

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY  
I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE

CIV-2017-404-259

BETWEEN

STEWART NGAWAKA,  
MARYLIN STEPHENS, MARK  
ANTHONY McMATH, ALLAN  
JOHN MOORE, HORI TE  
MOANAROA PARATA and  
ELDERS and registered  
members of NGĀTI REHUA-  
NGĀTIWAI KI AOTEA  
Plaintiffs

AND

NGĀTI REHUA-NGĀTIWAI KI  
AOTEA TRUST BOARD  
First Defendant

YVONNE JEWEL WIKI  
Second Defendant

CATHERINE HOPE MUNRO  
Third Defendant

NICOLA MARIE ATARIA  
MACDONALD  
Fourth Defendant

RODNEY NGAWAKA  
Fifth Defendant

---

**WHAKAPĀ TUHINGA NĀ TE ROIA TAUTOKO KI TE KŌTI/HEAMANA Ā  
WĀ MO TE POARI TARAHITI MŌ NGĀTI REHUA-NGĀTIWAI KI AOTEA**

**AMICUS CURIAE/INTERIM INDEPENDENT CHAIR'S REPORT TO THE  
COURT FOR NGĀTI REHUA-NGĀTIWAI KI AOTEA TRUST BOARD**

Tēnei te Rā 4 o Pipiri, 2021  
Dated this 4<sup>th</sup> Day of June, 2021

---

Presented for Filing by:

Amicus Curiae, Independent Interim Chair

TU'INUKUTAVAKE BARRON AFEAKI  
BARRISTER,  
AFEAKI CHAMBERS  
PO BOX 13-397, Onehunga Mall, Auckland 1643  
Tel: 09 909 4904  
Email: tavake@afeakichambers.co.nz

MĒNĀ KA PAI KI TE KŌTI,  
MAY IT PLEASE THE COURT,

WHAKAPĀ TUHINGA NĀ TE ROIA TAUTOKO KI TE KŌTI/HEAMANA Ā  
WĀ MO TE POARI TARAHITI MŌ NGĀTI REHUA-NGĀTIWAI KI AOTEA

AMICUS CURIAE/ INDEPENDENT INTERIM CHAIR'S REPORT TO THE  
COURT FOR NGĀTI REHUA-NGĀTIWAI KI AOTEA TRUST BOARD

**WHAKATAUKĪ WHAKATAKI  
[INTRODUCTORY PROVERB]**

***Ka kitea ngā kokonga o te whare,  
engari ka kore e kitea ngā kokonga o te ngākau.***  
*[The four corners of a house can be seen,  
but never the corners of the heart]*

- 1) I provided my latest Amicus Report dated 19 May 2021, reporting on, *inter alia*:
  - a. successful mahi of the combined kaumātua whakapapa validation committee;
  - b. the then proposed election timetable and AGM date;
  - c. my not yet having received original documents sought from the defendants (and the status at that time);
  - d. discussions and correspondence about the ongoing duties of discovery in respect of these proceedings and as required by the Trusts Act 2019<sup>1</sup>.
  
- 2) I now provide the Court an update on developments, hui and proposals which have arisen since 19 May. This report will update, address and seek any orders the Court may deem appropriate on:
  - a. Discovery and return of the trust's original documents;
  - b. Revised proposed election timetable, leading to AGM on Saturday 31 July 2021 at Kawa Marae, Aotea; and
  - c. Requests for hapū trust register database.

**Discovery of trust's original documents**

- 3) Following my report, Learned Counsel for the second to fourth defendants, Ms Wroe filed and served a memorandum in response advising that she had contacted me to arrange to provide me discovery of original documents, advising:

“Additional documents which have been located since the trial are for the most part duplicates of what has already been

---

<sup>1</sup> WHAKAPĀ TUHINGA NĀ TE ROIA TAUTOKO KI TE KŌTI/HEAMANA Ā WĀ MO TE POARI TARAHITI MŌ NGĀTI REHUA-NGĀTIWAI KI AOTEA/ AMICUS CURIAE/INTERIM INDEPENDENT CHAIR'S REPORT TO THE COURT FOR NGĀTI REHUA-NGĀTIWAI KI AOTEA TRUST BOARD, T B Afeaki, 19 May 2021, at paras [23]-[57]

provided. Arrangements are in hand to provide the original documents to Mr Afeaki. Arrangements have been made to deliver them on 27 May 2021.”<sup>2</sup>.

- 4) I confirm that Ms Wroe organised delivery of two boxes of what she advised to be Ms Ngaire Pera’s original documents to me. I confirm receipt of two large archive boxes of documents weighing approximately nine kilograms from Ms Wroe on 27 May 2021.
- 5) Ms Wroe asserts that legal privilege attaches to the documents disclosed as per her email of 27 May 2021, which privilege her client defendants do not waive. The cover email is reproduced **below** for ease of reference:

**From:** Sarah Wroe <sarah@sarahwroe.co.nz>  
**Sent:** Thursday, 27 May 2021 12:58 pm  
**To:** Tavake Afeaki <tavake@afeakichambers.co.nz>  
**Cc:** Christopher Finlayson  
<christopher.finlayson@bankside.co.nz>  
**Subject:** Ngati Rehua Trust Documents

Hello Tavake,

You will receive two boxes of documents this afternoon.

There is a file marked “Legal Services”. This includes documents that are legally privileged and that privilege sits with the trust and the other defendants as they were jointly represented at that time. Our clients do not waive privilege in those documents. It would therefore not be appropriate to share them with anyone involved in the current proceedings, including the interim trustees who are witnesses. There is nothing in that file that impacts on the current day to day administration of the trust so it should not be necessary to share the legal documents with anyone else.

I believe the Legal Services file also contains some of the original reports from the auditor, they of course would be in a different category and electronic copies have already been circulated in any event.

Please confirm receipt of this email.

Kind regards,

---

<sup>2</sup> Memorandum of Counsel for second to fourth defendants in response to the Report of the Amicus filed on 19 May 2021, C Finlayson QC/S Wroe, 21 May 2021, [3]

Sarah Wroe  
Barrister

### **Eldon Chambers”**

- 6) Not yet having been able to inspect any of these documents received, due to unexpected increased caseload and my associate barrister having recently had heart surgery, I cannot yet make any further comment.
- 7) I remain unsure as to whether or not any other original documents which might be held by any of the second to fourth defendants themselves, all former trustees, are going to be disclosed and returned to the ownership of the trust.

### **Legal Privilege**

- 8) With respect to learned counsel for three of the defendants’ assertions of legal privilege, I note that I am the independent chair of the first defendant trust and counsel assisting, which might entail some other layers of legal duties and rights over what might be usual parameters of legal privilege.
- 9) Given the Court’s concerns during the first week of hearing about a lack of full and timely disclosure or original trust documents, by which to check veracity, it may be that the Court has a different view about the privilege asserted, or about what the Court wants me to do as counsel assisting.

### **Amicus Role**

- 10) Learned defence counsel’s comment that:

“There is nothing in that file that impacts on the current day to day administration of the trust so it should not be necessary to share the legal documents with anyone else.”

- appears to assume that my role as amicus is only administrative, no doubt arising from the March 2019 phase of the proceedings in which His Honour Palmer J directed me<sup>3</sup> to focus on facilitating the processes required for the regularisation of registrations and the database, the holding of an AGM and election of trustees, as soon as possible.

- 11) Many complications arose in the two years since those orders and as amicus and chair, I am still working to ensure that those particular 2018 Court orders are carried out.

---

<sup>3</sup> Minute No 3 of Palmer J, 27 March 2019, at [4], please also see [2] and [2] (a)

Validation, hapū database, trustee elections and the AGM are now in train. However, I am also concerned that all of the beneficiaries' best interests are protected and advanced while I remain on this watch of duty.

- 12) How I best carry out those duties and that I should do nothing more than "day to day administration" appears to be the import of learned defence counsel's comments.
- 13) If indeed the Court does wish me to restrict my services in any way, then of course I would abide by such orders.
- 14) In the circumstances I would seek the Court's directions as it deems appropriate on the matters of legal privilege as asserted and also concerning my role as amicus and interim chair of the first defendant.

#### **Fifth Defendant, Mr Ngawaka's documents**

- 15) Ms Wroe also mentions that Learned Counsel, Mr Jason Pou the fifth defendant, Mr Rodney Ngawaka advised Her Honour Duffy J that Mr Ngawaka has hard copy documents of Trust documents stored at Kawa Marae, Aotea. Further, that Mr Pou has arranged to go Aotea to review the documents and identify any missing documents that have not been provided.
- 16) I confirm that, during the evening after hearing on 24 March 2021, I had been pleased to have a hui with the fifth defendant, Mr Rodney Ngawaka and Mr Jason Pou.
- 17) The next day, Mr Pou duly advised Her Honour Duffy J of the import of our hui, that he would attend on inspection and I was able to confirm to the Court that those arrangements had been commenced.
- 18) Mr Pou advised me that he is going to inspect Mr Ngawaka's documents at Kawa Marae and when they have done that, he and Mr Ngawaka invited me to come and inspect those documents. I accepted that proposal at our hui a kanohi.
- 19) I am comfortable to work with Messrs Ngawaka and Pou on this process and happy to await further advice on timing and logistics from Mr Pou.

### **Mr James Nair, Trust's former Accountant's documents and duty to deliver up trust documents**

- 20) Ms Wroe mentions<sup>4</sup> the documents I had asked Mr Nair, the former Trust Board's accountant for <sup>5</sup> in October 2019 as having been discovered to me.
- 21) I cannot have known what was or was not in Mr Nair's files for the trust because he told me he was instructed in 2019 to send all of the documents he held to her as counsel for the second to fourth defendants.
- 22) Therefore he was not able to give any documents to me.
- 23) Importantly in the context of the Trusts Act, these proceedings, my duties to the trust beneficiaries and the Court as supervisor of the trust, all the trust's original documents belong to the trust and should have been discovered with copies made for any other persons or parties.
- 24) By contrast unless any party are not sure of their obligations and rights in respect of the trust's original documents - they are not 'owned' by any particular party, or individual, former contractors or group of people. The original documents belong to the trust. The parties and former trustees have a legal duty to deliver those documents up to the trust if they hold them.

### **Mr Kris MacDonald, former trustee's documents**

- 25) Ms Wroe asks through the Court in her memorandum whether or not I have asked former trustee and witness, Mr Kris MacDonald for trust documents and trust-related emails in his possession. His involvement as a former defendant in these proceedings was prior to my accepting the Court's appointment to this duty on 1 February 2019.
- 26) I recall Mr MacDonald's evidence at the March hearing and his answers during cross-examination in particular in relation to trust board meetings and dates, minutes, documents, whether or not and where they happened and in respect of some of those issues, the accuracy or veracity of certain records or information put to him. Disclosure of original and copies of documents was discussed many times during that part of the evidence. Some of the most relevant

---

<sup>4</sup> Ibid, at [5], [6]

<sup>5</sup> Amicus Report 19 May 2021, at para [48] see discussion of my request to Mr Nair for his documents in reproduced email to Learned Counsel for second to fourth defendants, para 8, page 15

references to the Court's notes of evidence about these matters are footnoted below for the Court's convenience<sup>6</sup>.

27) The comments I have made in my 19 May Report and in this present report in respect of trustees' duties to discover and to return original documents to the trust apply to Mr MacDonald as well as to other former trustees who may hold trust documents.

28) I confirm that I have written to Mr MacDonald and Learned Counsel for the Plaintiffs, Mr Harrison and asked that they provide me all original trust documents and any trust-related emails and documents he holds. Mr Harrison advised that he is following up with Mr MacDonald.

### **Amended Proposed Election Timetable, Dates, AGM**

29) Since I reported to the Court on 19 May 2021 about the achievements of the Combined Kaumātua Whakapapa Validation Committee at their 5<sup>th</sup> hui on 8 May 2021, we moved to re-invigorate preparation for trustee elections. I provided to the Court a proposed draft election timetable commencing 4 June with an AGM to be convened after elections on Saturday 10 July 2021.

30) Since my 19 May Report, some of the hapū have welcomed the proposed draft timetable prepared by the independent Returning Officer, but others have contested that proposed timetable seeking more time to prepare, consult with their whanau and seeking an election timetable to be set down after the completion of the evidential hearing of the substantive allegations during the week of 2-6 August 2021.

31) I sought to hui with my Interim Board of Trustees to canvas their views and after delays we were able to hui with all interim trustees on 27 May 2021 to discuss this, the proposed venue, finances, accounts, administration and other work matters.

32) After extensive discussions, including a consideration of requests from some kaumatua for a longer period in which to engage with their whanau, and some for a shorter period, the Interim Board resolved to compromise, to provide early public notices, a longer election period of 46 days, starting on 11 June and running to 27 July, with an AGM on 31 July 2021.

---

<sup>6</sup> Courts notes of evidence, 22-26 March 2021, Witness Kris MacDonald, 23 March from page 113, pages 116, 117, 126, 133-135, 138 – 139, 144, 156, 159-160, 165-166, 167, 168, 182, 187, 189-190

## **AMENDED Trustee Elections Draft Timetable**

33) The Interim Board resolved to change the earlier proposed trustees' election timetable for endorsement by the Court should it so wish. The new timetable is as follows:

- a. Saturday 5 June 2021: Public Notices to be lodged in NZ Herald and Barrier Bulletin, with the trustees to also post the same on the hapū trust website and hapū trust FaceBook page;
- b. Friday 11 June 2021: Delivery of Voting papers by the Returning Officer. Voting opens on 11 June 2021;
- c. Friday 11 June to Tuesday 27 July 2021, Returning Officer's early processing of votes received;
- d. Tuesday 27 July: close of postal and online voting, 5 pm;
- e. Friday 30 July 2021: 3-day postmarked votes received will be accepted and the Returning Officer will then complete vote processing; and
- f. Saturday 31 July 2021, 10am: Trust's AGM, Kawa Marae, Aotea. Preliminary vote result to be declared. [Returning Officer will provide a Final Vote Return the following week]

### **AGM VENUE, KAWA MARAE, AOTEA**

34) The interim board confirm that the AGM venue will be held at Kawa marae on their whenua tīpuna, Aotea and the hapū interim trustees are to contact Kawa Marae to book the weekend.

35) Ka tika kia hui ngā uri o te hapū kei runga Aotea Rahi, kei runga o rātou marae tīpuna.

### **Combined Kaumātua Validation Committee Hui**

36) The Combined Kaumātua Validation Committee will have to meet to consider any new applications to register and for those earlier applicants who had been asked by the validation committee to provide further information.

37) The interim trust board consider that in order to assist with validating ongoing registrations of hapū members and enabling those people to vote via a special vote process to be conducted by the Returning Officer, we invite the Combined Kaumātua Validation Committee to convene their committee on Thursday 29 July 2021 at a venue to be confirmed.

- 38) If any other applications for registration or further information responses are received between 29 July and the AGM on 31 July, then the Combined Kaumatua Validation Committee may need to convene another hui at Kawa Marae on 31 July to consider those applications. Any registrations validated and special votes able to be cast as a result will be provided to the Returning Officer to process.
- 39) The Returning Officer will provide a Final Vote Report after all the special votes are received and counted.
- 40) I have invited the Returning Officer to attend the AGM at Kawa Marae, to be able to provide his independent services and answer any questions about the process.
- 41) The interim board will need to work through the finer details, logistics, funding, kai and a support process for the kaumātua and whānau beneficiaries as able.
- 42) The Board welcome the support of hapū members in bringing this AGM together.
- 43) I am keen to get this work done to culminate in a successful election, AGM to organise a proper handover of all the Trust's information, hard copy files, the trust's laptop, financial statements and bank accounts. The Interim Board hope that at the AGM we will be able to give the incoming trustees as good a start as possible.
- 44) Given the enormous efforts by so many to get to this stage, some years of conflict and the fact that in its 18 December 2018 judgment, the Court held that:

“The key objective must be to resolve the disputes that have arisen over registration and the database which have impeded the holding of elections and an AGM since 2016.

And:

“I direct the interim independent chair, as counsel assisting the court, to facilitate the implementation of the consent judgment procedures.”<sup>7</sup>

- 45) And thus ordered me:

---

<sup>7</sup> *Ngawaka v Ngāti Rehua-Ngātiwai ki Aotea Trust Board* [2018] NZHC 3398, at [39], [40], and the directions in [41] and [45]

“b. to facilitate the processes required to determine registrations, the database, the holding of an AGM and the election of trustees.<sup>8</sup>”

46) The fact that the work of the interim trustees took longer than the 18 months estimated in late 2018 is testament to the fact that the issues being dealt with required time, patience, respect, numerous hui a kanohi, tikanga and whanaungatanga for Ngāti Rehua-Ngātiwai ki Aotea hapū to proceed with.

47) Congratulations are due to all the good folk who have contributed to reaching this stage and who are committed to serving the all the whānau of the hapū.

48) In my view, Ngāti Rehua-Ngātiwai ki Aotea hapū have come so far to not proceed with this now.

49) The key objective remains for the hapū to proceed within their own Mana Motuhake, work with all their whānau to participate in the elections and choose who they wish to serve them as new trustees.

### **Court’s Endorsement of Election Timetable Sought**

50) If the Court is so minded, I ask that the Court endorse the election and AGM timetable.

### **Security of Hapū Trust Register Database**

51) The Returning Officer and I have received two different requests from both sides excluding the fifth defendant, for information from the Returning Officers, namely:

- a. to provide the list of names of people who were formerly on the database and who have been invited to re-register and the list of names of people who have applied for membership, and whose applications were considered by the combined kaumātua validation committee, but who were asked by the committee to provide further information; and secondly
- b. to provide the hapū trust database of members eligible to vote.

52) The first list of names (a) was provided to the kaumātua for both parties to the litigation upon kaumātua requests for this at committee hui, with their intention to follow up with those whānau directly. I am advised that this is happening.

---

<sup>8</sup> *Ngawaka v Ngāti Rehua-Ngātiwai ki Aotea Trust Board* [2018] NZHC 3398, at [31]

53) In response to the second request, I am reporting to the court and through the court to the interim trustees, the parties, learned counsel and via them, the wider whānau of the hapū.

54) I do not wish to release the hapū database to any of the parties, candidates, trustees or legal counsel for the following reasons:

- a. The information is private and confidential to those beneficiaries themselves. It is for use by the trust for registration and voting purposes only. It cannot be released to anyone else unless each person provides their specific consent to the information being released to anyone. The beneficiaries have not so consented;
- b. Given the upcoming elections it is not feasible for the trust to now ask each and every registered beneficiary for their consent to release their details to anyone, as they are entitled to trust the Trust and Returning Officer to hold safe their information;
- c. I sought the Returning Officer's advice about these requests and he advised that as the Trust's returning officer, and interim-custodian of the membership database, his duty is to ensure a transparent and independent electoral process for all members of Ngāti Rehua-Ngātiwai Ki Aotea Trust, and to protect of beneficiaries' private data while it is in their custody;
- d. Accordingly he advised me not to release the hapū database to anyone;
- e. Given the acrimonious circumstances of the last several years and the allegations of misuse or manipulation of the hapū trust data before the court, it would not be responsible of myself, nor the Returning Officer to release the hapū database to anyone; and
- f. As court-appointed chair and counsel assisting the court, I do not wish to do anything which will unnecessarily detract from the independently run election, cause confusion, anxiety or further fuel any historical disputes and allegations, which the hapū are seeking to leave behind them by having properly run elections.

55) It is very important for us to get this process right at this crucial juncture of the hapū's history. The course and reasons described herein are to maintain transparency and

accountability to the Court and bearing in mind that the principal stakeholders here are all the hapū beneficiaries.

56) If the Court believes it necessary to make any orders it sees fit concerning this process, I welcome them. Otherwise I am keen to proceed to trustee elections as a matter of priority.

### **Whakakapi/Final Comments**

57) I make this report and seek orders as the Court sees fit under the provisions of the Trusts Act 2019 and in reliance on the Court's inherent jurisdiction to supervise this trust for the benefit of the hapū trust beneficiaries.

58) Should the Honourable Court require me to report further or provide any other information, I would of course abide by such orders.

59) I acknowledge how busy the Court and the registry staff are serving the people of this hapū. I also appreciate the hard-working uri and whānau o Aotea for their good intentions and patience as we head to the next stages of designing their own future within their own tikanga, their tino rangatiratanga.

*Hei whakakapi, e karanga atu ana kia tau ngā manākitanga ki te Kaiwhakawā, me ngā kaimahi katoa. He karanga hoki ki ngā tarahi kaitiaki, me ngā uri whakaheke o Ngāti Rehua-Ngātiwai ki Aotea, huri noa, kia maranga ake ki ngā kaupapa nui nei mo ō koutou hapū.*

*Tēnā koutou katoa.*

**MĒNĀ KA PAI KI TE KŌTI,  
MAY IT PLEASE THE COURT,**

Kei Māngere, Tāmaki Makau Rau,  
At Mangere, Auckland,  
Tēnei te Rā 4 o Pipiri, 2021  
Dated this 4<sup>th</sup> Day of June, 2021



**Tu'inukutavake Barron Afeaki  
Amicus Curiae**

**Independent Interim Chair, Ngāti Rehua-Ngātiwai ki Aotea Trust**

To: The Registrar, High Court, Auckland (Shaoreeq Ali/Tony Mortimer)

To: Counsel for the Plaintiffs, R Harrison

To: Counsel for the Second to Fourth Defendants, C Finlayson QC & S Wroe

To: Counsel for the Fifth Defendant, J Pou