

**IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT**

A20140010697

UNDER Sections 215, 231 and 238(1), Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Okahu 1, 3B2B2A, 3B2B2C, 3B2B2D, 4A, 4B,
4D, 4C1, 4C2, 3A3B2A Blocks

BETWEEN TE URI REIHANA-NGATOTE and
DESMOND MAHONEY
Applicants

Hearing: 8 June 2016
(Heard at Kaitaia)

Judgment: 30 June 2016

RESERVED JUDGMENT (NO 3) OF JUDGE D J AMBLER

Introduction

[1] In dismissing the appeal against my decision of 9 March 2015 constituting the Ngākahu–Ngākohu Ahu Whenua Trust (“the Trust”) and appointing interim trustees,¹ the Māori Appellate Court directed a review of the performance of the trustees pursuant to s 238(1) of Te Ture Whenua Māori Act 1993 (“the Act”).² The focus of that review was allegations concerning the failure of the interim trustees to work together as a cohesive group.³

[2] The review hearing took place at Kaitaia on 8 June 2016.⁴ By the time of the hearing the Trust had in fact held its first AGM on 2 April 2016 where seven trustees were nominated to replace the existing interim trustees. That meeting was intended to give effect to one of my orders of 9 March 2015 whereby the interim trustees were only to be in place for 12 months and were to arrange a general meeting to address trusteeship (among other issues).

[3] In this decision I address the trust review and the appointment of trustees as a result of the AGM. The review issues are likely to have limited bearing on the ongoing performance of the Trust because of the AGM election, though they may be relevant to whether I appoint particular trustees.

Review of trust

[4] The Māori Appellate Court’s direction that the Trust be reviewed arose out of issues raised in the appeal hearing concerning the refusal or inability of trustees to work with one of their fellow trustees, Kristine Te Paa. The Appellate Court did not specify the particular issues I was required to address.

[5] In advance of the hearing on 8 June 2016 I directed the trustees to set out their particular concerns in relation to Kristine Te Paa and for her to respond to those matters. The only trustees to raise matters were Judy Baker (interim responsible trustee) and Des

¹ *Far North District Council – Okahu 3B2B2* (2015) 97 Taitokerau MB 234 (97 TTK 234).

² *Mahoney v Trustees of the Nicholas George Te Paa Whānau Trust – Okahu 1 Block* [2015] Māori Appellate Court MB 417 (2015 APPEAL 417).

³ *Ibid* at [23].

⁴ 132 Taitokerau MB 49-78 (132 TTK 49-78).

Mahoney (interim advisory trustee). Kristine Te Paa responded to their issues and raised her own concerns in relation to the functioning of the Trust. I turn to these issues below.

[6] Before addressing the particular issues I reiterate the point that, given that the trust review concerns the functioning of interim trustees in the first 12 months of the Trust's existence, and that replacement trustees were nominated at the AGM held on 2 April 2016, many of these issues are likely to have little bearing on the ongoing functioning of the Trust. Their main relevance will be in relation to the question of whether any of the interim trustees nominated at the AGM should be appointed as full trustees.

Interim responsible trustees' stalemate

[7] In my decision of 9 March 2015 I appointed four interim responsible trustees and the three members of the Interim Management Committee ("IMC") as interim advisory trustees.⁵ The intention was for the Trust to transition from the IMC and to go to an AGM where a full contingent of trustees could be appointed.

[8] The responsible trustees never managed to conduct a single meeting between their appointment on 9 March 2015 and the Court hearing on 8 June 2016. One outcome of that inaction was that a secretary was not appointed and bank accounts not opened. This meant that the advisory trustees could not action my direction of 9 March 2015 to transfer all money, assets and documentation held by the IMC to the Trust.

[9] That situation was due to a combination of factors. Meetings were arranged and then cancelled. Kristine Te Paa, who lives in Australia, was prepared to attend meetings by electronic means but at least one of the other trustees, Judy Baker, objected and felt she should attend in person. Ms Te Paa sought to have her travel costs met but the responsible trustees could not agree on that point. There was then a split amongst the four responsible trustees as to whether they should meet separately from the advisory trustees or together. Also, during this period Mr Mahoney filed an appeal against my 9 March 2015 decision, and this may have added to the responsible trustees' inertia.

⁵ *Far North District Council – Okahu 3B2B2* (2015) 97 Taitokerau MB 234 (97 TTK 234).

[10] I agree with Mr Mahoney that my appointing four responsible trustees did not assist the situation as a stalemate was possible. Nevertheless, the fact that the four individuals who were prepared to be responsible trustees could not organise a single meeting in over 12 months reflects poorly on them all. In contrast, the advisory trustees did meet and, as I will shortly explain, effectively assumed responsibility for steering the Trust while the responsible trustees were in a stalemate.

The role of the advisory trustees

[11] In the absence of the responsible trustees meeting, the advisory trustees in effect assumed responsibility for the Trust. Te Uri Reihana-Ngatote, one of the advisory trustees, acknowledged that they had overstepped their boundaries of responsibility, but felt that the circumstances dictated some sort of action. In particular, the existing lessee, the Grbich family, sold their farm and stepped aside as lessee, and the Trust needed to secure a new lessee. Also, as Mr Mahoney outlined, the Trust undertook further improvement work on the land including securing Northland Regional Council funding for fencing, undertaking that fencing and gorse eradication and other work, and continuing to liaise with the Far North District Council over rating.

[12] Kristine Te Paa pointed out that the advisory trustees had effectively resumed their role as the IMC, and yet my decision of 9 March 2015 made it plain that it was the responsible trustees who were to make decisions about the Trust. Her point is valid. Nevertheless, in the circumstances a robust approach is required by me in reviewing the actions of the advisory trustees.

[13] The responsible trustees had failed to function. The parties were involved in the Māori Appellate Court hearing. The Trust needed to deal with the exit of the lessee. From the correspondence I have read it seems that three of the four responsible trustees were happy for the advisory trustees to take the lead role in securing a new lessee. Ultimately, the lease document prepared under the instructions of the advisory trustees was executed by the responsible trustees, including Kristine Te Paa.

[14] In fact, Ms Te Paa did not have any objection to the lease itself or have any particular concerns in relation to the security of the land, its use over the past 15 months, or

the Trust's overall direction. Her concerns relate largely to the Trust's governance processes.

[15] I do not consider that any sanction is required in relation to the actions of the advisory trustees. It might be said that they were continuing to act out their roles as the IMC. But in reality they were filling the vacuum left by the responsible trustees. In the end, the Trust ended up in a better position than if the advisory trustees had not taken any steps, and the responsible trustees followed their lead. Thus, while it might have been "cart before horse", the Trust got to the agreed destination in the end.

Attacks on Kristine Te Paa and the Whānau Trust

[16] Kristine Te Paa complains that Des Mahoney attacked her ability as a trustee, her father and their whānau trust, the Nicholas George Te Paa Whānau Trust ("the Whanau Trust"). She says that Mr Mahoney in particular indicated that he was not prepared to engage with her or the Whānau Trust. She refers to various emails in this regard.

[17] I have reviewed the email correspondence. I sense that the email traffic was increased by the failure of the responsible trustees to meet, either on their own or with the advisory trustees. The advisory trustees took the lead in relation to the lease negotiations, which in turn led to Kristine Te Paa asking a number of questions in relation to those negotiations. She expressed the view that, with her business background, she should have had a role in negotiating the lease. However, given that she lives in Sydney, I consider that an impractical suggestion. Certainly, the outcome in terms of the lessee and lease suggests that the advisory trustees did a good job.

[18] Mr Mahoney clearly became frustrated with Kristine Te Paa's numerous questions over what the trustees were doing on the ground. Some of his emails are terse and blunt. Mr Mahoney has appeared in my Court on at least four occasions now and I have had a reasonable opportunity to assess his manner and approach. He can be terse, irascible and even rude. I can see that he could offend people. But the points he makes generally have some merit. That also goes for what was raised in the email correspondence.

[19] However, there was an occasion or two where Mr Mahoney raised personal disagreements with Kristine Te Paa and her whānau which should not have been part of the

Trust's business. For example, Mr Mahoney's email of 16 October 2015 to Ms Te Paa raised personal matters concerning his relationship with the Te Paa whānau, which were copied to other trustees. Ahjun Ahoy, one of the responsible trustees, responded on 20 October 2015 to say that such communication was not appropriate for dissemination amongst the wider trustees. I agree. And Mr Mahoney in fact acknowledged fault on his part at the 8 June 2016 hearing.

[20] One of the issues raised by Mr Mahoney concerned his allegation that Kristine Te Paa's father, Nick Te Paa, had received money and goods from the Grbich family for grazing the land prior to the establishment of the Trust and had failed to account to his fellow owners. This is a topic that was raised in hearings before me in 2014 and 2015, in the Appellate Court hearing in 2015, and in the hearing on 8 June 2016. As I have said on more than one occasion, the parties need to either resolve that issue themselves or, if they consider it worthwhile, formally bring the matter before the Court by way of an application. However, it is entirely counterproductive to leave the allegation hanging and to throw it into the debate whenever it suits.

[21] Overall, the email communication reflects the lack of progress by the responsible trustees and the frustrations that arose out of the advisory trustees leading the Trust. In that respect, I do not believe the trustees as a whole singled out Kristine Te Paa or attempted to exclude her from involvement. However, some of Mr Mahoney's comments directed at Kristine Te Paa were personal to her and her whānau, and demonstrated an unwillingness to work with her. Ultimately, his comments did not prevent ongoing communication, and the Trust continued to progress its business in relation to the new lessee, improving the land and liaising with the Far North District Council. I do not consider that any sanction or relief is required.

Mr Mahoney's issues - the rating of non-income-producing blocks

[22] In an email to the Court dated 1 March 2016 Mr Mahoney asked that the Court, as part of its trust review, clarify issues surrounding the rates liability for Okahu 3B2B2B. The issues raised by Mr Mahoney have wider significance for the Trust and, in particular, land blocks that are not income-producing.

[23] The background is that Okahu 3B2B2B is solely owned by the Nicholas George Te Paa Whānau Trust, of which Kristine Te Paa is one of the trustees. The land is a half acre house section. There is a derelict house on it. The land does not produce any income. The Whānau Trust did not originally want Okahu 3B2B2B included in any collective governance structure but at the hearing on 9 February 2015 agreed for it to be included in the Trust if certain concerns were met. It was subsequently included in the Trust per my 9 March 2015 decision.

[24] Okahu 3B2B2B has not been included in the grazing lease to the new lessee, the Garton family, and produces no income. According to Mr Mahoney's email of 1 March 2016, in order to include the section in the grazing lease the house would need to be demolished, and land remediation work and fencing undertaken. The Trust is apparently not prepared to undertake that work.

[25] In July 2015 Kristine Te Paa queried Des Mahoney as to why Okahu 3B2B2B was not included in the grazing lease and suggested that, if it was included, then the lease income could be put towards the expenditure on the land. Mr Mahoney advised Ms Te Paa that blocks under the Trust could not cross-subsidise each other's expenses, and relied on my 9 March 2015 decision in this regard.

[26] In a subsequent email of 11 November 2015, Kristine Te Paa advised that the Whānau Trust had received a rates invoice from the Far North District Council for Okahu 3B2B2B, and asked the Trust to meet the rates demand and that the block be included in the Trust's contiguous rating agreement with the Far North District Council.

[27] Mr Mahoney subsequently arranged for Okahu 3B2B2B to be included in the contiguous rating agreement, and the Far North District Council then issued a revised rates invoice. However, in an email dated 13 November 2015, Mr Mahoney advised Ms Te Paa that the Trust would not meet the rates demand for the land as it was not income-producing.

[28] In Ms Te Paa's reply email of 4 February 2016 she maintained that the Trust was responsible for the rates demand, and invited the Trust to set-off the rates against any income due to the Whānau Trust from its other land interests. Mr Mahoney invited Ms Te

Paa to raise the set-off proposal with the owners at the forthcoming AGM. He otherwise advised that he would raise these issues with the Court as part of the trust review.

[29] The issues raised by Mr Mahoney may be summarised as follows:

- (a) Can the income from other land blocks be used to meet the rates and other expenses of Okahu 3B2B2B or any other non-income-producing blocks?
- (b) What is the Trust's responsibility for meeting rates in relation to land that is non-income-producing?
- (c) How should the Trust deal with Kristine Te Paa's request that the rates demand be set-off against her Whānau Trust's entitlement to distributions from other land blocks?

[30] Mr Mahoney also raised a question as to whether Kristine Te Paa was acting in a conflict of interest in raising the rates issue with the Trust. In my view she was not in a conflict of interest in doing so. However, had the Trust made any decisions about Okahu 3B2B2B, then she would have been required to absent herself from any discussions or decision making. As it transpires, the Trust never addressed the rates issue.

Can the income from other land blocks be used to meet the rates and other expenses of Okahu 3B2B2B or any other non-income-producing blocks?

[31] When I constituted the Trust on 9 March 2015 I made it plain that it was on the basis that land blocks under the Trust would not cross-subsidise each other. That reflected the situation at law (which treats each block as having separate trusts) and the clear views of the owners (who did not want a global approach to income and expenditure). I set out below paragraphs [56] and [72] of my decision which touch on that point:

[56] I conclude that there is sufficient support for an ahu whenua trust amongst the owners of Okahu 3B2A, 3B2B2B, 3B2B2D, 4A and 4D. In terms of s 215(4)(b) of the Act, I do not consider that the Te Paa Whānau Trust has any meritorious objection providing that their legitimate concerns can be addressed in the trust order. I believe they can. In particular, as I will go on to explain, the trust order will need to respect the principle that income and expenditure must be accounted for in relation to each block of land, that owners must be able to call for voting at general meetings to be based on shareholding and there must be suitably skilled trustees to represent the various land blocks.

...

[72] The trust order will provide for the trustees to account for income and expenditure in relation to each of the seven land blocks/groups (cl 4.4.5). The owners do not want an income-producing block to subsidise a non-income producing block. Arguably that will mean that some blocks will operate in deficit. In that situation the trustees may need to call upon the beneficial owners of a particular block to contribute to the costs of the block. But importantly, one land block/group is not to subsidise another.

[32] Mr Mahoney rightly relied on paragraph [72] in his email discussion with Kristine Te Paa to point out that the Trust could not allow the income from one block to meet the expenditure of another block. In fact, I do not understand Ms Te Paa to disagree with his point – her Whānau Trust, being one of the largest shareholders, argued in support of that principle when the Trust was being formed.

[33] While that principle is well understood by the trustees and owners, I note that clause 4.4.5 of the trust order provides for one set of accounts for each of the “seven land blocks/groups”, including one set for the four related Okahu 3B2B2A-D blocks. Those blocks are treated as one land group for voting and trustee purposes. However, I understand that ten separate accounts are maintained by the Trust. On reflection, the current wording of clause 4.4.5 risks causing confusion in relation to the principle that the income and expenditure of each land block must be treated separately. That is especially so when Okahu 3B2B2B and 3B2B2C do not produce an income.

[34] I therefore intend tidying up clause 4.4.5 by varying it to expressly provide for separate accounting for each of the ten land blocks. However, lest the Trust disagree with varying clause 4.4.5, I will give it two months in which to raise any objections to that variation.

What is the Trust’s responsibility for meeting rates in relation to land that is non-income-producing?

[35] Clause 4.1 of the trust order provides for the trustees to “use their best endeavours” to, among other things, pay rates. Under s 92(4) of the Local Government (Rating) Act 2002, the trustees of the Trust should be regarded as the ratepayers for Okahu 3B2B2B (and Okahu 3B2B2C) as it is not leased (s 92(2)) or the subject of an occupation order (s 92(3)). However, s 93 of that Act limits the liability of trustees to pay rates:

93 Limitation on trustee liability

If trustees are liable to pay the rates on rateable Māori freehold land,—

- (a) the rates must be paid out of income derived from the land and received by the trustees for the beneficial owners of the land; and
- (b) the trustees are liable for rates only to the extent of the money derived from the land and received by the trustees on behalf of the beneficial owner or owners.

[36] Thus, in the present situation, I would expect the Trust to be shown as the ratepayer in the Council's records for Okahu 3B2B2B but, because the land is not income-producing, the Trust is not liable to pay any rates. Conversely, it is difficult to see how the Whānau Trust has any liability for the rates when the land is vested in the Trust. Therefore, on my reading of the situation, the Council is obliged to issue rates demands to the Trust; the Trust in turn has no liability to pay rates while the land is not income producing; the Whānau Trust has no rates liability as it is no longer the legal owner of the land; but the rates will continue to accumulate against the land.

[37] There is nothing to stop the Whānau Trust meeting the rates demand itself. That reflects the point in paragraph [72] of my 9 March 2015 decision that the Trust can call on beneficial owners to meet costs associated with a particular land block. But the Whānau Trust cannot require the Trust to pay rates when it does not receive an income from the land. The same situation would appear to apply to Okahu 3B2B2C, which is also a house section that is non-income-producing.

[38] Importantly, this situation does not relieve a land block from rating liability. What that will mean in relation to Okahu 3B2B2B is that, if the rates are not paid, they will accumulate once again. The situation is less than ideal and should prompt the parties to reflect on whether there is a way for Okahu 3B2B2B to produce income or whether it should be amalgamated with its related land blocks or whether it should even remain vested in the Trust.

How should the Trust deal with Kristine Te Paa's request that the rates demand be set-off against her Whānau Trust's entitlement to distributions from other land blocks?

[39] It is certainly possible for the Trust to use distributions owed to the Whānau Trust to meet rating debt on Okahu 3B2B2B. However, it depends on two things. First, there

being a “distribution” owing to the Whānau Trust. Simply because the Whānau Trust holds interests in other income-producing land blocks under the Trust does not mean the Whānau Trust is “entitled” to that income. The Whānau Trust only has an entitlement (along with any other land owners) if and when the Trust declares a distribution. That has yet to happen. Second, such an arrangement depends upon the Trust and the Whānau Trust agreeing to take that approach with any distribution due. That also has yet to happen. This is certainly an issue for the Trust and the Whānau Trust to continue to discuss.

Appointment of trustees

[40] In my 3 March 2016 direction setting down the trust review for hearing on 8 June 2016 I directed that the hearing would also address the updating of trusteeship arising out of the 2 April 2016 AGM. I also directed (at the request of at least one of the responsible trustees) that a Court officer attend the AGM to assist the trustees and owners.

[41] The AGM took place on 2 April 2016. Two Court officers attended to assist the trustees and owners. The owners elected the following trustees (in relation to the seven land blocks/groups):

- (a) Okahu 3A – Richard John Hadfield
- (b) Okahu 3B2A – Des Mahoney
- (c) Okahu 3B2B2A-D – Judy Baker
- (d) Okahu 4A – Raiha Mann
- (e) Okahu 4B – Te Uri Reihana-Ngatote
- (f) Okahu 4C1 – Desley Austen
- (g) Okahu 4D – Tania Morunga

[42] Kristine Te Paa was unsuccessful in her nomination as trustee in relation to four blocks/groups. She did not attend the AGM, though her father did attend. There was no motion to vote by shareholding (as provided for in clause 4.5.9(b) of the trust order). Two objections to the outcome of the election were raised with me at the 8 June 2016 hearing.

Mango Hoera's objection

[43] First, Mango Hoera attended the AGM and hearing, and objected to Okahu 3A being included in the Trust (though, at the hearing, he suggested he did not object per se to the land being in the Trust) and to not being able to vote at the AGM. He is a grandson of Matiu Hoera, who is listed as an owner in Okahu 3A.

[44] In my decision of 9 March 2015 (which constituted the Trust) I in fact referred to Mr Hoera's objection to the Trust and the fact that he was still completing succession to his grandfather. At the hearing on 8 June 2016 I noted that the Māori Land Court at Hamilton had in fact made orders on 12 October 2015 completing succession and constituting the Matiu Hoera Whānau Trust. Mango Hoera is one of eight trustees. However, he disputed that the Māori Land Court had constituted the whānau trust on 12 October 2015, claimed the Court's actions were "mischievous", said that the whānau had only held their first whānau hui on 30 January 2016, and also referred to his allegiance to the "Maunga Hikurangi Māori Incorporation" as being a basis to challenge the Trust.

[45] I do not understand Mr Hoera's complaint about the Court's order of 12 October 2015 constituting the Matiu Hoera Whānau Trust. He appears to have participated in an earlier hearing (on 26 August 2014).⁶ In any event, the Court constituted the whānau trust on 12 October 2015 and I am not aware of any decision that has reversed those orders.⁷

[46] In any event, the point of Mr Hoera's objection in relation to the election is that he attended the AGM but was not able to vote as the up to date ownership lists relied on by the trustees (dated 31 March 2016) still showed Matiu Hoera "(deceased)" as the owner. Nevertheless, Mr Hoera was able to express his views and objections to the process.

[47] It is not clear to me why the whānau trust order of 12 October 2015 has not been entered into the Māori Land Court records and the ownership list for Okahu 3A updated. Nevertheless, the trustees cannot be faulted for in relying on the current ownership list at the AGM. In accordance with that ownership list, Matiu Hoera was still shown as an owner, and Mango Hoera did not have any right to vote on his behalf. But, even if he had been able to vote, there were seven other beneficial owners in Okahu 3A who voted for the

⁶ 85 Waikato Maniapoto MB 200-207 (85 WMN 200-207).

⁷ 108 Waikato Maniapoto MB 282-286 (108 WMN 282-286).

sole trustee nominee, Richard Harawira, and Mr Hoera's vote would not have changed the outcome of the election. I therefore reject Mr Hoera's objection.

[48] On another point, Mr Hoera correctly pointed out that the Court's trust order of 9 March 2015 incorrectly identifies Okahu 3B2B2D as having 0.2023 hectares. The correct area is 17.110 hectares. I will make an order under s 86 of the Act correcting that error.

Kristine Te Paa's objection

[49] The second objection to the outcome of the election came from Kristine Te Paa. As noted, she had stood for election in relation to four land blocks/groups and was unsuccessful. Although she did not attend the AGM, she accepted that the voting process "all appears perfectly fine".⁸ However, she objected to three of the trustee nominees because of their involvement as interim trustees. That is, she objected to the appointment of Des Mahoney, Te Uri Reihana-Ngatote and Judy Baker.

[50] Ms Te Paa's general objections related to the matters outlined above in the trust review. That is, the fact that the advisory trustees had effectively led the functioning of the Trust and that there had been poor processes in finalising the Garton lease. Her primary objection was against Mr Mahoney. She referred in particular to his statements that he was not prepared to work with her or her Whānau Trust or undertake any work on Okahu 3B2B2B. Her specific complaint against Mr Reihana-Ngatote was that he had complained that she had been difficult to contact. As for Judy Baker, Ms Te Paa referred to Ms Baker's deference to the advisory trustees when she was one of the responsible trustees. In addition to these complaints, Ms Te Paa objected to the fact that her Whānau Trust would have no representation on the ahu whenua trust.

[51] Ms Te Paa's objections to the outcome of the election do not relate to the election itself but the general functioning of the Trust and the actions of Mr Mahoney. Clearly there were failings in the functioning of the Trust. The responsible trustees (including Ms Te Paa) were unable to hold a meeting or undertake core business such as electing officers and taking over from the IMC. The advisory trustees assumed responsibility for leading

⁸ 132 Taitokerau MB 60 (132 TTK 60).

the Trust in the absence of the responsible trustees doing so. Strictly speaking, they may have overstepped their legal authority. But ultimately the decisions they made were endorsed by the responsible trustees. The terse email communication between the trustees was symptomatic of the dysfunction within the Trust. Some of Mr Mahoney's communications were inappropriate – which he acknowledged in Court. But through all of that, the Trust managed to secure a new lessee, continue dealings with the Far North District Council over rates, undertake improvements on the land in conjunction with the Northland Regional Council, and engage with the owners.

[52] I am not satisfied that the objections raised by Kristine Te Paa should prevent the appointment of Mr Mahoney, Mr Reihana-Ngatote or Ms Baker as trustees. The owners clearly support their appointment. Mr Mahoney and Mr Reihana-Ngatote in particular, together with Hone Peters, have been pivotal in the progress of the land, both under the IMC and as advisory trustees. They took the lead when the responsible trustees failed.

[53] Admittedly, Mr Mahoney is a strident individual with a strong personality. But I conclude that he has been instrumental in the progress of the Trust. He might be seen as the “yeast in the bread”: bitter to taste but essential to the bread rising. Notwithstanding Mr Mahoney's personality and approach, I note that the only objection to him comes from Kristine Te Paa and her Whānau Trust. Clearly the relationship soured over the allegations that Nick Te Paa received money due to the owners. I have encouraged the trustees and owners to resolve that issue one way or the other, and during the Court hearing on 8 June 2016 Mr Mahoney appeared to receive support from those owners in attendance that the Trust put that issue behind it. Whatever the ultimate outcome, Mr Mahoney and his fellow trustees will need to ensure that personal differences do not distract the Trust from its core business. Certainly, the progress to date suggests to me that that has not been the problem. Overall, Mr Mahoney's actions would not justify his removal and do not prevent him from being made a full trustee.

[54] Ultimately, Kristine Te Paa and her Whānau Trust do not have an automatic entitlement to trusteeship on the ahu whenua trust. Clause 4.5.9(b) enables a vote to be by shareholding. That provision was not relied on at the AGM. Ms Te Paa expressed doubt whether that could ever be relied on. I do not believe the provision is ineffective or inappropriate. With every ahu whenua trust there is a need to strike a balance between the

interests of the owners by number and by shareholding, lest one group of owners dominate the other. Clause 4.5.9(b) reflects other standard clauses.

[55] I would also add that, while the reasons for owners not supporting Kristine Te Paa's nomination are not fully known, the comments in the minutes and the overall evidence before me suggest that Ms Te Paa's location in Australia, failure to attend the AGM, lack of rapport with her fellow owners, and the allegation of her father receiving money before the Trust was formed (which he did not deny in Court), have all influenced the owners' voting.

[56] Accordingly, I am satisfied that the seven trustees nominated at the AGM should be appointed as responsible trustees. There is no call for any advisory trustees to continue. I will make orders accordingly. I also note an error in my 9 March 2015 decision in identifying Judy Baker as "Julie Baker". That error will also be corrected.

Outcome

[57] In accordance with this decision I deal with the application as follows:

- (a) The trust review under s 238(1) is completed;
- (b) Pursuant s 239 of the Act the Court:
 - (i) appoints the following persons as responsible trustees in replacement of the interim responsible trustees: Richard John Hadfield, Judith Anne Baker, Raiha Mann, Te Uri o Rangi Matiu Ho Reihana-Ngatote, Desley Desiree Austen, Tania Marie Morunga, and Desmond William Mahoney.
 - (ii) removes the interim advisory trustees.
- (c) Pursuant to ss 37(3), 86 and 244 of the Act my decision of 9 March 2015 and the trust order are corrected and varied as follows:
 - (i) Paragraph 104(c) of my decision of 9 March 2015 and the resulting order are corrected by replacing "Julie Baker" with "Judy Baker".

- (ii) Schedule A to the trust order is corrected to show Okahu 3B2B2D to comprise 17.110 hectares;
- (iii) Clause 4.4.5 of the trust order is varied and replaced with the following clause:

“Shall show the financial position of each of the ten land blocks”

- (d) Pursuant to s 73 of the Act the order in paragraph 57(c)(iii) is conditional upon the Trust not objecting to the variation by 31 August 2016.

[58] The above orders are to issue immediately save for that in paragraph 57(c)(iii).

Pronounced at 4.06 pm in Whangarei the 30th day of June 2016.

D J Ambler
JUDGE