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

AP-20230000035662

WĀHANGA *Under*	Section 231, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Omahu 2H1B and Others
NA *By*	MATTHEW PETER LOGAN Te kaitono *Applicant*

Nohoanga: *Hearing*	30 January 2024, 107 Tākitimu MB 29-45 7 May 2024, 109 Tākitimu MB 184-198 (Heard at Hastings)
Whakataunga: *Judgment date*	24 May 2024

TE WHAKATAUNGA HUKIHUKI A KAIWHAKAWĀ D H STONE
Preliminary Judgment of Judge D H Stone

Hei tīmatanga kōrero
Introduction

[1] The Herewini Tiopira Whānau Trust ("the Trust") was established in 1993 as an ahu whenua trust for two general land blocks, namely, Omahu 2H1B and Omahu 2Q. Matthew Logan seeks a review of the Trust. He raises a number of issues, including that the trustees of the Trust ("the Trustees") have not produced audited accounts for many years, nor reported to the beneficiaries at regular intervals.[1] He says there are some financial anomalies in the operations of the Trust, including in relation to a series of mortgages over the Trust's land. The Trustees do not strictly oppose a review, although they do not accept many of the issues raised in the application.

Whakarāpopototanga
Summary

[2] The application was last heard on 7 May 2024. I granted the review and identified four issues. My reasons follow, together with timetabling directions to bring this application to a final hearing.

Kua ahatia?
What has happened?

[3] The application to review the Trust was accepted for filing on 6 December 2023. A review was sought on the grounds that:

(a) The Trust has failed to complete audited accounts since 1993;

(b) There have been no meetings of the beneficiaries of the Trust for some time;

(c) The Trustees have failed to file certain documents with the Court; and

(d) The Trustees have failed to apply to the Court to seek a review of the Trust.

[1] The trustees for the Herewini Tiopira Whānau Trust are John Matthews and Rawinia Matthews appointed at 136 Napier MB 42 on 21 December 1993, and Sandra Aroha Buchanan and Tracey Hiraina Matthews appointed at 188 Napier MB 69-71 on 8 February 2007.

[4] The application was first heard in Hastings on 30 January 2024. Following that hearing, I directed the Trustees to file certain trust information.[2] That information was filed on or about 8 March 2024. Among other details, it included financial statements for the Trust from 2006 and information concerning various mortgages over the Trust's land. Matthew Logan responded to this information on 18 April 2024.

[5] The application was next heard in Hastings on 7 May 2024.[3] At that hearing, Matthew Logan indicated that he continued to seek a review of the Trust. He argues that the information provided by the Trustees confirms that they have breached the trust order for the Trust. The Trustees accept that they may not have complied with all of the provisions of the trust order, but do not accept that there are any financial anomalies within the Trust.

Ngā ture
The law

[6] This Court has extensive supervisory powers over trusts.[4] That said, the Court is not usually concerned with day-to-day operational issues. Instead, the Court is usually concerned with higher level matters of policy. A review should be a matter of last resort, conducted if the Court considers there is a reasonable apprehension of risk to the assets of the trust, or where some serious allegation has been made that warrants the Court's intervention.[5]

Ngā take
Issues

[7] The first issue to determine is whether I should grant a review of the Trust per s 231 of the Act. If a review is granted, I must decide the issues that will be considered as part of that review, being mindful that the Court does not usually intervene in operational matters.

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2 107 Tākitimu MB 29-45.
3 109 Tākitimu MB 184-198.
4 *Proprietors of Mangakino Township v Māori Land Court* CA65/99, 16 June 1999.
5 *Tupe Snr v Everton – Manunui No1 4th Residue Ahu Whenua Trust* (2015) 334 Aotea MB 227 (334 AOT 227).

Ka arotakengia te tarahitī e te Kooti?
Should the Court review the trust?

[8] The Trustees do not oppose a review of the Trust. They acknowledge that they may not have kept the beneficiaries regularly informed of the operations of the Trust. Although the Court may not have all of the evidence at this stage, it also appears that the trustees have not strictly complied with certain provisions of the trust order. For example, it appears that the trustees have not filed the Trust's financial statements with the Court.[6] It also appears that they have not sought a review of the Trust, despite being required to do so after 10 years.[7]

[9] It is also clear that there are some historical activities of the Trust, including the leasing and mortgaging of trust land and permitting beneficiaries to occupy trust property free of charge, that have not been communicated effectively to the beneficiaries. The Trustees say that these historical activities have been undertaken in accordance with their trustee obligations. That may be so. A review of the Trust will allow the trustees to demonstrate that to the Court and the beneficiaries.

[10] I therefore grant a review of the Trust.

He aha ngā take ka arotakengia e te Kooti?
What are the issues that the Court should review?

[11] A review of the Trust should focus on higher level policy, rather than operational matters.

Audited Trust accounts

[12] Matthew Logan says that the Trust has failed to keep audited financial accounts since 1993. He seeks a full audit of the Trust's accounts from that date.

[13] Clause 4(b)(i) of the trust order sets out the obligations of the trustees to maintain accounts. It provides:

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6 This is required by clause 4(b)(i) of the trust order at 136 Napier MB 42.
7 This is required by clause 4(c)(i) of the trust order at 136 Napier MB 42.

> If in any one year the income of the Trust is in excess of $10,000 the Trustees shall cause to be prepared Annual Reports and audited proper accounts of the assets and liabilities and of the income and expenditure for each year ending on the 31st day of March or such annual Balance date as the Trustees may from time to time fix upon and shall file a copy of such report and accounts with the Registrar of the Court within 6 months of the said Balance date. PROVIDED HOWEVER if the accounts are prepared by a Chartered Accountant the audit requirements hereinbefore mentioned need not be adhered to.

[14] It is clear that the trustees are not required to have the Trust's financial statements audited if those statements are prepared by a chartered accountant.

[15] As directed, the Trustees have filed with the Court the financial statements for the Trust from 2006. Rawinia Matthews, who is the current chairperson of the Trust, has confirmed by affidavit that each of these financial statements has been prepared by a chartered accountant. Accordingly, the Trustees have not been required to have the financial statements audited. Therefore, the review of the Trust need not consider this issue.

Financial anomalies

[16] Matthew Logan alleges that there are some anomalies with the Trust's financial statements. His application questions transactions made by the Trust dating back to 1993. The trustees do not accept that there are any financial anomalies with the Trust's accounts.

[17] At this stage, it is difficult to determine whether there are, in fact, any anomalies with the Trust's financial statements. That is because, firstly, Matthew Logan has not had an opportunity to articulate to the Court precisely what those anomalies are, having only recently received the Trust's financial statements. Secondly, although the Trustees have provided information that responds in general terms, they have obviously not had an opportunity to respond to any precise allegations of a financial nature. In these circumstances, it is appropriate to include alleged financial anomalies as part of the review of the Trust.

[18] That said, a review of alleged financial anomalies is not an invitation to review the Trust's financial statements line by line or to investigate every transaction of the Trust. To do so would be to delve into operational matters. Matthew Logan must now set out precisely the financial anomalies that he wishes the Court to consider. He has indicated that he will need more information from the Trustees to be able to do this, such as bank statements. The

Trustees will also need an opportunity to respond. I will issue directions to allow this to occur.

[19] Ultimately, the Court will need to be satisfied that there is sufficient basis to include any alleged financial anomalies as part of the review.

Provision of information to the beneficiaries of the Trust and the Court

[20] Matthew Logan says that the Trustees have failed to provide information to the beneficiaries of the Trust. He says that the Trust has not held a meeting of beneficiaries for many years.

[21] Interestingly, the trust order does not require the Trustees to convene meetings of beneficiaries. However, certain trustee decisions can only be made if approved at meetings of beneficiaries.[8] Further, there is a presumption that trustees must make basic trust information available to beneficiaries.[9] Some of the Trustees appear to accept that they may not have strictly complied with their obligations to inform the beneficiaries of Trust activities. Therefore, whether the Trustees have failed to comply with these obligations should be considered as part of the review of the Trust.

[22] As noted, clause 4(b)(i) of the trust order does not require the Trustees to prepare audited financial statements. However, it does require the Trustees to file the Trust's financial statements with the Court. Based on the evidence before the Court at this stage, it appears that the Trustees have not complied with this obligation. Therefore, the extent to which the Trustees have complied with their obligations to file information with the Court should be considered as part of the review of the Trust.

Trust mortgages

[23] The Trust has entered into various mortgages over trust land. Matthew Logan has queried them. The Trustees say that the mortgages were required to purchase shares in Trust land that had been sold previously and to purchase a relocatable home to place on Trust land.

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8 See clause 3(b)(ii) of the trust order at 136 Napier MB 42.
9 Trusts Act 2019, s 51.

[24] Entry by the Trust into mortgages is a high-level policy matter. Given that allegations have been made about how the Trust entered into those mortgages, it is appropriate to review them.

Trust benefits

[25] Matthew Logan says that the Trust has allowed one of the beneficiaries, John Matthews, to reside on Trust land for free. This, he says, is contrary to the obligation of the Trustees to act fairly towards all beneficiaries of the Trust. The Trustees accept that John Matthews has lived on Trust land rent-free but say this is what their tipuna wanted and is consistent with tikanga.

[26] Clause 3(b)(ii) of the trust order permits the Trustees to allow beneficiaries to use Trust land at reduced rates or otherwise on terms more favourable than obtainable on the open market, provided that any such proposal has first been approved by a resolution of a meeting of beneficiaries. It is not clear at this stage whether such a resolution was obtained in relation to the arrangements with John Matthews. Because that is a requirement of the trust order, it is appropriate for the Court to inquire further into this issue.

Ngā ōta
Orders

[27] The Court orders a review of the Herewini Tiopira Whānau Trust pursuant to s 231 of Te Ture Whenua Māori Act 1993.

Ngā arotanga
Directions

[28] The review will consider the following issues:

(a) Whether there are any financial anomalies in the Trust's financial statements?

(b) Whether the Trustees have complied with their obligations to provide information to the beneficiaries of the Trust and the Court?

(c) Whether the mortgages that have been registered against Trust land have been entered into appropriately?

(d) Whether the trustees have properly authorised the use of Trust land by beneficiaries of the Trust?

[29] These issues may be refined once the application is updated and further evidence is filed.

[30] The applicant has indicated that further disclosure by the Trustees is required to enable him to prepare a refined statement of issues. He seeks the Trust's bank statements from 1994, 1998 and 2007. I direct the Trustees to file these bank statements with the Court and serve them on the applicant by **7 June 2024**.

[31] I further direct as follows:

(a) The applicant is to file a detailed statement of issues and associated evidence, focussing on the four issues under review, by **21 June 2024**.

(b) The Trustees are to file a response to the detailed statement of issues, and associated evidence, by **12 July 2024**.

(c) The applicant is to file any reply evidence by **26 July 2024**.

(d) Leave is granted for any party to seek further directions.

[32] I respectfully direct the Pae Tukutuku to set this matter down for further hearing at the August sitting of the Māori Land Court in Hastings.

I whakapuaki i te 3.00 pm i Te Whanganui-a-Tara, i te 24 o ngā rā o Mei i te tau 2024.

D H Stone
JUDGE