

**MĀORI LAND COURT****Place:** Ruatōria**Present:** C M Wainwright, Judge

G Pohatu, Clerk of the Court and Deputy Registrar

J Hauraki, Court Assistant

H Kururangi, Deputy Registrar

**Date:** 10 August 2020**Pānui No:** 10      **Application No:** A20200005581      **AW File:** 379**Subject:** Totaranui A1D2B2B - Replace the Māori Trustee with Barry James Soutar, Te Rina Aupouri, Celia Natasha Marama Koia and Thomas Henare Tibble as Trustees**Legislation:** Section 239, Te Ture Whenua Māori Act 1993**Also** Wirihana Raihania, Tamati Tibble, Kataraina Paterson, Heni Houkamau,**Present:** Desley Houkamau, Joseph Nepe and M B???

Details of the applicant are as follows:

| <u>Applicant</u> | <u>Address</u>             |
|------------------|----------------------------|
| Māori Trustee    | PO Box 1260, Gisborne 4040 |

**Pauline Clarke, Deputy Registrar:** This is an application to replace the Māori Trustee as responsible trustee of Totaranui A1D2B2B with owner trustees. Block details:

|  |   |              |
|--|---|--------------|
| <b>Trust:</b>                                      | Totaranui A1D2B2B Ahu Whenua Trust  |              |
| <b>Trust structure:</b>                            | Ahu Whenua Trust  |              |
| <b>Block appellation:</b>                          | Totaranui A1D2B2B   |              |
| <b>Block Title:</b>                                | 120 Waiapu MB 239 dated 5 December 1961   |              |
| <b>Current trust order:</b>                        | 52 Tairawhiti MB 131-135 dated 3 September 2015   |              |
| <b>Area:</b>                                       | 127.368 hectares  |              |
| <b>Total shares:</b>                               | 2360.37   |              |
| <b>Number of owners:</b>                           | 405   |              |
| <b>Land Information New Zealand Reference:</b>     | 479009  |              |
| <b>Block valuation:<br/>(as at September 2019)</b> | Capital valuation:  | \$958,000.00 |
|  | Land valuation:   | \$642,000.00 |
|  | Improvements:   | \$316,000.00 |
| <b>Current responsible trustee:</b>                | Māori Trustee   |              |
| <b>Responsible trustee to be replaced:</b>         | Māori Trustee   |              |
| <b>Proposed responsible trustees:</b>              | Barry James Soutar, Te Rina Aupouri, Celia Natasha Marama Koia, Thomas Henare Tibble, Sam McLean (no trustee consent) |              |
| <b>Current advisory trustees</b>                   | Marylyn Frances Nalder, Natasha Celia   |              |

|  |  |
|--|--|
|  | Marama Koia, Rahera (Sarah) Gibson, Te Rina Aupouri, Tuheirangi Tibble |
| <b>Advisory trustee to be removed:</b> | Natasha Celia Marama Koia and Te Rina Aupouri                          |
| <b>Review date:</b>                    | 1 June 2021  |

A meeting of owners was held at Te Rongo i te Kai Marae, Ruatōria on Saturday 15 February 2020. Notice was sent to 181 of 405 owners dated 15 January 2020. 9 out of 405 owners attended.

Future administration of the blocks was discussed and how the Māori Trustee had been approached by owners to replace the Māori Trustee as responsible trustee. A motion was moved by Barry Soutar and Lucky Reuben, *"the Māori Trustee files an application in the Māori Land Court to replacing the Māori Trustee with owners as the responsible trustee of Totaranui A1D2B2B"*.

The following were nominated as trustees:

| <u>Nominee</u>  | <u>Nominator</u> | <u>Seconder</u> |
|-----------------|------------------|-----------------|
| Barry Soutar    | Alexandra Puha   | Te Rina Aupouri |
| Sam McLean tbc  | Natasha Koia     | Te Rina Aupouri |
| Te Rina Aupouri | Brenda Soutar    | Barry Soutar    |
| Natasha Koia    | Brenda Soutar    | Stephen Soutar  |
| Tom Tibble      | Alexandra Puha   | Lucky Reuben    |

Natasha Celia Marama Koia also known as Celia Natasha Marama Koia and Te Rina Aupouri are currently advisory trustees who have been nominated as responsible trustees. Māori Trustee are to make contact with Marylyn Nalder, Rahera (Sarah) Gibson, Tuheirangi Tibble to confirm if they wish to resign.

Sam McLean was also nominated as a trustee but he has not signed a trustee consent form.

The current trust order at 52 Tairāwhiti MB 131-135 dated 3 September 2015 is only specific to the Māori Trustee. This was not discussed at the meeting.

The Māori Trustee seeks that the orders are made conditional upon a new application for variation of trust order being received by the Court within 3-6 months of the sitting (see email dated 19 June 2020).

In support of the application:

1. Report to the Court;
2. Minutes of the hui;
3. Owners report;
4. Notice to owners;
5. Trustee consents from Barry Soutar, Te Rina Aupouri, Celia Natasha Marama Koia and Thomas Tibble.

Orders are sought replacing responsible trustees and reducing advisory trustees

**TRANSCRIPTION OF RECORDED HEARING:**

**The Court:** All right whānau we are here today to talk about Totaranui A1D2B2B where the application is to replace the Māori Trustee. How long has the Māori Trustee been a trustee of this block Mr Raihania?

**Wirihana Raihania, for the Māori Trustee:** Neke atu i te 20 tau, Your Honour.

**The Court:** Te wā roa. But now there are trustees to be appointed from amongst the owners of the block and you have all come to tautoko this, yes?

**Celia Natasha Marama Koia:** Āe.

**The Court:** He pātai o koutou?

**Various Speakers:** Kārekau.

**The Court:** No? Kei te pai?

**C Koia:** Kei te whakarongo au.

**The Court:** All right. So do you have anything you would like to add Mr Raihania?

**W Raihania:** Perhaps I might read the submission Your Honour. I know that not everyone at the table was present at the meeting that was held on 15<sup>th</sup> February.

**The Court:** That's a very good idea.

**W Raihania:** Ka pai.

"I, Wirihana Raihania White on behalf of the Māori Trustee hereby make application for an order in terms of section 239 of Te Ture Whenua Māori Act 1993 to replace the Māori Trustee as responsible trustee under the terms of the trust order for Totaranui A1B2B2B on the grounds that on the 2<sup>nd</sup> of October 2001 the Court made an order pursuant to section 215 of Te Ture Whenua Māori Act 1993 vesting Totaranui A1B2B2B in the Māori Trustee. The terms of the trust order are due for review no later than 1 June 2021. The Māori Trustee convened a meeting of owners on 15 February 2020. Individual notices were sent to the owners on 15 January 2020. The owners to replace Māori Trustee as responsible trustee and nominations for responsible trustees were items on the agenda for discussion. Two advisory trustees, seven owners and two whānau members attended the meeting. That the Māori Trustee files an application to the Māori Land Court to be replaced with shareholders and as the responsible trustees of Totaranui A1B2B2B and that the following persons are nominated as the responsible trustees, namely: Barry Soutar, Sam McLean, Te Rina Aupouri, Natasha Koia and Tom Tibble."

**The Court:** So someone called Sam?

**W Raihania:** Sam McLean and I think that was to be confirmed by Mr McLean.

**The Court:** So has he not confirmed because I do not have his name here?

**W Raihania:** I have not received any correspondence from Mr McLean either Your Honour. However, if I just finish...



**The Court:** Yes.

**W Raihania:** So the report to the Court and the Māori Trustee's administration of the Totaranui A1B2B2B Trust has been filed with this application and we seek immediate release of orders as sought.

**The Court:** All right. So you had the meeting, you have voted some persons to be responsible trustees instead of the Māori Trustee, but Sam McLean has not completed a trustee consent form, so we cannot appoint him at the moment unless he is here?

**Various Speakers:** No.

**The Court:** No. Now, I just have one question Mr Raihania, whānau mā, why did you want to appoint advisory trustees?

**W Raihania:** I wasn't present at the meeting Your Honour. I can only presume that appointing the advisory trustees was a safety barrier for the incoming responsible trustees, notwithstanding that I don't think that we've had any return correspondence from the advisory trustees as to their wishes as to whether they wish to remain as advisory trustees or indeed be considered for responsible trustees.

**The Court:** So were those advisory trustees that I have on the list here, were they advisory trustees previously?

**W Raihania:** Yes.

**C Koia:** Three of us.

**The Court:** Well generally speaking, if you have a trust that is simply a trust over the land, not a Māori trust where the Māori Trustee is the trustee, then you just have responsible trustees. Advisory trustees are put in there when the Māori Trustee is the trustee to ensure that members of the whānau are still involved as advisory trustees.

**C Koia:** Okay, yes.

**The Court:** Although advisory trustees do not have voting rights, it is only the responsible trustees. So generally speaking, when you establish this situation where owners take over as trustees, there is no need to have advisory trustees so I was just wondering – did you just have the advisory trustees because you had had advisory trustees before?

**C Koia:** Well, what you've just told us.

**The Court:** On that, yes. Because I think there is a desire to vary the trust order because the trust order that you have got is the Māori Trustee's trust order and it is designed to allow the Māori Trustee to be the trustee rather than responsible trustees of the whānau.

**C Koia:** Okay, yes.

**The Court:** So I can appoint advisory trustees because it provides for advisory trustees...

**C Koia:** What would be the purpose?

**The Court:** Yes. I do not think there is much purpose. Unless you are very committed as a whānau to having advisory trustees, I would suggest that we just replace the Māori Trustee with these responsible trustees and when you do your new trust order it will not provide for advisory trustees. It just clutters things up really. Advisory trustees do not have a voting right, so why are they there, what are they doing? If you have got whānau who want to run this land, then they should put their hands up and be responsible trustees if the whānau wants them.

**C Koia:** Yes.

**The Court:** The advisory trustees are in a kind of a nebulous condition where it is not really clear why they are there, that is my perspective. But if you had come and said to me "No Judge, we want this group of people to be there to watch over the responsible trustees, to learn to be trustees," something like that, I would say, "Okay, kei te pai". But if the reason that they are there is simply because historically you have had advisory trustees because you had the Māori Trustee – I would say, "He ao hou tēnei," you know, you are different now, you are doing it yourselves, you do not need advisory trustees.

**C Koia:** Ka pai.

**The Court:** All right?

**Various Speakers:** Yes.

**The Court:** So I will not appoint advisory trustees. I will appoint those people that you have voted to replace the Māori Trustee as responsible trustees, except for Mr McLean whose consent has not been received.

**C Koia:** Kāore anō kia tuku i tana pepa, āe, yes.

**The Court:** And then within six months, the new trustees are supposed to submit to the Court an application to vary the trust order. In the Tairāwhiti Māori Land Court we have a standard trust order for an ahu whenua trust and if you talk to your case manager she will give it to you and you can talk with her about it. To be honest, I have just been working with it that document recently, it is quite legal. It is probably worthwhile for you as trustees if you can to get someone from the Court to sit down with you and tell you what it all means because it is not obvious to non-lawyers and then you can decide which bits of it you want to adopt for your new arrangement as trustees without the Māori Trustee. Then you are supposed to bring that to the Court within six months for it to be inserted as your new trust order. That will give the power properly to you as responsible trustees to run your land.

**C Koia:** But what's in that trust order is mostly legal stuff anyway that we have to comply with.

**The Court:** Well I am actually working on a redraft of it because I think it is quite difficult for non-lawyers to understand, which I do not think is very useful.

**C Koia:** Yes.

**The Court:** Talk to Pauline about it. I will talk to Pauline. Can you make a note of that please Henri? Because I am actually working on this redraft now to take some of the material that is too dense out of it, so that it is more user friendly for ahu whenua trusts. So I will work on that and I will get Pauline to send you a copy

**of the revised version.** But even so, as new trustees, in the old days there used to be a document for ahu whenua trusts about three or four pages long, but for people, it did not set out what the real job of responsible trustees is and for people who are not familiar with that world there is actually a lot of responsibilities on trustees.

I agree with having a trust order that sets that out so that you as trustees know this is what tells us what our job is, we do what this document says, that is actually what a trust order is whereas the old trust order kind of skated over the top. So if you, as trustees, were going, "Should we do this or not?", and you went to that trust order, you would not really know. Whereas this new one is about 20 pages long so it sets out the whole situation. There is nothing in it that is wrong, it is just quite difficult, so I am trying to simplify it. I found reading through it, and I was doing this for another block, some of the sections I was reading two or three times going, "What are they trying to say there?". I mean, if that is what I am doing, it is not clear enough. So I will talk to Pauline and I will work on a redraft and I will get her to send you the redraft as soon as I have done it.

**C Koia:** Lovely.

**The Court:** And then you can look at it and maybe go and see her or somebody else in the Māori Land Court, any of these guys, to discuss it and to know what you are letting yourselves in for really.

**C Koia:** Mīharo.

**The Court:** All right?

**C Koia:** Yes.

**The Court:** All right. So I will just make the orders.

**Kataraina Paterson:** Excuse me Your Honour. Kia ora, kia ora e te whānau.

**The Court:** Tēnā koe.

**K Paterson:** Kataraina Paterson tōku ingoa, he uri ahau nō Tuameko, nō Rongoitekai, anei mātou whānau nō Te Houkamau, ngā Moeke hoki. We had a little bit of trouble with the communication, knowing what's kind of going on. So we sort of come in at the end – just knowing the Court was on so we haven't had much communication with the whānau at all. However, yes, we are concerned about the future utilisation of the whenua and we would like to include perhaps someone to represent our whānau as well, with the trust.

**The Court:** This is one of the things that the trust order says, is that what the job of the trustees is, is to do everything that the trustees can do for the benefit of all the beneficiaries.

**K Paterson:** Āe.

**The Court:** So any trustee who is sitting there going, "Kei te pai, I am here for my whānau," is already in breach of trust. No one is allowed to be there for their whānau. If you are a trustee on a block, your job is to do the best you can for every single beneficiary.

**K Paterson:** Āe.

**The Court:** And if you are distinguishing between them, if you are saying, "We want these ones to do better," kua hē katoa tēnā whakaaro.

**K Paterson:** No, not like that at all, just to be included because we haven't really been included.

**The Court:** One of the jobs that trustees have to do and can do very easily in this era is to get a really good communication list.

**K Paterson:** Yes.

**The Court:** Because it wasn't all that long ago where you had to communicate with everyone by post, which was very expensive and difficult. Not now. So I would invite the new trustees if it has not been done already, to set up a Facebook page or a website for your whenua and to let everyone know so that they can access all the information all the time so that everyone knows when you are going to have a trustees meeting, how are you going to have the trust meeting, who is going to attend, and then you put the minutes up. It is amazing how, if everyone knows everything all the time, any fear that people have that things are happening that they do not know about or that things might be happening that are not in their best interest, that goes away. Communication is number one when it comes to multiply-owned land.

**K Paterson:** Yes.

**The Court:** So make sure that you are all on a list. Who is going to be your person in charge of communications, do you know yet?

**C Koia:** Probably me.

**The Court:** Probably you? Well that is a big job, tō kaha hoki.

**C Koia:** Just hei whakautu i te kōrero a Kataraina, I know the Māori Trustee did, to the best of their ability, to whakamōhio atu, tuku pānui ki ngā whānau katoa, ngā beneficiaries katoa, so pōuri ake kāore koe i whiwhi i te pānui mai i a mātou.

**K Paterson:** And I did get a pānui on the 29<sup>th</sup> of July and I've posted back to Pauline Clarke and to the Court. The pānui that we got were actually just emails with pānui letter heads and no pānui, and I have a copy of those. I've already submitted them to the Court which is why we are here. I'm a resident in the area as well and yes, it does concern us what the future utilisation of the block would be.

**The Court:** Of course.

**K Paterson:** And these are the whānau that actually haven't had notification and have, shareholdings in the same block as well.

**C Koia:** So we will try and do a better job than the Māori Trustee and get your guys' addresses and contact details so that ka taea e tātou te whakamōhio atu ki a koutou.

**K Paterson:** Yes, I'm just saying that through Te Tumu Paeroa they see why they're being removed because there hasn't been enough communication.

**The Court:** Well what will happen under this new trust order is there will be annual general meetings.

**K Paterson:** Okay, and there will be rollovers?

**The Court:** Well that is the way to go.

**K Paterson:** Yes.

**The Court:** The old trust order used to appoint people as trustees and they were there for life or until they resigned, and that has caused problems. So what the new one does is you can have a two-year rotation or a three-year rotation, it is up to you. No one is automatically a trustee for longer than two or three years, depending on what you choose. But then you can put your hand up again to be reappointed, and if you have done a good job you should be reappointed. But if you have not, then people need to ask questions and make sure they have the best people in the roles. So that will come through and that means that every year, once you get into it, trustees come up for reappointment. So it is a rotation. So say you have six trustees every year and they are each there for three years, every year two positions come up. That is a way of making sure that everybody who is interested and engaged and willing to attend meetings can become a trustee if they are suitably qualified and the whānau gets to have the best people that they can to maximise their interests. So is this land in grazing?

**C Koia:** Yes.

**The Court:** And there are 127 hectares?

**C Koia:** Yes.

**The Court:** Okay, that is a big block. Is it on the Waiapu? Where is Totaranui?

**Unidentified Male Speaker:** (12:13:07) Hiruharama.

**C Koia:** Yes.

**The Court:** Does it flood?

**C Koia:** No, we're pretty lucky. Everybody else floods around us – Makatote goes around us, not through.

**The Court:** Good, okay. All right. Well I am prepared to go ahead and effect this transfer to the new trustees and also help you to get your new trust deed in place, that will put in place this new regime where there will be revolving trustees, and there should be a meeting within 12 months to have a look at this question. How many trustees does the existing trust order provide for, is it five? Because at the moment there are four, but that does not include Mr McLean whose consent did not come through.

**W Raihania:** So the current trust order only allows for the Māori Trustee.

**The Court:** I see, so it is just not really fit for purpose.

**W Raihania:** No.

**The Court:** All right. I am putting in new trustees not entirely consistently with the trust order because the trust order was designed to have the Māori Trustee there. So we need to try and change that as soon as we can, and I will get on to that with Pauline when I get back to the office and we will get you a new draft. Ka pai?



C Koia: Yes.

The Court makes orders pursuant to section 239 of Te Ture Whenua Māori Act 1993:

- (a) section 239 replacing the Māori Trustee with Barry James Soutar, Te Rina Aupouri, Celia Natasha Marama Koia and Thomas Henare Tibble as responsible trustees of Totaranui A1D2B2B

The foregoing orders to issue without delay pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

These orders are conditional upon the new trustees submitting an application to the Court to vary the trust order within six months from today.

**The Court (continuing):** So it really means that you are conditional trustees and you need to get the next stage in place. Thank you all whānau for coming along. I think the new trustees are quite clear that there are other people who are engaged with this whenua and they will make sure that everybody is in the loop. Thank you very much for coming.

Copy of minute to applicant and interested parties.

A handwritten signature in black ink, appearing to read 'C M Wainwright', with a stylized flourish at the end.

C M Wainwright  
JUDGE