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

AP20240000002699

WEHENGA *Under*	Section 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Waireia A and others
I WAENGA I A *Between*	RONALDE KENDALL Te kaitono *Applicant*
ME *And*	WAIREIA A TRUST Ngā kaiurupare *Respondents*

Kōtitanga: *Hearing*	25 November 2024, 287 Taitokerau MB 1-91 (Heard at Whangarei)
Kanohi kitea: *Appearances*	R Park for Applicant R Mark for Respondents
Whakataunga: *Judgment date*	5 October 2026

TE WHAKATAUNGA A KAIWHAKAWĀ M P ARMSTRONG
Judgment of Judge M P Armstrong

Hei tīmatanga kōrero
Introduction

[1] The Waireia Trust is an ahu whenua trust that administers five blocks of land. Two of the blocks are Māori freehold land, the other three are General land owned by Māori. Together, those blocks have a total area of 1,525.51 hectares.

[2] There are no individual shareholders for any of those blocks. Rather, the trust order provides that the beneficiaries are:

> …the descendants of the original Tupuna, Tarutaru, Ihengaiti, and Ngono and the descendants of the original 1914 shareholders of Waireia.

[3] The trustees operate various commercial activities on these blocks. That includes a farm, forestry, a local shop, beehives, and a market garden. The trust also owns kaumātua flats.

[4] One of the beneficiaries, Ronalde Kendall, argues that the trustees have breached their obligations. He seeks a review of the trust to investigate those alleged breaches. He also argues that, if I conduct a review, I should also grant an interim injunction preventing the trustees from undertaking certain activities pending the completion of that review.

[5] In this judgment, I determine whether to undertake a review, and if so, whether I should grant an interim injunction pending the completion of that review.

He aha ngā mātāpono ā-ture e hāngai ana?
What legal principles apply?

[6] Per s 231 of Te Ture Whenua Māori Act 1993 (the Act), I can review the terms, operation, or other aspect of the trust. In *The Proprietors of Mangakino Township v The Maori Land Court*,[1] the Court of Appeal held that:

> (a) In carrying out a general review of this kind, the Court ought to concentrate on the broader picture and not become drawn into matters of detail;

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[1] *The Proprietors of Mangakino Township v The Maori Land Court* [1999] LGHNZ 49.

(b) It comes down to a question of common sense how far into the affairs of a trust the Māori Land Court should burrow;

(c) Its primary focus ought to be on the policies that the trust is pursuing and on how, in a general way, those policies are being implemented;

(d) In order to see whether a policy is working the Court may not be able to avoid considering some operational matters;

(e) There is an armoury of powers given to the Court in relation to trusts; and

(f) When conducting the review, the Court may take further steps outside of s 231, such as enforcing the trustees' obligations per ss 37(3) and 238 of the Act.

He aha ngā take i tēnei kēhi?
What are the issues in this case?

[7] Mr Kendall argues that the trustees have breached their obligations by:[2]

(a) Failing to maintain adequate reports on the operations and financial performance of the Trust;

(b) Failing to follow adequate decision-making processes or to accurately record the process and outcomes of their decisions;

(c) Failing to seek expert advice and undertake proper planning for the projects undertaken by the Trust; and

(d) Failing to properly disclose and manage conflicts of interest between the trustees and the trust.

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[2] I note that Mr Kendall and his brother raised a number of other concerns they have about the operation of the trust, however, these are the grounds pleaded in the application for which they are seeking a review.

[8] I first consider each of these issues before deciding whether I should undertake a review.

Have the trustees failed to maintain adequate reports on the operations and financial performance of the Trust?

[9] The trustees filed financial statements for the years ending June 2020, 2021, 2022, 2023 and 2024. Those accounts were prepared by a chartered accountant.

[10] Mr Kendall says that those financial statements were prepared for tax purposes. He argues that the accounts do not contain sufficient information to properly show the financial performance of the trust. As an example, he says the trustees used funds from the sale of carbon credits in the New Zealand Emissions Trading Scheme (ETS units) to fund the purchase and development of the shop. He says that the accounts do not show the transfer of money from the forest to the shop, nor does it show whether and how that money will be repaid.

[11] Clause 27 of the trust orders states:

> The Trustees shall keep proper and separate accounts for each of the titles the subject of the Trust for which they are required by law to keep separate accounts (or for such substituted titles) and shall present the accounts to the owners at any general meeting, and forthwith after the meeting file a copy thereof in the Tokerau Registry of the Maori Land Court.

[12] This is an unusual provision. The trust order was confirmed in 1987 and this may reflect an outdated approach to keeping accounts. There is no question that the trustees are required to keep accounts. This would be the case even without this provision in the trust order. The question is whether the standard requirement for keeping accounts is modified by this provision. In my view, it is not.

[13] Clause 27 only requires the trustees to keep separate accounts for each of the titles where this is required by law. Where a single trust is administering multiple blocks of land, the trustees have to keep separate accounts where there are separate and distinct beneficial owners in each block. This is because the trustees must account separately to each set of owners over the administration of that particular block.

[14] In this case, while there are five different blocks vested in this trust, none have separate or distinct beneficial owners. There are no beneficial owners who hold shares in the land as tenants in common. Rather, the beneficiaries are defined in the trust order as descendants of certain tupuna and the original 1914 shareholders of the parent Waireia block.

[15] As there is one common set of beneficiaries across all five blocks, the trustees are not required by law to keep separate accounts for each title. They are simply required to account to the beneficiaries at large in relation to the trust funds.

[16] I accept that the financial statements filed were prepared by the trust's accountant for tax purposes. However, such financial statements are the standard form of accounts kept by most, if not all, Māori land trusts. The only common exception to this is where the trust order expressly requires the accounts to be audited. There is no requirement in the trust order for this trust, for the accounts to be audited.

[17] I also note that these financial statements do provide some breakdown of the financial performance of the different commercial activities the trust operates. There are separate entries for the farm, the shop and the apiary. I consider these accounts provide a reasonable account to the beneficiaries of the overall performance of the trust. Mr Kendall has not demonstrated that the trustees are required to keep more detailed financial accounting records above what has been provided.

[18] Despite that, I do have concerns over some of the entries, or lack of entries, in the accounts. Clause 11 of the trust order provides that the trustees are authorised:

> To engage employ and dismiss any staff professional advisers or contractors required to carry out the powers of the Trustees and to fix their remuneration. The Trustees may employ or engage any one of their number for such purposes provided that the remuneration so paid shall not exceed the market rate therefor and the amount of the payment and the name of the payee shall be separately identified in the annual accounts for the Trust.

[19] Clause 17 of the trust order provides that the trustees are authorised:

> …to reimburse the Trustees for all their out-of-pocket expenses actually and reasonably incurred in their attendance to the affairs of the Trust and to either pay them a reasonable travelling and accommodation allowance for attendance at meetings of the Trust or otherwise travel to attend to the business of the Trust or to reimburse them for expenses actually and reasonably incurred in attending thereat

> and to pay them such fees (if any) in respect of their services as may have been authorised at a general meeting of the beneficial owners.

[20] One of the trustees, John Smart, told me that there is a set rate of $90.00 per trustee, per meeting. He also told me that this rate was set "mai rā anō".[3] In the financial statements there is an entry for "Trustees Honoraria". Underneath, it lists the trustees and the payments received for each financial year. The amounts received by each trustee differ. In some years the honoraria received by a trustee could be as low as $423.00 or as high as $2,679.00. Generally, the honoraria payments are within that range in the four years of accounts filed.

[21] However, between 2019 to 2023, the payments to Mr Smart are significantly higher than for any other trustee. His honoraria payments are:

(a) 2019 - $6,988.00;

(b) 2020 - $15,157.00;

(c) 2021 - $7,866.00;

(d) 2022 - $4,588.00;

(e) 2023 - $7,550.00.

[22] It is not clear why there is such a large difference in the honoraria payments to the trustees, and to Mr Smart in particular. I asked Mr Smart whether his high honoraria payments reflected the different number of meetings he attended or whether it included other reimbursements such as for travel expenses. He responded "No, I think that's where that building stuff has gone to." Mr Smart was referring to payments he received for renovating the shop.

[23] Earlier Mr Smart told me that the trust engaged his company, Nanakia Holdings, to undertake those renovations. It is not clear why those payments would be listed as honoraria payments to him. It is also unclear why that would result in significantly higher payments to him over those five years when the renovations to the shop did not continue for that period.

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[3] 287 Taitokerau MB 1-91 (287 TTK 1-91) at [64]-[65].

[24] Another trustee, Kepa Parker, was also engaged as a contractor by the trust. In an affidavit from Mr Kendall, he states that up until June 2020, Mr Parker received payments of $76,000.00. Mr Smart agreed that this figure is consistent with his recollection of the payments Mr Parker received. There is no clear recording of those payments to Mr Parker in the accounts.

[25] The accounts do record payment of administration wages to some trustees such as Karen Murray and Mina Pomare-Peita. It is not clear why the contracting payments to Mr Parker and Mr Smart's company are not clearly identified in the accounts.

Have the trustees failed to follow adequate decision-making processes or to accurately record the process and outcomes of their decisions?

[26] Mr Kendall argues that the trustees have not followed proper process when making decisions and have not accurately recorded trustee resolutions. There is evidence to support both of these concerns.

[27] Clause 31 of the trust order provides that:

> (a) Trustee powers must be exercised by at least a two-thirds majority;
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> (b) Any resolution signed by a two-thirds majority and attached to the minute book shall have the same effect as a resolution passed at a meeting of trustees; and
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> (c) Where a quorum of five pass a resolution at a meeting, the signature of a sixth trustee in the minute book is required to validate the resolution.

[28] Mr Smart said that the trustees decided to sell the trust's ETS units at a trustee meeting on 24 February 2023. Counsel for the applicant, Ms Park, put a copy of the minutes from that meeting to Mr Smart. He accepted that while those minutes record discussions around selling the units, it does not record a resolution or decision by the trustees to sell the units.[4]

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[4] 287 Taitokerau MB 1-91 (287 TTK 1-91) at 47.

[29] In addition to Mr Smart, five other trustees have sworn statements confirming that they did decide to sell the ETS units at the trustee meeting on 24 February 2023. Despite that, there is no record of a resolution passed nor is there a signed resolution attached to the trustees' minute book as required under the trust order.

[30] While that decision may have been technically deficient, another decision was substantially deficient. Mr Smart was the chairperson of the trust. At a trustee meeting in July 2024, Mr Smart stood down as the chairperson. Later at that same meeting, the other trustees agreed to employ Mr Smart as the general manager for the trust.

[31] I asked Mr Smart what the normal process is where the trustees are considering engaging one of their number as a contractor or employee. He told me that the trustees would advertise the position, collect quotes and then make a decision from the quotes over who gets the job. However, when Mr Smart was employed as the general manager that process was not followed. There was no advertising. It appears that there may have been some discussion about the role prior to the July 2024 meeting but the decision was made at that meeting without any open application process. When I asked Mr Smart why the standard process was not followed, he responded that it was due to his experience for the role.

[32] It also appears that the trustees decided to employ Mr Smart at the July 2024 meeting, but they left it to the new chairperson, Mina Pomare-Peita, to later negotiate the remuneration for that role with Mr Smart. It is not clear what that remuneration was based on or how Ms Pomare-Peita satisfied herself that it was at a market rate. It is also not clear whether that remuneration was ever ratified by the other trustees.

[33] Ms Park also questioned Mr Smart about the trustees' decision to employ Mr Smart as the general manager. Mr Smart agreed that the trustees did not have a sufficient majority at that meeting to make that decision, nor was it subsequently ratified as required under the trust order.

Have the trustees failed to seek expert advice and undertake proper planning for the projects undertaken by the Trust?

[34] On this issue, Mr Kendall takes issue with a number of decisions that the trustees made. This includes:

(a) Selling the ETS units;

(b) Reducing stock on the farm;

(c) Building the market gardens; and

(d) Renovating the shop.

[35] Mr Kendall does not necessarily disagree with those decisions, rather he disagrees with the timing or aspects of those decisions. In particular, he says:

(a) The ETS units and stock were sold when the market was low. Selling at a later time could have yielded a higher return;

(b) The market gardens were built in a location with no water. It should have been relocated to another site where water is accessible; and

(c) The sale proceeds from the ETS units were used to renovate the shop, this is using one business to prop up another business.

[36] Mr Kendall argues that the trustees didn't get advice, or didn't get proper advice, and didn't have an overall plan around the timing and implementation of these decisions.

[37] In response, the trustees say that they did take advice on these steps and they did have an overall plan. They say:

(a) They used an ETS expert Interpine to assist with selling the ETS units;

(b) They took advice from their stock manager concerning reducing the stock and converting to Hereford cattle;

(c) There is water available at the market garden site and they took advice from John Reid who leads Bell Gardens;

(d) The trustees did use the ETS sale proceeds to renovate the shop and the kaumātua flats but this is simply using trust funds to improve other trust assets; and

(e) The trustees prepared annual plans and budgets to support each plan.

[38] These are all operational issues. The trustees have the power to undertake all of these steps. I accept the trustees' evidence that, generally, they have taken advice where necessary and have plans and budgets in place around implementing these steps.

[39] While Mr Kendall may not agree with those decisions, or at least aspects of those decisions, questions around the timing and implementation of these steps requires burrowing down into matters of detail not required for a general review of this kind. It is also easy, with the benefit of hindsight, to say that trust assets could have been sold at a later time for a higher price. Predicting market forces is not as straight forward as Mr Kendall suggests.

[40] I accept that considering particular operational matters may be necessary when assessing how policies are being formulated and implemented but I do not consider that is necessary in relation to these issues.

Did the trustees fail to properly disclose and manage conflicts of interest between the trustees and the trust?

[41] Generally, trustees cannot profit from their position. This is known as the self-dealing rule. That includes entering into financial arrangements or transactions with the trust. While that is allowed under the trust order for this trust, that is not unqualified. The Court will usually require clear evidence that robust processes were followed to manage and avoid any potential conflicts of interest.

[42] When the trustees decided whether to employ Mr Smart as the general manager, Mr Smart left the room so that the remaining trustees could make their decision in his absence. That was good. However, I have already noted concerns about other parts of that decision including:

(a) There was no advertising or application process for the position;

(b) The trustees who made the decision did not form a sufficient majority;

(c) It is not clear what the remuneration was based on; and

(d) The remuneration was approved by the new chairperson but may not have been ratified by the other trustees.

[43] It is also clear that the trust has engaged or employed trustees on multiple occasions:

(a) At least two trustees have been employed in administration roles; and

(b) Mr Smart and Mr Parker have been engaged in contracting roles.

[44] The payments made to those trustees have not always been clearly recorded in the accounts.

[45] I have also noted other concerns in relation to trustee decision making. Trustee decisions haven't always been clearly recorded as required under the trust order.

[46] Taking all of these factors into account, I do have concerns about whether a proper and robust process has been followed when employing or engaging trustees to manage or avoid any potential conflicts of interest.

Me arotake ahau i tēnei tarahiti?
Should I review this trust?

[47] Having considered the issues raised by Mr Kendall, I am going to undertake a review of this trust. I am not going to undertake a review into all of the issues Mr Kendall has raised. Rather, my primary concern is to ensure that proper process has been followed when making payments to the trustees. In particular, the review will focus on:

(a) The honoraria payments made to the trustees as identified in the accounts; and

(b) The engagement of trustees in employment and contracting roles with the trust.

[48] Per s 37(3) and 238(1) of Te Ture Whenua Māori Act 1993, I require the trustees to file the following:

(a) A breakdown of all payments made to trustees for the year ending 30 June 2020 to the present date. That includes honoraria payments, reimbursements, and payments to trustees as employees or contractors;

(b) Copies of any minutes of trustee meetings or trustee resolutions approving those payments and / or approving the engagement of those trustees as employees or contractors;

(c) Where applicable, copies of relevant invoices for any contracting arrangements or reimbursements; and

(d) Any minutes from a general meeting of the beneficiaries authorising the payment of trustee fees.

[49] I set this application down for a judicial conference on a date and time to be determined by the Registrar. The purpose of that conference is to monitor compliance with these directions and to consider whether any further steps are required to undertake this review.

Me tuku ahau i tētahi whakatāpu mō tētahi wā kia oti rā anō tēnei arotake?
Should I grant an interim injunction pending the completion of this review?

[50] An interim injunction is a form of interlocutory relief to protect the applicant's position, or the trust property, pending the determination of a substantive application. In order to obtain an interim injunction, the applicant must demonstrate that:[5]

(a) There is a serious question to be tried;

(b) The balance of convenience supports an injunction; and

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[5] *Lomax v Apatu — Awarua o Hinemaru Trust* (2013) 22 Takitimu MB 282 (22 TKT 282) at [29] referencing *Klissers Farmhouse Bakeries Ltd v Harvey Bakeries Ltd* [1985] 2 NZLR 129.

(c) The interests of justice support an injunction.

[51] Mr Kendall seeks an interim injunction preventing the trustees from:

(a) Investing further time and money into projects outside the core business operations of the trust, which are farming, forestry and the shop;

(b) Agreeing to or undertaking any further development projects;

(c) Making any significant decisions about the assets, income and direction of the trust; and

(d) Expending any sums over and above those required to maintain the core operations of the trust.

[52] While I am conducting a review into payments made to the trustees, I am not undertaking a review into the general operations of the trust. There is no serious question to be tried on these issues. Nor do the balance of convenience and the interests of justice support an injunction on these terms.

Kupu whakatau
Decision

[53] The application seeking an interim injunction is dismissed.

[54] I am going to undertake a review of this trust as set out in paragraphs [47] to [49] above.

I whakapuakina i te 12:00pm i Whangarei, tuarima o ngā rā o Oketopa i te tau 2026.
Pronounced at 12:00pm in Whangarei, this 5th day of October 2026.

M P Armstrong
JUDGE