

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

*In the Māori Land Court of New Zealand
Te Waipounamu District*

**A20220009007
AP-20230000022495**

WĀHANGA <i>Under</i>	Section 280, Te Ture Whenua Māori Act
MŌ TE TAKE <i>In the matter of</i>	Proprietors of Waitutu Incorporation
I WAENGA I A <i>Between</i>	RICHARD MANNING AND DIANE HOLLOWAY Ngā kaitono <i>Applicants</i>
ME <i>And</i>	JANICE CUSHING, KURT SCORINGE, MILES DUNNET, STANNARD COLE, SUSAN MCKENNA, TERENCE NICHOLAS AND TIMOTHY DYER AS MEMBERS OF THE COMMITTEE OF MANAGEMENT OF WAITUTU INCORPORATION Ngā kaiurupare <i>Respondents</i>

Nohoanga: 5 June 2024, 88 Te Waipounamu MB 134-139
Hearing 26 July 2024, 89 Te Waipounamu MB 5-25
(Heard at Christchurch)

Kanohi kitea: C Hirschfeld for the Applicant
Appearances T Barker for the Respondents

Whakataunga: 5 September 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ S F REEVES
Judgment of Judge S F Reeves

Hei tīmatanga kōrero*Introduction*

[1] Diane Holloway and Richard Manning (“the applicants”) have filed an application under s 280 of Te Ture Whenua Māori Act 1993 (“the Act”) for an investigation into the affairs of the Proprietors of Waitutu Incorporation (“the Incorporation”).

[2] Many of the issues raised in this application have been before the Court in one form or other since the early 2000s. It is my hope that this decision will give some measure of resolution and a pathway forward for these issues to be finally determined by the Court.

Ko te hatepe ture o te tono nei*Procedural History**Amy Campbell application*

[3] On 23 October 2001, an application was made by Michael Malloy on behalf of Amy Olive Perry Campbell (a shareholder in the Incorporation) for an order under s 280 to appoint examining officers to investigate the affairs of the Incorporation.¹

[4] By minute dated 16 January 2004, the Court dismissed the application, on the basis that explanations provided by the Incorporation in response to the issues raised by the applicant were satisfactory to the Court.²

[5] Mrs Campbell appealed that decision to the Māori Appellate Court, who directed a rehearing on the basis that the lower court hearing did not adhere to natural justice principles.³ The Māori Appellate Court did not express a view on the substantive issues regarding alleged dysfunction in the Incorporation.

[6] The Incorporation appealed the decision of the Māori Appellate Court to the Court of Appeal. On 5 December 2005, the Court of Appeal confirmed that the appeal had been abandoned. Subsequently, the rehearing in the lower Court was never pursued.

¹ A20010007290.

² 105 SI 105.

³ *Campbell – Proprietors of Waitutu Inc* [2005] 6 Te Waipounamu Appealte MB 63 (6 APTW 63).

[7] This application is relevant because many of the same issues have been raised in the present application relying on the evidence that was provided to the Court in 2001.

Present application

[8] Richard Manning and Diane Holloway filed the present application on 3 June 2022. On 3 February 2023, I issued a preliminary determination that the applicants had failed to establish the required support and gave the applicants 28 days to provide further evidence to the Court.⁴ That decision sets out the procedural history for this application until 2023.

[9] The applicants filed an affirmation of Diane Joy Holloway on 8 March 2023. The respondents filed a memorandum on 4 June 2024. I held a judicial conference on 5 June 2024. The applicants and respondents each filed a memorandum on 19 June 2024. I issued directions on 3 July 2024. The applicants filed an affirmation of Diane Joy Holloway on 15 July 2024. I held a hearing on 26 July 2024 and the parties each filed final submissions on 1 October 2024. I reserved my decision.

Te ture

The Law

[10] The Māori Land Court has the jurisdiction to appoint an examining officer to investigate the affairs of a Māori incorporation and report to the court where certain support thresholds are met.

[11] Section 280 of the Act states:

280 Investigation of incorporation's affairs

(1) The court may appoint 1 or more persons (in this section referred to as **examining officers**) to investigate the affairs of a Maori incorporation and to report to the court in such manner as the court directs.

(2) The person or persons so appointed may (with the consent of the chief executive) be officers of the Ministry.

(3) The court's jurisdiction under subsection (1) may be exercised—

(a) on the application of shareholders together owning not less than one-tenth of the shares; or

⁴ *Manning v Waitutu Inc - Waitutu Inc* (2023) 80 Te Waipounamu MB 101 (80 TWP 101).

(b) pursuant to a declaration by special resolution passed by a general meeting of shareholders that the affairs of the incorporation should be investigated.

[12] The Act provides for a two-step approach. First, I must assess whether the threshold in s 280(3) is met. That threshold is a strict necessity. Second, I must consider whether to exercise my discretion to grant an investigation, and what the scope of that investigation should be. The Court will consider whether there are reasonable grounds for believing there is a clear and present risk to the Incorporation’s assets or to the wider interests of the shareholders as a result of action or inaction of the committee.⁵

[13] The Court has described the purpose of s 280 and surrounding sections as providing “an effective avenue for a shareholder to seek the assistance of the Court where the shareholder considers that the functioning of the incorporation has gone awry.”⁶ The corollary of the great autonomy given to incorporations is that “shareholders are given ready access to the Court to remedy problems with ... the functioning in general of incorporations (ss 280 and 281).”⁷

[14] In *Te Hiwi v Tahamata Inc*, Judge Harvey declined to exercise his discretion to grant an investigation because he was “not satisfied that an investigation as presently framed by the Applicant is warranted as I do not accept the allegation that the Committee has acted illegally.”⁸ In *Kani v MacDonald*, the Judge looked at the cumulative factors of the management of the incorporation, deciding to grant a s 280 application because “viewed collectively, they do point to a concerning picture about the conduct and practices of the committee.” The Court emphasised that an investigation into the matters raised by the applicants would be in the “interests of shareholders as a whole.”⁹

Ngā take

The issues

[15] I must determine:

⁵ *Floyd v Hahungaroa 2C Incorporation* (2014) 325 Aotea MB 42 (325 AOT 42); and *Kani v MacDonald – Waimārama 3A6B6B Incorporation* (2021) 88 Tākitimu MB 148 (88 TKT 148).

⁶ *Watson v Day - Proprietors of Torere 64 Inc* [2024] Māori Appellate Court MB 183 (2024 APPEAL 183), [2024] Māori Appellate Court MB 183 (2024 APPEAL 183).

⁷ *Watson v Parker - The Proprietors of Torere 64 Incorporated* [2015] Māori Appellate Court MB 543 (2015 APPEAL 543).

⁸ *Te Hiwi v Tahamata Inc* (2005) 148 Aotea MB 265 (148 AOT 265).

⁹ *Kani v MacDonald - Waimarama 3A6B6B* (2021) 88 Takitimu MB 148 (88 TKT 148) at [44].

- (a) Whether the s 280(3) threshold of support has been met.
- (b) Whether to exercise my discretion to appoint examining officer(s) to investigate the Waitutu Incorporation, and in relation to which issues.

I whakatutuki a ngā kaitono te whakamātautau taupae?

Have the applicants met the threshold test?

[16] On 3 February 2023, I issued a preliminary determination on the issue of whether the required threshold of support from 10% of shareholders had been met.¹⁰ At that time, the Court had received signed declarations in support from 54 individuals holding 388.30276 shares equating to 7.2367% of the shares. The Court had received a further 24 declarations in support signed by individuals associated with 16 whānau trusts holding 304.69814 shares.

[17] I concluded that the applicants failed to establish the required support of shareholders, on the basis of deficiencies in the declarations by whānau trusts. The applicants were given 28 days to provide further evidence to the Court.

[18] An affirmation of applicant Diane Joy Holloway was submitted to the Court on 8 March 2023. Attached to this affirmation was Exhibit A, containing new declarations of other shareholders who had not declared their support for the application in 2022. The applicant submits that these new declarations brought the total shareholding in support to 13.11 per cent, and that therefore the 10 per cent threshold had been met.

[19] The respondent submits that some of the forms provided by the applicant are invalid but concedes the applicant has provided valid evidence of support from 56 shareholders holding 589.40727 shares, amounting to 10.98% of the Incorporation's shareholding. The respondent expressed concern as to whether that support remains given the scope of an inquiry is likely to have changed since support was originally provided.

[20] I have already determined that I am satisfied on the evidence that 7.2367% of the shareholding supports an investigation. I agree that not all of the new forms provided to the Court are acceptable evidence. However, I am satisfied that the evidence filed since my

¹⁰ *Manning v Waitutu Inc - Waitutu Inc* (2023) 80 Te Waipounamu MB 101 (80 TWP 101).

preliminary decision demonstrates support from a further 8 trusts and two individuals holding 245.1719 shares (4.569%). Legible declarations have been provided recording agreement by all or a majority of trustees. Therefore, I am satisfied that shareholders holding 11.8057% of the Incorporation's shares support an investigation into the Incorporation, and the threshold is met.¹¹

[21] With regards to the respondent's concern as to whether support remains, I am satisfied that there is current support for an investigation. Although the scope of the investigation sought has become clearer over time, there have been no fundamental changes to the application.

Me kopou ahau tētahi tangata kia whakahaere i tētahi tirotirohanga? Me tirotirohanga ki te aha?

Should I appoint somebody to conduct an investigation? What should the investigation be into?

[22] In their closing submissions, the applicants submitted the issues for determination, in terms of appointing an examiner, are:

- (a) What grounds and process did the Committee of Management apply for removing the sustainable Longwood Forest compensatory cutting rights acquired under the Waitutu & Crown Deed of Settlement from the Incorporation?
- (b) What grounds and process did the Committee of Management apply to convert the ownership shares of Waitutu Holdings Limited from the Incorporation into individual beneficial ownership?
- (c) What grounds and process did the Committee of Management apply to not charge interest for a \$2 million loan from the Incorporation to Waitutu Holdings Limited?
- (d) What process has the Committee of Management applied to unfound beneficial owners of their desire to acquire significant areas of whenua outside the Murihuku rohe?
- (e) What process has the Committee of Management applied to providing information to locate unfound owners (450) and supply an unclaimed dividends list?
- (f) What process has the Committee of Management applied to reduce the Waitutu Lodge operating at a substantial trading loss year on year?

¹¹ Evidence filed to demonstrate support from a further 0.943% of the shareholding contained minor errors. It was not necessary for me to determine whether this evidence is acceptable.

- (g) Why has the Incorporation not sought to remedy the loss of, at least, its equitable proprietary claim over the compensatory cutting rights?

[23] The respondents submit that several issues raised by the applicants in the present proceedings were not appropriate for an investigation because they were historic matters or stated too generally. The respondents submit any investigation should be limited to the following matters:

- (a) The decision to change the ownership of the Company from sole ownership of the Incorporation to individual shareholder ownership.
- (b) The decision to vest the shares of unfound owners previously held by the Incorporation in a Share Management Trust.
- (c) Any funds remaining owed to the Incorporation from the advances made to the Company or other parties.
- (d) Other matters the Court considers are current issues for the Incorporation, the investigation of which will provide value for the shareholders or the ongoing operation of the Incorporation.
- (e) The decision to pass resolutions made at the 2022 AGM, requiring a special resolution of 33% of shareholders to alter those resolutions and whether this was a decision in the best interests of the shareholders.

[24] I have carefully considered the issues discussed by the parties in their final submissions and throughout the proceedings. As I indicated during the hearing, the Court must be provided sufficient information to be satisfied there are substantive issues that meet the standard for investigation. Whereas the Court has broad supervisory jurisdiction over trusts, the Court's oversight is more limited with incorporations. An investigation involves significant cost and is disruptive to the incorporation's work. The Court will not order an investigation on the basis of unsubstantiated allegations or on the basis of rumour and speculation. The onus is on the applicants to provide the Court with evidence of clear risk to assets or the interests of the shareholders.

[25] I acknowledge the significant effort and time the applicants have spent pursuing this application. The applicants raised a myriad of issues and unfortunately it was generally not clear what specifically they sought to be investigated, nor what specific evidence substantiated each claim. For completeness, I have addressed all of the issues mentioned by the applicant.

[26] I consider that the issues raised fall into three categories. First, issues that rely on evidence referred to in the 2001 application and that have already been addressed by the Court. Second, general allegations without supporting evidence. Third, issues that are substantiated with evidence and ought to be investigated. I address each of these in turn.

Issues that rely on evidence from the 2001 application and that have already been addressed by the Court

[27] The applicants expressed grave concern that the Incorporation has lost control over compensatory cutting rights, which are now vested in the Waitutu Holding Company. This situation is the result of a sequence of events. Although there are aspects of this issue which I consider should be investigated, three matters leading up to this situation should be outside the scope of investigation. First, negotiations with the Crown between 1984 and 1995 for the sale of cutting rights over the Incorporation's land. Ms Holloway confirmed at hearing that she does not seek to challenge these negotiations directly. Second, the setting up of the Waitutu Holding Company Ltd, a subsidiary company created between 1995 and 1997. Third, the Incorporation procuring the vesting of substitutionary forest rights in the subsidiary company as opposed to the Incorporation, which occurred around the time the subsidiary company was created.

[28] In terms of these three matters, the applicants have relied heavily and at times solely on information in the affidavit of Mr Malloy filed in support of the application in 2001.¹² Ms Holloway confirmed to me in the hearing that she did not have direct knowledge of these matters and was largely relying on Mr Malloy's account. The evidence was written 24 years ago, and Mr Malloy passed away prior to this current application being filed.¹³ Consequently, Mr Malloy cannot explain his evidence to me nor the Incorporation. Neither is the Incorporation able to challenge his evidence through cross-examination. Mr Malloy's opinion might have changed given the passage of time and subsequent events. The point is, we cannot know and without the ability for the evidence to be tested in front of me, there is a risk that the Court could misunderstand the evidence.

¹² 89 Te Waipounamu MB 5-25 (89 TWP 5-25) at 21; Affirmation of Diane Joy Holloway dated 15 July 2024 at footnote 2.

¹³ <https://notices.nzherald.co.nz/nz/obituaries/nzherald-nz/name/michael-malloy-obituary?id=42205446>

[29] Furthermore, these three matters were discussed in proceedings for the 2001 application. Judge Wainwright asked the Incorporation:

3. What is the background to the Incorporation acquiring a wholly-owned subsidiary company (Waitutu Holding Company Limited)?
4. Was the acquisition of this subsidiary company (Waitutu Holding Company Limited) within the Incorporation's powers?
5. What was the background and reasoning behind the Incorporation's not obtaining shareholder approval for vesting compensatory cutting rights in the subsidiary company rather than in the Incorporation itself?

[30] Ms Holloway said that the proceedings for the 2001 application did not resolve the problems that Mr Malloy raised. However, as noted Judge Wainwright was satisfied by the Incorporation's responses and did not think the matters raised at that time required investigation. I acknowledge that uncertainty and lack of finality arises from the fact Judge Wainwright's decision was appealed, and then that the further appeal to the Court of Appeal was abandoned. The Māori Appellate Court found that Judge Wainwright should have given the applicants in that case an opportunity to respond to the Incorporation's evidence provided in reply to the allegations made. However, no new information was provided at that time, nor in the current proceedings, which would change the Court's conclusion that it would not be appropriate to investigate these three matters.

[31] The applicants also raised concerns about improper dealings with Incorporation funds in the years 1995 to 2001, specifically referring to a payment of \$1.5 million to Paynter Timber Ltd in 1996 (referred to as compensation), an advance of \$2 million to Waitutu Holding Company, an interest-free advance from Waitutu Holding Company of \$2 million to Lindsay and Dixon Ltd in 1997, and an advance by the Incorporation of \$1.5 million to Sakahyam Telco Ltd in 2001. The applicants raised concerns about the negotiation of the contract with Lindsay and Dixon generally.

[32] The problems I discussed above are equally relevant here. These events are now historic, occurring over 25 years ago. The applicants have no direct knowledge of these matters and rely on Mr Malloy's evidence, and these issues were previously touched on in the proceedings for the 2001 application.¹⁴

¹⁴ 103 South Island MB 65-66 (103 SI 65-66) at questions 6-7 and 13-14.

[33] The applicants said that the subsidiary company did not provide financial accounts for the first five years of its existence. Ms Holloway said at hearing that those financial accounts are not on the company's website. The respondent questioned whether she could be sure the accounts were not presented in person at the AGMs, and Ms Holloway responded that she could not but other people who were at the AGMs complain they have not received those accounts. Although Ms Holloway does not rely solely on Mr Malloy's evidence here, this issue was touched on in the proceedings for the 2001 application.¹⁵

[34] Ms Holloway generally referred to the Incorporation's failure to return a dividend for a long period despite the Incorporation's accounts for the year ending 1997 showing shares in the subsidiary company as a non-current asset valued at \$5 million. This issue was also brought before Judge Wainwright.¹⁶

[35] The respondent submits that the applicants have not addressed whether any of their claims are barred by the Limitation Act 1950. Given I have determined that it is not appropriate to investigate these issues, it was not necessary for me to determine this issue.

General allegations without supporting evidence

[36] The respondent expressed concerns throughout proceedings that the applicant had not made clear what exactly they wished to be investigated. I agreed and directed several times that the applicant provide further particulars of the allegations. On 3 July 2024, I directed:

I agree that the application requires further details of the allegations concerning the matters that the applicant says require to be inquired into. Currently, there are a series of broad and unsupported allegations but no particulars or references to evidence filed.

There is a direction that the applicant is to file further and better particulars of the scope and issues for the proposed investigation together with clarification of the parties they are making the allegations in respect of, by 12pm, 15 July 2024.

[37] On 15 July 2024, counsel for the applicants filed an affirmation of Ms Holloway containing further evidence as directed. The affirmation sets out the history of the Incorporation and describes many of the applicants' concerns. It does not clearly set out what

¹⁵ 103 South Island MB 65-66 (103 SI 65-66) at question 1.

¹⁶ 103 South Island MB 65-66 (103 SI 65-66) at question 12.

the applicant alleges or seeks investigation into. Not all of the allegations are substantiated by evidence.

[38] The applicant submits that where an allegation is raised without thorough supporting evidence, but no opposing evidence is provided, the Court should consider the issue at least contentious and accordingly order an investigation. The respondent submits that due to the cost and disruption which comes with an investigation, the Court should only order an investigation into matters where there is evidence of a risk to the assets or to the interests of the owners of the Incorporation. I tend to agree.

[39] I find that the following issues raised by the applicants were not sufficiently specific or I was not provided with sufficient evidence concerning the matters raised:

- (a) The applicants say that the Incorporation has not located unfound owners nor supplied an unclaimed dividends list. It is unclear whether this issue relates to unfound owners of the Incorporation, or the Waitutu Holding Company, or both. No evidence (such as correspondence with the Incorporation) was provided to the Court. The minutes of the Waitutu Incorporation dated 23 September 2023 and Waitutu Holding Company dated 19 July 2019 both discuss strategies for locating unfound owners.
- (b) The applicants raised concerns that the Chairperson increased their shareholdings. Ms Holloway confirmed at hearing that she was not alleging the shares were purchased in a way that was inconsistent with the constitution, but she said the purchase wasn't communicated to other shareholders.¹⁷ No evidence has been provided of any impropriety. The applicants also referred to Leonie Gale and John Southerwood purchasing shares in Paynter (Lindsay & Dixon) prior to settlement, and then reselling them post-settlement. Again, no detail of this transaction has been provided.
- (c) The applicants also raise as an issue that the Forestry Manager Daniel Gale has purchased multiple vehicles, purported to be for business but used by the Secretary Leonie Gale. At hearing Ms Holloway explained that other owners

¹⁷ 89 Te Waipounamu MB 5-25 (89 TWP 5-25) at 19.

were angry that the vehicle has changed so frequently and is rarely used to visit the forest, because it is an unnecessary expense. Similarly, the applicants raise that the Southerwood family have purchased eleven properties between 1997 and 1999. Ms Holloway states that Daniel Gale said to committee members that Diane Holloway will never find out how the properties were purchased. The applicants have not provided evidence or details in relation to the vehicle or property purchases. They have not said whether they are alleging the properties were purchased with company funds, nor provided evidence of misconduct.

- (d) Ms Holloway listed in her evidence the issue “Problems with Successions”, but no detail was given about this issue. Ms Holloway generally referred to the Incorporation’s failure to satisfactorily answer questions from shareholders or communicate with shareholders and to the need to investigate the actions of Leonie Gale throughout the first 5 years of the subsidiary company, but no detail or evidence was provided in relation to these issues.
- (e) Two of the issues listed in the applicants’ closing submissions were not explained in evidence at all:

What process has the Committee of Management applied to unfound beneficial owners of their desire to acquire significant areas of whenua outside the Murihiku rohe?

What process has the Committee of Management applied to reduce the Waitutu Lodge operating at a substantial trading loss year on year?

Issues that are substantiated with evidence and ought to be investigated

[40] The applicants raised several issues of concern which were substantiated by the evidence of both parties.

[41] First, the Incorporation’s loss of control over the compensatory cutting rights which were vested in the Waitutu Holding Company. Two decisions appear to be central to this issue. Diane Holloway gave evidence that in 2006/7, the Waitutu Holding Company was separated from the Incorporation by changing the ownership in the Waitutu Holding Company to individual shareholding. Instead of the Incorporation being the sole shareholder

in the Waitutu Holding Company, each person who was a shareholder in the Incorporation became a shareholder in the Waitutu Holding Company. The Management Committee meeting notes of the Waitutu Incorporation dated 21 July 2006 record:¹⁸

WAITUTU HOLDING COMPANY: At the last meeting we were asked to find out the best way to restructure so the shareholders can be direct shareholders in the Company, instead of through the Incorporation, and be able to attend the meetings. The Company is set up under the Companies Act, looking after forestry, and the Incorporation works under Te Ture Whenua Māori Act, looking after investment of the money received by the Incorporation. If shareholders were not interested in being involved with logging, if the Company is separated from the Incorporation, then shareholders would be able to sell their shares in the Company without affecting their shareholding in the Incorporation. This was discussed.

J Southerwood moved that we the shareholders hereby resolve that all those shares in the Waitutu Holding Company Ltd currently held on behalf of the owners by the Proprietors of Waitutu Incorporation be passed back to the owners. Seconded R Waterreus. CARRIED.

[42] The meeting notes further state this decision will “divorce the Company from the Incorporation and should get rid of any further cases like the Campbell court case from the Incorporation.”

[43] Next, the decision to vest all of the shares of unfound owners into the Share Management Trust, giving the trustees of that trust a voting block of over 40% of the shareholding of the Waitutu Holding Company. The applicants detailed how at the last two meetings of the Waitutu Holding Company, attempts to pass resolutions and to appoint a new director were overridden because they were outvoted by the Share Management Trust.

[44] The respondent shares the concerns of the applicants in respect of the control and operations of the Waitutu Holding Company. Their final submissions state:

6.12 However, the change of ownership of the Company, from the Incorporation as the sole owner to individual shareholders, means that the Company can no longer be considered a subsidiary and holding company of the Incorporation.¹⁷

6.13 Similarly, the Share Management Trust is a trust established in respect of shares in the Company and outside the control of the Incorporation.¹⁸

6.14 Currently, the Respondent cannot address any concerns of shareholders that relate to the Company and Share Management Trust and those concerns must be raised directly with the Company. The Respondent has attempted to raise some

¹⁸ Originally annexed to the affidavit of Leonie Gale dated 26 February 2022 and then attached to the affirmation of Diane Joy Holloway dated 15 July 2024.

matters for shareholders with the Company, such as the holding of meetings close together for ease of the shareholders, however, the Company has not been willing to accommodate these requests to date.

[45] It is of concern that the evidence suggests owners of the Incorporation have lost control over a significant segment of their assets, and that the likely purpose of the change of ownership was to avoid owner scrutiny. It is necessary to investigate exactly how the Incorporation lost control over the assets vested in the Waitutu Holding Company. An investigation will be most useful to shareholders if it:

- (a) examines whether the two decisions above followed correct procedure.
- (b) examines whether, in relation to the assets held by Waitutu Holding Company, the Incorporation has acted in line with its obligations.
- (c) ascertains possible pathways to remedy the Incorporation's loss of control over those assets if that is in the interests of the shareholders of the Incorporation.

[46] The parties have made submissions as to whether the Māori Land Court has jurisdiction to issue orders against the Waitutu Holding Company or the Share Management Trust following the investigation. It is not necessary for me to resolve that question. I am satisfied that there is evidence of a clear and present risk to the interests of the shareholders. An investigation which clarifies the facts will be useful to ground further action if that is needed.

[47] Related to the loss of control over assets held by the Waitutu Holding Company is the issue of what, if any, funds the Waitutu Holding Company owes to the Incorporation in respect of the advances the Incorporation made to it.

[48] Finally, the Incorporation said that the implementation of a strategic plan the committee of management have developed is limited by resolutions passed in 2022. The closing submissions of the respondents state that the committee of management have developed a strategic plan with the support of Deloitte Ltd and intend to present it at the next AGM. However, they were advised by Deloitte that resolutions passed in 2022 constrain the ability to implement this strategic plan. The Incorporation said the committee wish to put amendment of the 2022 resolutions to the shareholders at a future meeting. However, the

2022 resolutions state they can only be overturned with the support of 33% of the shareholders.

[49] The committee believe that achieving this level of shareholder support will be near impossible given that, of the 1,095 current shareholders, 565 are "unknown" or deceased, amounting to almost 52% of the shareholding. I consider that it is in the interests of the shareholders for the Incorporation to be able to implement its strategic plan, given it receives sufficient support. Requiring 33% of shareholders to support any change to the 2022 resolutions significantly restricts that ability and may obstruct the interests of shareholders.

[50] Accordingly, I think it appropriate that the circumstances concerning the decision to pass resolutions at the 2022 AGM, requiring a special resolution of 33% of shareholders to alter those resolutions, and whether this was in the best interests of the shareholders, should be a matter for investigation.

[51] I note Waitutu Holding Company was represented by Greenwood Roche in the early part of these proceedings but did not participate further. I have taken into account their stated position in relation to jurisdiction.¹⁹ I consider that an investigation into the matters traversed above falls within the Court's jurisdiction.

Whakataunga

Decision

[52] The applicants have met the support threshold required for an investigation of an incorporation. I will appoint an examining officer to investigate the several specific issues which are substantiated by evidence demonstrating risk to the assets of the Incorporation or the interests of the owners. I note that the applicants have also raised several issues which were not substantiated by evidence nor contained sufficient detail. I do not find it appropriate to order an investigation into those historic issues which rely solely on evidence provided in Mr Malloy's 2001 application, as that evidence was not tested before the Court. I note the committee of management of the Incorporation support an investigation, albeit one with limited scope.

¹⁹ Notice of Opposition to Application A20210013839 by the Second Respondent dated 1 July 2022.

[53] I have considered the applicants' suggested examining officer and the submissions of the respondent. In all the circumstances, I consider Kerensa Johnston, lawyer and former Chief Executive of Wakatū Incorporation, to be an appropriate examining officer.

Ngā ota

Orders

[54] For the reasons discussed in length above, pursuant to s 280(1), I appoint Kerensa Johnston to investigate the affairs of the Proprietors of Waitutu Incorporation and report to the Court on the following issues:

- (a) The decision to change the ownership of the Company from sole ownership of the Incorporation to individual shareholder ownership.
- (b) The decision to vest the shares of unfound owners previously held by the Incorporation in a Share Management Trust.
- (c) Any funds remaining owed to the Incorporation from the advances made to the Company or other parties.
- (d) The decision to pass resolutions made at the 2022 AGM, requiring a special resolution of 33% of shareholders to alter those resolutions and whether this was a decision in the best interests of the shareholders.
- (e) Further issues which Ms Johnston considers will provide value for the shareholders or the ongoing operation of the Incorporation, if any such issues come to light during the investigation.

I whakapuaki i te wā 10am i Te Whanganui-a-Tara, i 5 o ngā rā o Mahuru i te tau 2025.

Pronounced at 10am in Wellington on Friday this 5th day of September 2025.

S F Reeves
KAIWHAKAWĀ