

**I TE KOOTI WHENUA MĀORI O AOTEAROA  
I TE ROHE O WAIKATO MANIAPOTO**

*In the Māori Land Court of New Zealand*

*Waikato Maniapoto District*

**AP-20230000019778**

**A20210005536**

WĀHANGA

*Under*

Sections 231, 237, 238 and 240, Te Ture Whenua  
Māori Act 1993

MŌ TE TAKE

*In the matter of*

Opuatia 9C2B2 and Others

I WAENGA I A

*Between*

RANGITIAHO RAU AND DEIDRE TUPAEA

Ngā kaitono

*Applicants*

ME

*And*

GARY STOCK, BRIAN MAHARA, FAITH  
RAPANA, JUSTIN TAUA AND PHILLIP  
MAHARA AS TRUSTEES OF THE PAKAU  
TRUST

Ngā kaiurupare

*Respondents*

Nohoanga:

*Hearing*

9 June 2021, 224 Waikato Maniapoto MB 132 - 153

24 February 2022, 238 Waikato Maniapoto MB 196-202

22 September 2022, 243 Waikato Maniapoto MB 176-290

(Heard at Hamilton)

Kanohi kitea:

*Appearances*

K Ketu and T Barker for Applicants

M Sharp for Respondents

Whakataunga:

*Judgment date*

27 November 2025

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**TE WHAKATAUNGA Ā KAIWHAKAWĀ R P MULLINS**

*Judgment of Judge R P Mullins*

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**Te kaupapa o ngā tono***The nature of the applications*

[1] At the heart of these applications is the occupation of whenua administered by the Pakau Trust, decision-making of trustees of the Pakau Trust (the respondents), and the significance of the names Pakau and Puhirua.

[2] Rangitiaho Rau and Deidre Tupaea (the applicants), represented by Mr Ketu and Ms Barker, are both beneficiaries of the Pakau Trust. The applicants say that Faith Rapana (Faith) should not have been granted a licence to occupy (LTO) by the trustees, as she is not a beneficiary of the Pakau Trust. Further, they argue that Gary Stock (Gary) should not have been granted an LTO because Opuatia 9C 2B 2 is administered by the Pakau Māori Reservation Trust and not the Pakau Trust. They raise concerns about conflicts of interest in granting the LTOs, as both Faith and Gary are trustees of the Pakau Trust. They want those LTOs cancelled.

[3] The applicants also seek orders that the Pakau Trust refer to itself by its legal name.

[4] The applicants submit that the trustees removal is necessary as they have failed to learn the terms of trust and act in accordance with them, as follows:

- (a) The possible misinterpretation of the powers of the respondents to grant LTOs.
- (b) Failing to confirm that Faith had the requisite blood ties required by the trust order.
- (c) Acting outside of the powers given to them under the trust order by granting a lease over non-trust land.
- (d) Using the incorrect trust name.
- (e) Failing to exercise their duty to carry out proper administration and management of the business of the trust by:
  - (i) Ensuring Faith was on the correct land block.

- (ii) Allowing Faith to occupy an area larger than permitted by her LTO.
- (iii) Unconsented buildings being put on trust land.
- (iv) The lack of minutes and record keeping.
- (v) Failing to monitor the terms of the LTOs.

[5] The respondents, represented by Mr Sharp, argue that they adopted proper processes in their decision-making to manage conflicts of interest. They say Gary does not currently require council consents for the buildings he has placed within his LTO, and whilst Faith may not have all of the required consents, it is not, at present, an obligation for the Pakau Trust to address this. Further, the Pakau Trust continues to refer to itself as the Puhirua Pakau Trust because the respondents say they were consulted prior to the name change and are currently going through the process of applying to change it back.

**Ngā take**  
*The issues*

[6] The issues for the Court to determine are:

- (a) The correct name of the Trust.
- (b) Have the trustees followed proper processes in granting any licenses to occupy and/or leases to Faith and Gary, including managing conflicts of interest?
- (c) Were the necessary District Council consents sought for buildings constructed on trust land by Faith and/or Gary as per the relevant LTOs and/or leases?
- (d) Have the trustees fulfilled their duties by acting as prudent trustees in the administration and management of the trust in the best interests of the beneficiaries?

**Te Ture**  
*The Law*

[7] The Court is being asked to exercise its powers under ss 231, 237, 238 and 240 of Te Ture Whenua Māori Act 1993 (the Act).

[8] Section 231 of the Act allows the court to review the terms, operation or other aspect of the trust including to confirm a trust order without variation, exercise its powers to vary the trust per s 244 of the Act, or terminate the trust if there is sufficient degree of support.

[9] Section 237 and 238 of the Act provides:

**237 Jurisdiction of court generally**

- (1) Subject to the express provisions of this Part, in respect of any trust to which this Part applies, the Maori Land Court shall have and may exercise all the same powers and authorities as the High Court has (whether by statute or by any rule of law or by virtue of its inherent jurisdiction) in respect of trusts generally.
- (2) Nothing in subsection (1) shall limit or affect the jurisdiction of the High Court.

**238 Enforcement of obligations of trust**

- (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.
- (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] Section 240 of the Act states:

**240 Removal of trustee**

- (1) The court may at any time, in respect of any trustee of a trust to which this Part applies, make an order for the removal of the trustee, if it is satisfied that—
  - (a) the trustee has lost the capacity to perform the functions of a trustee; or
  - (b) the removal is desirable for the proper execution of the trust, and 1 or more of the following grounds for removal are met:
    - (i) the trustee repeatedly refuses or fails to act as trustee:

- (ii) the trustee becomes an undischarged bankrupt:
  - (iii) the trustee is a corporate trustee that is subject to an insolvency event:
  - (iv) the trustee is no longer suitable to hold office as trustee because of the trustee's conduct or circumstances.
- (2) A trustee has lost the capacity to perform the functions of a trustee, for example, if the trustee—
  - (a) is subject to an order appointing a manager under [section 31](#) of the Protection of Personal and Property Rights Act 1988; or
  - (b) has a trustee corporation managing the trustee's property under [section 32](#) or [33](#) of that Act.
- (3) A person may no longer be suitable to hold office as trustee, for example, because of the following conduct or circumstances:
  - (a) the trustee is convicted of an offence involving dishonesty:
  - (b) it is not known where the trustee is and the trustee cannot be contacted:
  - (c) the trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of,—
    - (i) a company under the [Companies Act 1993](#); or
    - (ii) an incorporated or unincorporated body under the [Financial Markets Conduct Act 2013](#) or the [Takeovers Act 1993](#).

[11] The Court in *Henderson v Brooking* summarised the approach for the removal of a trustee per s 240:<sup>1</sup>

- (a) First, one of the grounds in s 240(1)(b) must be met. If a trustee becomes an undischarged bankrupt, one of the grounds is satisfied simply by that fact. If a corporate trustee is subject to an insolvency event, one of the grounds is satisfied simply by that fact. The remaining two grounds in s 240(1)(b) require an assessment by the Court.
- (b) If the ground relied on is s 240(1)(b)(iv), the Court must assess the trustee's conduct or circumstances. Following that assessment, the Court must determine whether, based on that conduct or those circumstances, the trustee is no longer suitable to hold office as trustee. Making this determination is an exercise of discretion. But it is not the end of the matter.
- (c) The examples in s 240(3) of when a person may no longer be suitable to hold office as a trustee does not limit s 240(1)(b)(iv), which remains wide in ambit

<sup>1</sup> *Henderson v Brooking - Wharekahika A47* [2023] Māori Appellate Court MB 17 (2023 APPEAL 17) at [40] (footnotes omitted); The Court of Appeal in *Henderson v Brooking* [2025] NZCA 368 upheld these findings, except to say that the first limb of the test is not a matter of discretion.

and scope to allow the Court to consider the range of conduct or circumstances that may result in a trustee being unsuitable to hold office. This approach is consistent with how examples in legislation are to be interpreted, per s 23 of the Legislation Act 2019.

- (d) If one or more of the grounds in s 240(1)(b) are met, the Court must then assess what is desirable for the proper execution of the trust. What is “desirable” does not mean what is necessary, and whether removal is “desirable” requires taking into account the broader circumstances of the trust, the land, the owners, and the principles and kaupapa of the Act. Ultimately, removal of a trustee must be to the advantage, advisable, prudent or expedient for the proper execution of the trust and the beneficiaries as a whole.

[12] The ‘conduct and circumstances’ ground is wide in scope and ambit. This wide-ranging ambit is necessary to allow the Court to consider the range of conduct or circumstances that may result in a trustee being unsuitable to hold office.

[13] The Trusts Act 2019 (the Trusts Act) provides that trustees have mandatory duties to know the terms of trust and act in accordance with them.<sup>2</sup> As the Court explained in *Rameka v Hall*, trustees must act in the best interests of the beneficiaries by discharging their obligations as set out in the Act and the trust order.<sup>3</sup> When doing so, general principles of trust law apply. These include a duty to acquaint themselves with and adhere rigidly to the terms of trust.<sup>4</sup>

[14] Section 28 of the Trusts Act confirms that the default trustee duties must be performed unless modified or excluded in accordance with that Act. These include the trustee duties not to exercise power for their own benefit, to avoid conflict of interest, not to profit and to act for no reward.

[15] Furthermore, s 34 of the Trusts Act sets out that trustees have a mandatory duty to avoid conflicts between the interests of the trustee and the interests of the beneficiaries.

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<sup>2</sup> Trusts Act 2019, ss 22-27.

<sup>3</sup> *Rameka v Hall* [2013] NZCA 203.

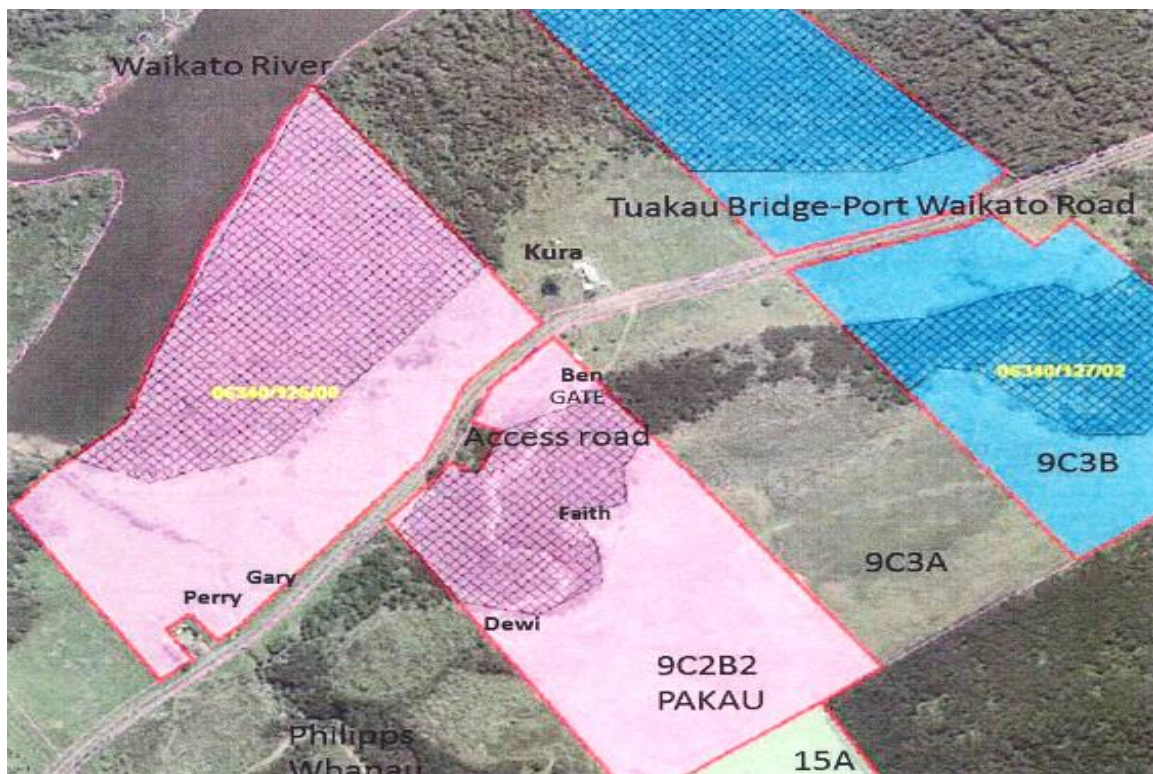
<sup>4</sup> *Rameka v Hall* [2013] NZCA 203 at [29], citing *Apatu v Trustees of Owahaoko C Trust — Owahaoko C1 and C2* (2010) Māori Appellate Court MB 34 (2010 AP 34) at [16].

**Te ingoa tika o te taratī***The correct name of the trust**The lay of the land*

[16] These applications involve three separate trusts – the Pakau Trust and the Puhirua Trust (which are both ahu whenua trusts), and the Pakau Māori Reservation Trust. Initially there was only one trust, which was seemingly unnamed by Court orders. To determine what the correct name of the trust is we must look to the constitution of the three trusts for context.

[17] On 22 June 1988, the Māori Land Court made an order pursuant to s 438(2) of the Māori Affairs Act 1953 vesting the Māori freehold land blocks known as Opuatia 9C2B2, Opuatia 9C3A, Opuatia 9C3B and Opuatia 15A in nine trustees as joint tenants.<sup>5</sup> From the orders issued at this time the land was merely vested in the names of the nine trustees as opposed to under a named structure like a trust.

[18] The following map shows the placement of the relevant land blocks:



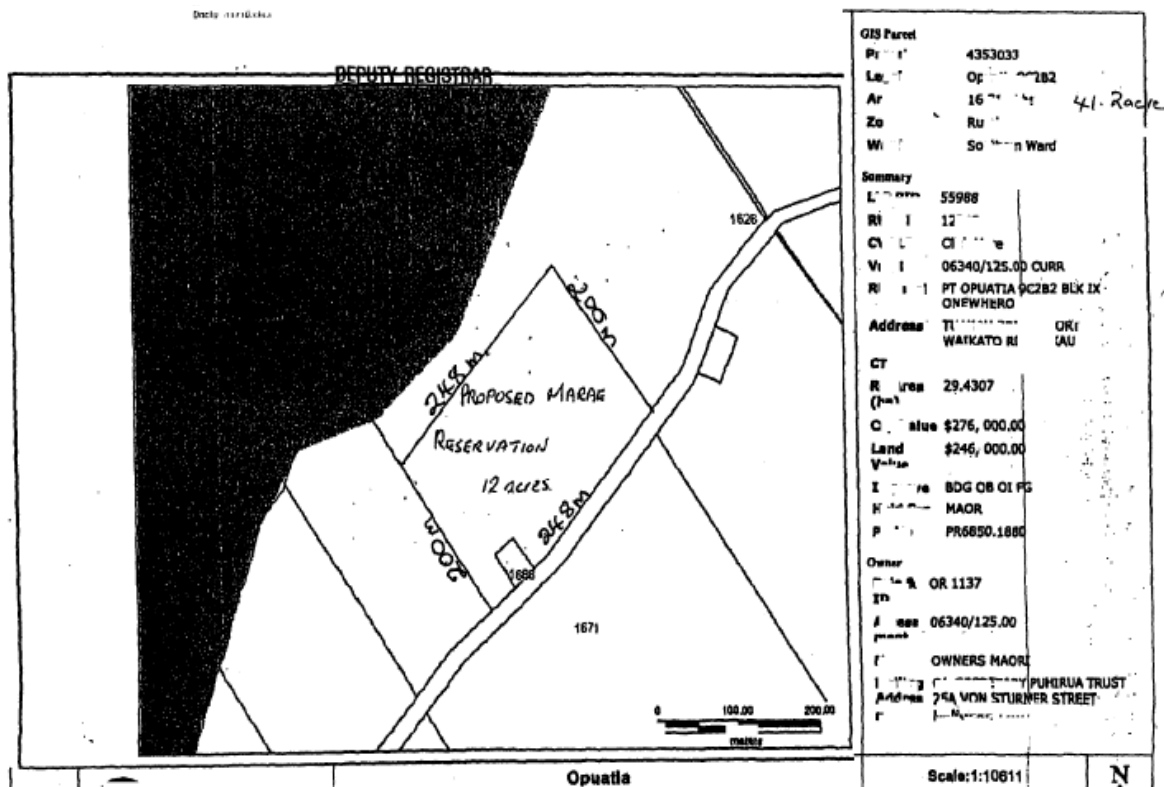
<sup>5</sup> 67 Waikato MB 150-151 (67 W 150-151).

[19] On 15 December 1988, an order was made varying the terms of the trust.<sup>6</sup> A new trust order was put into place and the Trust was named the Puhirua Trust. All the same blocks remained vested in the trust.

[20] In 2004 the name of the trust was amended to Puhirua Pakau Trust.<sup>7</sup>

[21] In 2007, part of the Opuatia 9C 2B 2 (Pt Opuatia 9C 2B 2) block was set apart as a Māori reservation, to be known as the Pakau Māori Reservation. The purpose of the Pakau Māori Reservation was for a marae and papakāinga to be built on the land.<sup>8</sup> The beneficiaries are the owners and their descendants. Hamuera Taua, Ronald Mahara, Gary Stock, Tatau Pikaahu, Teinamoorea Taua and Justin (Tahau) Taua were appointed as trustees of the Pakau Māori Reservation.<sup>9</sup>

[22] The following diagram, submitted to the court by the applicants at the hearing before me on 22 September 2022, shows where the reservation land is located on the trust land:



<sup>6</sup> 67 Waikato MB 247-249 (67 W 247-249).

<sup>7</sup> 107 Waikato MB 103-108 (107 W 103-108).

<sup>8</sup> "Setting Apart Maori Freehold Land as a Maori Reservation" (4 October 2007) 108 *New Zealand Gazette* 2839 at 2873; 124 Waikato MB 258-264 (124 W 258-264).

<sup>9</sup> 124 Waikato MB 258-264 (124 W 258-264).

[23] At an AGM on 27 May 2018 (the 2018 AGM), unanimous support was recorded for the removal of Opuatia 9C 3A block from the Puhirua Pakau Trust. It is unclear who was in attendance at the meeting as an attendance sheet was not filed into evidence. However, the minutes do show that Gary, Faith, Brian Mahara, Donna Cullerton and Michael Sharp, as a court appointed lawyer, attended the AGM. The following motion was put to the meeting:<sup>10</sup>

... to partially terminate the Puhirua Pakau Trust in its present form and extract Block 9C3A to be managed separately. A vote was held 9 x voted in favor and nil voted against.

[24] On 11 September 2018, an order was made to partially terminate the Puhirua Pakau Trust in respect of the Opuatia 9C 3A block (the 2018 hearing).<sup>11</sup> Opuatia 9C 3A was vested in trustees and the trust was called the Puhirua Trust. The trustees were Caroline Tawhiao, Donna Culleton, Judith Hawera, Kahukura Rau and Tipa Brown-Rapana. The partial termination had the effect of removing some beneficiaries of the Puhirua Pakau Trust, who instead became beneficiaries in the new Puhirua Trust. This included Faith.

[25] Orders were also made on 11 September 2018, based on the AGM resolution, that the Puhirua Pakau Trust be renamed the Pakau Trust. Gary is a beneficiary of this trust.<sup>12</sup> The trustees were Gary, Phillip Mahara, Justin Taua, Barry Rapana, Faith, and Brian Mahara.<sup>13</sup>

[26] From this point on there were three trusts – the Pakau Trust containing Opuatia 9C 3B, Opuatia 9C 2B 2 and Opuatia No 15A blocks, the Puhirua Trust containing Opuatia 9C 3A block and the Pakau Māori Reservation containing Pt Opuatia 9C 2B 2.

[27] On 15 May 2021, the Pakau and Pakau Māori Reservation trusts held a joint AGM.<sup>14</sup> A motion was passed to change the name of the Pakau Trust back to the Puhirua Pakau Trust and that the trustees for both trusts be the same. To date, no application to vary the name of the trust or amend the trustees has been filed with the court.

<sup>10</sup> The names of the nine who voted in favour were not recorded in the minutes.

<sup>11</sup> 169 Waikato Maniapoto MB 113-130 (169 WMP 113-130).

<sup>12</sup> 169 Waikato Maniapoto MB 113-130 (169 WMP 113-130).

<sup>13</sup> These are the current trustees subject to the application for removal.

<sup>14</sup> The minutes show a joint AGM between Puhirua Pakau & Pakau Marae Reservation Trusts.

*How should the Pakau Trust refer to itself?*

[28] At the hearing I heard evidence from Rangitiaho Rau about the significance of the names Pakau and Puhirua as they relate to the tūpuna Reituu and Reipae.<sup>15</sup> I directed that Rangitiaho file a written brief of evidence setting out this kōrero which she did subsequent to the hearing:<sup>16</sup>

**The story of Reituu and Reipae**

8. The names given to the whenua – Paakau and Puhirua – refer to our tupuna Reituu and Reipae and the koorero of the manu Ueoneone.
9. Paakau takes its name from the saying “Te Paakautanga o te parirau o te manu tupuna o Ueoneone” - the flapping wing of Ueoneone’s supernatural bird. This relates to the story of the Ngapuhi rangatira Ueoneone, who journeyed to Waikato and became enamoured by the sisters, Reituu and Reipae.
10. After returning north, Ueoneone sent his manu tupuna, a karearea named Hauaawhiowhio to fetch the sisters and carry them back to him. When Hauaawhiowhio arrived, he found Reituu sitting in the porch of her whare, Tauranga-miromiro, and perched on a beam.
11. After a tohunga chanted a karakia to make Reituu and Reipae light enough for Hauaawhiowhio to carry them, Hauaawhiowhio headed home to Ueoneone with the sisters on his back. When Hauaawhiowhio got to the Tuakau bridge area, he turned and followed the river until he reached Paakau where he then turned north. As he did so, his wing clipped the side of the Paakau maunga causing water to gust out, creating the Paakau waterfall. It is said that this location, which is near Puhirua, is also the site of the oldest Ngaati Tiipa paa in the rohe, Paakau te Parirau ki te Whenua. The name Pakau (which is the name we use to identify the relevant whenua) comes from this story and the clipping of Hauaawhiowhio’s wing.
12. Puhirua refers to the two sisters Reituu and Reipae. Puhī means or refers to a woman of high rank and rua means the number two (2). Puhirua can literally translate to two women of high rank, in this context being Reituu and Reipae.
13. The distinguishing factors between the Paakau and the Puhirua lands arises from the lives and whakapapa of Reituu and Reipae. On their travels to Ueoneone on top of Hauaawhiowhio, Reipae jumped off in Whangarei and settled there. However, Reituu carried on up north and married our tupuna, Ueoneone (or Uenuku). Thus, these two tupuna wahine are different and the whakapapa from them are distinct. The Paakau and Puhirua lands also have different kawa associated with them. Puhirua is the kaitiaki of the caves, whereas Paakau are the kaitiaki of the Paakau waterfall.

<sup>15</sup> 169 Waikato Maniapoto MB 113-130 (169 WMN 113-130).

<sup>16</sup> Reply affidavit of Rangitiaho Rau, McCaw Lewis, 2 November 2022 at [8]-[13].

[29] This evidence was unchallenged by the respondents.

[30] The two names Puhirua and Paakau have significant meanings to the different areas associated with those names. It is clear from the trust order that the legal name of the trust is Pakau Trust, something both parties accept.

[31] The respondents argue that the name change was completed without prior consultation with the trustees or beneficiaries. At the 2018 hearing the respondents had the opportunity to object to the name being changed. Gary, Faith, Brian Mahara and Donna Cullerton, who were at the 27 May 2018 AGM, were also at the 2018 hearing. None of them objected to the name change in either setting. It is clear that the respondents were aware of the proposed name change and had two opportunities to object – at the 2018 AGM and at the 2018 hearing. They remained silent.

[32] I agree that the use of the incorrect name causes confusion. Puhirua and Pakau are two separate trusts, but the use of the name Puhirua Pakau Trust in minutes of meetings and licences to occupy has the effect of incorrectly combining the two trusts. It also runs the risk of blurring the roles between the two sets of trustees from the Pakau Trust and the Puhirua Trust.

[33] Until such time as an application to vary the terms of trust to change the name has been filed, heard and orders made, the trust is called the Pakau Trust, and the trustees should refer to it as such, including in any documentation.

**Ngā nohonoho ki Opuatia 9C 2B 2 me te Pakau Māori Reservation Trust whenua**  
*Occupation of Opuatia 9C 2B 2 and the Pakau Māori Reservation Trust land*

[34] Occupation of the trust lands has been an active issue for the Pakau Trust and beneficiaries. The two LTOs at issue in this matter are:

- (a) Faith's occupation of Opuatia 9C 2B 2 – land vested in the Pakau Trust; and
- (b) Gary's occupation of Pt Opuatia 9C 2B 2 – land vested in the Pakau Māori Reservation.

*Background to Faith's occupation*

[35] It is not clear exactly when Faith and her whānau moved onto the whenua. Faith was not called to give evidence at the hearings. The area Faith and her whānau occupy is on Opuatia 9C 2B 2 block that is part of the Pakau Trust of which Faith is a trustee, but not an owner. When Faith first came to occupy the whenua she did not have permission to do so. The Rapana whānau are instead owners in the Puhirua Trust.

[36] A beneficiary hui of the Puhirua Pakau Trust (as it was then called) was held on 12 February 2017. The minutes record that the kaupapa of the hui was “an unauthorized occupation of the Whenua (9C 3A and 9C 2B 2)”.<sup>17</sup>

[37] The minutes filed in evidence by Rangitiahō are unchallenged and record the following key points:

- (a) Faith advised the hui that she has every right to be there and she was not moving;
- (b) Gary asked Tom Shortcliffe (Tom), Faith's partner, to remove their two large pitbull dogs from the property as their presence meant the balance of the property was unable to be leased;
- (c) Tom advised the hui that the beneficiaries should not listen to the trustees as they have no authority;
- (d) In response, the trustees present cautioned Tom about giving the beneficiaries incorrect information and advised that an application for occupation would need to be considered by the trustees; and
- (e) Kura Rau stated that she had filed an application to remove 9C 3A from the Puhirua Pakau Trust.

[38] Part of the summary of the 2017 beneficiary hui records:

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<sup>17</sup> General form of application filed per ss 231, 237, 238 and 240, Exhibit A (2A), dated 26 March 2021.

...It is therefore the Trust's intention to look at money making options with the imposition of those currently on the blocks reducing the Trusts capability to lease the whenua for pasture.

[39] Although the hui minutes do not record this, Gary's evidence is that the Puhirua Pakau trustees attempted to get Faith and Tom to move down to the bottom of the hill (that is, to Opuatia 9C 3A block), which is where the "Rapana land" is located.<sup>18</sup> However, they refused to move. This is telling because even when the two blocks were part of the same trust it was known, at least by Gary, that the "Rapana land" was Opuatia 9C 3A.

[40] At the 2018 AGM, there was a motion passed to partially terminate the Puhirua Pakau Trust by removing Opuatia 9C 3A "to be managed separately".

[41] In the general business section of the minute discussion about Faith's occupation was recorded:<sup>19</sup>

Faith Rapana was still interested in a license to occupy and agreed to move to a road side section on 9C3A moving her belonging[s] from the top of the block however she doesn't see this happening for between 2-5 years. She advise[d] the AGM that she now wishes to remain on 9C3A and requested permission from the Trust for a Licence to Occupy. Faith also presented a Power Point presentation outlining her proposals to occupy 9C3A.

The Trust has given approval to pursue a licence to occupy.

[42] The minutes record that the action required was "Ms Faith Rapana will carry out Administration to acquire a license to occupy". Further it was recorded that Faith wanted to submit a proposal to lease Opuatia 9C 3A for agricultural purposes and to eventually live on the land via an LTO.

[43] At the 2018 hearing Faith raised a concern that she had just been given a licence to occupy part of Opuatia 9C 3A from the trustees of the Puhirua Pakau Trust.<sup>20</sup> The Puhirua Pakau Trust however was no longer the administrator of Opuatia 9C 3A. Faith submits that she had been advised by counsel, Mr Sharp, to apply for an occupation order. Judge Milroy agreed this was good advice. Judge Milroy explained to Faith that once the Opuatia 9C 3A block was extracted from the trust, and the new trust was set up, Faith would need to get

<sup>18</sup> 243 Waikato Maniapoto MB 176-260 (243 WMP 176-260) at 229.

<sup>19</sup> General form of application filed per ss 231, 237, 238 and 240, Exhibit A(4), dated 26 March 2021.

<sup>20</sup> 169 Waikato Maniapoto MB 113-130 (169 WMN 113-130) at 119.

another LTO from the trustees of the new Puhirua Trust.<sup>21</sup> Judge Milroy noted Faith's objection to the partial termination but it was too late to change it, and that Faith would therefore need to get the Puhirua trustees' consent for an occupation order.

[44] On 1 March 2019 an LTO was entered into between the trustees of the Puhirua Pakau Trust and Faith Justina Lee Rapana and Thomas George Laing (the 2019 LTO). This was despite there no longer being a trust called the Puhirua Pakau Trust. In summary, the 2019 LTO detailed:

- (a) The licensors were "the trustees of the Puhirua Pakau Trust".
- (b) The area of the house site over which the licence was granted was described as "part of Opuatia 9C 2B 2 block containing 87120 square feet more or less".
- (c) The term of the licence was for 80 years.
- (d) The rent was set at \$1040 per annum.
- (e) Any building plans require prior written approval from the licensor.
- (f) The licensor is required to obtain all necessary local council consents for any structures.
- (g) Any dwellings are to be removeable.
- (h) All dogs must be restrained and controlled by the licensee.

[45] At a trustee hui of the Puhirua Pakau Trust on 7 March 2021, Faith's occupation was discussed. It was recorded that Faith has a blood connection to Gary, and was therefore able to occupy Opuatia 9C 2B 2 as the trust deed allows for LTOs to be granted to owners or their blood relatives. The minutes also record:

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<sup>21</sup> As above.

Faith, Dewi and Ben Rapana all moved onto 9C2B2 in the belief it was part of their block which is managed by the (now) Puhirua Trust, which supported their application at the time, as they also believe the area was part of their block. Faith and her family have suffered ongoing harassment as a result of Puhirua Trust withdrawing their support and demanding she is removed from 9C2B2 (a block they neither own or manage).

[46] A further LTO was entered into between the trustees of the Puhirua Pakau Trust and Faith on 9 June 2021 (the 2021 LTO). There are some differences in the 2019 and 2021 LTOs. Of relevance is that this time the lease was between the trustees and Faith solely, the area is 800m<sup>2</sup> and no animals are to be kept onsite without the written consent of the licensor.

[47] A site visit was conducted to confirm the actual area of occupation on 1 May 2023, during which I confirmed Faith was occupying an area greater than what was agreed under the 2021 LTO. There were also dogs onsite. No evidence was presented before the court permitting or consenting to dogs on the property, as required by the LTO.

*Background to Gary's occupation*

[48] On 7 March 2021, the Pakau Trust held a hui. The minutes of the hui record a motion to grant Gary an LTO. The minutes also record that the trustees agreed in principle to grant a lease to Gary's company, Pakau Waterfall Farms.

[49] Gary's LTO was formally entered into with the trustees of the Pakau Trust on 18 April 2021. Gary's LTO is on the area of Pt Opuatia 9C 2B 2, which forms part of the Pakau Māori Reservation (which, as discussed above, has separate trustees to the Pakau Trust). The Pakau Māori Reservation trustees are not a party to the LTO.

[50] The key terms of the LTO are that it is for the occupation of 800m<sup>2</sup> of Pt Opuatia 9C 2B 2 for a term of 80 years. The occupation fee is \$10.00 per week. The LTO also provides for Gary's spouse to remain on the land after his death, should he predecease her, and for the LTO to be succeeded by or assigned to the uri of Gary for the remaining term.

[51] On the same date, the Pakau Trust trustees entered into a grazing lease of a part of Opuatia 9C 2B 2 with Pakau Waterfall Farms.

**Kua whai tikitia ngā tukanga (tae atu ki te whakahaere pānga taupatupatu) e ngā tarahitī kia tuku raihana hei noho, kia tuku rīhi anō hoki ki a Faith rāua ko Gary?**  
*Have the trustees followed proper processes in granting any licenses to occupy and/or leases to Faith and Gary, including managing conflicts of interest?*

[52] The trustees' position is that they did adopt proper processes in granting the LTOs to Faith and Gary, including managing conflicts of interest (as Gary and Faith are both trustees of the Pakau Trust).<sup>22</sup>

[53] The relevant provisions of the Pakau Trust deed states:<sup>23</sup>

**B. Object**

- 1 The object of the Trust shall be to provide for the use management and alienation of the land and any other property or assets of the trust to the best advantage of the beneficial owners or the better habitation or user of land by beneficial owners and to carry on any one or more businesses undertakings or enterprises either upon the land or part or parts thereof or in connection with some user of the land which will directly or indirectly assist in the better utilisation of the resources of the land or any other trust property or the commercial realisation thereof for the beneficial owners.
- 2 To ensure the retention of the lands for the present Māori beneficial owners their successors and assigns.
- 3 To make provision for any special needs of the owners or their blood relatives as a group or groups

**C. Powers**

**The Trustees are empowered: -**

...

**1. To Permit Occupation Enjoyment and to make Special Provisions for Owners**

At the Trustees' discretion in any arrangement made for the use of the land to reserve or otherwise provide for any one or more of the beneficial owners to personally occupy use or otherwise enjoy such defined part or parts of the lands as the Trustees shall determine having regard to the comparative shareholdings and if any such right is reserved licensed or otherwise provided for but to one or some only of the beneficial owners then the Trustees will determine the extent to which participation in rentals and profits are to abate for the purposes of receiving the benefit of such reservations licences or provisions or otherwise be adjusted.

...

<sup>22</sup> Opening submissions for the respondent trustees, M Sharp, 21 September 2022 at [4].

<sup>23</sup> 169 Waikato Maniapoto MB 113-130 (169 WMN 113-130).

**3. To Make Other Special Provision**

At their discretion to alienate by way of lease or **licence to any beneficial owner or to any blood relatives of a beneficial owner.**

...

**12. To Lease**

To lease the whole or any part or parts of the said lands from year to year and for any term of years at such rent and upon such covenants and conditions as the trustees shall think reasonable and to any persons corporate body and/or Her Majesty the Queen and to accept surrenders of leases thereof and to rent the lands. No lease shall provide for payment of compensation for improvements effected by the lessee and no lease shall be granted for a term in excess of seven (7) years unless a resolution to such effect has formally been passed by the beneficial owners at a meeting convened for such purpose.

PROVIDED that the trustees may at their discretion alienate by way of lease or **licence to any beneficial owner or any blood relative of a beneficial owner** free of rent or otherwise upon terms more favourable to a lessee than might be given if the land were dealt with on the open market without favour;

(emphasis added)

*Did the respondents have the power to grant Faith a LTO over the land she is occupying?*

[54] The respondents argue the trust order provides expressly in cl C3 that licences can be granted to any beneficial owner or to any blood relatives of a beneficial owner. They say this clause does not exclude the granting of LTOs. The respondents' view, as recorded in the minutes of the hui held on 7 March 2021, is that Faith is Gary's blood relative, and therefore she could be granted a LTO under cl C3 of the trust order.

[55] As well as cl C3, the respondents submit that cl C12 reserves the right for trustees to alienate trust land through a licence (such as an LTO) to blood relatives of a beneficial owner.

[56] The respondents also point to the fact that Judge Milroy at a court hearing on 9 June 2021 agreed with the respondents' interpretation of the trust order:<sup>24</sup>

**R Rau:** Yes see that in clause 3 but thought clause 1 would be paramount.

**The Court:** No its not. The trustees can grant licences to occupy or leases or whatever for occupation as dwelling to those who simply have whakapapa connection to the land.

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<sup>24</sup> 224 Waikato Maniapoto MB 132 (224 WMP 132) at 139.

[57] The respondents acknowledge that they knew Faith was not on Opuatia 9C 3A, despite her assertion she was. However, they submit they made attempts to convince her to move to Opuatia 9C 3A, but she refused. The trustees did not feel comfortable forcibly removing her from the land, especially since she had young children.

[58] The respondents granted Faith two LTOs, the 2019 LTO and then the 2021 LTO over Opuatia 9C 2B 2 (an area she was already living on). This did not align with the fact that Faith was given permission to pursue a licence to occupy based on her presentation proposing an LTO over Opuatia 9C 3A at the 2018 AGM. She is a beneficial owner in the Puhirua Trust, and the respondents knew she was residing on a block she was not a beneficial owner in.

[59] In Gary's brief of evidence, which he presented at the 22 September 2022 hearing, he says "I confirm that Faith is related to the other owners through a common ancestor who came from Tauranga and settled at Port Waikato". He reaffirmed this at the hearing where he said "she's also a blood relative to Peter Waikato, who is a tupuna that was from Tauranga, and that's her connection with that."<sup>25</sup>

[60] Following further questioning by Mr Ketu at that same hearing, Gary could not confirm the exact blood connection between Peter Waikato, Faith and himself that gives Faith a whakapapa connection to the block she is occupying. In fact, nobody seemed to know who Peter Waikato was.

[61] At the 22 September 2022 hearing, Gary also gave evidence that he had been told his grandmother Moewai and Faith's grandfather Paraone Rapana were half siblings. In his affidavit, submitted following directions I issued during that hearing, Gary revised the evidence he had given in court. He stated that further whakapapa research shows that going back five generations he and Faith are both direct descendants of Karuwhero (aka Karuwhero Mahu). This was based on whakapapa evidence relating to Karuwhero, date stamped 1942, which he obtained from a local historian.

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<sup>25</sup> 243 Waikato Maniapoto MB 176-290 (243 WMN 176).

[62] He submitted the following chart to demonstrate these lines of descent:

**Karuwhero (aka Karuwhero Mahu) (M)**

|                              |                                               |
|------------------------------|-----------------------------------------------|
| <b>Te Taua Karuwhero (M)</b> | <b>Te Koi Karuwhero (F)</b>                   |
| <b>Pirihira Te Taua (F)</b>  | <b>Matiki Karuwhero (aka Rapana Taiko)(M)</b> |
| <b>Moewai (F)</b>            | <b>Paraone Rapana (aka Brown Rapana)(M)</b>   |
| <b>Lucille (F)</b>           | <b>Matiki Rapana (aka Dickie Rapana)(M)</b>   |
| <b>Gary Stock</b>            | <b>Faith Rapana</b>                           |

[63] The applicants dispute the whakapapa submitted by Gary and argue Gary is not blood related to Faith. Rangitiaho Rau gave the following whakapapa evidence:

The Te Taua Karuwhero line descends from the Paakau whenua. The Rapana line descends from the Puhirua whenua. Gary and I descend from Te Taua Karuwhero and his wife, Taruke Kahui. They had ten (10) children. Of relevance are the children Tauke and Pirihira Moewai. I descend from Tauke, who is my great-grandfather. Gary descends from Pirihira Moewai, who is his grandmother.

Faith only has whakapapa to the Puhirua lands. Paraone (or Brownie or Duke) Rapana's brother, Turu Rapana, is Faith's grandfather. Turu married Tata Clark and had Dickie Rapana. Dickie Rapana is Faith's father. Gary is not blood related to Faith Rapana.

[64] The applicants' evidence is that Gary has incorrectly placed Paraone (Brown) Rapana into the Karuwhero/Te Taua whakapapa. They argue this is possibly as a result of Gary getting Paraone (Brown) Rapana and Paraone Karuwhero confused, and presuming they are the same person. The applicants argue there is no evidence that they are the same person.

[65] Under questioning from counsel and the Court it was clear that Gary was not confident about the whakapapa evidence he presented, hence a revised version was filed. I am concerned about the veracity of Gary's evidence. He did not have personal knowledge of the whakapapa he was addressing and struggled under cross-examination. However, even if Gary's evidence was to be accepted, the common tupuna shared by Gary and Faith is five generations back. It seems unlikely that the trust deed sought to allow such a wide cohort of people the ability to occupy a piece of whenua of approximately 73 hectares who are not already one of the Opuatia 9C 2B 2 beneficial owners. That is too long a bow to draw. My

view is that the blood relative clause is for children or other close relatives who may not have yet succeeded to interests in the land or who, as a result of a will or whānau arrangement, have not received an interest in the whenua. I therefore do not consider Faith to have a sufficient blood connection to Gary to fall within cl 3.

*Did Faith, as a trustee, conduct herself appropriately in terms of the conflict of interest when being granted her LTO?*

[66] It is the respondents' position that they have substantially complied with their obligations to manage the conflicts of interest in granting the LTOs and leases.<sup>26</sup>

[67] At the hearing on 22 September 2022, Gary was asked about the conflict of interest discussions of the trustees surrounding Faith's LTO:

**K Ketu:** ... as trustees you didn't discuss and that includes Ms Rapana you didn't declare and discuss her conflict of interest as a trustee who were seeking an LTO on significant terms and would benefit from a positive decision by the trustees. You didn't discuss that when you granted her that licence to occupy on the 1% of March 2019?

**G Stock:** Probably not to the extent that was expected no

[68] Faith did not participate in the hearings and no further evidence was presented about Faith's conduct and how she managed her conflict of interest when she was granted her LTO.

[69] The respondents submit that it is incorrect to say, as a general principle (as the applicants have), that trustees with a declared conflict of interest on a matter to be voted on *must* leave the room during the vote. Rather, the assessment of whether this step is required to meet the particular trustee's obligations under s 227A of the Act and their general fiduciary obligations will depend on the circumstances of each particular case.

[70] In support of their argument, the respondents rely on the Supreme Court's decision in *Fenwick v Naera*.<sup>27</sup> They submit the Supreme Court only specified the conflicted trustee should not "participate" in the decision by the trustees. There was no requirement that the trustee must leave the room. Mr Sharp acknowledged the Māori Appellate Court decision in *Pook v Matchitt – Matangareka*, which found, in the circumstances of that case, that

<sup>26</sup> Opening submissions for the respondent trustees, M Sharp, 21 September 2022 at [4].

<sup>27</sup> *Fenwick v Naera* [2015] NZSC 68 at [61].

conflicted trustees should have left the room.<sup>28</sup> However, he argues this was not laid down as a general principle to be applied to all cases.

[71] The respondents argue reasonable steps were taken to manage the conflict. Faith as a trustee was not involved in approving or signing the LTO as she was signing as the person being granted the LTO.

[72] Faith has a clear conflict of interest. She was seeking an LTO from a trust she was a trustee of. She had a duty to disclose that conflict and remove herself from any and all discussions and voting.<sup>29</sup> Similarly, her fellow trustees had a duty to manage that conflict.<sup>30</sup>

[73] The nature of the conflict in this instance was heightened by the fact that the issue of Faith's occupation on the whenua had been a topic of considerable debate and kōrero by trustees and beneficiaries over a number of years. I consider therefore that this case is one that requires the utmost care and caution by not just the conflicted trustee but all trustees. As in *Pook v Matchitt* it was not enough for Faith to just refrain from participating in discussions on matters concerning her LTO, she should not be in the room when such discussions take place.<sup>31</sup> Further as the Supreme Court confirmed in *Fenwick v Naera* trustees "must bring to bear a mind unclouded by any contrary interest".<sup>32</sup>

[74] The minutes in evidence do not record any conflict of interest considerations at the time the LTOs were entered into in relation to the two LTOs granted to Faith. Faith herself did not address the conflict and no other trustees addressed it either. Put simply, the conflict of interest issue was ignored.

*Is Faith in breach of the LTO in terms of the actual area*

[75] The respondents have acknowledged Faith is occupying an area greater than what is allowed by her LTO, however the respondents do not believe any harm is being caused by this at the moment.

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<sup>28</sup> *Pook v Matchitt – Matangareka* 38 [2019] Māori Appellate Court MB 167 (2019 APPEAL 167).

<sup>29</sup> Pakau Trust order at 169 Waikato Maniapoto MB 113-130 (169 WMN 113-130) at cl 33.

<sup>30</sup> As above.

<sup>31</sup> *Pook v Matchitt – Matangareka* 38 [2019] Māori Appellate Court MB 167 (2019 APPEAL 167) at [61].

<sup>32</sup> *Fenwick v Naera* [2015] NZSC 68 at [61].

[76] The respondents say they have not attempted to enforce the strict boundaries of Faith's LTO yet because there have been no formal proposals to occupy the extra area Faith is occupying. Gary stated that if they did receive such proposals, the respondents would look at enforcing the LTO more closely.

[77] Additionally, Mr Sharp submitted in hearing that, as a practice on Māori land, buildings are built that sometimes go over LTO areas. This submission seemed to suggest that because the land is Māori land, there should be an acceptance that LTO terms do not need to be adhered to, and occupiers are entitled to use whatever amount of land they choose. This submission bears no fruit.

[78] As was confirmed at the site visit Faith occupies an area in excess of her LTO. Significantly, the 2021 LTO specified a 800m<sup>2</sup> area, when the trustees knew she was already occupying a site area far greater than that. It is clear that Faith has been in breach of the terms of her LTO from the day it was signed and the respondents knowingly entered into the LTO on that basis.

*Did the respondents have the power to grant Gary's LTO over reservation land?*

[79] Gary provided some context for why the Pakau Trust dealt with his LTO request instead of the Pakau Māori Reservation Trust. Gary is also a trustee of the Pakau Māori Reservation Trust. He explained that the Pakau Māori Reservation Trust was not functioning properly, with a couple of trustees passing away and not being replaced, and the remaining trustees not engaging in their roles. When Gary requested the LTO, there wasn't a functioning trust to approach. The Pakau Trust took over the administration that should have been done by the Pakau Māori Reservation Trust because it was not being carried out otherwise.

[80] In his evidence Gary explains that, even though not recorded in the minutes, he did abstain from the vote at the trustees' meeting on 7 March 2021, which approved his LTO. During the vote to grant Gary the lease to Pakau Waterfall Farms at the meeting held on 7 March 2021, the minutes do record that Gary did not vote because he had a conflict of interest.

[81] I also note that at the joint AGM on 15 May 2021 discussions took place about joining the Pakau Trust and the Pakau Māori Reservation to have the same trustees. There are no applications before the court to action the proposed integration of the two trusts.

[82] The respondents submit that granting the LTO was not a serious breach of trust. It was a practical response to a situation that was not ideal.

[83] However, the simple fact is that the Pakau Trust does not have the legal authority to grant an LTO over land owned by a separate trust. In retrospect, the respondents accepted this too.<sup>33</sup> The LTO needed to be granted by the trustees of the Pakau Māori Reservation Trust. Gary is a trustee of the Pakau Māori Reservation Trust and he could have called a beneficiary hui to elect trustees and/or sought directions from the court. I do not accept it was simply a practical response. Gary wanted an LTO, and he used the Pakau Trust to achieve that.

[84] The LTO is invalid because it was not granted by the owner of the land.

#### *Tikanga considerations*

[85] The respondents assert that they made their decisions in accordance with tikanga. In particular, they highlighted the values of whanaungatanga and manaakitanga as informing their actions and interpretation of the trust order.

[86] Gary gave evidence that the respondents' initial position against Faith's occupation changed when they realised she had young children and lacked whānau support, stating that "we left her there because she needed a home for her and her kids." He explained that this decision was based on manaakitanga and whakawhanaungatanga.

[87] Mr Sharp submitted that taking in people who are whānau, or have some relationship with the land, is an important element of tikanga, specifically whanaungatanga. This allows whānau who have a historical and customary connection to the land to be accommodated, even if they do not have legal title.

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<sup>33</sup> 243 Waikato Maniapoto MB 176-260 (243 WMN 176-260) at 215.

[88] It is accepted by the Court that whanaungatanga and kaitiakitanga are principles central to guiding persons in leadership roles, including trustees, however the principles and values that may apply in any given scenario are context specific.<sup>34</sup> The Court is required to interpret and apply the provisions of the Act (including the trust provisions in Part 12) in a manner that furthers the principles of the Act found in the Preamble. These principles include tikanga.

[89] The primary role of the trustees as kaitiaki is to act in the best interests of the beneficiaries. The duty to act for the benefit of the beneficiaries is a manaakitanga obligation to beneficiaries, and their connection to the whenua. Locking up the land in long-term LTOs, without following proper processes, to a person who is not a beneficiary, goes against these duties.<sup>35</sup>

[90] The duty to not exercise power for your own benefit and manage conflicts of interest is an expression of rangatiratanga, where decisions are made for the collective, not for personal benefit. Faith and Gary, as trustees, prioritised their own benefit over the benefit of their people by not clearly identifying their conflicts of interest in the relevant trust decisions and absenting themselves from the trustee discussions where the granting of the LTOs in their favour were considered and voted on.

[91] I reject the respondents' argument that they were acting in accordance with tikanga in allowing Faith to remain on Opuatia 9C 2B 2. Promoting a non-beneficiary's interest ahead of other beneficial owners is not an exercise of whanaungatanga. In my assessment of the evidence and submissions, it appears that the respondents did not want to deal with Faith, her dogs and the area she occupied. It was just too hard. Turning a blind eye was an easier option.

**I rapua ngā whakaaetanga a te Kaunihera ā-Rohe mā ngā whare i hangaia e Faith Rapana rāua ko Gary Stock ki runga i te whenua taratī, e ai ki ngā LTO me ngā rīhi?**  
*Were the necessary District Council consents sought for buildings constructed on trust land by Faith Rapana and/or Gary Stock as per the relevant LTOs and/or leases?*

[92] Both Faith and Gary have built structures on the land subject to their LTOs.

<sup>34</sup> *Pokere v Bodger – Ōuri 1A3* (2022) 459 Aotea MB 210 (459 AOT 210).

<sup>35</sup> Closing submissions on behalf of the applicants, McCaw Lewis Lawyers, 12 June 2023 at [6.4].

[93] The respondents argue that the lack of consent for buildings does not amount to a serious breach of trust by the respondents.

[94] The respondents believe that it is the obligation of the individual licence holder to ensure compliance with any consent requirements.

[95] In terms of Gary's LTO, the respondents' position is that placing transportable buildings on the site (as Gary has done with his moveable cabin) is not in breach of council planning requirements, and this is confirmed by the recent council inspection. Gary gave evidence in Court that the Council had advised that if he planned to apply for a building consent he should apply before finishing the internal wall linings, which he intends to do.

[96] In terms of Faith's LTO, the trustees had expressed concerns with the buildings Faith had put on the land prior to being granted the LTO. However, the respondents argue it is her responsibility, not the Trust's, to apply for the necessary consents. In his July 2022 brief of evidence, Gary said the council had not advised Faith what consents she requires, and the inspector stated that he would need to visit again for more information. None of this evidence is corroborated.

[97] On 25 March 2021, a Senior Building Inspector from the Waikato District Council wrote to Rangitiahō Rau, informing her that prior to her enquiries to the Council's Property Information Officer, the Council was not aware of unauthorised building works on the trust land. The next steps would be for the Inspector to make contact with Gary and Faith to arrange a site visit. The purpose of the site visit would be to ascertain the extent of the building works and determine if the buildings were dangerous or insanitary,<sup>36</sup> and whether the buildings comply with the New Zealand Building Code.

[98] The inspection was conducted on 23 June 2021.

[99] On 29 June 2021, an Unauthorised Building Work Notice was issued. It set out the details of the unauthorised work:

The building works at 1625 Tuakau Bridge-Port Waikato Road comprises of various portacom type structures, Wastewater system, and other structures.

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<sup>36</sup> Buildings Act 2004, ss 121 and 123.

The building works at 1684 Tuakau Bridge-Port Waikato Road comprises of a 9.6m x 6.0m shell only building.

[100] An accompanying letter was sent by the Building Inspector stating that unauthorised building work had been undertaken on the property. There were no Council records of building consents being applied for, or inspections being carried out. The building works were not considered to be dangerous or insanitary.

[101] The letter detailed the opportunity to make an application for a Certificate of Acceptance for the works (although that can only be issued if the building works comply with the New Zealand Building Code). No evidence of Certificates of Acceptance being applied for or granted has been submitted to the Court.

[102] The terms of the LTOs require all relevant permits and consents to be obtained from local councils for structures on the land, per cl 7(b). No permits or consents have been obtained and the letter from the Waikato District Council suggests they may be required. Additionally, cl 7(a) of the LTOs require licensees to obtain the prior written consent of the licensor for any building intended to be erected on the site before construction begins. No such consents were sought from the Pakau Trust. The respondents are attempting to abdicate their role as trustees by saying it is the licence holders' responsibility to comply with any consent requirements. The LTO holder certainly has an obligation to comply with local council requirements, however it is the trustee's responsibility as landowners and kaitiaki of the whenua to ensure their licence holder is complying with the terms of the LTO. It is not sufficient to simply bury their heads in the sand and blame the licence holder.

**Kua tutuki i ngā tarihiā ā rātou kawenga tarahiā?**

*Have the trustees fulfilled their duties as trustees?*

[103] Mr Sharp for the trustees submitted that if there is any breach of obligations by the trustees it should be discussed at further hearings to allow the trustees to make submissions to the Court.<sup>37</sup>

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<sup>37</sup> 243 Waikato Maniapoto MB 176-260 (243 WMN 176-260) at 214.

[104] He further argues, with regards to the conflict of interest issue, that it is a judgment call on whether there is a breach of fiduciary or tikanga obligations, rather than “were the other trustees a party to it”.<sup>38</sup>

[105] Counsel in opening submissions provided a summary of the various decisions made by the trustees and the process followed submitting it shows the trustees have “substantially complied with their obligations to manage the conflicts of interest in the grant of the LTO’s and leases”. I have produced these submissions in full below:<sup>39</sup>

- (a) Following the approval given by the owners at the 27 May 2018 a LTO was granted to Faith Rapana and her partner Thomas Laing dated 1 March 2019 with the 4 trustees signing it as licensor (Gary Stock, Philip Mahara and Justin Taua) and Faith Rapana as licensee.
- (b) The LTO granted to Gary Stock date was approved at the trustees meeting on 7 March 2021 attended by trustees Brian Mahara, Gary Stock, Faith Rapana and Phillip Marhara. Although not noted in the minutes Mr Stock did not vote on the decision. The LTO document dated 18 April 2021 was signed by trustees Faith Rapana, Phillip Mahara and Brian Mahara as licensor and Mr Stock as licensee.
- (c) The lease to Pakau Waterfall Farms was approved at a trustees meeting on 7 March 2021 attended by Brian Mahara, Gary Stock, Faith Rapana and Phillip Mahara. The minutes record that Gary Stock did not vote because he had a conflict of interest. The lease dated 18 April 2021 was signed by Philip Mahara, Brian Mahara and Faith Rapana as trustees and Gary Stock on behalf of Pakau Waterfall Farms.
- (d) The minutes of the trustee meeting on 9 June 2021 attended by Brian Mahara, Gary Stock, Faith Rapana and Phillip Mahara noted the signing of lease to Faith Rapana. The lease documents also dated 9 June 2021 was signed by Brian Mahara, Gary Stock and Phillip Mahara as trustees and Faith Rapana as lessor.
- (e) A further LTO was granted to Faith Rapana alone dated 18 April 2021 was signed by three trustees (Gary Stock, Philip Mahara and Martha Peri) as licensor and Mrs Rapana as licensee. In the minutes of the trustees meeting of 9 June 2021 this is noted as being signed.

[106] Rather than show a prudent and robust process of decision making, what the summary actually highlights is the lack of transparency in the processes followed by the respondent trustees, the lack of necessary resolutions in the trustee hui minutes, and a high level of complicit behaviour by the trustees.

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<sup>38</sup> As above.

<sup>39</sup> Opening submissions for the respondent trustees, M Sharp, 21 September 2022 at [26].

[107] The mandatory and default duties set out in the Trusts Act 2019 are the minimum expectations beneficiaries have of their trustees subject to the terms of trust set out in the trust deed:

- (a) Duty to know terms of trust;<sup>40</sup>
- (b) Duty to act in accordance with the terms of trust;<sup>41</sup>
- (c) Duty to act honestly and in good faith;<sup>42</sup>
- (d) Duty to act for benefit of beneficiaries or to further permitted purpose of trust;<sup>43</sup>
- (e) Duty to exercise powers for proper purpose;<sup>44</sup>
- (f) General duty of care;<sup>45</sup>
- (g) Duty to invest prudently;<sup>46</sup>
- (h) Duty not to exercise power for own benefit;<sup>47</sup>
- (i) Duty to consider exercise of power;<sup>48</sup>
- (j) Duty to not bind or commit trustees to future exercise of discretion;<sup>49</sup>
- (k) Duty to avoid conflicts of interest;<sup>50</sup>

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<sup>40</sup> Trusts Act 2019, s 23.

<sup>41</sup> Trusts Act 2019, s 24.

<sup>42</sup> Trusts Act 2019, s 25.

<sup>43</sup> Trusts Act 2019, s 26.

<sup>44</sup> Trusts Act 2019, s 27.

<sup>45</sup> Trusts Act 2019, s 29.

<sup>46</sup> Trusts Act 2019, s 30.

<sup>47</sup> Trusts Act 2019, s 31.

<sup>48</sup> Trusts Act 2019, s 32.

<sup>49</sup> Trusts Act 2019, s 33.

<sup>50</sup> Trusts Act 2019, s 34.

- (l) Duty of impartiality;<sup>51</sup>
- (m) Duty not to profit;<sup>52</sup>
- (n) Duty to act for no reward;<sup>53</sup> and
- (o) Duty to act unanimously.<sup>54</sup>

[108] Gary as a trustee is receiving a significant benefit as the terms of the LTO are very favourable. They have an 80-year term, the licensee's spouse is able to inherit a life interest to the licence, there is a right of renewal for the licensee or their successor, and the fee is only \$10 per week. Faith as a trustee is similarly receiving a significant benefit with an 80-year term on a block she is not a beneficiary of, where she does not have an established blood connection to a beneficial owner, and is occupying an area far greater than provided for in her LTO.

[109] Their actions are not for the benefit of the beneficiaries, they are self-serving and in bad faith. Gary continues to use the land for grazing stock, despite the fact that his grazing lease was cancelled. Therefore, he continues to receive a benefit from the land with no reciprocal benefit to the trust and beneficiaries.

[110] Mr Sharp acts on behalf of the respondent trustees, yet he only called Gary to give evidence. In his opening submissions, Mr Sharp submits that the usual course of proceedings with applications per s 238 of the Act is that if there is a finding of a breach of trustee obligations a further remedies hearing should be held regarding removal.<sup>55</sup> I note that there was also an application for removal per s 240 of the Act heard alongside the s 238 application. It was open to Mr Sharp and his clients to call all relevant witnesses, but they chose not to and therefore cannot ask the court to stop short of making a decision on removal to give the other trustees the opportunity to give evidence. That opportunity has well passed. On the evidence before the court, the other trustees did not challenge, question, enquire or oppose any of the decisions made in relation to the LTOs. Their inaction speaks volumes,

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<sup>51</sup> Trusts Act 2019, s 35.

<sup>52</sup> Trusts Act 2019, s 36.

<sup>53</sup> Trusts Act 2019, s 37.

<sup>54</sup> Trusts Act 2019, s 38.

<sup>55</sup> Opening submissions for the respondent trustees, M Sharp, 21 September 2022 at [37].

and they cannot hide behind their inertia as a defence. As trustees they have proactive duties, which they did not adhere to.

### **I muri te kōtitanga**

#### *Following the hearing*

[111] We received further submissions from Gary regarding events occurring on the whenua following the hearings.<sup>56</sup> He claims that the applicant's uncle, Perry Rau, put buildings and caravans in the Pakau Māori Reservation Trust land without permission from the Pakau Māori Reservation trustees. Further claims of graffiti and trespass were made against Perry's son, Wayne Rau and that he had visited the whenua with a friend carrying a gun and set Gary's cabin on fire.

[112] These matters are for a different jurisdiction, but more importantly they do not take away from the issues already discussed in this decision. It does set the tone for the upcoming mahi that will be required by the Pakau Trust trustees moving forward to ensure that the whenua and the beneficiaries are taken care of in the future.

### **Kupu Whakatau**

#### *Decision*

[113] I make the following orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) Section 231 the Court confirms the legal name of the trust is the Pakau Trust;
- (b) Section 238 confirming the LTO granted to Faith Rapana was entered into in breach of the trust deed, and was accordingly outside of the trustees' powers;
- (c) Section 238 confirming that the LTO entered into with Gary Stock on land owned by the Pakau Maori Reservation Trust, not the Pakau Trust, was not within the trustees' powers to grant;

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<sup>56</sup> Further brief of evidence of Gary Stock, M Sharp, 17 May 2023.

- (d) Section 240 removing Gary Stock and Faith Justine Lee Rapana as trustees of the Pakau Trust immediately.
- (e) Section 240 removing the balance of trustees being Barry William Samuel Rapana, Brian Te Ranui Mahara, Justin Llyod (Tahau) Taua and Phillip Tehau Mahara from the date of the SGM called for the purpose of electing new trustees.

*Further directions*

[114] All matters are now at an end except for the s 231 application.

[115] The outgoing trustees of the Pakau Trust (named above) are directed to file their annual accounts and minutes of all trustee hui and beneficiary hui for the last three years by 31 January 2026. The matter is to be set down for a further hearing at Hamilton in April 2026.

[116] I appoint Glen Tootill to facilitate a SGM to be held before the 28 February 2026 for the purposes of electing new trustees. The outgoing trustees of the Pakau Trust are not eligible for re-election at this SGM.

[117] The new trustees are directed to file all paperwork including an application for the replacement of trustees and trustee consent forms by 14 March 2026. The application for replacement of trustees will be heard alongside the s 231 application at Hamilton in April 2026.

I whakapuaki i te tekau ma tahi karaka i Kirikiriroa, te rua tekau ma whitu o ngā rā o Noema i te tau 2025.

*Pronounced at 11:00am in Hamilton on Thursday this 27<sup>th</sup> day of November 2025.*

R P MULLINS  
JUDGE