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

AP-20250000010064

WEHENGA *Under*	Sections 67 and 238 of Te Ture Whenua Māori Act 1993 and ss 126–127 of the Trusts Act 2019
MŌ TE TAKE *In the matter of*	Tūhoe - Te Uru Taumatua Trust
I WAENGA I A *Between*	TIMOTI BUDDY NIKORA Te kaitono *Applicant*
ME *And*	TAMATI KRUGER, LORNA TAYLOR, PATRICK McGARVEY, NGATAI RANGIHAU AND MERE McLEAN AS TRUSTEES OF THE TŪHOE – TE URU TAUMATUA TRUST Ngā kaiurupare *Respondents*

Kōtitanga: *Hearing*	30 Āperira 2026, 372 Waiariki MB 193-227 3 Tīhema 2025, 356 Waiariki MB 141-148 (Heard at Rotorua)
Kanohi kitea: *Appearances*	J W McDougall and S Blyth-Nepia for Applicant M van Alphen Fyfe for Respondents
Whakataunga: *Judgment date*	1 October 2026

TE WHAKATAUNGA A KAIWHAKAWĀ T M WARA
Judgment of Judge T M Wara

Hei tīmatanga kōrero
Introduction

[1] Mr Nikora seeks the disclosure of certain information from the trustees of Tūhoe – Te Uru Taumatua Trust ("the Trust").

[2] I initially declined to grant the orders that Mr Nikora sought, however my decision was appealed.[1] By judgment dated 5 May 2025 the Māori Appellate Court in *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust* determined that a rehearing was warranted.[2]

[3] Mr Nikora seeks an order pursuant to s 238 of Te Ture Whenua Māori Act 1993 ("TTWMA"), requiring the trustees to report to the Court in relation to the administration of the Trust. In the alternative, if the Court is not minded to grant an order under s 238, Mr Nikora seeks a review under s 126 of the Trusts Act 2019 ("the Trusts Act") of the trustees' decision to refuse to disclose the information.

[4] Fundamentally, this decision considers the scope of judicial supervision of trust administration and the application of the statutory framework governing trustee accountability.

He aha te whakataunga e rapua nei?
What is sought?

[5] Initially the breadth of information sought by Mr Nikora in 2022 was extensive. He sought:

a. The Trust budgets (and associated trustee minutes approving them) for the years ending 31 March 2020, 2021 and 2022.

b. Trustee minutes (from about 2014-2016) approving the Investment Committee's recommendation for the investment by the Trust in the Ruatāhuna Store and Motels.

c. The Statement of Profit and Loss and Balance Sheet for the Ruatāhuna Motels and Store for the years ending 31 March 2019, 2020 and 2021.

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1 *Nikora – Tūhoe - Te Uru Taumatua* (2023) 292 Waiariki MB 6 (292 WAR 6).
2 *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust* [2025] Māori Appellate Court MB 192 (2025 APPEAL 192).

[6] With the assistance of counsel, the request has narrowed materially since 2022. As put in the applicant's written submissions, what remains is:[3]

a. trustee minutes recording approval of the Trust's budgets for the years ending 31 March 2020, 2021 and 2022, including the trustees present; and

b. the statements of profit and loss and balance sheets for the Ruatāhuna Motel and Store operation at Te Tii for the years ending 31 March 2019, 2020 and 2021.

He aha ngā take hei whakatau?
What are the issues for determination?

[7] The issues for determination concern the exercise of the Court's supervisory jurisdiction and the application of the statutory framework governing trustee accountability. In particular:

a. Which jurisdictional pathway is engaged?

b. Is the information "trust information" within the meaning of s 49 of the Trusts Act?

c. Does the Trust Deed codify the extent of disclosure required?

d. How did the trustees approach the process for deciding whether the s 52 presumption has been rebutted?

e. Was the refusal reasonably open to the Trust?

Ko tēhea te ara whaimana kua parahia?
Which jurisdictional pathway is engaged?

[8] There are two jurisdictional pathways for seeking review of trustee actions: s 238 of TTWMA and ss 126-127 of the Trusts Act. The Māori Land Court holds concurrent jurisdiction with the High Court over trusts to enforce the provisions of the Trusts Act.[4] The Trust is a trust constituted in respect of General land owned by Māori, so that ss 237 to 245 of TTWMA apply to it.[5] In respect of such a trust, s 237 confers on this Court the same

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3 Applicant's submissions (24 April 2026) at [2.6].
4 Te Ture Whenua Māori Act 1993, s 237.
5 *Nikora v Kruger* [2024] NZSC 130 at [36]–[37] and [79]–[91]; TTWMA, s 236(1)(c).

jurisdiction as the High Court, which includes the power to review a trustee's decision under ss 126–127 of the Trusts Act.

[9] Under s 238, the Court has wide supervisory and enforcement powers:

> **238 Enforcement of obligations of trust**
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> (1) The court may at any time require any trustee of a trust to file in the court a written report, and to appear before the court for questioning on the report, or on any matter relating to the administration of the trust or the performance of his or her duties as a trustee.
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> (2) The court may at any time, in respect of any trustee of a trust to which this section applies, enforce the obligations of his or her trust (whether by way of injunction or otherwise).

[10] Under ss 126-127 of the Trusts Act the Court has particular powers:

> **126 Court may review trustee's act, omission, or decision**
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> (1) The court may review the act, omission, or decision (including a proposed act, omission, or decision) of a trustee on the ground that the act, omission, or decision was not or is not reasonably open to the trustee in the circumstances.
> (2) The court may undertake a review on the application only of a beneficiary.
> (3) The review must be conducted in accordance with section 127.
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> ...
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> **127 Procedure for court's review of trustee's act, omission, or decision**
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> (1) An applicant for a review under section 126 must produce evidence that raises a genuine and substantial dispute as to whether the act, omission, or decision in question was or is reasonably open to the trustee in the circumstances.
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> (2) If the court is satisfied that the applicant has established a genuine and substantial dispute, the onus is on the trustee to establish that the act, omission, or decision was or is reasonably open to the trustee in the circumstances.
>
> (3) If the court is satisfied on the balance of probabilities that the act, omission, or decision was not or is not reasonably open to the trustee in the circumstances, the court may (but subject to subsection (4))—
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> (a) set aside the act or decision, or direct the trustee to act in the case of an omission:

(b) restrain the trustee from acting or deciding in the case of a proposed act or decision, and direct the trustee to act in the case of a proposed omission:

(c) make any other orders that the court considers necessary.

[11] The applicant primarily relies on the enforcement powers under s 238. Counsel for the applicant submits that s 238 of TTWMA gives the Court wide supervisory and enforcement powers that may be exercised at any time,[6] and that this includes the power to require the Trust to provide to it the information sought. The alternative avenue is set out in ss 49-55 of the Trusts Act, setting out the trustees' obligations to keep and give information. The failure to provide this information can then be remedied by ss 126-127 of the Trusts Act.

[12] Counsel for the Trust acknowledges the breadth of s 238 but submits that it is a potentially invasive provision, and its exercise may be unduly burdensome on the Trust and trustees. Counsel submitted that its use must be proportionate to the circumstances and cannot be engaged merely based on unsubstantiated assertions of misconduct. Further, counsel suggests that the parallels between the purpose of s 238 and ss 126-127 of the Trusts Act indicate that s 238 ought not to be used where provision of information would not otherwise be required under the Trusts Act regime.

[13] Starting with the scope of s 238, the authorities are clear that the supervisory jurisdiction of s 238 is wide. In this very case the Māori Appellate Court was clear that Mr Nikora need not first prove a breach of trust before the Court can require the trustees to provide information.[7] As to the parallels between the two Acts, there is some merit to this argument. If Parliament created a bespoke, factor-driven disclosure regime in the Trusts Act, it is odd for a general supervisory power to deliver more. It is not necessary, however, to decide whether s 238 can, in an appropriate case, require disclosure beyond what ss 49–55 of the Trusts Act would require. For the reasons that follow, applying the Trusts Act regime on its own terms, the trustees' refusal was not reasonably open to them. The Trust's symmetry argument therefore does not assist it.

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6 The breadth confirmed in *Clarke v Karaitiana* [2011] NZCA 154 at [36].

7 *Nikora v* Trustees of the Tūhoe - *Te Uru Taumatua Trust* [2025] Māori Appellate Court MB 192 (2025 APPEAL 192) at [37].

[14] During the hearing I raised how s 54 of the Trusts Act fits within the scheme. Section 54(2) requires a trustee to apply to the court for directions where, as a result of (among other things) a refusal under s 52(2), no beneficiary has any trust information. Counsel for the applicant submitted that, as the trustees had not applied for directions, the applicant's existing application is the one that engages the review jurisdiction under ss 126–127, albeit the decision under review was made after the application was filed. Counsel for the Trust submitted that s 54 is not engaged, because beneficiaries receive core information through the Trust's annual reporting, and that the lack of a substantive application is a barrier, as the jurisdiction under the Trusts Act has not properly been invoked.

[15] I am satisfied that the existing application is sufficient to engage ss 126–127 of the Trusts Act in respect of the trustees' decision of 11 March 2026. From the outset the application sought review of the trustees' refusal to provide the information. The 11 March 2026 decision re-made that refusal after the Māori Appellate Court's judgment. Both parties have filed evidence and submissions directed to it, and the Trust has not identified any prejudice. The concern identified by the Māori Appellate Court, that a review under s 126 may be undertaken only on the application of a beneficiary,[8] does not arise: Mr Nikora is a beneficiary and the applicant. To the extent a formal amendment is required, I grant leave to amend the application accordingly. It follows that both s 238 of TTWMA and ss 126–127 of the Trusts Act are available to the Court.

Ko te pārongo he "trust information" e ai ki s 49 o te Trusts Act?
Is the information "trust information" within the meaning of s 49 of the Trusts Act?

[16] Section 49 of the Trusts Act defines trust information as any information regarding the terms of the trust, the administration of the trust, or the trust property;[9] and any information that it is reasonably necessary for the beneficiary to have to enable the trust to be enforced.[10] However that information does not include reasons for trustees' decisions.[11]

[17] In *Erceg v Erceg*,[12] the Supreme Court identified trustee accountability as the starting point for disclosure, explaining that beneficiaries are entitled to access information necessary

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8 *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust*, above n 2, at [33].
9 Trusts Act 2019, s 49(a)(i).
10 Section 49(a)(ii).
11 Section 49(b).
12 *Erceg v Erceg* [2017] NZSC 28; [2017] 1 NZLR 320 at [51].

to assess whether the trust has been properly administered. In *Taylor v Inder*,[13] the High Court, applying *Erceg*, declined disclosure where the request appeared to be a "*fishing expedition*" for the purpose of finding a basis for challenging the actions of the trustees, rather than for enforcing the trust. In this case, the Māori Appellate Court considered both *Erceg* and *Taylor*, concluded that the applicant's request for information is not a "*fishing expedition*", and determined that the information being sought by Mr Nikora was trust information.[14]

[18] Counsel for the applicant submits that the Māori Appellate Court's finding is unequivocal, and that budgets and operating financials are information regarding the administration of the trust and trust property. Counsel for the Trust submits that it is genuinely unclear whether the Māori Appellate Court decided the point or left it to the Māori Land Court to determine.[15]

[19] I do not accept the Trust's submission that the point was left open. The Māori Appellate Court stated: "*We therefore consider that the information requested by Mr Nikora is trust information as defined in s 49 of the Trusts Act.*"[16] That is a determination, not an observation. The later observation that it remains open to this Court to determine what level of detail is reasonably necessary was made under the heading addressing the Trust Deed and does not qualify that finding. The information now sought is a subset of the information the Appellate Court considered, and the finding applies to it. The matter is settled.

[20] The exclusion in s 49(b) means that, to the extent the minutes record the trustees' reasons for approving the budgets, including their deliberations, those parts are not trust information and may be redacted.[17] The balance of the minutes, recording that the budgets were approved and the trustees present, is trust information.

[21] Counsel for the Trust advised that Te Tii, where the Ruatāhuna motel and store operate, is held with other assets by the Tūhoe Charitable Trust, a registered charity, rather

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13 *Taylor v Inder* [2022] NZHC 73 at [49].

14 *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust* [2025] Māori Appellate Court MB 192 (2025 APPEAL 192) at [26] and [30].

15 Respondents' submissions (16 April 2026) at [52], referring to *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust* [2025] Māori Appellate Court MB 192 (2025 APPEAL 192) at [36(b)].

16 *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust* [2025] Māori Appellate Court MB 192 (2025 APPEAL 192) at [30].

17 *Taylor v Inder*, above n 13, at [83].

than by the Trust itself. The trustees' decision paper takes the same position.[18] Section 50(2) provides that ss 51 to 55 do not apply to charitable trusts. I do not consider that this affects the analysis. The request is made to the Trust, not to the Tūhoe Charitable Trust. On the Trust's own case, it owns the land and buildings at Te Tii through its established Trust Entities, which are entities wholly owned or controlled by the Trust,[19] and cl 13.1(b)–(c) of the Trust Deed makes the performance of Trust Entities, and of entities using the Trust's assets, part of the Trust's own reporting responsibilities. Counsel for the Trust properly accepted at the hearing that the information sought is the Trust's information, because the relevant decisions were made by the Trust, and that beneficiaries may ask for information the Trust holds or has access to through its Trust Entities. The trustees' resolution of 11 March 2026 likewise treated the Te Tii profit and loss statements and balance sheets as the Trust's confidential information. The information is therefore trust information within s 49, whether it is held by the Trust directly or is available to it through a Trust Entity.

Ko tā te tuhinga whakatau tikanga he whakatau i ngā momo pārongo me whāki?
Does the Trust Deed codify the extent of disclosure required?

[22] The issue is whether the Trust Deed acts as a ceiling to information available under the Trusts Act.

[23] Clause 13 of the Trust Deed dated 13 December 2013 sets out the planning and reporting requirements of the Trust and sets out the information that the trustees must make available to Registered Members by request. Counsel for the Trust submits that if the terms of the deed do not require provision of particular information, then that is the end of the enquiry under the Trust Deed in relation to that particular information. However, Counsel acknowledges that the Trusts Act regime applies separately and advises that the Trust does not take the position that the Trust Deed dictates the extent of its information provision obligations.

[24] The Māori Appellate Court considered the extent of the disclosure and observed that even where a Trust Deed does not itself require disclosure at the level of detail sought, that

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18 Tūhoe – Te Uru Taumatua: Decision paper (11 March 2026) at [19.2]; respondents' submissions (16 April 2026) at [38].

19 Respondents' submissions, above n 18, at [37]–[38]; Trust Deed, cl 1.1.

fact is not determinative of a disclosure request directed to enforcement of trustee obligations.[20]

[25] Ultimately the legal principle as to the provision of trust information is settled, and this is acknowledged by the Trust. For the avoidance of doubt, the Trust Deed does not act as a ceiling to information available under the Trusts Act.

He aha tā ngā tarahitī rautaki i whāia hei hanga i te tukanga kia whakatau ai āe rānei ka pā mai te ture ā-whetau o s 52?
What was the trustees' approach to process for deciding whether the s 52 presumption has been rebutted?

[26] Under s 52 of the Trusts Act, the presumption is that a trustee must give information to a beneficiary on request. This, however, is a rebuttable presumption, and trustees may refuse to provide information if, after taking into account a number of specified factors, the trustees reasonably consider the information should not be given to the beneficiary. Those factors are listed in s 53 of the Trusts Act.

[27] The evidence is that the trustees considered a decision paper on 11 March 2026. This paper is very detailed and addresses every s 53 factor in turn. Importantly, the Māori Appellate Court's criticism was the absence of any evidence of process,[21] and a process has now been undertaken. Taking the decision paper into account, the Trust resolved unanimously to accept its assessment, to confirm the budgets and Te Tii profit and loss balance sheets as confidential information, and to decline Mr Nikora's request for information.

[28] The reasons for the Trust's decision, and their assessment as to the s 53 factors, are set out below. Section 53(h) applies only to family trusts and is not engaged.

(a) Nature of interests

[29] The Trust's assessment is that this factor weighs against the presumption of disclosure. Its reasoning is that Mr Nikora is one of many tens of thousands of discretionary

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20 *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust* [2025] Māori Appellate Court MB 192 (2025 APPEAL 192) at [28] and [36(b)].

21 *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust* [2025] Māori Appellate Court MB 192 (2025 APPEAL 192) at [32].

beneficiaries; the nature of the Trust as a perpetual trust to benefit generations yet to come; the fact that the Trust provides benefits to Tūhoe as a whole; and the fact that the Trust's objectives include investment in collective assets and community facilities.

[30] Counsel for the Trust submits that all Tūhoe members have an equally proximate interest in the Trust, and there are a large number of beneficiaries. To that degree, it is submitted that the Trust is similar to the energy trust at issue in *Taylor v Inder*,[22] where the number of beneficiaries (some 25,000) was a factor in declining to provide information.

[31] In response, Counsel for the applicant submits that the likelihood of receiving trust property is irrelevant to a request for information, and that the factor is at worst neutral for a post-settlement governance entity.

[32] Section 53(a) expressly makes the likelihood of the beneficiary receiving trust property in the future relevant, and the trustees were entitled to weigh the size of the beneficiary class. But the number of beneficiaries says little about whether a beneficiary should receive information going to the trustees' accountability for particular decisions. I do not consider that the trustees erred in their assessment of this factor, but it cannot carry the weight needed to rebut the presumption on its own.

(b) Confidentiality

[33] The Trust's assessment is that confidentiality weighs against the presumption of disclosure. Its position is that budgets are commercially sensitive and could reveal investment intentions to competitors (medical centres, cafés, accommodation). Further, it contends that Te Tii financials contain detail of value to competing businesses and remuneration data that, with few staff, could identify individuals. Counsel for the Trust submits that the Trust's position correctly reflects the long-standing position of the courts that confidential information held by trusts is deserving of protection, citing both *Erceg v Erceg* and *Taylor v Inder.*

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22 *Taylor v Inder*, above n 13, at [55] and [67].

[34] In response, counsel for the applicant relies on two High Court decisions regarding commercial sensitivity: *ASB Bank v Jamieson*[23] and *Wānaka Stakeholders Group Inc v Queenstown Lakes District Council*.[24] Counsel submitted that both decisions find that commercial sensitivity attenuates with age. Counsel says that the information being sought is 4-7 years old, and this goes against the Trust's concerns about revealing investment intentions to competitors.

(c) Settlor expectations

[35] The Trust's assessment is that this factor weighs against the presumption of disclosure. Its position is that the settlors of the Trust did not intend for beneficiaries generally, or Mr Nikora in particular, to be given the information sought. This is evident from the careful and detailed provisions in the Trust Deed that require specific information to be given to beneficiaries each year.

[36] In response, Counsel for the applicant makes the point that the "settlors" are not identified, and that settlor's intention is being inferred from the Trust Deed.

[37] Given the conclusion at [25], the reporting provisions of the Trust Deed do not show that the settlors intended to exclude disclosure beyond what the Deed requires. The trustees were entitled to have regard to those provisions, but they are not in themselves a reason to refuse information to which the Trusts Act presumption applies.

(d)–(e) Age and circumstances

[38] Both parties have accepted that this point is neutral. The applicant does note his background as a retired chartered accountant is relevant context.

(f)–(g) Effect on parties

[39] The Trust did not consider there would be adverse effects on Mr Nikora in giving him the information. In turn, however, the Trust says that there may be adverse effects on

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23 *ASB Bank Ltd v Jamieson* HC Auckland CIV-2006-404-2929, 2 August 2006 at [11].

24 *Wānaka Stakeholders Group Inc v Queenstown Lakes District Council* [2020] NZHC 2472 at [27] and [30].

trustees. For example, the trustees may be more reluctant to speak their mind in meetings and may also feel pressure to agree to investments that are solely fiscal rather than investments that are in the interests of cultural, social, and spiritual development.

[40] Insofar as the request concerns trustee minutes, it is confined to minutes recording approval of the budgets and the trustees present. Information of that kind reveals little of the trustees' deliberations, and any record of reasons may be redacted (s 49(b)). The concern that trustees would be inhibited from speaking freely therefore carries little weight.

(i) Practicality — large class

[41] The Trust's assessment is that the practicality regarding disclosure to a large class of beneficiaries weighs against the presumption of disclosure. It says that the provision of the information to all beneficiaries, or to a large class of beneficiaries, would be impracticable, and may result in expectations amongst other beneficiaries if the information was provided to Mr Nikora alone. It would become an administrative burden for the Trust's staff.

[42] Counsel for the Trust says that a finding that the Trust is obliged to provide the information Mr Nikora seeks could have significant consequences as to the obligations of impartiality and even-handedness, as it would have difficulty in justifying a decision to decline to provide similarly detailed information to any other beneficiary, resulting in an impractical administrative burden.

[43] Counsel for the applicant's answer to the administrative burden argument is that the Trust could publish the information on the Trust's website, as other agencies routinely do.

(j)–(k) Safeguards and redaction

[44] The Trust's position is that it is against disclosure with redactions. The Trust says that it considered a range of options for restrictions, safeguards and redactions, but concluded that none were practical in the circumstances. For instance, hard copy perusal of the documents would not necessarily prevent disclosure of personal or commercially confidential information. Redactions on financial documents would be extensive, and defeat the purpose that Mr Nikora has in seeking them.

(l) Nature and context of request

[45] The Trust says the applicant's request is made in the context of intended hostile litigation, resting on allegations of fraud, malfeasance and possibly criminal conduct that are improperly made and unsupported.

[46] Counsel for the Trust set out a series of allegations made by Mr Nikora:

a. *"malfeasance, loss of assets and abuse of power";*
b. *"fraudulent and corrupt practices" in relation to elections and tampering with the Trust deed;*
c. *"signs of misconduct" in relation to "non-production of annual [plans] with attendant budgets", some of which is "likely to be criminal";*
d. *"abuse of power by the trust; mainly by the chairman Tamati Kruger";*
e. *"possible criminal misconduct" or "possibly evidence of criminal conduct".*

[47] Counsel for the Trust submits that it is settled law that an applicant must have a proper basis before making any allegation in the nature of bad faith, misconduct or corruption. This is because of the very serious nature of such allegations, which are closely akin to fraud, dishonesty and other reprehensible conduct.[25]

[48] Counsel also suggests that, while the Māori Appellate Court was correct to say that Mr Nikora need not first "prove" a breach of trust before the Court can require the provision of information, the Māori Land Court was equally correct to identify a significant flaw in Mr Nikora's claim, that there was no proper and credible evidential basis for the serious allegations made.

[49] Counsel submits that *Taylor v Inder* is relevant in the context of hostile litigation, where Cull J held that Court discovery processes are more appropriate.

[50] The Māori Appellate Court has already held that the request is not a fishing expedition. I accept that some of Mr Nikora's allegations are serious and have not been substantiated, and nothing in this decision should be taken as suggesting otherwise. But the information now sought is narrow, historical and directed to the trustees' accountability for budget approvals and a trust-owned business. Any risk that it will be misused can be met by conditions on inspection. The context of the request does not, in itself, justify refusal.

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25 *Schmidt v Pepper New Zealand (Custodians) Ltd* [2012] NZCA 565 at [15].

(m) Any other factor

[51] The Trust says that the unique and special character of the Trust means the relationship between the Trust and its beneficiaries is vital. However, it is also recognised that the importance of these relationships can pull both ways in respect of decisions to provide information or not.

I whaitake tā te Taratī te whakanau?
Was the refusal reasonably open to the Trust?

[52] The trustees considers that the presumption has been lawfully rebutted. The question is whether the refusal was reasonably open to the Trust.

[53] The procedure is governed by s 127. Mr Nikora must first produce evidence raising a genuine and substantial dispute as to whether the refusal was reasonably open to the trustees. If he does, the onus shifts to the trustees to establish that it was. The evidential threshold in s 127(1) is a low one. The question is not whether the Court would have made the same decision, but whether the decision was within the range reasonably open to the trustees. A decision that failed to take into account a relevant matter, or was materially influenced by an irrelevant one, may fall outside that range, provided the error would or might have affected the decision.[26] I am satisfied that the evidence raises a genuine and substantial dispute, for the reasons at [54]–[56]. The onus is therefore on the trustees. In my assessment, there are three respects in which the trustees' decision fell outside the range reasonably open to them: the absence of any reference to the s 50(1) purpose in the decision paper of 11 March 2026; personal and commercial confidentiality; and the circularity in the trustees' safeguards analysis.

[54] Counsel for the applicant submits that the trustees addressed the s 53 factors through the wrong lens, and that the statutory purpose in s 50(1) does not appear anywhere in the decision paper. Section 50(1) of the Trusts Act states that the purpose of ss 51 to 55 is to ensure that beneficiaries have sufficient information to enable the terms of the trust and the trustees' duties to be enforced against the trustees. As counsel submits, the refusal of disclosure affects beneficiaries' ability to understand and assess the administration of trust assets. This is different to the concerns raised regarding hostile litigation and is centred on

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26 *Paton v Acropolis Holdings Ltd* [2024] NZHC 43 at [54], [56] and [59]–[60].

the principle of trustee accountability. Having reviewed the decision paper, I find that it does not refer to s 50(1), and it does not otherwise address the need for beneficiaries to have enough information to hold the trustees to account. The s 53 factors are to be weighed in light of that purpose. Weighing them without reference to it meant the trustees gave no weight to the principle of accountability, which is central to the statutory scheme. That omission was material: had the trustees weighed the s 50(1) purpose, the outcome may well have been different.

[55] Counsel for the applicant also challenges the Trust's characterisation of the information sought as being personal or confidential. Counsel submitted that, to the extent any of the information may have once been commercially sensitive, the information sought is now historical and any commercial sensitivity has waned. The proposition that commercial sensitivity diminishes over time is supported, in other contexts, by *ASB Bank Ltd v Jamieson* and *Wānaka Stakeholders Group*. The information sought is between four and seven years old. The trustees' assessment treated it as if it were current and did not engage with its age. I have considered *Taylor v Inder*, where the historic nature of the documents told against their disclosure.[27] That was in the context of whether the information was reasonably necessary to enforce the trust, a question the Māori Appellate Court has already answered in this case, and on facts, including a request by a commercial competitor for detailed third-party reports, that the Appellate Court has distinguished.[28] That was not a view reasonably open to them. The concern about personal information is legitimate, but it does not justify withholding the documents altogether. It can be met by redacting individual remuneration details, which the trustees did not consider in relation to this concern.

[56] This leads to the issue of safeguards. In my view the Trust's safeguards analysis at [32]–[37] of the decision paper is flawed. Effectively the Trust asserts that safeguards such as undertakings, restrictions as to inspection, and redactions, would not necessarily be sufficient to protect the information, but the reasoning is circular and relies on the assertion as proof. Further, the Trust measures concern regarding practicality against the applicant's purpose rather than against the statutory purpose of enabling enforcement. Counsel-only

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27 *Taylor v Inder*, above n 13, at [48]–[54] and [68]–[69].
28 *Nikora v Trustees of the Tūhoe - Te Uru Taumatua Trust*, above n 2, at [26] and [30].

inspection subject to undertakings, which counsel for the applicant proposed at the hearing, is the paradigm s 53(j) safeguard and is expressly contemplated by *Erceg*.[29]

[57] For these reasons, I am satisfied on the balance of probabilities that the trustees' decision of 11 March 2026 to decline Mr Nikora's request was not reasonably open to them in the circumstances. The decision is set aside.

Ngā mahi kei mua i te aroaro?
Where to from here?

[58] As set out at [15], both s 238 of TTWMA and ss 126–127 of the Trusts Act are available to the Court. Having found that the trustees' refusal was not reasonably open to them, the remaining question is the appropriate order. Section 127(3)(c) of the Trusts Act permits the Court to make any other orders it considers necessary, and s 238(2) of TTWMA permits the Court to enforce the obligations of the trust "*by injunction or otherwise*".

[59] The usual course, where a trustee's decision is found not to have been reasonably open, is to set it aside and direct the trustees to reconsider it.[30] I do not consider that appropriate here, given that the request has been outstanding since 2022 and the trustees have now considered it with the benefit of the Māori Appellate Court's judgment. Nor is disclosure to Mr Nikora at large appropriate, given the legitimate confidentiality concerns. Inspection by counsel, subject to undertakings and limited redaction, strikes the right balance between the accountability purpose in s 50(1) and those concerns.

Ngā whakahau
Orders

[60] I make the following orders:

a. The trustees' decision of 11 March 2026 is set aside.

b. Under s 127(3)(c) of the Trusts Act and s 238(2) of TTWMA, the trustees are to make available for inspection by counsel for the applicant, within [20] working days of this decision, the following documents, to the extent they are held by or available to the trustees, including through any Trust Entity: (i) the trustee minutes recording approval of the Trust's budgets for the years ending

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29 *Erceg v Erceg* [2017] NZSC 28; [2017] 1 NZLR 320 at [56(j)].
30 *Paton v Acropolis Holdings Ltd*, above n 26, at [141]–[143].

31 March 2020, 2021 and 2022, including the record of trustees present; and (ii) the statements of profit and loss and balance sheets for the Ruatāhuna Motel and Store operation at Te Tii for the years ending 31 March 2019, 2020 and 2021.

c. The trustees may redact any record of the trustees' reasons for decisions (s 49(b) of the Trusts Act) and information identifying the remuneration of individual employees. Each redaction is to be marked on the face of the document.

d. Inspection is conditional on counsel first giving written undertakings that the documents and their contents will be used only to advise Mr Nikora on the enforcement of the trustees' duties; that they will not be disclosed to any other person [other than Mr Nikora, in summary form / except with leave of the Court]; and that no copies will be made or retained.

e. Any dispute as to redactions or the terms of the undertakings is reserved, to be determined on the papers.

f. Costs are reserved. Any application for costs is to be filed within [20] working days of this decision, with any response [10] working days after that.

[61] Leave is granted to the parties for any further directions as to process.

I whakapuaki i te 2:00pm i Picton, i te tuatahi o te rā o Ōketopa i te tau 2026.
Pronounced at 2:00pm in Picton on this 1st day of October 2026.

T M Wara
KAIWHAKAWĀ