mapped over time.

[83] E mārama ana te kite atu i tēnei whakamāramatanga mō te ahi kā, he hirahira te whakapapa ki te whakatau, ko wai te ahi kā mō te whare me te pātaka kai.

[83] It is clear from this description of ahi kā that whakapapa is fundamental in ascertaining who is ahi kā of the whare and pātaka kai at Te Raina.

[84] E mea ana ngā kaitono, ko rātou te ahi kā. I tīmata tēnei tūranga i a Arekatera ka heke ai ki tana uri tae noa ki tēnei wā nei. Kia koni atu i te rau tau, ka whakaatu atu rātou i taua tūranga ahi kā nā te tanu i ngā pito, nā te whakatū wāhi tapu, nā te tuku ihotanga hoki o te wāhi noho me te tiaki i te whenua, i te whare anō hoki.

[84] The applicants say they are ahi kā. It was first established with Arekatera and remained with his uri to the present day. Their ahi kā status is evidenced by the burial of pito, the presence of a wāhi tapu, and the intergenerational occupation, care and maintenance of the land and whare for more than a century.

[85] E mea ana te KW, kāhore te angawā i te tautoko i tā rātou kerēme kia tū hei ahi kā. Ka kī rātou, i noho whare puehu noa a Te Raina mō ngā tau maha whai muri i te

[85] The COM say the timeline does not sustain a claim of settled continuous ahi kā. They say that Te Raina sat empty for significant periods between Arekatera's

³⁶ He Poutama, above n 33 at 2.46.

matenga o Arekatera me tā Toha hoki atu i te tau 1991, kei te takiwā o te 20 tau te roa. E mea ana rātou, i roto i aua wā wātea, nā te Kōporeihana kē i haere ki te whenua, i whakatutuki hoki ō rātou takohanga ki ngā kaipupuri whenua katoa.

[86] Ka tahuri hoki te KW ki ngā takohanga o te ahi kā ki te whenua. Ka kī rātou, ko ngā mahi a Rawiri Andrews, arā ko tana tuku i ngā manuhiri kāhore i rēhitatia kia kuhuatū ki Te Raina me te kore e whai whakaaro ki ngā hātepe haumarū anō hoki a te Kōporeihana, e takahi nei i ngā kawenga o te ahi kā ki te whenua.

[87] Kāhore te KW e kerēme ahi kā ana ki te whare, heoi anō tā rātou, he whakahē i tā ngā kaitono kerēme ahi kā nā runga anō i tā ngā kaitono tāmotanga mō te 20 tau me ngā mahi aro kore a Rawiri Andrews ki ngā takohanga o te ahi kā.

[88] E tautoko ana ahau i tā te KW tāpaetanga e mea ana, e tika ana kia noho tonu, kia tiaki tonu te ahi kā i te whenua. Ka haere ngātahi hoki ngā takohanga me ngā mōtika. Engari, kāhore au e whakaae ana ko te tohu o te noho tonu ko te noho ki reira, ia rā, ia rā. Kāhore ngā uri a Arekatera i whakarere mārika i te whare me te pātaka kai kia kīa ai he mātao rawa atu ō rātou mōtika ahi kā. I ngā tau 20 o te

passing in 1970 and Toha's return in 1991, a period of approximately 20 years. They say that during this period of vacancy, it was the Incorporation who were present on the land and fulfilling their obligations to all owners.

[86] The COM also draw on the obligations ahi kā have to the whenua. They say Rawiri Andrews' actions, such as allowing unregistered visitors to access Te Raina without consideration for the Incorporation's access and safety processes, disregards any ahi kā duties they owe to the whenua.

[87] The COM do not make a claim of ahi kā to the whare themselves, rather they suggest that the applicants' claim to ahi kā cannot be sustained given the 20-year vacancy and Rawiri Andrews' disregard to ahi kā obligations.

[88] I agree with the COM's submission that ahi kā requires continuous occupation and active care of the land. It also carries obligations as well as rights. However, I do not consider that continuous occupation means continuous daily residence. The uri of Arekatera did not abandon the whare and pātaka kai entirely so as to extinguish any ahi kā rights they have. During the 20-year period of "vacancy", Toha resided

wā "wātea", i noho a Toha ki Tūrangi, he rite tonu tana hoki ki Te Raina, tana pūmau anō hoki i te hononga o tana whānau. Ahakoa he ngoikore pea te taha tiaki me te manaaki i ēnei tau, kāhore e tika ana te kī ake, kua wehe mārika te whānau i te whare. Ka mutu, e noho tūturu ana rātou ki reira ināianei, e tino tuku ana i te tautiaki mā roto mai i ngā whakahoutanga, i ngā mahi whakapaipai me te pūmau tonu ki tā rātou hononga ā-whānau ki Te Raina.

[89] E whakaae ana ahau, kāhore pea ētahi o ngā mahi a ngā kaitono i te noho tahi me ngā kawenga o te ahi kā, engari kāhore au e whakaae ana, mā tērā mahi e whakakore tā rātou kerēme ahi kā ki te whare. Ka whakawhānui ake ahau i ngā kōrero mō ngā kawenga me ngā takohanga ahi kā ki aku kupu tohutohu hei te mutunga o tēnei whakataunga.

Kaitiakitanga.³⁷

Kaitiaki speaks to the obligation of guardianship to maintain a duty of care for process, people and environment. A kaitiaki can take the form of a person, a creature or an object. This concept, like the other principles, works to support mana, mauri, tapu, whakapapa, whanaungatanga and matemateāone.

The role of the kaitiaki is to protect and ensure the appropriate processes and procedures are used when entering spaces and areas kaitiaki are located. The concept of kaitiaki speaks to the spiritual world view of te ao Māori.

in Tūrangi, visited Te Raina regularly and maintained their whānau connection. While more care and upkeep could have been given during this period, it cannot be said that the whānau left the whare entirely. Furthermore, they are living permanently there now and have showed significant care by way of improvements, upkeep and maintaining their whānau connection with Te Raina.

[89] I agree that some of the actions of the applicants do not align with duties held by ahi kā but I do not consider that those actions cancel out the claim they have to the whare and pātaka kai as ahi kā. I address the matters of ahi kā duties and obligations, in my directions at the conclusion of this decision.

Kaitakitanga.³⁷

³⁷ He Poutama, above n 33 at 3.96-97

[90] E taea ana te haere ngātahi te tūranga o te ahi kā me te kaitiaki. Ko rāua rāua e kōrero ana mō ngā takohanga o te manaaki me te whakahaumarū. Mā ia horopaki e whakatau, nā roto mai i te whai whakaaro ki te kaupapa ake, ki te whakapapa me te whanaungatanga hoki o ngā hunga e whai take nei.

[91] Kāhore ngā kaitono i mea atu, ko rātou te kaitiaki o te whare, o te pātaka kai, o te whenua anō hoki. Engari anō ā rātou tāpaetanga, he whakaū ki te take o te ahi kā.

[92] Engari, e tahuri ana te KW ki te take o te kaitiakitanga i ā rātou e whakaaro nei i ō rātou ake kawenga hei Koporeihana. E mea ana rātou, he kawenga te kaitiakitanga kia tiakina, kia manaakitia te taiao, te whenua me ōna rawa. Ka kī rātou ka tae atu hoki taua kawenga kia manaakitia te taha ohanga me te taha kaiao o te pūnaha pāmu e tuku nei i te pūtea, e hāpai nei hoki i ngā pānga o te hunga whai pānga katoa, ka mutu, e pūmau tonu nei i te aronga kia noho tonu te whenua ki ngā ringaringa o ngā mokopuna o rātou mā.³⁸

[93] E tautoko ana ahau i te whakaaro he āhua ōrite ngā kawenga me ngā takohanga o te kaitiaki ki ngā kawenga me ngā

[90] The role of ahi kā can go hand in hand with the role of kaitiaki. Both speak to obligations of care and protection. This will be determined on a case-by-case basis, taking into consideration the subject matter and the whakapapa and whanaungatanga connections at play.

[91] The applicants have not suggested that they are kaitiaki of the whare, pātaka kai or the whenua. Rather their submissions centre around ahi kā.

[92] The COM, however, refer to kaitiakitanga in relation to their own specific duties as an Incorporation. They say that kaitiakitanga is a duty to exercise guardianship and protection of the environment, the land and its resources. They say it also extends to protecting the commercial and ecological viability of the farming operation that provides income and sustains the interests of all beneficial owners and ensures that the whenua remains in the hands of the descendants of those traditional owners.³⁸

[93] I agree that many of the duties and obligations of a kaitiaki can be analogous to the duties and obligations of the

³⁸ See closing submissions for the COM dated 8 April 2026 at [46]-[55].

takohanga o te Koporeihana. Engari, he tāwhiti kē pea te kī atu, ko te Koporeihana te kaitiaki o te pōraka whenua, kāhore hoki te KW i te kerēme e pēnā ana, ki taku mōhio. Ko te taunakitanga o tāku i kī pērā ai, ko te whakamāramatanga o runga e mea ana, kei a te kaitiaki ngā kawenga ki te tiaki me te manaaki, engari ka puta ēnei kawenga i te tirohanga ā-wairua o te ao Māori, ka mutu, e haere ngātahi ana me ngā tikanga pērā i te mana, i te mauri, i te tapū, taa – nō reira, ko tētahi o ana aronga matua, me mātua hāpai i ngā tikanga o te taiao, nāna hoki ai i tiaki. Kāhore i te whai pērā te Koporeihana. Ehara i te mea ko te hāpai i ngā tikanga tō rātou kawenga matua. Ki te whakaae ahau ki ngā mōtika ā-noho o ngā uri a Arekatera, e taea tonu ana e te COM te whai, te whakatutuki anō hoki i ō rātou kawenga, he kawenga e ōrite ana tana āhua ki tā te kaitiaki.

Incorporation. I would not go so far, however, to suggest that the Incorporation is the kaitiaki of the block, and my understanding of the submissions is the COM do not make a claim as such. I base this observation primarily on the definition provided above in that, while the kaitiaki has duties of protection and care, the concept speaks to the spiritual world view of te ao Māori and works to support other tikanga concepts, such as mana, mauri tapū, etc – therefore, one of its primary purposes has to be to uphold the tikanga of the environment it is charged to protect. That is not the case with the Incorporation. It is not their primary duty to uphold tikanga matters. In any instance, any kaitiaki-analogous duties the COM has to the block can still be balanced and exercised if I were to recognise occupation rights in favour of the descendants of Arekatera.

Mana Whakahaere.³⁹

Mana Whakahaere.³⁹

The concept of ‘mana’ speaks to authority that is granted by the collective. The connection to the collective is mapped through whanaungatanga and whakapapa. Through this, collective authority is granted to the order in which processes are conducted and events are to be supported, through to the elevation of people to maintain order for the collective. The individuals who are afforded the will and support of the people will be those recognised as holders of the knowledge required to maintain the integrity of the knowledge and processes of the people.

³⁹ He Poutama, above n 33, at 3.32.

[94] I te wā e tu nei ēnei tono, kua puta ngā take e rua mō te mana.

[95] Tuatahi ake, e mea ana te KW, ko te kōmiti te rōpū e tika ana kia whakataungia ngā take whakariterite me ngā take whakahaere o te Koporeihana, nā, ka haere ngātahi taua tūranga me tōna ‘mana of management’.

[96] Kāhore anō ahau i rongō i tērā rerenga, te “mana of management”, engari e whakaae ana ahau, kua tukuna e tētahi ohu kaupupuri hea he mana whakatau ki te COM mō ngā take o Hauhungaroa 1C, nā konā kei a rātou tētahi mana e puta nei i te whakapapa o te Koporeihana ake. Nō reira, mō ngā take tikanga, e whakaae ana ahau e noho haepapa ana rātou ki te ohu i a rātou e whakatau nei i te pai, i te kino rānei o tā te whare noho tonu ki runga i a Te Raina. I tā rātou tuku i tēnei mana whakatau, kāhore e tika ana tā rātou titiro whāiti ki tētahi tikanga nahe nei, me whakawhānui ake tā rātou titiro ki ngā tikanga katoa e hāngai ana, pērā i te whakapapa, i te whanaungatanga, i te ahi kā, i te kaitiakitanga me ngā āhuatanga katoa ka tau ki runga i te hunga whai take.

[97] E mārama ana ahau ki te tāpaetanga o te kaitono mō te take o te mana, kāhore hoki pea he take o taku tuku kōrero anō. E

[94] Two matters of mana have arisen during the course of these applications.

[95] Firstly, the COM say that the committee is the body responsible for the administration and management of the Incorporation, and with that role comes a corresponding ‘mana of management’.

[96] I have not yet come across the term “mana of management” myself, however, I agree that the COM has been granted a type of authority by the collective of shareholders to make decisions regarding Hauhungaroa 1C and therefore they do hold mana which is mapped through the whakapapa of the Incorporation. In terms of tikanga, I agree that the COM have certain responsibilities to the collective in making decisions about the viability of the whare and pātaka kai remaining at Te Raina. In the exercise of this mana, they cannot, however, consider one tikanga in a vacuum, they must take into account all applicable tikanga such as whakapapa, whanaungatanga, ahi kā, kaitiakitanga and the overall impact it will have on those involved.

[97] The applicants’ submission on mana is straightforward and I do not consider it requires further comment from

mea ana rātou, kei a rātou tētahi haepapa kia pūmau tonu ki te mana o te whakaaetanga i puta waenga i te Koporeihana me Arekatera mō te take o te mōtika kia noho ki Te Raina.

Te kaupapa o te Ture

[98] I ngā wā katoa, me whai whakaaro te Kooti ki te kaupapa whānui o te Ture.⁴⁰ Ka whakaatu ngā wehenga 2 me 17 o te Ture i te aronga ki te pupuri, te whakamahi, te whakawhanake me te whakahaere anō hoki i te whenua Māori e te Māori hei taonga tuku iho.

[99] E ōrite ana te āhua o ā te KW tāpaetanga mō te kaupapa o te Ture ki ana tāpaetanga mō te whakapapa, te mana me te tahuri ki ngā whakaaro o te katoa, kaua ki ngā uri o Arekatera nahe nei. Hei toai noa i tā rātou i ki ai, me taurite te tahuri ki ngā tāngata katoa e whai pānga nei ki te katoa o te poraka whenua o Hauhungaroa 1C. E mea ana rātou, e noho haepapa ana, e noho whai whakaaro ana rātou ki te tirohanga o ngā kaipupuri hea 880 katoa.

[100] E mea ana te KW, mā te tuku i tētahi mōtika noho tūturu ki tētahi rōpū tokoiti e whai pānga ana, pērā i ngā uri o Arekatera rāua ko Makarena Mariu, ka whakahē i ngā hiahia kua tino

me. They maintain that they have an obligation to uphold the mana of the agreement between the Incorporation and Arekatera for the right to occupy Te Raina.

The kaupapa of the Act

[98] The Court must, at all times, take into account the overall kaupapa of the Act.⁴⁰ Sections 2 and 17 of the Act express a theme of retention, use, development and control of Māori land by Māori as taonga tuku iho.

[99] The arguments presented by the COM with respect to the kaupapa of the Act are similar to the submissions around whakapapa, mana, and having regard to the collective rather than the just the descendants of Arekatera. Again, they say equal weight must be given to all those who hold interests in the entire Hauhungaroa 1C block. They say they answer to, and must consider the views of, all 880 beneficial shareholder owners.

[100] The COM say granting a permanent occupation right to a minority beneficial ownership group like the descendants of Arekatera and Makarena Mariu, would go against the express

⁴⁰ Te Ture Whenua Māori Act 1993, ss 2 and 17.

whakapuakina e ērā atu kaipupuri hea katoa, ā, ka takahi kē i ngā whāinga o ngā wehenga 2 me 17 o te Ture, kua ko te whakatairanga i aua whāinga.

[101] Wairuatoa, kāhore i mua i a tātou ngā taunakitanga ngā whakaaro o ngā kaipupuri 880 katoa,⁴¹ kāhore hoki e tika ana kia whakapae noa tātou i ō rātou tautoko, i ō rātou whakahē rānei. Heoi anō, e mōhio ana tātou ki te hītoria mai i tā Arekatera hanga mai i te whare me te pātaka kai, me te meka, mō ngā tekau tau maha, i noho tonu tōna whānau ki Te Raina, kāhore hoki te Koporeihana i whai kia whakamutua taua noho, kia tangohia rānei ngā hanganga. Nō ngā tau tata nei anahe ka noho tautohe te noho tonu ki Te Raina, me te tangohanga o te whare me te pātaka kai. E whakaae ana ahau ki tā ngā kaitono, kāhore e tika ana, i roto i tēnei kēhi, kia whakatauhia te pānga tōkeke ki te mana pupuri e kerēmehia ana ki te whare me te pātaka kai, me te mōtika noho e hono ana ki taua pānga, mā te titiro noa ki te tapeke o ā rātou hea,⁴² ā, ki taku whakaaro, e tukituki ana tērā ki te kaupapa o te Ture.

wishes of all other owners and would undermine rather than advance the objectives of sections 2 and 17 of the Act.

[101] Unfortunately, we do not have evidence of the views from all 880 owners⁴¹ before us and we cannot assume that they are either in support or opposition. However, what is clear is the history since Arekatera built the whare and pātaka kai and the fact that for many decades his whānau continued to occupy Te Raina without steps being taken by the Incorporation to bring that occupation to an end or require removal of the structures. It is only in more recent years that the continued occupation of Te Raina, and ultimately the removal of the whare and pātaka kai, have become matters of dispute. I agree with the applicants that attempting to determine a shareholder entitlement to the claimed equitable ownership interest in the whare and pātaka kai, or the associated occupation right, by reference to their total shareholding alone⁴² does not sit well in this particular case and, in my view, would go against the kaupapa of the Act.

Kōrerorero

Discussion

⁴¹ The Court received evidence from witnesses called on behalf of the Incorporation, but I do not treat that evidence as establishing the views of all 880 owners.

⁴² See the COM's opening submissions dated 9 December 2025 at [20] whereby the COM submit that the applicants are minority beneficial owners with negligible shareholding amounting to 0.1% in total.

[102] Ki te whakaarotia ērā take katoa o runga, me ngā tikanga i tukuna mai hei whakaaro māku, ka whakatauhia e au nā te KW i whakatō tētahi whakaaro, tētahi tūmanako rānei ka whai mōtika ngā uri o Arekatera ki te noho ki te whare i Te Raina, ā, kua whakawhirinaki rātou ki taua whakaaro, ki taua tūmanako rānei.⁴³

[103] Kua whai mōhiotanga ahau, nā te mōtini o te KW o taua wā i te tau 1964 i whakatō tētahi whakaaro ki roto i a Arekatera kia wāwāhitia te whenua o Te Raina e pai ai tana whakawehe i tētahi wāhi mōna me tōna ake whānau. Ae, kāhore te wāwāhanga i puta ki te ao mārama, engari kāhore tērā āhuatanga i panoni i tā te KW tuku i tō rātou whakaaro o te wā. I aua horopaki, e whakaae ana ahau, nā te KW i whakatō whakaaro kia āhei a Arekatera te noho ki te whare.

[104] I ngā tau whai muri i te mōtini o 1964, kua whai mōhiotanga ahau, nā ngā mahi, ngā kore mahi rānei, o te KW i tautoko i taua whakaaro. Nōna e ora ana, kāhore te KW i whakahē i tā Arekatera noho. Whai muri i tana matenga i te tau 1970, i tīmata te KW ki te kōrero tahi ki ana uri mō ngā whakaaetanga ā-noho, i tīmata te KW ki te kōrero mō ngā

[102] Taking into account all the matters above and the tikanga submitted on for my consideration, I find that the COM did create a belief or expectation that the descendants of Arekatera would be entitled to occupy the whare at Te Raina, which they have relied on.⁴³

[103] I am satisfied that, by way of the 1964 resolution, the COM at the time created a belief that Arekatera could partition the land at Te Raina to establish a separate area for him and his family. The fact that the partition did not eventuate does not change the representation made by the COM at the time. In those circumstances, I am satisfied that the COM created a belief that Arekatera would be entitled to occupy the whare.

[104] Following the 1964 resolution, I am satisfied that the actions, and inactions, of the COM until 2018 added to that belief or expectation. While Arekatera was alive, the COM did not contest his occupation. Following his passing in 1969, the COM entered into discussions concerning occupation agreements with his descendants, as well as entering into access

⁴³ As per *Ratu v Marshall*, above n 26, at [93].

whakaritenga ā-haerere; ka mutu, mō ngā tau 50 koni atu whai muri i te mōtini o 1964, kāhore te KW i whakahē i te nohoanga, i te whai hoki kia hunukuhia te whare ki Te Raina.

[105] E mārama ana te kite atu ki roto i ngā taunakitanga, kua whakawhirinaki atu a Arekatera me ana uri ki taua whakaaro. I whakapau kaha, i whakapau utu hoki ngā uri a Arekatera kia whakapaitia te whare me te whenua e karapotihia nei nā runga anō i te whakaaro, ko te whare e noho nei ki Te Raina tō rātou kāinga noho, nā e pai ana tā rātou noho tonu ki te whare. E tino kitea ana taua whakaaro me taua whakawhirinakitanga ki roto i te wira³³ a Arekatera me tana takoha atu i te whare o Te Raina ki tana wahine, ki Makarena.

[106] Hei whakamutu atu, ki te tahuri atu ki te hītoria o tō te whānau o Arekatera hono ki Te Raina me ngā tikanga i rārangitia ai ki runga, arā ko ngā tikanga o te whakapapa me te ahi kā, mōku ake, kāhore e tino tika ana tā te KW hoki whakamuri i taua whakaaro, nā rātou kē i whakatō ai i roto i ngā tau, me te kī atu ki ngā kaitono me wehe rātou i a Te Raina, me hiki hoki i te whare me te pātaka kai.

[107] Hei toai noa i ngā kōrero o runga, kua whakatutukihia ngā paearu o te taratī

arrangements; and for over 50 years following the 1964 resolution the COM did not oppose occupation or attempt to relocate the whare or pātaka kai at Te Raina.

[105] It is clear from the evidence that Arekatera and his descendants, including the applicants, have relied on that belief to their detriment. Arekatera and his descendants incurred expenditure and undertook significant work on the whare and the surrounding whenua in the belief that the whare at Te Raina was their whānau home and they would be able to continue to occupy the whare. That belief and reliance is evidenced most significantly in Arekatera's will and his gifting of the whare at Te Raina to his wife, Makarena.

[106] Finally, taking into account the history of Arekateras family involvement with Te Raina and the tikanga set out above, particularly the matters or whakapapa and ahi kā, in my view it would be unconscionable for the COM to now go back on the belief or expectation they have created over the years and require the applicants to leave Te Raina and remove the whare and pātaka kai.

[107] As mentioned previously, a constructive trust has been made out, and

whai oranga, kāhore hoki e taea ana, e tika ana rānei te tuku i te utu paremata, waihoki te hiki i te whare me te pātaka kai. Ka kī ake au i konei, e meinga ana e te tika kia whai hua taua pānga tōkeke mā te whakamana i tētahi mōtika ki te noho ki te whare i Te Raina.

Whakataunga

[108] Ka tukuna e te Kooti ngā ōta e ai ki wehenga 18(1)(a) o Te Ture Whenua Māori Act 1993, e whakatauhia ana:

- (a) he tautara te whare me te pātaka kai, he wāhanga hoki aua hanganga o Hauhungaroa 1C, ā, kei te Koporeihana o Hauhungaroa 1C te mana pupuri ā-ture o aua hanganga;
- (b) kei raro taua mana pupuri ā-ture i te pānga tōkeke ki te mana pupuri o ngā uri o Arekatera rāua ko Makarena Mariu ki te whare me te pātaka kai i Te Raina, ā, i ara ake taua pānga i raro i tētahi taratī whai oranga; ā
- (c) he mōtika tō ngā uri o Arekatera rāua ko Makarena Mariu ki te pupuri i te whare i Te Raina, ā, mā taua mōtika e āhei ai rātou ki

neither compensation nor removal of the whare and pātaka kai are possible or appropriate. I consider justice requires that equitable interest to be given practical effect through recognition of a right to occupy the whare at Te Raina.

Decision

[108] The Court makes orders pursuant to section 18(1)(a) of Te Ture Whenua Māori Act 1993, determining that:

- (a) the whare and pātaka kai are fixtures forming part of Hauhungaroa 1C, and their legal ownership rests with the Hauhungaroa 1C Incorporation;
- (b) the legal ownership is subject to the equitable ownership interest in the whare and pātaka kai at Te Raina in favour of the descendants of Arekatera and Makarena Mariu, arising through a constructive trust; and
- (c) The descendants of Arekatera and Makarena Mariu have a right to possession of the whare at Te Raina, which entitles them

te noho ki te whare me te wāhi
e karapoti tonu ana i te whare, i
raro i ngā tikanga ka
whakatauhia whai muri i ngā
tāpaetanga anō e whakahaua
ana i [110].

[109] Kua tukuna e ngā kaitono tētahi
tono e ai ki wehenga 244 kia
whakarerekēhia ngā tikanga o te Taratī ā-
Whānau o William Toha Gage kia uru mai
ai ngā uri katoa o Arekatera rāua ko
Makarena Mariu hei kaiwhiwhi. I mua i
taku tuku i tētahi whakahau e ai ki
wehenga 244, e tono ana ahau kia tukuna
mai ētahi atu tāpaetanga hei whakamārama
pena e hiahia ana ngā kaitono kia uru mai
ngā uri katoa o Arekatera rāua ko
Makarena Mariu ki te Taratī, ā, inarā, he
aha te tūranga e whakaarotia ana mō
Corrina Gage, kei a ia anō ōna ake pānga
ki Hauhungaroa 1C.

[110] Nā runga anō i aku kitenga mō ngā
pānga tōkeke a ngā kaitono ki te puritanga
whare me tā rātou noho ki reira, kāhore i
angitu te tono tāria a te KW kia hīkina te
whare. Engari, e whakaae ana ahau kia
tahuri tonu tātou ki ētahi o ō rātou
āwangawanga mō ngā take hauora, mō te
haumarutanga me ngā ara haerere. Nō reira
e meinga ana ki ngā taha e rua kia tukuna

to occupy the whare and its
curtilage, subject to the terms to
be determined following the
further submissions directed at
[110].

[109] The applicants have filed a section
244 application to vary the terms of the
William Toha Gage Whānau Trust to
include the beneficiaries of all the
descendants of Arekatera and Makarena
Mariu. Before making any direction under
s 244, I require further submissions
clarifying whether the applicants intend the
Trust to include all descendants of
Arekatera and Makarena Mariu and, in
particular, the intended position of Corrina
Gage, who holds Hauhungaroa 1C interests
independently.

[110] Given my findings as to the
applicant's equitable ownership interests
and right of occupation interests, the
COM's injunction application for removal
of the whare must fail. However, I consider
the issues raised by the COM with respect
to several health, safety and access matters
needs further attention. I therefore direct
parties to file further submissions on the

mai ētahi anō tāpaetanga mō ēnei take nei
i mua i te 5pm, Paraire 30 o Oketopa 2026:

following matters by 5pm, Friday 30
October 2026:

- | | |
|--|--|
| <p>(a) tētahi whakaaetanga ara
haerere mō Te Raina;</p> | <p>(a) an access agreement for Te
Raina;</p> |
| <p>(b) tētahi tautuhinga tūturu o te
wāhi noho ki Te Raina; tae atu
ki ētahi take roherohenga me
ngā utu e whai take ana;</p> | <p>(b) identification of the exact area
of occupation for Te Raina
including any boundary issues
and associated costs;</p> |
| <p>(c) mēnā me utu tētahi utu noho,
tētahi rēti rānei ki te
Koporeihana mō te mōtika
noho ki Te Raina, ā, mēnā rā,
te nui o taua utu; me te
haepapa mō ngā reiti;</p> | <p>(c) whether any occupation
payment or rent is payable to the
Incorporation for the right of
occupation at Te Raina and, if so,
the amount of that payment; and
responsibility for rates;</p> |
| <p>(d) te roa o te oranga o te mōtika
noho; me</p> | <p>(d) duration of the occupation right;
and</p> |
| <p>(e) ētahi whakaaro mō te take o te
wāhi tapu ki Te Raina.</p> | <p>(e) proposals on the issue of wāhi
tapu at Te Raina.</p> |
| <p>(f) pena rānei e tono ana ngā
kaitono kia whakarerekēhia te
Taratī ā-Whānau o William
Toha Gage e ai ki wehenga
244 kia uru mai ai ngā uri
katoa o Arekatera rāua ko
Makarena Mariu, ā, ki te pērā,
he aha te pānga e whakaarotia
ana ki taua whakarerekētanga,</p> | <p>(f) whether the applicants seek a
variation of the William Toha
Gage Whānau Trust under s 244
to include all descendants of
Arekatera and Makarena Mariu
and, if so, the intended effect of
that variation, including the
position of Corrina Gage.</p> |

tae atu ki te tūranga o Corrina
Gage.

[111] Ka kī ake ahau i konei, kāhore ngā take o runga, ngā take e tatari nei ki ētahi atu tāpaetanga, i te panoni i taku whakataunga whānui, āra, kei a ngā uri a Arekatera rāua ko Makarena Mariu tētahi pānga tōkeke ki te mana pūpuri ā-ture o te whare me te pātaka kai ki Te Raina, kei a rātou hoki te mōtika kia noho ki te whare.

[111] I note that none of the above matters that require further submission will change my overall decision, that the descendants of Arekatera and Makarena Mariu have an equitable ownership interest in the whare and pātaka kai at Te Raina; and have a right to occupy the whare.

I whakapuakina i Pōneke i te rā 11 o Hepetema i te tau 2026.

Pronounced in Wellington, on this 11th day of September 2026.

A M Thomas
JUDGE