

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O AOTEA

*In the Māori Land Court of New Zealand
Aotea District*

AP-20240000004878

WĀHANGA Section 240, Te Ture Whenua Māori Act 1993
Under

MŌ TE TAKE Rakato and Part Rakato Māori Reservation
In the matter of

I WAENGA I A SHELLY MARIE PUOHOTUAU
Between Te kaitono
 Applicant

ME ANNE MICHELLE PARANIHI, MERENGAHOE
And RANGINUI, MICHELLE IATAMAI CRIBB AND
 MIRIAMA JORDAN CRIBB AS TRUSTEES OF
 THE PART RAKATO B MĀORI RESERVATION
 TRUST
 Ngā kaiurupare
 Respondents

Nohoanga: 4 June 2024, 486 Aotea MB 1-29
Hearing (Heard at Whanganui)

Whakataunga: 17 July 2024
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ A H C WARREN
Judgment of Judge A H C Warren

*Ka pū te ruha, ka hao te rangatahi*¹

Te Take

The issue

[1] Shelly Marie Puohotaua, beneficiary of the Part Rakato B Māori Reservation Trust (the Reservation Trust) has applied to remove all trustees of the Reservation Trust under s 240 of Te Ture Whenua Māori Act 1993 (the Act) (Removal Application).²

[2] Ms Puohotaua alleges that the trustees have failed to act in several respects and claims that there is no confidence in the current trustees as evidenced by a ‘vote of no confidence’ at an online hui held on 10 March 2023 (Special Beneficiary Hui).

[3] The sole issue for determination is whether the current Reservation Trust trustees should be removed for cause.³

[4] On the evidence before me, and for the reasons below, there is no basis to remove any of the Reservation Trust trustees for cause.⁴

Te kehi a Shelly Puohotaua

The case for Shelly Puohotaua

[5] The grounds for removal were numerous and varied. Some were advanced with more vigour than others. Given the evolving nature of the claims, I have quoted directly from the Removal Application which sets out the original reasons for lodging it:⁵

A special urgent hui was held on 10/3/24. All beneficiaries had the opportunity to attend. These trustees refused to attend - hence a decision being made without them. Attached is the support for vote of no confidence, the reasons were addressed in the

¹ I acknowledge the work of the current trustees who are considered rangatahi and on the evidence before me, they are doing a very good job as trustees.

² In advance of hearing the Removal Application, Ms Puohotaua requested that I recuse myself from hearing it. I declined for the reasons given in a decision at 486 Aotea MB 31-37.

³ I also need to decide how I address the request from the current trustees for an order under s 98C of the Act to restrict Ms Puohotaua from filing further applications against the Reservation Trust.

⁴ The Removal Application was filed on 26 March 2023. At that point I merged it with two other applications relating to the Reservation Trust and the Rakato Ahu Whenua Trust, in the sense that they were to be heard at the same time, not in the sense that they became one single application.

⁵ Ms Puohotaua filed two separate applications, as she was not clear that s 240 of the Act applied to the Reservation Trust and in her reply, submissions asserted that her application was not made under s 240 of the Act. This was clarified by me, when it became an issue after the hearing, at a post-hearing judicial conference and in a follow up direction dated 11 June 2024 confirming that the removal application was made per s 240 of the Act. Ms Puohotaua accepted this fact during the JC.

hui. These trustees refuse to hui with beneficiaries to address issues or provide information. For 33 years there has been little information pertaining to this reservation trust. I suspect the previous domineering trustees Reti Cribb & Cecelia Whanarere have manipulated other beneficiaries without providing any paper trail. These trustees were on the trust for "29 years". No proper elections, AGM minutes or financial reporting. It appears the new trustees are scrambling to create a charter (one never existed) for the garage that does not have habitual consent from the council that they are calling a "marae". Only a small proportion of beneficiaries have been making decisions on the whenua deliberately excluding others by holding hui on the land. Our great koro Wiwi's whare was burned down so they could have their reservation. This has angered a lot of beneficiaries as they did not have permission to burn down our koro's historical whare. They did not consult with the majority of beneficiaries when selecting the area. Evidence that the whenua was not looked after by the trust has been presented. In 33 years there has never been a water tank for those who apparently use the reservation, no ablutions either. From 1991 to 2019 the reservation has rarely been used for anything until concerns were raised by me in 2018, so - they have also "misled" the court. I have succeeded my father's shares in the whenua. He was a trustee of both Ahu and Reservation and the comments he made back then were not good about these trusts hence resigning but, he did not know how to rectify it. I assume this is the same for other beneficiaries. Until now. This needs immediate attention. The history of this trust is a shambles.

[6] In her written reply statement after the hearing, Ms Puohotaua raised further issues, some of which in effect were new grounds for removal:⁶

- (a) That the response submission by the trustee's dated 30 May 2024 was written by Piri Cribb and not the trustees and therefore this is a breach of their trustee duties.
- (b) They have not dealt with disputes or conflict and have failed in their duty to be impartial per s 35 of the Trusts Act 2019.
- (c) That there are no guidelines for the Court to remove the trustees, referencing ss 23, 24 and 35 of the Trusts Act 2019 as examples whereby the trustees have fallen foul of their duties.
- (d) The trustee's indication at the hearing that they provided all minutes from 2018 to current date is not correct and is misleading and dishonest conduct to the Court. This includes the failure for minutes to have financial balance sheets.

⁶ After the hearing, I gave Ms Puohotaua an opportunity to respond in writing to material that was filed in the leadup to the 4 June 2024 hearing. She has taken up this opportunity and I have taken her reply into account in reaching my decision.

- (e) Ms Puohotaua challenges the notion that there was a recommendation to separate the Trust into two. She asserts that there has always been two separate trusts (the Reservation Trust and the Ahu Whenua Trust).
- (f) There was a failure to properly advertise the special hui held on 8 April 2024 (Special Hui).
- (g) The ‘garage’ that was removed was consented by council at the time it was erected.⁷
- (h) The conflicts of interest with previous trustees (whānau) is the reason why the current trustees do not wish to provide information.
- (i) That Piri Cribb does not dispute that only a small handful of beneficiaries are making decision on the whenua and Ms Puohotaua wants other beneficiaries to have input.
- (j) That her previous comment in another Court hearing to resolve matters by a ‘punch up’ was a joke as raised by Piri Cribb.⁸
- (k) That if requests for information were met, then there would be no need to keep contacting the trustees.

[7] During the hearing Ms Puohotaua bounced between historical (pre-2020) issues and post-2020 issues. As I will address later, her application is really focussed on her grievances with former trustees and not really on the actions or omissions of the current trustees, which should have been the focus of the Removal Application.

[8] After closing the hearing, Ms Puohotaua filed further information and sought leave to have it adduced in support of her Removal Application. I deal with this request in the context of my analysis of the Removal Application below.

⁷ There was no nexus argued between this issue and why the trustees should be removed for doing something or not doing something, so I consider this point to be irrelevant.

⁸ I do not need to address this issue in these proceedings given that it is not relevant.

Ngā kōrero whakautu a nga tarahiti*The response by the trustees*

[9] In most respects, Ms Puohotaua's claims are rejected by the current trustees, and they refute the claim that they should be removed as trustees for cause. The current trustees were appointed by the Court in July 2020 at 418 Aotea MB 21-23.⁹

[10] The trustees remain frustrated by the barrage of claims and applications to the Court by Ms Puohotaua including the Removal Application, so much so that they have asked that I make an order per s 98C of the Act stopping Ms Puohotaua from bringing any further applications to this Court in relation to the Reservation Trust.

[11] Those that support the trustees paint a very positive picture of the work that the current trustees have done since taking office in 2020, yet do not shy away from the reality that post-2020, things with the Reservation Trust required considerable improvement.

[12] I address relevant specific responses when analysing the grounds for removal.

Ngā Ture*The law*

[13] The starting point is a reminder that removing a trustee for cause is a serious step and is not to be taken lightly.¹⁰

[14] In more specific terms, I may only remove trustees per s 240 of the Act if certain grounds exist. Those grounds are set out in s 240(1)(b) of the Act. In this context and based on the claims made here, two s 240(1)(b) grounds are relevant: whether the Reservation Trust trustees have repeatedly refused or failed to act; and/or whether they are suitable to continue are trustees because of their conduct or circumstances.¹¹

⁹ Ms Puohotaua has issues with the fact that these trustees were appointed during the Covid 19 lockdown period and was not aware of their appointment until 2023. If she had known about the appointment she submits that she would have objected. No reasons were given as to why she would have objected.

¹⁰ *Henderson v Brooking – Wharekahika A47* [2023] Māori Appellate Court MB 17 (2023 APPEAL 17) at [28].

¹¹ Section 240(1)(b)(i) and (iv) of the Act. I note that s240(1)(b)(i) of the Act deliberately uses the word "repeatedly" suggesting that any evidence of refusing or failing to act, must be more than a one off. The extent of what might constitute 'repeatedly' will, in line with principles of statutory interpretation be determined by context.

[15] If I am satisfied that one or both of these grounds exist, then I must pause and consider whether removal is desirable for the proper execution of the Reservation Trust, which involves an exercise of discretion in accordance with the principles and kaupapa of the Act.¹² It therefore requires a two-stage approach.¹³

[16] Ms Puohotaua referenced various provisions of the Trusts Act 2019, mostly in her reply statement, including ss 23, 24 and 35, arguing that the current trustees are in breach of the duties in those sections.¹⁴ The Trusts Act 2019 applies to the Reservation Trust making the codified mandatory and default duties applicable to the current trustees.¹⁵

[17] Ms Puohotaua is mistaken that there are no guidelines in the Act to remove Māori reservation trustees. Section 240 of the Act applies to Māori reservation trustees by virtue of s 236 of the Act.¹⁶

Have the trustees repeatedly failed or refused to act and/or is their conduct or circumstances such, that they are no longer suitable to be trustees?

[18] On the material before me I distil the main trustee performance issues asserted by Ms Puohotaua as follows:¹⁷

- (a) The lack of a charter for a considerable period of time.

¹² Above n 10, at [40].

¹³ *Nikora v Trustees of Tuhoe - Tuhoe Te Uru Taumatua Trust* (2021) 252 Waiariki MB 157 (252 WAR 157) at [69].

¹⁴ Trusts Act 2019, ss 23, 24 and 35;

23 Duty to know terms of trust

A trustee must know the terms of the trust.

24 Duty to act in accordance with terms of trust

A trustee must act in accordance with the terms of the trust.

35 Duty of impartiality

(1) A trustee must act impartially in relation to the beneficiaries, and must not be unfairly partial to one beneficiary or group of beneficiaries to the detriment of the others.

(2) This section does not require a trustee to treat all beneficiaries equally (but all beneficiaries must be treated in accordance with the terms of the trust).

¹⁵ There is no evidence that the trustees have modified or excluded any of the default duties.

¹⁶ *Moke v The Trustees of Ngāti Tarāwhai Iwi* 2019] Māori Appellate Court MB 265 (2019 APPEAL 265) at [57].

¹⁷ Some of the grounds were new ones raised in Ms Puohotaua's reply statement. Given that none of them lead me to a view that removal is necessary and even though they were raised late, to the extent that I find that they are relevant, I have addressed them in concert with the list above.

- (b) The lack of a trust order, resulting in the trustees not understanding their powers and duties.
- (c) The failure to provide trust information when requested.
- (d) The failure to hold meetings when requested.
- (e) A ‘vote of no confidence’ is evidence that these trustees do not have beneficiary support.
- (f) No proper elections and trust material.
- (g) Certain pool of beneficiaries making decisions for the Reservation Trust.

There is no Charter

[19] Trustees of a marae reservation trust must have a charter.¹⁸ There is no dispute that the Reservation Trust did not have a charter in place until one was approved at the Special Hui. The trustees had been operating under a draft charter since 2021.¹⁹ That is, the Reservation Trust did not have a charter since 1994, when that requirement came into force for marae reservations.

[20] There is no evidence that the current trustees have repeatedly refused to produce a charter. There is no evidence that they have repeatedly failed to implement a charter. The charter is now in place having been ratified by the beneficiaries at the Special Hui (the Charter), a hui that Ms Puohotaua attended and contributed to.

[21] The trustees accept that a charter did not exist when they were appointed, but knew they needed one. What then was their response?²⁰

¹⁸ Māori Reservation Regulations 1994 (Regulations), regulation 7.

¹⁹ Submission of the Part Rakato B Māori Reservation Trust, Trustees of Part Rakato B Māori Reservation, 30 May 2024. It is also accepted that when Ms Puohotaua filed the Removal Application the charter was not ratified.

²⁰ Response to new evidence and response to Shelly Puohotaua, Part Rakato B Māori Reservation Trust, 18 June 2024 at [1].

...hence it became our first point of business. It was resolved by beneficiaries at the 2021 annual general meeting (AGM) that we would act under our charter in its draft form until such time it was ready to be ratified.

[22] The trustees had a plan, took the lack of a charter seriously and acted, with the support and knowledge of beneficiaries. That is hardly refusing or failing to act.

[23] Prudently, when the draft charter was in a final form, it was circulated to every beneficiary who provided their email at the 11 February 2024 annual general meeting (AGM). Ms Puohotaua was provided a copy of the draft charter by email on 5 February 2024. The draft charter was also posted on the ‘Rakato, Ngati Hine o Te Ra’ Facebook Group before the Special Hui.

[24] The minutes of the Special Hui reflect that Ms Puohotaua was in attendance and spoke to the draft charter, by firstly thanking the Reservation Trust trustees for their mahi that had been done in their four-year term to that point. Ms Puohotaua did object to the draft charter and then left the hui. The minutes state that Ms Puohotaua was the only person objecting to the draft charter at that hui.²¹

[25] For completeness there is no substance to the concern about the way the Special Hui was advertised. Ms Puohotaua clearly knew about it, as she attended. She could have raised concerns if she held the view that others may not be aware the Special Hui was on. Or better still, she could have let people know about the Special Hui, i.e. tautoko, as opposed to raising issues after the fact. There is no evidence she did either.

[26] I cannot fault the process adopted to sanction the Charter. Whilst four years may seem a long time to hui about a charter, this fact does not amount to a repeated failure to act or a refusal to act. Furthermore, there is no evidence of prejudice or serious impact on the underlying whenua over the time it has taken to get a charter approved.

[27] I find that the current trustees did act appropriately with respect to the Charter and its adoption, and nothing presented by Ms Puohotaua or any other party leads me to a contrary view.

²¹ The trustees characterise Ms Puohotaua’s behaviour in the following terms “ambushed the meeting with foul language, suggested violence as a method for dealing with issues...made personal attacks against past trustees, and continually interrupted others when speaking”.

The failure to have a trust order

[28] Ms Puohotaua argued that the trustees do not have a trust order. That is correct, but a Māori reservation trust is not required by law, to have a trust order, it is optional.²² There is no substance to this allegation.

Because there was no charter or trust order there has been no basis to function as trustees

[29] Ms Puohotaua raised a somewhat fair question,²³ as to how these trustees have been functioning and administrating the trust without a charter or a trust deed.²⁴ In essence she argues that the trustees have exercised powers where none have existed. Her assumption being that the Reservations Trust need these legal instruments to exercise powers and duties.

[30] The correct answer is that Māori reservation trustees have their powers and duties sourced in the Act, the Māori Reservation Regulations 1994, and the Trusts Act 2019. Powers and duties may also be sourced in the common law, which may include duties at tikanga.²⁵

[31] It is a myth, that somehow a charter is the source of all trustee obligations and duties. Rather, a charter is best described as a guide that supplements, rather than substitutes or supersedes, the powers, duties, and obligations of responsible trustees.

[32] In short, the failure to have a formal charter and/or a trust order from 1994 to April 2024 does not mean that the past and present trustees have had no powers or duties to exercise. From their appointment in July 2020, the current trustees have been possessed of all powers, duties and available remedies that the law provides responsible trustees of a Māori reservation.

The trustees have failed to respond to requests for trust information

²² Te Ture Whenua Māori Act 1993, s 338(8).

²³ I say somewhat fair, because Ms Puohotaua is not a lawyer and is not expected to know off hand the legal source of trustee powers, but this is where she should have sought legal advice before launching into a Removal Application or sought directions from the Court, which is a simple way to clarify the obligations of a trustee under the jurisdiction of the Court.

²⁴ 486 Aotea MB 1-29 (486 AOT 1-29) at 15.

²⁵ This is a point I note Ms Puohotaua does not accept; see Rakato Beneficiaries Special Hui Transcript, Shelly Puohotaua, 10 March 2024 at 4.

[33] Ms Puohotaua claimed that her requests for trust information have been refused by the trustees. I do not accept this based on the responses from the trustees.²⁶

[34] The only information not provided, upon request, seems to be as a result of an oversight with respect to the request dated 6 February 2024 for a copy of the recording from the 2024 AGM. The trustees state that their focus on preparing for the AGM and whānau day meant that the request was missed. This is an oversight and not a refusal.

[35] I accept that the trustees have responded to the requests for minutes from 2018.

[36] It became clear that the information Ms Puohotaua actually wants is historical information that the trustees do not have. Ms Puohotaua conceded as much.²⁷

The Court: ...I heard from the trustees that they have responded to your request for information, and they have given you the information you have requested. What do you say to that?

S Puohotaua: It's hard for me to answer that, because I'm seeking really historical information.

[37] I asked Ms Puohotaua whether her requests for historical information were specific. In reply:²⁸

S Puohotaua: I don't think it's been about historical

...

S Puohotaua: Simply because I know they can't get it.

[38] I find it nonsensical to complain about non-disclosure of information Ms Puohotaua knows the current trustees do not have possession of.

²⁶ There is sufficient evidence filed by the trustees that information has been made available to all beneficiaries including Ms Puohotaua. Firstly, general meetings have been held in 2021, 2022, 2023 and 2024. Two of the four hui were held at Rakato and two in Whanganui township. All minutes and reports from the annual meetings are filed with the Court. Those that have attended the general hui have been given copies of minutes and reports, including those that have given their apologies. The trustees responded to the 9 September 2023 request for information on 19 September 2023, with a positive reply from Ms Puohotaua. There was no response to the 12 January 2024 request for documents because the trustees felt their response on the 19 September 2023 was sufficient and because they did not have a ratified charter to give Ms Puohotaua. A third request was received on 5 February 2024 and as a result a copy of the latest draft charter was sent to Ms Puohotaua via email on 6 February 2024.

²⁷ Above n 24, at 25.

²⁸ Above n 24, at 26.

[39] There is no basis to the allegation that the current trustees do not wish historical information to surface to protect former trustees, who may be whanaunga. That is a serious allegation not supported by evidence. The current trustees concede that the past trustees were not perfect. That may be so, but what Ms Puohotaua has failed to comprehend is that the Removal Application is not about those previous trustees.

[40] It became clear that this application is really about the former trustees:²⁹

The Court: Your grievance is really against those former trustees.

S Puohotaua: It is and I'm entitled to have a grievance against them,

[41] In her reply statement Ms Puohotaua asserted that I confirmed at the hearing that I have no jurisdiction to deal with historical matters where the Reservation Trust's conditions and administration are disputed.³⁰ That is correct as it relates to the appointment of the current trustees or actions of former trustees. It is incorrect regarding matters between 2020 when these trustees were appointed and now. Such matters are technically historical in nature, but the actions or omissions of the past four-year period form part of my consideration of Ms Puohotaua's Removal Application.

[42] I find that the Reservation Trust trustees have generally complied with their obligations to respond to reasonable requests for information by Ms Puohotaua. That obligation is not an absolute one.³¹ There is no evidence of a repeated refusal or failure to provide information that would cause me concern. Oversights do not amount to repeated refusals or failures in this context.

The failure to call meetings of beneficiaries

[43] There was little direct evidence given by Ms Puohotaua about this allegation.

²⁹ Above n 24, at 19.

³⁰ Response submission of Shelly Puohotaua, Shelly Puohotaua, 8 June 2024, at [3].

³¹ Trusts Act 2019, ss 51-53; *Hutcheson v Houkamau – Porangahau 2B No 10* (2021) 88 Takitimu MB 118 (88 TKT 118) at [39].

[44] The evidence is that there have been four AGMs in four years. I am not sure whether Ms Puohotaua expects more than one. I have not seen any evidence where the trustees have been asked to hold a hui and have rejected that request out of hand.

[45] The trustees did respond, by letter dated 18 September 2023, to a request for the trustees to requisition a hui. This letter set out why the request was made in error and referenced the upcoming January 2024 AGM. Ms Puohotaua was aware of this response.³²

[46] If this allegation relates to the non-attendance of trustees at the ‘vote of no confidence’ hui, then I address that issue next.

[47] I find that there is no failure to call meetings as alleged.

The beneficiaries have no confidence in the trustees

[48] The Special Beneficiary Hui seems to have been the catalyst in filing the Removal Application.³³ A hui called for beneficiaries to discuss a ‘vote of no confidence’ in the Reservation Trustees.

[49] I have read closely the transcript from Special Beneficiary Hui and draw the following conclusions:

- (a) Most of the talking, at least based on the transcript, was undertaken by Ms Puohotaua. Only Piri Cribb and Colin Puohotaua also contributed in any substantive way during the hui.
- (b) There was little adverse comments from other beneficiaries, other than Ms Puohotaua, claiming that the performance of the trustees was such that they lacked confidence in them. Colin Puohotaua did not criticise the trustees, but rather questioned why matters needed to go to Court.³⁴

³² Above n 24, at 17.

³³ Rakato Beneficiaries Special Hui Transcript, Shelly Puohotaua, 10 March 2024 at 46:
Shelly: The outcome of this hui will be recorded with a maori land court tomorrow, along with the appropriate legal application.
Shelly: To remove them.
Shelly: Ka pai?

³⁴ Rakato Beneficiaries Special Hui Transcript, Shelly Puohotaua, 10 March 2024 at 39:

- (c) Piri Cribb actively supported the trustees during her kōrero at the hui.
- (d) A formal vote was never taken as to whether those in attendance had confidence in the current trustees or not.³⁵
- (e) It seems that one of the motivations for bringing the Removal Application was a decision not to allow Ms Puohotaua to live on Rakato lands.³⁶ It has no relevance to the Removal Application, because it was not a decision of the Reservation trustees.
- (f) Many of Ms Puohotaua's assertions about the law were wrong as it relates to a Māori reservation trust.³⁷

[50] I find that the Special Beneficiary Hui does little to convince me that the current trustees are not suitable to be trustees due to their conduct or circumstance or that they have repeatedly failed or refused to act. The transcript of the Special Beneficiary Hui revealed little to cause me concern.³⁸ In fact the best kōrero came from Colin Puohotaua, who spoke at length about working issues out together.

[51] Many issues raised during the hearing by Ms Puohotaua were about historical matters, which I cannot address here because there is no application before me and because some issues are the subject of a s 45 application before the Chief Judge.

Colin Puohotaua: You know he is a, you know. If it comes to a court battle. It's it's the wrong way.

Colin Puohotaua: For me. I you know I don't. I don't like to take them to court.

Colin Puohotaua: You know, and and do those things. But yeah, but you know, if you need some legal advice, I think you, you know, get it off our tuakanas, you know, because you know they got the they got the korero

³⁵ Rakato Beneficiaries Special Hui Transcript, Shelly Puohotaua, 10 March 2024.

³⁶ Rakato Beneficiaries Special Hui Transcript, Shelly Puohotaua, 10 March 2024 at 29 and 42:

Colin Puohotaua: I know that. I know that this has started over Shelly moving onto the land.

...

Shelly: I agree with Piri before. It's about all the beneficiaries, not just some.

Shelly: Are trustees able to let us know why they said at the appeal, they don't want me on the land. Is there any valid reason?

Shelly: For me not been on the land?

Shelly: They did say there was some health and safety concerns. I have asked since July. Do they have a report from qualified health and safety experts.

Shelly: To date. No response.

³⁷ Rakato Beneficiaries Special Hui Transcript, Shelly Puohotaua, 10 March 2024 at 3:

Shelly: It's just a basic one. So, for those of you who are not aware when you have a legal trust, it's an entity that operates as a business.

³⁸ I also note that the trustees took the view that because the 'vote of no confidence hui' was not advertised as a hui for trustees, the trustees did not attend.

[52] Beneficiaries may call hui as they see fit, but it does not follow that the trustees or the Court must implement or are somehow bound by the outcomes of such hui. It is settled law that responsible trustees are not bound by the views of beneficiaries, nor is this, Court.³⁹

No proper elections, AGM minutes and financial reports

[53] Since their appointment in 2020, the current trustees have not been required to hold an election. They cannot fail or refuse to act for something they were not required to do. Ms Puohotaua produced no evidence to support this claim.

[54] There was no evidence produced to suggest that the AGM minutes and financial reporting has been below par since the current trustees took office. Ms Puohotaua provided no particulars as to why these reports were not “proper” or why they were “improper”. I have reviewed the relevant documents and they are in order.

[55] During the hearing Ms Miriama Cribb assured me that all annual financial reports since 2021 are available and are in order.⁴⁰

[56] I also note that the trustees advise that a “balance sheet” from 2021 can be found on file at the Court.⁴¹ That is accurate upon my review.

A small portion of beneficiaries are making decisions for the Marae Reservation

[57] Ms Puohotaua argues that a small portion of the beneficiaries are making decisions about the whenua and excluding others from decision making. Again, there were no particulars provided to support the general allegation, but it seems that she takes issue with the influence of Piri Cribb in particular.

[58] I have no doubt that more experienced whānau members are guiding the current trustees. That fact should be supported and not criticised, unless of course that guidance is misplaced and these trustees have or are blindly following more senior members of the marae

³⁹ *York - Matakohē North Eastern Portion Lot 54 Section 3B1 Māori Reservation* (2021) 235 Taitokerau MB 288 (235 TTK 288) at [27]; see also *Re Proprietors of Mangakino Township Inc* (1999) 73 Taupo MB 30 (73 TPO 30) at [4].

⁴⁰ Above n 24, at 23.

⁴¹ Above n 20, at [4].

community, to the detriment of that community. There is no evidence to suggest either is occurring.

[59] In fact, I find the support given by the likes of Piri Cribb as appropriate and necessary, given the rangatahi status of these trustees and perhaps because of where this trust has come from. Using experienced operators in the Māori land world, to try and avoid history from repeating itself, in terms of previous performance of trustees, is wholeheartedly supported.

[60] The trustees reject the claim that their reply statement dated 18 June 2024 was written by Piri Cribb and that its contents were not their views. I too reject that claim and find no reason to believe that the current trustees do not hold the views as expressed in that statement. Further, there is no basis to claim that the trustees are not addressing conflict or disputes, but rather have somehow delegated those to Piri Cribb. For the same reasons given above, there is little wrong with trustees taking advice and leaning on the expertise of senior experienced operators in this space, as long as they maintain the understanding that they are ones who must make the decisions. There is no evidence to suggest they are not taking such responsibility.

Leave to adduce further evidence

[61] I address the request for leave to adduce further evidence in my substantive decision because my reasons for rejecting the request are in some respects the same as those for dismissing the Removal Application.⁴²

[62] By email dated 24 June 2024 Ms Puohotaua filed with the Court screen shots of information from records held by the Court relating to the Reservation Trust and Ahu Whenua Trust. The request was not served on the trustees. The claim being made was that somehow the information originally submitted by the trustees of the Reservation Trust and Ahu Whenua Trust has changed since it was last inspected by Ms Puohotaua. A summary of the matters the emails raise are as follows:

⁴² I have treated this request as an ex parte application on the basis that my decision does not prejudice the trustees and I decided that I did not need to hear from them.

- (a) Financial information has been added to the Court file, making it difficult to decipher what financials are for which trust (the Reservation Trust and the Ahu Whenua Trust) due to the use of the same bank account.
- (b) That Ms Puohotaua did not receive the financial information that was emailed back in 2019 as stated in the AGM minutes.
- (c) That Reti Cribb was the treasurer of the Ahu Whenua Trust, but she never moved the financial information at the AGM held in 2019, Teresa Ranginui did.
- (d) Ms Puohotaua claims that the 2019 Whanganui District Council rates amount differs from the rates amount shown on the Ahu Whenua AGM 2019 rates report and that whoever typed the report knowingly entered the incorrect amount.
- (e) Ms Puohotaua also states that the whānau wish to sight the bank statements because of these discrepancies and that she has requested this information since last year, as it was not on a Court file.

[63] On 25 June 2024, Ms Puohotaua sought leave, by way of email, to have the above information adduced and considered by me as part of the Removal Application. However, the request came after I closed the hearing on 20 June 2024.⁴³

[64] There is no doubt that I can receive new evidence up until I issue my decision. This ability is codified in s 98 of the Evidence Act 2016.⁴⁴

[65] The evidence sought to be adduced is not overly relevant to the Reservation Trust trustees' performance post their appointments in 2020. It relates to information of former trustees, an issue I have dealt with above in assessing the merits of the Removal Application.

⁴³ This email was not sent to the trustees by Ms Puohotaua.

⁴⁴ *Tauwhao Te Ngare* (2004) 79 Tauranga MB 40 (79 T 40); I also have jurisdiction per r 6.18 of the Māori Land Court Rules 2011, which allows the Court, on the application of any party or on its own initiative, to make orders or give directions requiring the giving of additional evidence.

[66] Further, the emails filed by Ms Puohotaua are vague, in that there is no clear link between the incumbent trustees and their performance post-2020. They also relate to the Ahu Whenua Trust trustees who are not the subject of the Removal Application.

[67] The lack of relevance, weighed up against principles of fairness and natural justice tips the scales towards refusing the introduction of this new evidence after the close of the hearing. The strong policy position to bring closure to proceedings also supports refusing to allow this new evidence. This information could have been sourced in advance of the hearing, as the issues relate to documents that have been on the Court file for some time.

[68] I therefore dismiss the request to adduce further evidence as requested by Ms Puohotaua.

Ngā whakataua me ngā kupu whakahau'

Decision and directions

[69] On the evidence before me, there is no basis for the Court to take the serious step of removing any of the Reservation Trust trustees.

[70] I find that the Removal Application had little chance of success, primarily because, by her own admission Ms Puohotaua's main *take* relates to historical (pre-2020) issues which these trustees had no direct responsibility or control over.

Section 98C Request

[71] Before dismissing the Removal Application, I need to address the request by the trustees for an order per s 98C of the Act.⁴⁵

⁴⁵ **98C Judge may make order restricting commencement or continuation of proceeding**

- (1) A Judge may make an order restricting a person from commencing or continuing proceedings in the court.
- (2) The order may have—
 - (a) a limited effect (a limited order); or
 - (b) an extended effect (an extended order).
- (3) A limited order restrains a party from commencing or continuing proceedings on a particular matter in the court.
- (4) An extended order restrains a party from commencing or continuing proceedings on a particular or related matter in the court.
- (5) Nothing in this section limits the court's inherent power to control its own proceedings.

[72] At the end of the hearing on 4 June 2024, I was invited by the Reservation Trust trustees to make an order under s 98C of the Act. Such an order would restrain Ms Puohotaua from commencing or continuing applications on a limited or extended basis as it relates to the Reservation Trust. In this context, it seems that the trustees are seeking to refrain Ms Puohotaua from bringing any new applications in relation to the Reservation Trust.

[73] I advised the parties at the hearing that I would consider the process to respond to such a request.⁴⁶

[74] Having reviewed s 98C of the Act and the effect an order would have on someone on the receiving end, I have concluded that I will not consider this request as part of this decision. Rather, I propose to issue a separate minute on the process that should be followed to allow me (if I am to hear it) to properly consider such a request. This is consistent with the s 98C(5) whereby I may control my own proceedings.

[75] I will treat this request as a separate application and not connected to the Removal Application.

[76] I now formally dismiss the Removal Application.

[77] There will be no award of costs.

Mauri ora

I whakapuaki i te 10:00am i Heretaunga te 17 o ngā rā o Hongongoi i te tau 2024.
Pronounced at 10:00am in Hastings on this 17th day of July 2024.

A H C Warren
JUDGE

⁴⁶ I referred to this fact in a post hearing direction dated 11 June 2024.