

**IN THE MĀORI LAND COURT OF NEW ZEALAND
TĀKITIMU REGISTRY**

A20180005711

UNDER Sections 215, 219, 220 and 241, Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Te Ahitainga No1 Sec 10 C and Te Ahitainga No 1 Sec
10 D Blocks - Termination of trust and constitute an Ahu
Whenua Trust

A20180005690

AND UNDER Sections 215, 219, 220 and 241, Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Te Ahitainga No 1 Section 5C 2, Ahitainga 1 5B
(General Land) Blocks - Termination of trust and
constitute an Ahu Whenua Trust

A20160003399

AND UNDER Sections 220 and 244, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Te Ahitainga 1 Section 5C2 Ahu Whenua Trust –
Variation of trust and vesting Te Ahitainga No 1
Subdivision No 4D and Ahitainga No 1 Section 5 C 1 in
the trustees of Te Ahitanga 1 Section 5C2 Ahu Whenua
Trust

A20160003398

AND UNDER Sections 220 and 244, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Te Ahitainga No 1 Sec 10 C Ahu Whenua Trust –
Variation of trust and vesting Te Ahitainga No 1 Sec 10
D in the trustees of Te Ahitanga No 1 Sec 10C Ahu
Whenua Trust

Hearing: 26 October 2018, 72 Tākitimu MB 275-304
(Heard at Masterton)

Judgment: 26 October 2018

ORAL JUDGMENT OF JUDGE M J DOOGAN

Decision

[1] What I would like to do is give an oral decision on the application that has been brought by the Registrar. Because it is an oral decision, I reserve the right to correct any errors or omissions, once the minutes are typed back, but the substance of the decision will not change. I am going to deliver a decision on the application to terminate the existing trust and create the two new trusts.

[2] What is known as the Te Ahitainga No. 1 Section 10C Ahu Whenua Trust was established by order of the Court on 14 December 1993.¹ Aside from the 10C Block itself, also administered by that trust from that time were the Te Ahitainga No. 1 Section 5C1, 5C2 and the No. 1 Section 10D Blocks.²

[3] I am dealing today with an application brought by the registrar on my direction to terminate this trust and to establish two new ahu whenua trusts. The first of the proposed new ahu whenua trusts would operate over the Te Ahitainga No. 1 Section 10C and 10D Blocks and the second proposed new ahu whenua trust would operate over the Te Ahitainga No. 1 Section 5C1, 5C2 and 5B Blocks.

[4] By directions dated 4 April 2018, I directed the Registrar to bring these applications. I also, in those directions, said that on the establishment of the new trusts, the records and funds would follow the respective land blocks. The objective is to put on a proper footing the future administration of these lands and to enable the new trustees to attend to distribution of the funds held.

[5] The background to these applications is complex and I need to set out that background in some detail.

¹ 48 Wairarapa MB 4.

² The minute dated 14 December 1993 at 48 Wairarapa MB 4 refers to the establishment of an ahu whenua trust over just the Te Ahitainga No 1 Section 5C 2 and 10C blocks. The land is vested in Trustees Pinga Paewai, Ralph Ward and Peter Carroll. Separate trust orders were issued, one for each block. The clear intention was to establish one ahu whenua trust and I have proceeded on that basis.

[6] The reference in my April directions to funds held relates to a total of approximately \$25,000.00 held by the existing trust, and, for ease of reference, I will use the term “existing trust” to refer to the current trust.

[7] As at 31 March 2017, there was a balance of \$25,019.00 held of which \$24,063.00 represented undistributed funds. Those funds had been received over a considerable period of time in relation to a number of Te Ahitainga blocks including a number of blocks that were not formally part of the existing trust.

[8] The background to that situation is helpfully summarised in a report Mr Bloor prepared for the Court on 8 December 2015. The following matters or facts are taken from Mr Bloor’s report and I will summarise some of the key events and background from that report.

[9] As I’ve indicated, the trust itself was established in December 1993, over the Te Ahitainga No. 1 Section 5C 2 and 10C blocks.

[10] In May 1995, solicitors acting for a prospective lessee made enquiries as to who were the appropriate representatives for the Te Ahitainga 4D, 5A, 5B, 5C1, 5C2, 6 and 7B blocks. As a result of that enquiry, Mr Bloor, who was then a registrar with this Court, prepared a report which describes the following matters.

[11] The 5C2 Block was vested in trustees Punga Paewai, Ralph Ward and Peter Carroll and those trustees advised that they had signed an agreement from other owners representing blocks 7B, 4D and 6, giving the 5C2 trustees authority to act on their behalf in leasing the land.

[12] The Te Ahitainga No.1 5A Block had been vested into trustees Maraea Karaitiana, Sandra Reiri, Tracey Rimene and Jacqueline Whaanga in December 1993. This was a 0.7892 hectare block with no boundary fences and hadn’t been included in the administration of the existing trust or what is known as the Te Ahitainga No.1 Section 5C2 Trust.

[13] The 5C2 Block, as I said, was vested in trustees Punga Paewai, Ralph Ward and Peter Carroll. That block consisted of just over three hectares and was, according to a report in 2007, in poor pasture, only partially fenced and unattractive.

[14] There were also adjoining blocks in similar condition, not producing any return to the owners.

[15] There was discussion in March 1994 about the feasibility of amalgamating some of the blocks to more effectively manage them.

[16] On the 6 May 1994, a memorandum of agreement was accepted on behalf of the 4D Block by Dawn and Bob Aporo, on behalf of the No.6 Block Boy Waipuka and Pia Burt, the 7B Block by Josephine Paewai, and the 5C2 Block by trustees Peter Carroll and Ralph Ward, and that agreement was witnessed by Mr Chase.

[17] That agreement essentially records an arrangement to amalgamate the blocks for the purposes of leasing. Administrators or trustees in each block are to be responsible for the distribution of income to the beneficial owners or shareholders. The agreement provided that the Te Ahitainga Trust, which is the existing trust as set up by the Māori Land Court, be the administrators for the ensuing six-year lease. They also have specific responsibility for formulating and overseeing the terms of the lease and their fulfilment. There's a further clause requiring the organisation of a general meeting of administrators biannually, and finally a clause recording that an administration fee of \$500.00 is deducted in the first instance and thereafter to be reviewed. The deduction is to be made proportionate to the land area amalgamated.

[18] As I understand it, that agreement was the origin of the situation by which the existing trust ultimately assumed responsibility for managing the leasing of a number of the Te Ahitainga Blocks, aside from the two blocks that were formally part of the trust.

[19] Over time, that administration clause appears to have become understood as a right by the trustees to withhold a 10% figure of the rental income received for the particular blocks, and then that figure was then applied to meet overall administration costs.

[20] A lease was initially negotiated for those amalgamated blocks. The total area at that time came to 18.0622 hectares and that lease was to a neighbouring dairy farmer at the rate of \$62 per acre. The farmer was responsible for organising water supply, fencing and the

upgrades to the pasture. That was a three-year lease with a right of rent review after three years.

[21] By 2007, several other blocks had been added over time, so the total area administrated under this arrangement came to 22.299 hectares and the rate at that time in 2007 had risen to \$230.00 per acre. Total rental received was \$6,140.00 every six months, so \$12,000.00 approximately per annum. That lease was due to expire in 2009, and also at this time in around 2007, inquiries of the Masterton District Council revealed that the 5C2, 5A, 5B and 5C1 blocks were all being rated under the one rates invoice.

[22] In 2007, there was also an election to replace trustees Ralph Ward and Peter Carroll. Beryl Miller, Ina Whanarere and Theresa Taia were appointed trustees with Punga Paewai and Peter Carroll becoming advisory trustees.

[23] In 2007, there were funds held in terms of unclaimed dividends, totalling approximately \$13,400.00 and they related, as I understand it, to the those blocks outside of the formal trust structure, but coming within the administration arrangement. There had been no tax paid on that income. When the matter was before the Court, in or about 2007, the Court at that time gave approval that the unpaid dividends could be used to locate owners and set up trust properly, and so some of those funds, I understand, were used to try to improve the owners' list and on improving arrangements for financial recording and taxation.

[24] In 2009, there was a meeting in Masterton, the result of which lead to the withdrawal of the Te Ahitainga 6 Block, an area of 7.18 hectares. The owners of that block withdrew from the amalgamated or combined leasing arrangement and also at that time Theresa Taia resigned as a trustee.

[25] In 2010, a grazing lease was negotiated with Cameron Stewart for the Te Ahitainga 4D, 5A, 5B, 5C1, 5C2 and 7B blocks for a total area of 15.11 hectares with rental of \$11,714.00 per annum for two years.

[26] At some point around that time, Madeleine Carroll also relinquished her lease with regard to the 10C and 10D blocks, which meant that for a period there was no income off those blocks to meet rates liability. Trustees were also advised by the accountants, Bryce

Smith and Associates, that the existing trust was in no position to make distributions as they could do so only after operating costs including taxation had been met.

[27] A new grazing lease was subsequently negotiated with Cameron Stewart for the 4D, 5A, 5B, 5C1, 5C2 and 7B blocks, same area totalling 15.11 hectares for \$12,165.00 per annum for a period of three years.

[28] At about that time, which I take to be in 2012 or possibly 2013, the 10C and 10D blocks, total area of 3.47 hectares, were offered to Cameron Stewart for lease, but was declined. Also, an attempt was made to have those blocks declared non-rateable as they weren't generating income. The council declined that request.

[29] Then or shortly thereafter, an application was made for review of the existing trust and that is the immediate background to these applications. When the application for review of trust was initially filed, the Court appointed Mr Bloor to work with the owners and trustees and to report to the Court. In 2015, during the course of the review proceedings, a new grazing lease was negotiated with Cameron Stewart for the 4D, 5A, 5B, 5C1 and 5C2 blocks, total area of 8.75 hectares at a rate of \$7091.00 per annum. That lease expires November 2018 with no right of renewal.

[30] There is a grazing lease in place with respect to the 10C and 10D blocks, 3.47 hectares in total to Sue Ormond of the company Running Horse Limited for a rental of \$3000.00 per annum, expiring in 2016 with a right of renewal for a further two years.

[31] I understand that Ms Ormond has been unwell for some time and I have been advised by Mrs Miller that there are currently arrears in rental and also rates outstanding with respect to the 10C and 10D blocks. Attempts have been made to contact Ms Ormond without success and it is also understood that the council has been pursuing Ms Ormond for the outstanding rates.

[32] Pursuant to the task given to Mr Bloor by the Court, a meeting of owners was called and held on the 20 February 2015 in Masterton, facilitated by Mr Bloor. As a result, Daphne Te Whare, Parehuia Haira and Madeleine Carroll were elected as additional trustees and

subsequently appointed by the Court as trustees of the existing trust to become trustees alongside existing trustees Beryl Miller and Ina Whanarere.

[33] So, the situation, just to summarise, is that the existing trust has been administering, if I can use that term, the Te Ahitainga No.1 4D, 5A, 5B, 5C1, 5C2, 7B, 10C and 10D blocks for a considerable period of time, although the Trust itself was established only over the 5C2 and 10C blocks.

[34] As a result of that situation I directed Mr Francois, an accountant of Hastings, to prepare a report to investigate and report on a number of specific questions. Mr Francois reported on 1 December 2017. In total, Mr Francois was directed to address six questions. They were:

1. The apportionment of income and expenses between the lands vested in the Ahu Whenua trusts and the remaining lands administered by the trusts. To what extent (if any) is cross-subsidization evidence in terms of the payment of expenses and, if evident, for what periods and for what blocks?
2. Have distributions to owners been fair or proportionate to income derived from the particular blocks in which they have an entitlement? If discrepancies are apparent, for which periods and in respect of which blocks?
3. For some time the trustees have been applying a 10% administration fee, deducted from the income across all the lands. Has this policy operated fairly and effectively with regard to the relative levels of income from the various blocks and with regard to the actual expenses of the trust?
4. Does the trust have a reliable and up to date record of owners:
 - a) With respect to the lands vested in the trust, and
 - b) With respect to the other lands administered by the trusts?
5. How significant an issue for the trusts are unclaimed distribution monies?
6. Having regard to the location and characteristics of the various blocks, what if any recommendations for improved or better administration could be made?

[35] With regard to the first question, Mr Francois concludes there was only one instance of cross-subsidization and that related to rates liability on the 10C and 10D blocks. A portion of rates relating to the 10D block was the only expense since 2009 that the trust had paid on behalf of lands being administered. The sums involved are relatively modest and I understand from discussion at the hearing today that what remains of this issue should be able to be reconciled from income due in the current financial year.

[36] The second question concerned fairness of distributions. Mr Francois had more concerns over this issue than in relation to any of the other questions. It was Mr Francois' view that the administrators of each land block ought to be responsible for paying rental income out to owners. However, due to the way matters have developed in this case, the trust had been receiving and distributing income direct to owners, including with respect to blocks that were not part of the trust. The amount of undistributed funds has increased from \$978.00 in 2009 to \$21,866.00 in the 2015 year. Mr Francois was concerned about the fairness of the trust holding over \$20,000.00 of funds. It appears some blocks were paid out while others were not. What ought to have happened was that the trustees pay income to the administrators for the respective blocks. The practice had developed that the trust would distribute income from the other land blocks and an expectation had arisen that this would continue. I note that updated accounts have now been filed with respect to the 2016 and 2017 financial years. This situation in terms of accumulated funds is an important factor behind this application to consider future administration of the lands.

[37] The fourth question was directed to whether or not the trust had reliable and up-to-date records of owners both with respect to lands vested in the trustees and with regard to the other blocks they administrated.

[38] Mr Francois noted that the trustees had not been using the Māori Land Online database to update the owners lists and, accordingly, Mr Francois was not confident the record of owners was up to date.

[39] The fifth question concerned the significance of unclaimed distribution monies as an issue. Mr Francois concluded that unclaimed distribution monies are not a major issue for the trust.

[40] The last of the questions touches upon the immediate background to this application.

[41] The last question was: "Having regard to the location and characteristics of the various blocks, what, if any, recommendations for improved or better administration could be made?" Mr Francois said, due to the small size of the individual land blocks and the administration costs involved, including accounting fees and possible tax, it is difficult to come up with a solution that would work. He identified three options:

- (a) do nothing and continue as is;
- (b) sell the land blocks and distribute proceeds to owners (which he discounted as not a seriously possibility); and
- (c) amalgamate the land blocks into one or two trusts to help reduce administration costs.

[42] He says option three would create two trusts; one trust to incorporate the land blocks that are currently leased for dairy farming, and the other trust to include the two land blocks that are currently used for horse grazing. He said, “this does make sense and is worth serious consideration”.

[43] That was one of the prompts leading to my direction to the Registrar in April this year to bring this application to the Court to terminate the existing trust and to create two new trusts over the 10C and 10D blocks which I understand are currently used for horse grazing, and over the Section 5 blocks which are under lease for dairy runoff or dairy grazing.

[44] I now wish to address the first step in these applications and that’s the question of whether or not the existing trust should be terminated. I address termination rather than a variation of the existing trust as this is the Registrar’s application, and there is no corresponding application by trustees to vary the trust (as required by section 244 of the Act). The Court has authority under section 241 of Te Ture Whenua Māori Act 1993 to terminate a trust.

[45] Section 241(1) of Te Ture Whenua Māori Act 1993 provides:

241 Termination of Trust

- (1) The Court ay at any time, in respect of any trust to which this Part applies, terminate the trust in respect of—
 - (a) the whole or any part of the land; or
 - (b) the whole or any part of any interest in land subject to the trust,—

by making an order vesting that land or that part of that interest in land in the persons entitled to it in their respective shares, whether at law or in equity, or in such other persons as the beneficial owners may direct.

[46] Essentially, the Court has a power to terminate the trust over all or part of a block of land. The relevant principles that the Court must have regard to in such a situation have been dealt with in a number of cases, and I will simply read you, from the Māori Appellate Court decision in *Larkins*³ the following passage because it captures fairly succinctly the principles. The Māori Appellate Court in that case said:

[This Court] must interpret the Act in a manner that best furthers the principles set out in the pre-amble and must exercise its powers, duties and discretions in a manner that facilitates and promotes the retention, use, development and control of Māori land as taonga tuku iho by Māori owners, their whānau, their hapū and their descendants, and that protects wāhi tapu. The Court also has obligations set out in section 17 which include ascertaining and giving effect to the wishes of the owners, to determine or facilitate the settlement of disputes amongst owners, to protect minority interests from an oppressive majority and to protect majority interests from an unreasonable minority, and to ensure fairness in dealings with the owners.

[47] The Court rejected an argument that unanimous support was required from owners for an application to terminate and cited, with approval, this passage from a case called *Rata*,⁴ and from that case I quote as follows:

Jurisdiction to allow withdrawal of participation in a trust is discretionary, to be refused where in all the circumstances, withdrawal of a party from the trust would create unreasonable disadvantage to either the interests of the public, the other parties, or of other persons interested in the continuance of the trust, and, where any other unreasonable disadvantage exists after a broad overview consideration is had of all other relevant matters. The words “unreasonable disadvantage” denote “unsuitability”, a situation “non-politic rather than unjust”, or “not having practical wisdom”. These definitions promote the idea of fairness. In terms of all classes of unreasonable disadvantage that may apply, the requirement is to look at the disadvantages and unsuitability of any request to sever an interest in the trust, and determine its practical wisdom and fairness in all respects relating to the interests of the classes of persons affected.

[48] So, from those cases, the Appellate Court set out these principles. First, a change of mind is usually insufficient for a ground of termination unless there is an absence of opposition. Second, termination should be refused where it is likely to result in detriment or create unreasonable disadvantage to affected parties. Third, evidence of a trust failing to adhere to their terms of trust and core accountabilities may be sufficient grounds for termination.

³ *Larkins v Kaitaia – Waihou Hutoia D2A Block* [2013] Māori Appellate Court MB 159 (2013 APPEAL 159).

⁴ 6 Taitokerau MB 139 (6 TTK 139) at 141.

[49] In relation to those factors and in relation to the various background facts that I have already set out, I would add the following observations and note the following additional features.

[50] First, it is clear to me from the history of this proceeding and from what I have seen in the record prior to my involvement that, in common with many small or relatively small Māori land blocks, it is difficult for trustees to achieve a high level of engagement of owners at meetings or hui called to consider or address trust business. It is not a criticism of owners, it is just a reality to be faced that it is difficult to get peoples' time and attention and even more difficult to have owners attend hui at places where they may not reside, or at times they simply cannot get away from other commitments.

[51] The effect is that the burden of practical day-to-day administration of small and relatively uneconomic blocks often falls on a very few people and can be quite a considerable and often unfortunately thank-less task. So that, particularly in relation to some of these blocks, I think is a reality that needs to be faced.

[52] I also note that the 5B Block is General land. It had been the subject of a life interest for the benefit of Peter Carroll and his whānau and the remainder interest is with the order of Benedictine monks. I understand from the whānau that attempts are underway to discuss with that order possible change to that arrangement whereby all the land may come back to the whānau or the wider Māori interests. As I understand it, until that estate, Mr Peter Carroll's estate, is attended to, the land remains currently under the informal administration of the existing trust. So, for the purposes of this application, I am noting that fact and will proceed on the basis that that's the position with respect to the 5B Block.

[53] Issues have been raised with respect to past payments made either to Mr Peter Carroll's benefit or to the benefit of his whānau and a question was raised as to whether there had been an error or an overpayment historically of some income from one of the other blocks. That was a matter that I had requested further information on and on the basis of the information received and on the basis also of Mr Francois' report, I am satisfied that there is not an existing issue that requires intervention by the Court in terms of the decision I need to make in relation to this application to terminate the existing trust and to create two new trusts.

[54] Having regard to those matters and to the background as I have described it, I believe there is a reasonable case for termination of the existing trust. I have particular regard to the fact that there is a need to put on a proper footing the administration of the various blocks that have for some time been attended to by the current trustees. As I have indicated in previous hearings, it is not an ideal situation for trustees to be assuming responsibility for lands and for blocks that do not form part of the trust itself.

[55] I have heard today from those existing trustees who are present, being Mrs Beryl Miller, Daphne Te Whare and Parehuia Haira. Apologies have been received on behalf of Madeleine Carroll and Ina Whanarere. Mrs Miller has been trustee since 2007 and, along with Ina Whanarere, has assumed a great deal of the practical burden of administering all of these blocks of land since that time.

[56] Ms Miller indicated support for the current application and a willingness to be appointed a trustee if a new ahu whenua trust was established over the 10C and 10D blocks. Mrs Miller indicated that her whānau had interests in those blocks but not the Section 5 blocks and she was therefore willing to carry on as a trustee with respect to the 10C and 10D blocks.

[57] Daphne Te Whare indicated a willingness to remain a trustee or become a trustee on both the proposed two new trusts, although she also expressed concern about whether there was enough information available to bring these applications to conclusion. She expressed some concern about the way in which information relating to these proceedings and to the conduct of the trusts had been made available to her over time.

[58] Parehuia Haira expressed some concerns about the information available and wanted some further time to consider her position with respect to the possibility that she might be a trustee on any newly-established trust.

[59] So, having regard to those matters, I also need to consider whether the legal thresholds or tests are met for the establishment of the proposed new trusts. Section 215 of the Act provides:

215 Ahu Whenua Trusts

- (1) The court may, in accordance with this section, constitute an ahu whenua trust in respect of any Maori land or General land owned by Maori.

- (2) An ahu whenua trust may be constituted where the court is satisfied that the constitution of the trust would promote and facilitate the use and administration of the land in the interests of the persons beneficially entitled to the land.
- (3) An application for the constitution of an ahu whenua trust under this section—
 - (a) shall be made in respect of all the beneficial interests in 1 block or in 2 or more blocks of land; and
 - (b) may be made by or on behalf of any of the owners or the Registrar of the court.
- (4) The Court shall not grant an application made under this section unless it is satisfied—
 - (a) that the owners of the land to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and
 - (b) that there is no meritorious objection to the application among the owners, having regard to the nature and importance of the matter.
- (5) The land, money, and other assets of an ahu whenua trust shall be held in trust for the persons beneficially entitled to the land in proportion to their several interests in the land.
- (6) Notwithstanding anything in subsection (5), the court may, either on the constitution of an ahu whenua trust or on application at any time thereafter, empower the trustees to apply the whole or any part of any specified portion of the trust income for Maori community purposes or for such Maori community purposes as the court may specify, and, in such a case, the trustees may apply any part of such specified portion of the trust income in accordance with section 218.
- (7) In any case to which subsection (6) applies, the beneficiaries shall be the beneficial owners of the block or blocks of land vested or to be vested in the trustees for the purposes of the trust.
- (8) The constitution of an ahu whenua trust shall not affect any person's entitlement to succeed to any beneficial interest in any land vested in the trustees for the purposes of the trust.

[60] So, the first of the criteria that I must have regard to is: is the Court satisfied that the creation of the new trust, or in this case the two new trusts proposed, would promote and facilitate the administration of the land in the interest of the persons beneficially entitled to the land?

[61] So obviously the first point in relation to the lands that we are dealing with today is the 10C and 10D blocks, the 5C1, 5C2 and 5B blocks have been subject to a form of trust administration since 1993.

[62] The primary change proposed is simply a shift to a two-trust structure as opposed to the single trust which has operated since 1993.

[63] I have regard to Mr Francois' report and his recommendation that there may be merit in the facilitating administration of the land by the separating of the two blocks administered for dairy grazing and horse grazing respectively. I also have regard to what trustees and owners have said today, and also in the previous hearings over the course of this proceeding, in addition to all the matters that I have referred to.

[Court discussion with parties]

[64] I also take on board the point made by Mrs Vette that there is merit in the proposed two-trust structure which would enable respective owners of the blocks under that structure to apply their time and energy to the blocks with which they have the primary affiliations. I give some weight to that factor and I am satisfied on that basis that the proposal to create the two new trusts does have merit and would meet the threshold of promoting and facilitating the administration of the land in the interest of those beneficially entitled.

[65] The second threshold that I must be satisfied is met is that the owners have had sufficient notice of the application and sufficient opportunity to discuss it and consider it.

[66] The first proposal to alter the existing trust by initially adding in a number of those blocks that had been informally administered was raised in a meeting of owners that Mr Bloor facilitated in 2015. The current proposal to create two trusts I believe was first raised by Mr Francois in his report and may have been raised earlier, but certainly the need to address or to rectify the current situation, under which the trust was administering a range of blocks outside of those vested in the trust, has been the subject considerable discussion during the course of these proceedings since 2014. In the course of those proceedings there have been several meetings directed by the Court and facilitated by Mr Bloor to address a range of proposals including trusteeship and, ultimately, as a result of Mr Francois' report and the distribution of that report, there has been discussion of a proposal to create these two new trusts.

[67] At my direction in April 2017, these applications were made on notice to all owners and I believe that notice was first issued in July. Having regard to those matters, I am satisfied that there has been sufficient notice of the application and sufficient opportunity for owners to discuss it and consider it.

[68] The third criteria I must address is that there was no meritorious objection to the application among the owners, having regard to the nature and importance of the matter.

[69] As far as I am aware, the only objection or reservations expressed have been made by trustee Parehuia Haira and perhaps to a lesser extent some reservations by trustee Daphne Te Whare. As I understand those concerns, they appear to relate primarily to adequacy of information or accountability for the past administration of the existing trust.

[70] I am aware of those concerns, they have been raised previously. In directions that I issued in April this year (at 67 Tākitimu MB 101) I was responding to a report from Mr Bloor of a meeting with trustees in January this year.

[71] Mr Bloor met with the Masterton-based trustees who I understand to be Ms Te Whare and Ms Haira, in January 2018, and reported to the Court. He reported that those trustees were asking the Court to investigate whether all payments had been approved in minutes of a properly convened meeting, with the quorum met, since 2009, and identify any payments not properly approved. Also, to compare ownership against payment for each individual owner since 2009. They questioned why there were three sets of accounts produced each year when only two would be necessary as there are two separate trusts the trustees administer. They wanted confirmation that the costs to administer the two trusts has not been subsidising the other five blocks.

[72] The trustees understood Peter Carroll was overpaid in the 5A Block when he was not an owner, only an owner for life in 5B, 5C1, 5C2, 10C and 10D. They wanted the Court to reconcile payments to Peter Carroll. They wanted the trust order changed so the audit threshold is that, for income under \$10,000.00, there is no obligation to have accounts audited.

[73] Mr Bloor goes on to record that there was discussion on what blocks would be administered by trustees. In general, it was agreed that blocks 10C and 10D could be in one trust, with 5C1, 5C2 and 5B included in a second trust.

[74] Mr Bloor notes that distribution of unpaid rent would be a matter for the new trustees of the newly-established trust and accumulated rentals would follow blocks into the new trust, and would be the responsibility of the new trustees.

[75] In directions in response, I said that I was not prepared to authorise the extent of the work requested by the Masterton-based trustees. That was not an effective use of the Court's special aid funds. A balance was required between the trustees' wish for transparency and accountability, and the need to now set matters on a proper footing so the distribution of funds held can take place on the basis of an updated list of owners for each of the affected blocks.

[76] Trustees are entitled to see all available financial records of the trust and they can, if they wish, continue to make their own inquiries with respect to historical income and expenditure.

[77] I directed Mr Bloor to itemise the amount said to have been overpaid to Mr Carroll with respect to the 5A Block and to report further on any proposed options for recovery, and I agreed with the proposal to amend the trust order requiring an audit threshold if income reached over \$10,000 in any one year. I also directed the Registrar to bring this application.

[78] Having regard to that background and to the matters that have been raised before me today, I do not see that there is any meritorious objection that would prevent the Court from making the orders establishing the proposed two new trusts. I am also satisfied from the Court record that there has been proper notice of today's hearing to owners of all of the affected blocks.

[79] With regard to the trust order for both trusts, I propose to adopt the trust order that was discussed at the meeting of owners facilitated by Mr Bloor, subject to clarification of the audit clause.

[80] There are, as I indicated previously, some consequential and practical matters that will need to be addressed. So, in summary, I am going to grant the application to terminate the existing trust and grant the application to establish the two new trusts.

[81] What I see as necessary before I make final orders is, first, while I am prepared to grant the applications and to make the orders, I will need to also vest the respective blocks in the trustees of the newly-established trusts.

[82] As matters currently stand, I have confirmation of a willingness to accept appointment from existing trustees present today. Mrs Miller also gave an indication on behalf of Ina Whanarere that she would also be willing to serve on a newly-established 10C-10D Trust. I will need confirmation from Ms Whanarere of that. I have an indication from Ms Te Whare that she would be prepared to accept appointment to both of the proposed new trusts.

[Discussion with parties]

[83] I now also have an indication from Ms Haira of a willingness to accept appointment.

[84] I will direct that, with respect to the remaining trustees who are not present today, that inquiries be made and that they are to be asked to confirm to the Registrar, say, within two weeks of today's date, of their position as to whether they are willing to serve on either or both of the proposed new trusts.

[85] What I have in mind, and this is something I just want to discuss with the parties now, is to make those appointments essentially for an interim period so that the new trusts can start and the new trustees call a meeting of owners of the new trusts in a reasonably short period so the question of trustees can be put to the owners of both trusts in a reasonable time.

[86] Also, I expect that there may be a number of outstanding matters that should also properly go to owners in terms of the accumulated income. Any issues with respect to rates, tax, debts, liabilities; those are all matters that the new trustees should have a chance to address, take advise if necessary, but then go to the owners within a reasonable time, report to the owners on the state of the finances, the trust, the leasing, and also ask the owners for, effectively, a mandate for trusteeship going forward.

[87] That's what I think should be consequential directions and in terms of a timeframe, what I had in mind, perhaps, was say six months or thereabouts because I am conscious we are quite close to the end of the year now.

[88] So, if I made appointments on the basis of the information I have today, I can, on the basis of the indication I have, appoint the three trustees present, and subject to what Ina and Madeleine have to say in the next fortnight, I can make orders from chambers with respect to their positions as well, but in terms of a reasonable time to call that first meeting of owners for the two trusts, is six months a reasonable timeframe?

[Discussion with parties]

[89] I will tidy up the orders themselves, but that's the effect of the orders that I propose to make today.

[90] I will direct the Registrar to make inquiries of Madeleine Carroll and Ina Whanarere as to their wishes, and based on what I am told today, I will make orders appointing all three existing trustees who are present in Court today: in the case of Beryl Miller, just to the newly established 10C and 10D Trust; and in the case of Daphne Te Whare and Parehuia Haira, to both new trusts.

[91] I will make the orders that I have indicated for immediate effect, that means that they are legally effective from today. The 10C and 10D Trust will be established from today and there will be orders vesting those blocks in trustees Beryl Miller, Daphne Te Whare and Parehuia Haira, and there will be orders also establishing the five 5C1, 5C2 and 5B ahu whenua trust and vesting those blocks in Daphne Te Whare and Parehuia Haira, and also orders declaring the terms of trust in terms of the draft trust order on the Court's file.

[92] So, both trusts will be established and trustees appointed to the respective trusts. The next step will be clarification of Madeleine Carroll and Ina's wishes with respect to whether they wish to serve on either or both trusts for this period up to the first meeting of owners.

[93] With respect to further appointments of additional trustees, the indication I give is it would be better to take that question to the forthcoming meeting of owners, and that it simply proceed in that way, and that the normal supporting documentation would then need to come back to the Court, which would be minutes of that meeting, trustee consent forms from any newly nominated trustees and then the Court can deal with addition or replacement of trustees.

[94] So, the intention is that we would establish these new trusts with directions that the trustees attend to updating the accounts with respect to the blocks administered under the new trusts.

[95] Existing income and liabilities are to essentially follow the blocks. So as between the two trusts, I would expect the trustees to cooperate as necessary with any questions of clarification or administration, but it should be relatively straightforward for the financial records as to the current leasing and funds that have been held by the accountants for some time, to be allocated once the new trusts have established their bank accounts and are up and running.

[96] The expectation is that within six months of today's date, the trustees of both newly established trusts will call a meeting of owners and report to owners on the financial position of the trusts and assets and liabilities, current use of the land and future prospects for use of the land, and the question of trusteeship going forward should also be put to the owners of the various blocks.

[97] I will reserve leave to all parties to apply for further directions if necessary at any time, and if need be I can issue directions from Chambers.

Orders and Directions

[98] There are orders pursuant to sections 215, 219, 220, 222 and 241 of Te Ture Whenua Māori Act 1993:

- 1) terminating the Te Ahitainga 1 Sec10C Block and the Te Ahitainga 1Sec5C2 Block Ahu Whenua Trust established by order dated 14 December 1993 at 48 Wairarapa MB 4;
- 2) an order establishing the Te Ahitainga 1Sec 10C and 10D Ahu Whenua Trust and vesting the land known as the Te Ahitainga 1Sec 10C and 10D Blocks in Beryl Miller, Daphne Marlene Hoana Te Whare and Parehuia Nellie Haira as trustees;

- 3) an order establishing the Te Ahitainga 1Sec 5C1, 5C2 and 5B Ahu Whenua Trust and vesting the land known as the Te Ahitainga 1Sec 5C1, 5C2 and 5B blocks in Daphne Marlene Hoana Te Whare and Parehuia Nellie Haira as trustees;
- 4) The Registrar is directed to make enquiries as to whether Ina Ginette Whanarere and Madeline Joyce Carroll wish to be appointed as a trustee of either or both trusts. Those enquiries are to be made within two weeks of the date of issue of this decision and, in the event either or both persons wish to be appointed trustees, the relevant consents are to be referred to me in Chambers so that orders may issue accordingly; and
- 5) The trustees of both newly established trusts are directed to convene a meeting of owners within six months of the date of this decision. The trustees are to report to the owners on the financial position of the trust, use and occupation of the lands and the appointment of removal of trustees.

[99] Leave to apply for further directions as required.

[100] These orders are to issue immediately pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

Pronounced at Masterton this 26th day of October 2018.

M J Doogan
JUDGE