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

AP-20250000003797

WEHENGA *Under*	Section 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Otakanini L Block
I WAENGA I A *Between*	CAROL POVEY Te kaitono *Applicant*
ME *And*	MARINA DIAMOND (PAIKEA), KERRY KOMENE, SHAN KOMENE AND BUMBI O'MEARA AS TRUSTEES OF THE OTAKANINI LAND TRUST Ngā kaiurupare *Respondents*

Kōtitanga: *Hearing*	27 May 2025, 291 Taitokerau MB 223-238 (Heard at Whangarei)
Kanohi kitea: *Appearances*	Bryce Lyall for the Applicant Coral Panoho-Navaja for the Trust
Whakataunga: *Judgment date*	1 October 2026

TE WHAKATAUNGA A KAIWHAKAWĀ T K T A R WILLIAMS
Judgment of Judge T K T A R Williams

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Introduction

[1] This is an application in respect of the Otakanini L Block. In April 2026, the Court had removed the trustees of the Otakanini L block trust and appointed Mr Glenn Tootill as an independent trustee for the Trust.

[2] His role as independent trustee was to consider whether a licence to occupy ("LTO") should be granted in favour of Carol Povey and to appoint new trustees to the Trust. An additional matter Mr Tootill was subsequently asked to consider was whether an LTO should be granted to Elaine Paikea.

[3] On the 1st of August 2026, Mr Tootill issued his report to the Court that addressed:

(a) the granting of a licence to occupy in favour of Carol Povey,

(b) the appointment of new trustees to the Trust;

(c) the possibility of granting a licence to occupy to Elaine Paikea or;

(d) the removal by her of dwellings she has placed on the Otakanini L block

[4] On 3 September 2026 the Court held a hearing to consider Mr Tootills report and hear submissions from Mr Lyall on behalf of Ms Povey about the granting of the LTO to her, the appointment of new trustees and the issues involving Ms Paikea. Mr Lyall appeared for Ms Povey and although not formally instructed, in support of Ms Paikea. Ms Panoho-Navajo appeared for the Trust.

[5] Evidence and submissions were filed by Mr Lyall and Ms Povey in support of her application for an LTO, in opposition to the appointment of three of five trustees and in opposition to the proposal that Ms Paikea remove her cabins/containers.

[6] At the hearing the Court granted the LTO proposed in favour of Carol Povey. Secondly, the Court appointed four of the five proposed new trustees to the Trust with Mr

Tootill to continue in the role as an independent trustee for 12 months. Thirdly, the Court declined granting a licence to occupy in favour of Ms Paikea as she was not a shareholder in the land, and contrary to earlier submissions to the Court, there was no pending application for her to become a shareholder in the land. There was also no evidence of support by trustees for Ms Paikea to receive an LTO on the land. As a result, Ms Paikea is required to remove the dwellings that she had placed on the land.

[7] At the hearing, it was suggested by Ms Povey that Ms Paikea could not afford to remove the dwellings. However, the Court was not prepared to accept that evidence from Ms Povey. Ms Paikea was present, but she failed to file any evidence to support claims of impecuniosity. She had ample opportunity to do so. Even under questioning from the Court and Mr Lyall, Ms Paikea resisted questions to establish whether she was impecunious. As such the Court made orders requiring her to remove the dwellings and containers.

[8] I then asked Mr Lyall, who acts for Ms Paikea's daughter, Carol Povey, to obtain instructions from Ms Paikea as to how long it would take Ms Paikea to remove the cabins/container. One option included moving them onto the licence to occupy area enjoyed by Ms Povey (with the consent of the trustees) or to remove them completely from the land.

[9] In providing Ms Paikea with the opportunity to advise what that timeframe might be, I indicated that given she was not a shareholder in the land and the trust did not support her having dwellings on the land independently of Ms Povey, the Court would not look favourably at a time period exceeding five or six months.

Position of Ms Paikea

[10] On 22 September Mr Lyall filed a memorandum with the Court in which he outlined the following:

(a) That he had met with Ms Povey and Ms Paikea to consider the best option for those cabins/containers owned by Ms Paikea.

(b) The best option was to move those items onto the LTO area granted by the Trust in favour of Ms Povey.

(c) Originally it was thought that could be done by end of January 2027. However, Ms Povey and Ms Paikea now seek to remove her cabins/containers by 25 July 2027.

(d) In the meantime, Ms Paikea proposes that the structures will remain where they were and they will not be added to or altered, with Ms Paikea remaining responsible for them.

[11] My Lyall sought orders accordingly on that basis.

Position of the Trust

[12] Ms Panoho-Navajo filed a memorandum in response on behalf of the trustees dated 25 September 2026.

[13] In her memorandum she advised the Court that:

(a) The trustees have agreed to Ms Paikea moving her cabins/containers onto the licence to occupy area granted in favour of Ms Povey. However, their consent is subject to Ms Paikea moving those cabins by no later than 31 January 2027. They therefore declined Ms Paikea's request to extend the removal deadline to 25 July 2027.

(b) That the cabins may remain the on the land outside of Ms Povey's LTO area until 31 January 2027. However, Ms Paikea is to pay rent to the Trust in the sum of $100 per month commencing from 23 September 2026. Payment details will be provided to Ms Paikea.

(c) That Ms Paikea is on notice that the amount charged by the trustees will increase if the cabins/containers are not removed by 31 January 2027.

Decision

[14] Given the positions expressed in the memoranda filed, the Court determines as follows:

(a) That the proposal to provide Ms Paikea until the 25th of July 2027 is unacceptable. That is some 10 months from the date of this decision and well in excess of the five to six months that the Court had already indicated would be unacceptable. Therefore, Ms Paikea is to move and relocate her cabins from their present location onto Ms Povey's LTO area by no later than 31 January 2027.

(b) Ms Paikea is to pay the trustees $100 per month whilst the cabins remain on the land outside of Ms Povey's licence to occupy area. The trustees are entitled to increase that rental if Ms Paikea has not removed them by 31 January 2027.

(c) If there is any damage caused to the land by Ms Paikea removing or relocating those cabins and containers, then Ms Paikea is to remedy, to the Trusts satisfaction that damage either by fixing the damage immediately or paying/reimbursing the trust to have the damage fixed. There will be no delay in giving effect to this remedy.

(d) Once relocated, Ms Paikea is to adhere to the same terms and conditions that Ms Povey is required to observe as contained in the licence to occupy. She is not to obstruct or hinder the Trust administering the balance of its land.

(e) If the cabins/containers are not removed by 28 February 2027, then the trustees may if they so decide, remove the cabins and containers themselves, the cost of which is to be reimbursed by Ms Paikea to the trustees.

(f) The trustees will not be responsible for the storage or condition of the cabins and containers if they are required to remove them.

I whakapuakina i te 4:00pm i Whangarei, i te kotahi o ngā rā o Oketopa i te tau 2026.
Pronounced at 4:00pm in Whangarei, this 1st day of October 2026.

TKTAR Williams
JUDGE