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

AP-202230000035662

WĀHANGA *Under*	Section 231, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Omahu 2H1B and Others
I WAENGA I A *Between*	MATTHEW LOGAN Te kaitono *Applicant*
ME *And*	JOHN MATTHEWS, RAWINIA MATTHEWS, SANDRA BUCHANAN AND TRACEY MATTHEWS Ngā kaiurupare *Respondents*

Nohoanga: *Hearing*	4 February 2025, 117 Tākitimu MB 73-98 22 October 2024, 113 Tākitimu MB 252-253 1 August 2024, 112 Tākitimu MB 164-178 28 May 2024, 109 Tākitimu MB 199-206 7 May 2024, 109 Tākitimu MB 184-198 30 January 2024, 107 Tākitimu MB 29-45 (Heard at Hastings)
Whakataunga: *Judgment date*	6 October 2025

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

Kōrero tīmatanga
Introduction

[1] On 24 May 2024, I granted a review per s 231 of Te Ture Whenua Māori Act 1993 ("the Act") of the Herewini Tiopira Whānau Trust ("the Trust") and identified four issues to be considered in the review. I heard from the parties on 4 February 2025 on these issues. I must now determine the issues and consider whether to grant any relief.

Whakarāpopototanga
Summary

[2] The trust order for the Trust requires updating. I therefore decline to confirm the trust order in its current form per s 231(3)(a) of the Act.

[3] Section 231(3)(b) of the Act allows me to exercise my powers to amend the trust order. However, I cannot exercise those powers now because the threshold test in s 244(3) of the Act is not satisfied. I direct the trustees of the Trust to undertake a process to update the trust order. As part of that process, a trustee election must be held.

Ngā take
Issues

[4] The issues to determine are as follows:[1]

(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?

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1 These issues were identified in my preliminary determination on this application: *Logan – Omahu 2H1B and Others* (2024) 109 Tākitimu MB 199 (109 TKT 199).

Ngā ture
Law

[5] The law relating to reviews per s 231 of the Act was summarised in my preliminary determination on this application and need not be repeated here.[2]

[6] Section 231(3) sets out the actions the Court may take in the context of a review of a trust. The Court may confirm the existing trust order, exercise its powers under s 244 of the Act (to amend the trust order) or terminate the trust. Further, as part of the Court's extensive supervisory powers, the Court may exercise all the same powers and authorities as the High Court in respect of trusts generally.[3]

Tātaritanga
Analysis

Are there any anomalies in the Trust's financial statements?

[7] The applicant highlighted two major issues with the Trust's financial statements:

(a) the amounts recorded in the financial statements derived from leasing the Trust's land do not always reflect the rental payable under the associated leases; and

(b) there are various miscellaneous amounts recorded in the financial statements that are otherwise unexplained.

[8] The trustees of the Trust say that the Trust's financial affairs are responsibly managed and accounted for by a chartered accountant on an annual basis. They refute that there are any financial anomalies in the financial statements. They further point out that the trustees are not paid for their services.

[9] The trustees of the Trust accept that, for some financial years, the rent received as recorded in the statement of financial performance of the Trust is not the exact amount of annual rental payable under the relevant leases. They say these differences are due to

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2 *Logan – Omahu 2H1B and Others*, above n 1, at [6].
3 Te Ture Whenua Māori Act 1993, s 237.

accounting practices. Under cross-examination, Rawinia Matthews could not recall the exact amounts, nor the specific reasons for any differences. However, her oral evidence was that all rental amounts were accounted for.

[10] It is unfortunate that, under cross-examination, Rawinia Matthews was not able to articulate the precise reasons for the differences between the rental received as recorded in the financial statements and the actual amounts due and payable under the relevant leases. That said, her affidavit evidence attached all of the financial statements for the Trust dating back to the financial year ending 31 March 2006, all of which were prepared by chartered accountants. Those financial statements disclose that the Trust has been in regular receipt of income in relation to the land it manages and that the trustees have regularly and properly accounted for that income as reflected in the financial statements. I am therefore satisfied that the financial statements properly disclose the financial position of the Trust, and that all income of the Trust has been properly accounted for.

[11] In terms of the miscellaneous amounts recorded in the financial statements, the trustees of the Trust accept that the financial statements disclose "modest gifts" to beneficiaries to assist whānau to travel home for family related reasons, to attend tangihanga and to relieve financial hardship. For example, the financial statements for the year ending 31 March 2009 show the payment of "mileage expenses" of $903. Mileage expenses then appear regularly in subsequent financial statements. Also, the financial statements for the year ending 31 March 2012 record "donations" of $250. In the scheme of things, these amounts are minimal and are not overly concerning. Moreover, these payments are consistent with the objects of the Trust, which include "to make provision for the special needs of the owners as a family group or groups".

[12] Overall, I consider that the Trust's financial statements properly disclose the Trust's financial performance and position. I am not satisfied that there are serious anomalies in the Trust's financial statements.

Have the trustees complied with their obligations to provide information to the beneficiaries of the Trust and the Court?

[13] The trustees of the Trust accept they have not complied with their obligations to provide information to the Court and the beneficiaries. Clause 4(b)(i) of the trust order requires the trustees to provide the Trust's financial statements to the Court within 6 months of the Trust's balance date (which, since at least 2006, has been 31 March). The trustees have not filed these statements with the Court when due. It is only through this application that the Court now has copies of these statements.

[14] Further, cl 4(c)(i) of the trust order required the trustees to apply to the Court for a review of trust in 2003. That did not occur. In fact, since its establishment over 30 years ago, the Trust has not been reviewed.

[15] I find that the trustees of the Trust have not complied with their obligations to provide information to the Court by failing to provide to the Court the Trust's financial statements and failing to apply to the Court to review the Trust.

[16] In terms of the provision of information to the beneficiaries, the applicant says that there have been no properly notified general meetings of the Trust since its establishment. Instead, there have been three informal meetings that have been held in conjunction with other whānau events. He says these gatherings occurred sometime in 2006, 29 April 2007 and 29 July 2007. The trustees appear to accept this. They say that these general meetings were held as part of other whānau events. They expressly acknowledge and accept that there should have been more meetings of beneficiaries.[4]

[17] The trust order for the Trust was approved in 1993. It has not been amended since. Unfortunately, it is a product of its time. It does not require the trustees to convene general meetings of the beneficiaries. Thus, the failure to hold general meetings does not necessarily contravene the trust order. That said, there are good reasons for trustees to keep beneficiaries reasonably informed of the operations of a trust. The applicant maintains that had he been provided with the information he requested from the trustees, he would not have filed this application. Moreover, there is a presumption that trustees must make basic information

[4] See paragraph [46] of the affidavit of Rawinia Matthews dated 8 March 2024.

available to beneficiaries and give information to beneficiaries on request.[5] The trustees did not produce evidence to show that they had properly considered the applicant's request for information, including the assessment that trustees are required to undertake under s 53 of the Trusts Act 2019 when beneficiaries request information. I therefore find that the trustees of the Trust have not complied with their obligations to provide information to the beneficiaries of the Trust when so requested.

Have the mortgages over Trust land been appropriately entered into?

[18] The applicant says that there are anomalies and inconsistencies in relation to the mortgages entered into by the trustees. He argues that the dates of the mortgages do not align with the dates on which the activities for which the mortgages were purportedly entered into occurred. He also argues that the amounts secured by the mortgages do not match the level of expenditure covered by the mortgages. He appears to suggest that the mortgages were entered into for ulterior purposes.

[19] The trustees of the Trust say that the mortgages were entered into to finance Trust activities. Firstly, a mortgage was taken out to fund the purchase of shares in the Omahu 2H1B and Omahu 2Q blocks, so that the Trust would be the sole owner of those blocks. Indeed, Rawinia Matthews deposes that this purchase was initially funded through the mortgage over her own home. Secondly, further funds were secured by mortgage to relocate a house onto Trust land. Over the years, the loans secured by these mortgages have been refinanced, such that the current mortgage is with Kiwibank. The trustees say that each of these mortgages related to Trust activities and were properly entered into and were obtained through proper legal advice.

[20] There is a clear and logical sequence in terms of the mortgage amounts and the dates on which they were entered. They generally align with significant activities of the Trust, being to purchase shares in the Omahu 2H1B and Omahu 2Q blocks and the relocatable house that now sits on Trust land. The dates of the mortgages and the associated activities do not match exactly, but that is not an indication that the mortgages do not relate to those activities. The trustees received legal advice and assistance in entering into the mortgages. I am satisfied that the mortgages over Trust land have been appropriately entered into.

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5 Trusts Act 2019, ss 51 and 52.

Have the trustees properly authorised the use of Trust land by beneficiaries?

[21] The trust order expressly contemplates that beneficiaries may occupy Trust land. Fundamentally, this is a stated object of the Trust. Clause 2 of the Trust order provides:

> 2 Objects
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> Except as hereinafter may be limited the objects of the Trust shall be to provide for the use management and alienation of the land to best advantage of the beneficial owners or the better habitation or use by beneficial owners, to ensure the retention of the land for the present Maori beneficial owners and their successors, to make provision for any special needs of the owners as a family group or groups, and to represent the beneficial owners on all matters relating to the land and to the use and enjoyment of the facilities associated therewith.

[22] The trust order also specifically empowers the trustees of the Trust to authorise beneficiaries to occupy, use or otherwise enjoy the Trust land. Clauses 3(b)(i) and (ii) of the trust order provide:

> 3 Powers
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> …
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> b Specific
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> Without limiting the generality of the foregoing but by way of emphasis and clarification as well to extend the powers of the Trustees it is declared that the Trustees are empowered:
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> i To permit occupation and enjoyment by the owners
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> At their discretion to reserve in any lease or license or otherwise provide for any one or more of the beneficial owners to personally occupy use or otherwise enjoy such defined part or parts of the land as the Trustees shall determine having regard to the comparative shareholdings and if any such right is reserved licensed or otherwise provided for but to one or some only of the beneficial owners then the Trustees will determine the extent to which participation in rentals and profits are to abate for the purposes of receiving the benefit of such reservations licenses or provisions or otherwise be adjusted.
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> ii To make other special provisions for beneficiaries
>
> At their discretion to alienate by way of lease or license to any beneficial owner or to any blood relative of a beneficial owner at a

> reduced rent or otherwise upon terms more favourable to the lessee than those obtainable on the open market for so long as that person or his executor or administrator remains in possession of the land PROVIDED THAT such proposal has first been approved by the resolution of a meeting of beneficial owners called by the Trustees.

[23] It is common ground that John Matthews, who is both a trustee and a beneficiary of the Trust, has occupied Trust land rent free for many years. The applicant says this arrangement is unfair to the other beneficiaries of the Trust. The trustees say this arrangement was established by their father, Herewini Tiopira, as the settlor of the Trust, and they are simply giving effect to his wishes. They further say that John Mathews is the rangatira of the whānau and attends to their duties as tangata whenua. They say the Trust benefits from having John Matthews reside on the land. They say he holds matauranga relating to the land and the whānau and actively participates in community activities and hapū and iwi affairs on behalf of the Trust.

[24] The trustees of the Trust clearly have the power to permit John Matthews to occupy Trust land. That power is expressly set out in cl 3(b)(i) of the trust order. In doing so, the trustees must determine the extent to which any benefits accruing to John Matthews should be taken into account in shareholder distributions. Based on the financial statements, there do not appear to have been any shareholder distributions since at least 2006, meaning that the trustees have not yet had to consider how John Matthew's occupation of Trust land should be accounted for in that context.

[25] Clause 3(b)(ii) of the trust order further allows the trustees of the Trust to alienate Trust land by way of lease or licence to any beneficial owner. The trustees maintain that they have not granted a lease or licence to John Matthews, nor is there a residential tenancy agreement in place. I accept this is the current state of affairs. The applicant properly inquired as to whether a residential tenancy arrangement is in place, as it is referred to in the 2011 financial statements. However, I am satisfied with the trustees' response that no such tenancy agreement has ever existed.[6]

[26] Because there is no lease or licence over Trust land in favour of John Matthews, cl 3(b)(ii) of the trust order is not triggered. Instead, John Matthews occupies the land per cl

6 See paragraphs [16]-[18] of the affidavit of Rawinia Matthews dated 13 September 2024.

3(b)(i) of the trust order. The trustees have the power to permit this arrangement but must take it into account if distributions are made in the future. Accordingly, I am satisfied that the trustees have not breached the trust order in permitting John Matthews to occupy Trust land.

[27] That said, John Matthews is in a difficult position. He is both a trustee (since the establishment of the Trust in 1993) and a beneficiary who is authorised to occupy Trust land. Those positions necessarily conflict. Unfortunately, the trustees are not in a position to confirm through evidence that this conflict has been appropriately managed over the years, because most of the Trust's records were destroyed by flood.[7] My impression is that this conflict most likely has not been actively managed. It is imperative to manage this conflict appropriately moving forward.

Whakataunga
Decision

[28] I have determined that the trustees of the Trust have not complied with their obligations to:

(a) provide information to the Court, by failing to provide to the Court the Trust's financial statements when they were due and failing to apply to the Court to review the Trust; and

(b) provide information requested by the beneficiaries of the Trust.

[29] I also have concerns (although I make no findings on this matter) that the inherent conflict that exists because John Matthews is both a trustee and a beneficiary that occupies Trust land may not have been managed appropriately in the past.

[30] Section 231(3) of the Act sets out what I can do following a trust review. I can confirm the trust order (without amendment), exercise my powers to amend the trust order per s 244 of the Act, or terminate the trust. I have not been asked to terminate the Trust, nor would that step make sense here. I have observed that the trust order is dated, so I am not prepared to confirm it without amendment. I am therefore left with the option of amending

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[7] See paragraph [4] of the affidavit of Rawinia Matthews dated 8 March 2024.

the trust order. However, s 244(3) of the Act prevents me from exercising that power unless I am satisfied that the beneficiaries of the Trust have had sufficient notice of the amendments and sufficient opportunity to discuss them. Any amendments I may propose now would not have been considered by the beneficiaries of the Trust. A further process is required to update the trust order.

[31] I have determined that the trustees of the Trust have failed to comply with various trustee duties. There is no application per s 240 of the Act (to remove trustees) before me at this stage, although I am aware that such an application has been filed with the Court. Nor can I remove trustees as relief under s 231 of the Act. Accordingly, I have not undertaken an assessment of whether the trustees of the Trust should be removed for failing to comply with their duties. However, invoking the Court's extensive supervisory powers over trusts per s 237 of the Act, I consider a refresh of the trustees of the Trust is required. A further process to enable that to occur is required.

[32] I therefore direct as follows:

(a) The trustees are to hold a general meeting of the Trust on proper notice within the next 3 months.

(b) The trustees are to develop a new trust order for the Trust, based on the Court's template ahu whenua trust order. The trustees are to engage with the beneficiaries of the Trust to seek their feedback on the terms of the new trust order. The beneficiaries must be given the opportunity to consider and discuss the new trust order prior to the next general meeting of the Trust. The trustees must then facilitate a vote to approve that trust order at the next general meeting of the Trust.

(c) The current trustees are to facilitate an election of trustees at the next general meeting of the Trust. The current trustees are to stand down as trustees at that meeting but are eligible for re-election.

[33] The application is adjourned to allow the trustees of the Trust to comply with my directions. On the filing by the current trustees of new applications per ss 239 (to replace

trustees) and 244 (to amend the trust order) following the next general meeting of the Trust, the review will be concluded.

I whakapuaki i te 4.30 pm i Heretaunga, i te 6 o ngā rā o Oketopa i te tau 2025.

D H Stone
JUDGE