JUDGMENT (INCLUDING THE RESULT) SUBJECT TO TEMPORARY ORDER PROHIBITING PUBLICATION UNTIL 8 AM ON 25 AUGUST 2026.

IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY

I TE KŌTI MATUA O AOTEAROA
NGĀMOTU ROHE

CIV-2026-443-32
[2026] NZHC 2519

BETWEEN	TARANAKI COMMUNITY ACCOUNTABILITY SOCIETY INCORPORATED Plaintiff
AND	CHRIS USSHER WHAREHOKA WANO RYAN EAGAR BALI HAQUE NICOLA NGAREWA LIANA POUTU JOHN O'SULLIVAN EMMA GARDINER and DIANNE MASON as trustees of THE TOI FOUNDATION Defendants

Hearing:	20 August 2026
Appearances:	D Grove and G Halse for Plaintiff J Smith KC and B Davies for Defendants
Judgment:	24 August 2026

JUDGMENT OF ISAC J
[Application for interim injunction]

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Introduction

[1] Toi Foundation is a charitable trust based in Taranaki. Its holding company, Toi Foundation Holdings Ltd, owns 100 per cent of the shares in TSB Bank.

[2] On 1 June 2026 Toi Foundation, Toi Holdings and Heartland Group Holdings Ltd entered into a conditional agreement to sell the entirety of Toi Foundation's shareholding in TSB to Heartland Group. At this stage the sale remains conditional on several approvals, including a resolution passed by at least 75 per cent of the Foundation's Trustees. They are due to vote on the proposed sale on 26 August 2026. The conditional agreement requires the Trustees to notify Heartland by 28 August whether the condition has been satisfied.

[3] The applicant, Taranaki Community Accountability Society Inc (TCAS), claims the proposed sale is unlawful and the Trustees of the Foundation are in breach of trust. It does so principally on the basis of what it claims is a deficient community consultation process Toi Foundation carried out as a requirement under its Deed of Trust. TCAS has applied for an urgent interim injunction preventing the Trustees from proceeding to vote on the proposed sale together with a prospective costs order.

[4] The application was heard on 20 August 2026. At the conclusion of the hearing I advised the parties, given the need for swift answer, that I would deliver judgment today.

Interim injunctions

[5] The approach to consideration of interim injunctions is well settled.[1] The Court should consider:[2]

(a) whether the applicant has made out a serious question to be tried;

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1 See *Intellihub Ltd v Genesis Energy Ltd* [2020] NZCA 344, [2020] NZCCLR 29 at [24].

2 *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA) at 142, as cited in *Intellihub v Genesis Energy*, above n 1, at [23]. See also *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [12].

(b) who is best placed between the applicant and the respondent to carry the risk of harm to rights pending the substantive hearing (referred to as the "balance of convenience"); and

(c) where the overall justice lies.

[6] At the interlocutory stage the Court is not required to resolve conflicts of evidence or difficult questions of law requiring detailed argument and mature consideration.[3]

[7] Where the grant of an interim injunction will have the practical effect of becoming a final judgment or putting an end to an action, the Court should bear in mind that it does so without permitting the defendant the right of trial. In such cases, the Court should be slow to decide the entire contest between the parties on what is in effect a summary basis.[4] This consideration has some moment in the present case because if the interim injunction is granted, there is a real prospect that the opportunity to sell the bank on the existing terms will be lost.

Background

[8] Toi Foundation is a charitable trust created in 1988 to hold the shares in TSB. Founded in 1850, TSB is a 176-year-old financial institution whose profits are returned to the Taranaki community through Toi Foundation. While TSB provides country-wide banking services, approximately half of its deposits come from customers based in Taranaki.

[9] Since its establishment, Toi Foundation has made grants of more than $310 million to charitable causes. It has done so through income generated from two assets owned by Toi Foundation Holdings: the shareholding in TSB, and a

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3 *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL) at 407; *Villa Maria Wines Ltd v Montana Wines Ltd* [1984] NZLR 422 (CA) at 425; and *Health Club Brands Ltd v Colven* [2013] NZHC 428 at [9].

4 In *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* above n 2, at 138, Davison CJ referred to the Court of Appeal of England and Wales' decision in *Cayne v Global Natural Resources Plc* [1984] 1 All ER 225. Kerr LJ noted at 236 that if the position in that case were viewed as an application for summary judgment that it would be clear beyond argument that Global must be entitled to a full trial, and in that context, it would be wholly wrong to decide the case summarily.

66 per cent shareholding in Fisher Funds, a well-known New Zealand financial services company.

[10] The applicant is a community advocacy organisation. It was formed in June of this year in response to concern about the proposed sale of TSB. Its purpose is to support community opposition to the sale.

The proposed sale

[11] Toi Foundation wishes to diversify its investments, which are concentrated in the New Zealand financial services sector. It is also concerned to improve its return on equity, which it considers is poor for various reasons. In October 2024 Toi Foundation Holdings was approached by an organisation interested in a potential merger with TSB. The directors considered this merited further exploration given the Foundation's increased commitment to diversification and the fact that TSB would soon need to undertake a multi-year digitisation project at significant expense.

[12] The Board sought advice on the costs and benefits of a potential sale or merger of TSB with another bank. They were initially advised by a firm of advisers — Antipodes — on strategy and process, including preparing an Information Memorandum to solicit wider market interest. In March 2025 the Trustees engaged Deloitte to carry out vendor due diligence on TSB.

[13] Through this process, Toi Foundation Holdings approached potential transaction counterparties and received a number of non-binding indicative offers. After receiving advice on those offers, in November 2025 the Trustees resolved to proceed to negotiate exclusively with Heartland Group Holdings, which owns Heartland Bank. Heartland Bank was the first New Zealand registered bank to acquire an Australian bank. Approximately 90 per cent of Heartland Group Holdings' shareholders are in New Zealand, five per cent in Australia and five per cent are international institutional investors.

[14] The Trustees then undertook a structured due diligence process and received advice from Antipodes, Bell Gully, KPMG, Clarien Partners, Corporate Value Associates, Forsyth Barr, Grant Thornton, NZIER, a commercial barrister and

MinterEllisonRuddWatts. In May 2026 they progressed the transaction towards a conditional merger implementation agreement, which was signed on 1 June 2026. The main conditions required to be satisfied for the agreement to become unconditional are for the Trustees to consult with the Taranaki community, pass a vote to approve the sale of TSB, and obtain Heartland shareholder and regulatory approvals.

[15] On 3 June 2026 the Trustees issued a public notice inviting submissions from the Taranaki community on the proposed sale, pursuant to cl 7.4 of Toi Foundation's Trust Deed. The initial engagement period was inadvertently cut a day short due to an error. To remedy this, the Trustees published a second notice on 9 July, advising that they were issuing a fresh notice and re-opening the submissions period. On 14 July, the Trustees issued a final notice confirming that the closing date for submissions was 12 August 2026.

[16] Alongside the notice, Toi Foundation updated its website to include a landing page about the proposed merger. This contained information about the proposal and links to an information booklet, a fact sheet, a video from the Foundation's chair, Frequently Asked Questions (FAQs) and a public submissions form. Five public information sessions were held during the initial engagement period, with a total attendance of approximately 500 people.

[17] On 10 June the Foundation published a response to an opinion piece written by Mr Kevin Landrigan, the treasurer of TCAS, in the Taranaki Daily News. Additional FAQs were also added to the website responding to questions received at the public meetings. On 17 June the website was updated again to include a 'Key Information' sheet.

[18] Beyond the public submissions process, the Trustees have held discussions with a number of stakeholder groups. Those groups include the Taranaki Mayoral Forum (with local iwi chairs and local authority chief executives in attendance), TSB staff, the Taranaki Chamber of Commerce, the Law Society, grantee organisations and Positive Ageing Taranaki.

[19] Mr Brough, the Mayor of New Plymouth, deposes on behalf of TCAS that the New Plymouth community is overwhelmingly opposed to the sale. There has been a petition raised with approximately 7000 signatures in opposition. Separate from the public information sessions, Mr Brough hosted a public meeting during the original consultation period which was attended by approximately 200–300 people. Ninety-nine percent of attendees opposed the sale. Their concerns include the loss of control of TSB, loss of identity, loss of value, and loss of jobs.

The terms of sale

[20] The merger agreement is not before the Court. The following summary is derived from Heartland's public announcement to the NZX and ASX exchanges, the information disclosed by Toi Foundation as part of its community consultation process and the evidence of Mr Christopher Ussher, the chair of Toi Foundation.

[21] If the sale proceeds, a new merged bank will be formed, to be called TSB Heartland Bank. Mr Ussher's evidence is that the parties have agreed — through a number of agreed regional principles — for the merged bank to maintain a strong regional presence in the Taranaki region. This includes retaining Taranaki as a key operational hub for customer-based banking services, maintaining a local branch network, retaining customer-facing roles, and continuing to operate TSB's New Plymouth based operations, contact centres and lending centre. Upon completion of the transaction, a Toi Foundation nominee will be appointed to the Heartland board and two existing TSB directors will join the merged TSB Heartland Bank board.

[22] Mr Ussher says the Foundation expects to see returns of approximately \$34 million to \$37 million per year as compared with the average returns from TSB of \$11 million per year in the period 2016 to 2025 if the transaction proceeds. The Foundation's evidence is that a central reason it has looked at a potential sale is the relatively low return on equity it receives from TSB, which is lower than could be obtained from investing the equity in an investment portfolio managed by a fund manager.

[23] The aggregate financial consideration for the transaction is $620 million, comprised of:

(a) $50 million as a pre-completion cash dividend from TSB;

(b) $250 million in ordinary shares in Heartland Group (200 million shares at NZ 1.25 each), giving Toi an approximate 17.5 per cent stake in Heartland Group;

(c) $264 million vendor loan provided by Toi Foundation to Heartland Group; and

(d) $56 million of subordinated debt regulatory instrument (issued by Heartland Bank as tier two capital) for a term of ten years, callable after five years.

[24] The total sale consideration amounts to 76 per cent of TSB’s book value. Heartland Group’s total number of shares on issue will increase to give effect to the merger, and Toi Foundation's resulting 17.5 per cent shareholding is calculated by reference to Heartland Group’s enlarged share capital immediately following completion. The proposed sale would increase Heartland Bank’s New Zealand asset base by approximately 170 per cent.

[25] The consultation material describes the vendor loan as earning a market interest rate for Toi Foundation. However, the loan would be issued at the level of Heartland Group, the listed parent, and ranks behind the regulated Heartland Bank’s depositors, senior creditors and tier two holders in an insolvency. Dr Greg Anderson, for TCAS, suggests that as the vendor loan is structurally subordinated, it would ordinarily be priced with a higher margin than a senior obligation of the regulated Bank. He also notes that Heartland Bank’s own Tier 2 notes, which are issued by the regulated bank and rank ahead of the vendor loan, were priced at 320 basis points over swap at issue and currently trade at a yield of approximately 5.5 per cent, or around 200 basis points over swap. The proposed $56 million Tier 2 note is priced at 220 basis points over swap. The consultation materials do not, according to Dr Anderson,

disclose the terms of either instrument in enough detail to benchmark these rates or determine whether the pricing is appropriate.

[26] If the proposed merger goes ahead the transaction is due for completion in December 2026, subject to satisfaction of the conditions in the agreement. Each party may terminate the agreement if any condition is incapable of being satisfied, or is not satisfied or waived, by the requisite date. As noted, the Trustees are required to notify Heartland by 28 August 2026 whether they have given their approval to the sale. If they do not, Heartland would have the right to cancel the agreement.

The applicant's case

[27] TCAS seeks an interim injunction restraining Toi Foundation from voting on the proposed sale and requiring it to apply for directions under s 133 of the Trusts Act 2019 ahead of any such vote.

[28] The applicant claims there is a serious question to be tried whether:

(a) Toi Foundation's consultation process was not carried out in accordance with the requirements of its Trust Deed and is therefore unlawful. TCAS says a lawful consultation is a prerequisite that must be undertaken before any such vote may take place; and

(b) even if a vote may now take place, a resolution in favour of a sale is not reasonably open to the Trustees on the evidence, and any such vote would therefore be unreasonable, irrational and capricious.

[29] While four causes of action are pleaded, only the second and third were advanced in support of the application for an interim injunction.[5]

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5 The first cause of action in the second amended statement of claim of 19 August 2026 seeks an order requiring the Trustees to disclose to the applicant commercial information relating to the proposed sale, and was not pursued at the hearing. The fourth cause of actions seeks an order for the removal of the Trustees under s 112 of the Trusts Act 2019 and, again, did not form part of the applicant's argument in support of an interim injunction. In light of my conclusion on the law relating to charitable trusts, it would seem likely that the fourth cause of action is untenable.

[30] The second cause of action is advanced under s 126 of the Trusts Act, which provides that the Court may review any proposed decision of a trustee on the grounds that the decision is not "reasonably open to the trustee in the circumstances".[6] If for any reason the Court lacks jurisdiction to grant relief under s 126, TCAS advances the same claim under the Court's inherent jurisdiction.

[31] The central thrust of the claim is that cl 7.4 of Toi Foundation's Trust Deed requires the Trustees to carry out a consultation process before they may vote to sell the TSB shares. TCAS criticises the consultation process on a large number of grounds. Principally it says the information provided by the Foundation to the community was misleading, incomplete, unbalanced, contradictory, did not present alternatives and advocated only for a sale. The consultation process is also alleged to have been unlawful because, among other things, the Trustees failed to provide adequate information for submitters to consider the merits of the proposal, did not provide alternative options, and provided insufficient time for consideration. It is also claimed that the Trustees failed to undertake the consultation process when the proposal was "still at a formative stage".

[32] Second, TCAS alleges as part of the second cause of action that the Trustees are in breach of their duty of good faith as they have predetermined the outcome of their vote.

[33] The applicant says the balance of convenience favours an injunction because damages are not an adequate remedy, the injunction would preserve the status quo, and it has a strong arguable case. Without an injunction, the sale may proceed and render the proceedings moot. It says concerns about the transaction collapsing are overstated as the parties have previously agreed to extend contractual deadlines and Heartland has not suggested it would terminate the agreement if the Trustees are unable to satisfy the condition requiring their approval to proceed with the sale.

[34] The prayer for relief for the second cause of action seeks an order under s 127 of the Trusts Act "restraining the Trustees from voting to approve the sale of the TSB shares", or alternatively an order under s 127 "restraining the Trustees from otherwise

6 Trusts Act 2019, s 126(1).

completing the sale". Mr Grove, for TCAS, suggested this form of relief means, in the first instance, the injunction would not prevent a vote declining to proceed with the sale.[7] In addition, TCAS seeks an order under s 133 of the Trusts Act requiring the Trustees to apply for directions approving the sale (essentially, a blessing order).

[35] The third cause of action is based solely on the Court's statutory jurisdiction under ss 126 and 127 of the Trusts Act. It alleges, on the basis of the available information, that a decision to sell the shares is not reasonably open to the Trustees at all. As with the second cause of action, the prayer for relief seeks orders under ss 127 and 133 of the Act.

The evidence in support

[36] In support of its position, the applicant filed evidence from Mr Brent Goldsack and Dr Greg Anderson.

[37] Mr Goldsack is a sitting director of Rabobank New Zealand Limited — a competitor of both TSB and Heartland. He is a former partner at PricewaterhouseCoopers, a Fellow of Chartered Accountants Australia and New Zealand, and is or has served on the boards or committees of substantial New Zealand corporations and public sector entities.

[38] Mr Goldsack offers opinions on valuation and deal structure based on the publicly available materials. His evidence raises two key points. First, he opines that the terms upon which the Trustees propose to sell TSB make no commercial sense. Secondly, he considers the consultation process was flawed in material respects.

[39] Mr Goldsack does not purport to provide expert evidence and his affidavit does not refer to the Code of Conduct for Expert Witnesses in the Fourth Schedule to the High Court Rules 2016. His evidence is almost entirely opinion and presumptively

[7] As I observed at the hearing, it does not appear appropriate to grant an injunction in terms which would effectively interfere with a democratic process required under the Trust Deed and the Community Trusts Act 1999. Either the vote should be enjoined or it should not be.

inadmissible.[8] As much of his evidence overlaps with that of Dr Anderson, the status of Mr Goldsack's evidence does not greatly affect the applicant's case.

[40] Dr Anderson is the managing director of Northington Partners Limited, a New Zealand based independent investment bank. He has over 25 years' experience in financial services. Dr Anderson provided his views on the adequacy of the consultation process and supporting material, and what he identifies as strategic risks arising from a sale of TSB. However, he notes he was not in a position to provide a specific quantitative valuation of TSB as a result of the Trustees' refusal to provide documentation which had been requested by TCAS.

[41] In relation to the consultation process, Dr Anderson raises 15 concerns about the adequacy of the information provided to consultees. The main criticisms were that insufficient information had been provided to justify the sale of TSB, including the asserted need for major IT investment, an alleged failure to adequately highlight that $320 million of the consideration comprised vendor financing from Toi Foundation, that the sale price was only 76 per cent of TSB's book value and that the Heartland shares forming part of the consideration were over-valued. He also considers the asserted $620 million of consideration overstates the amount to be paid by Heartland because it includes a $50 million dividend payable by TSB, so the effective purchase price would only be $570 million.

[42] Dr Anderson also identifies a number of significant strategic risks associated with the proposed sale. Those risks include the loss of Toi Foundation's control of TSB, that Toi Foundation's shareholding could be diluted through future capital raisings by Heartland, the value of the Heartland shares received as consideration would be subject to share-market fluctuations, and that repayment of the vendor-financing arrangements are dependent on Heartland's ability to refinance the debt.

The issues for determination

[43] The issues requiring consideration in respect of the application for interim relief are:

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8 Under both the r 9.43(3) of the High Court Rules 2016, and ss 23 and 24 of the Evidence Act 2006.

(a) Does the applicant have standing to bring this application?

(b) What does the Trust Deed require of the Trustees in relation to consultation?

(c) Is it seriously arguable the Trustees have not satisfied those requirements and therefore cannot legally vote on the sale?

(d) Is it seriously arguable that voting to approve the sale is so unreasonable that no reasonable trustee could approve it?

(e) Is it seriously arguable that a resolution in favour of the sale would be in breach of the Trustees' duties because they have predetermined the outcome?

(f) Can the Court compel the respondents to make an application under s 133 of the Trusts Act?

(g) Where does the balance of convenience lie?

(h) Where does the overall interest of justice lie?

[44] I now turn to address these issues.

Does the applicant have standing to bring this proceeding?

[45] A threshold question is whether TCAS has standing to advance the second and third causes of action.

[46] The Foundation argues that ss 126–127, and 133 of the Trusts Act do not apply to it. That is because as a charitable trust, it does not have any "beneficiaries" as that term is defined in the Act. Only beneficiaries may bring an application under the provisions that TCAS relies on in its second and third causes of action.

[47] In response, Mr Grove in oral argument submitted that TCAS, as a body made up of members who are eligible to benefit from the philanthropic purposes of the Foundation, is a "beneficiary" of the charitable trust capable of bringing this proceeding and obtaining relief under the Trusts Act. He noted that under cl 6.2 of the Trust Deed, the mandatory duties under that Act expressly apply to the Trustees.

[48] Counsel also relied on *Toailoa v Eliu*.[9] In that case a former pastor and two elders of the Samoan Independent Seventh Day Adventist Church applied for orders in respect of the administration of two related charitable trusts. The case concerned the interim appointment of a receiver or manager to administer the trust until a final determination of the proceeding. A preliminary issue was whether the applicants had standing to bring the application. Mr Grove highlighted the following dictum from the decision of Wilkinson-Smith J, who concluded the applicants had standing:

> [214] The Respondents say that a mere interest in how SISDAC operates is insufficient.
>
> [215] It is true that the Courts may deny standing where a defendant can show that a plaintiff lacks good faith or that the complaint is clearly frivolous, vexatious, or otherwise untenable.[10] But the main reason that the applicants are former members of SISDAC [the charitable trust] is because of the dispute that resulted in the current proceeding.
>
> [216] While the applicants have never been officers or trustees of SISDA Property Trust [a related charitable trust], that trust only exists and holds property for the charitable purposes of SISDAC. SISDAC's board members do have a proper interest in ensuring that SISDA Property Trust's assets are applied for the charitable purposes of SISDAC, and they must be able to act to ensure SISDAC's interests are protected.
>
> [217] Applications of this nature will inevitably be brought by an applicant who is dissatisfied with the way in which a trust is administered. Such an application is always likely to lead to division and the removal or attempted removal of the dissident from any position in relation to the trust. It would be quite wrong to deny standing to such applicants. If they are correct in their concerns, they are insiders raising real concerns about mismanagement of a charitable trust with which they were previously closely associated. People in the position of the applicants are the only people likely to know if matters are being mismanaged within a trust. It would be completely illogical and against natural justice to deny them standing.
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> [218] I find the applicants do have standing to bring these proceedings.

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9 *Toailoa v Eliu* [2024] NZHC 1509.

10 *O'Neill v Otago Area Health Board* HC Dunedin CP50/91, 10 April 1992 as cited in *Whanganui District Council v New Zealand Parole Board* [2012] NZHC 2248 at [76].

[49] In the alternative, Mr Grove argued the Court had the power to make the orders sought under its inherent jurisdiction to supervise the conduct of trustees, relying principally on *Paton v Acropolis Holdings Ltd*.[11]

Consideration

[50] It is not seriously arguable that TCAS is a beneficiary of Toi Foundation as a charitable trust. This conclusion has two implications for the applicant:

(a) first, it lacks standing to bring this proceeding; and

(b) second, the Court has no jurisdiction to grant the relief it seeks under the Trusts Act.

[51] As noted above, the Foundation was originally created in 1988 to hold the shares in TSB in accordance with the Trustee Banks Restructuring Act 1988. That enactment was replaced by the Community Trusts Act 1999 and, as the Trust Deed records,[12] the Foundation is now governed by that Act and its current Trust Deed.

[52] As a "community trust" under the Community Trusts Act, Toi Foundation is established to hold the shares and capital of TSB "for the purposes specified in [the] Act".[13] Property vested in a community trust must be held on trust "to be applied for charitable, cultural, philanthropic, recreational and other purposes".[14] And as the Trust Deed records, Toi Foundation is incorporated as a board under the Charitable Trusts Act 1957.

[53] Reflecting the terms of the Community Trusts Act, the Deed of Trust records the charitable purpose of the Foundation:

11 *Paton v Acropolis Holdings Ltd* [2024] NZHC 43, at [59].
12 At cl C of the Background to the Trust Deed.
13 Community Trusts Act 1999, s 4, definition of "community trust".
14 Community Trusts Act, s 12(1)(a).

2. **PURPOSES OF THE TRUST**

2.1 **Purposes**: The Trustees hold and may distribute or apply the Trust Fund for any charitable, cultural, philanthropic, recreational or other purpose, provided that the purpose is directly or indirectly beneficial to the community principally in the Specified Area.

2.2 **Purposes Deemed Charitable**: The Purposes are deemed to be charitable by the CT Act.

[54] It follows that the Foundation is, for the purpose of this proceeding, a charitable trust.

[55] A general requirement of the law of trusts is that there is a beneficiary capable of enforcing the trust. This is known as the "beneficiary principle".[15] For this reason, a trust expressed to be for a purpose is generally void because of a lack of any individual beneficiary capable of enforcing the trustee's obligation to apply the trust fund for that purpose.

[56] An exception to this rule is the charitable trust. Charitable trusts are a species of special purpose trust that exist for the advancement of social purposes rather than for the benefit of individual beneficiaries. As Lord Millet observed:[16]

> … It is of the essence of a charitable trust that it is a trust for the promotion or advancement of social purposes rather than a trust for individual beneficiaries Of course, individuals may benefit from the application of trust moneys, but they are not, as individuals, the beneficiaries of the trust and may not enforce its terms.

[57] Charitable trusts do not hold the trust property for the benefit of an identifiable class of persons. It is for this reason that as a matter of public policy, charitable trusts are supervised by the Attorney-General on behalf of the Crown.[17] It is a function of the Crown as parens patriae — the parent of the country — to ensure the due administration of charities and the proper application of funds devoted to charitable purposes.[18] Dal Pont explains:

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15 Gino Dal Pont *Charity Law in Australia and New Zealand* (Oxford University Press, Melbourne, 2000) at 84.

16 *Latimer v Commissioner of Inland Revenue* [2004] UKPC 13, [2004] 3 NZLR 157 at [29].

17 Dal Pont, above n 15, at 84.

18 Above n 15, at 266, citing *Construction Industry Training Board v Attorney-General* [1973] 1 Ch 173 at 183 per Buckley LJ and *Wallace v Solicitor-General for New Zealand* [1903] AC 1 173 at 181–182 per Lord Macnaghten.

> This function is executed by the Attorney-General being the officer who represents the Crown for all forensic purposes, who represents all of the objects of the charity. This regime applies whether the charity takes the form of a trust or of an incorporated body. For this reason, the Crown, represented by the Attorney-General, has been described as "the guardian of the public interest in the enforcement of charities".
>
> The foregoing has important ramifications. *First,* the Attorney-General is the *only* competent party to protect charitable trusts, to seek to enforce them, and to look after the interests of the public in those trusts ...[19]
>
> (emphasis in original)

[58] The important distinction between private trusts, which serve the interests of identifiable beneficiaries, and charitable trusts, which serve a public good, is reflected in the Trusts Act 2019. Under s 9 of the Act, a "beneficiary" is defined as:[20]

> a person who has received, or who will or may receive, a benefit under a trust (*other than a trust for a permitted purpose*), and includes a discretionary beneficiary.

[59] A "permitted purpose" is in turn defined as a "charitable purpose and any other purpose for a trust…".[21] And "charitable purpose" is defined as "a charitable purpose that relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community, and includes any other purpose within the meaning of charitable purpose in section 2 of the Charitable Trusts Act 1957".[22]

[60] The effect of the proviso in parentheses at [58] above is to exclude any person who may receive a benefit from a charitable trust from the meaning of "beneficiary" in the Trusts Act.

[61] The fact that charitable trusts do not have beneficiaries is reflected in other important respects within the Trusts Act. First, the general rights of beneficiaries to information concerning trusts of which they are a beneficiary is specifically excluded

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19 Citing *Strickland v Weldon* (1885) 28 Ch D 436 at 430 per Pearson J; *Solicitor-General v Wylde* (1945) 46 SR (NSW) 83 at 105–110 per Nicholas CJ in Equity; and *Ku-ring-gai Municipal Council v Attorney-General* (1954) 55 SR (NSW) 65, (1954) 72 WN (NSW) 8 at 69–70 per Roper CJ in Equity.

20 Emphasis added.

21 Trusts Act 2019, s 9, definition of "permitted purpose".

22 Trusts Act 2019, s 9, definition of "charitable purpose". "Charitable trust" is defined in s 9 of the Trusts Act as "a trust the permitted purpose of which is a charitable purpose".

from application to charitable trusts.[23] Of greater significance to this proceeding is s 126(2), which represents a fundamental legal obstacle to TCAS' proceeding:[24]

> **126 Court may review trustee's act, omission, or decision**
>
> …
>
> (2) The court may undertake a review on the application *only of a beneficiary*.

[62] It is clear then that Parliament intended to exclude the application of ss 126 and 127 to charitable trusts. This is consistent with the Law Commission's report that led to the enactment of the Trusts Act and reflects the long-standing status of charitable trusts, and the Attorney-General as the only party able to enforce their terms for the public good.[25]

[63] The result is that TCAS' third cause of action, which is wholly reliant on the Court's statutory jurisdiction under the Trusts Act, is untenable. It also renders the second cause of action untenable insofar as it relies on the same statutory powers.

[64] The remaining issue in relation to the second cause of action is whether the Court has, effectively, an identical power to ss 126 and 127 in relation to charitable trusts under the inherent jurisdiction.

[65] I do not consider that it does. The inherent jurisdiction is intended to ensure the Court can exercise its original jurisdiction effectively and in the interests of justice. In the context of trusts, it is an over-arching supervisory jurisdiction, principally designed to protect the interests of beneficiaries. As a matter of law, Toi Foundation does not have any beneficiaries.

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23 Trusts Act 2019, s 50(2).

24 Emphasis added.

25 Te Aka Matua o te Ture | New Zealand Law Commission *Review of the Law of Trusts* (NZLC R 130, 2013) at [1.14]—[115] and [2.6], where the Commission commented: "Private trusts benefit individuals and may be enforced by the beneficiaries. Charitable trusts aim to benefit the public by achieving a charitable purpose and are enforced by the Attorney-General. Charitable trusts are a form of purpose trust. New Zealand law only allows limited purpose trusts other than charitable trusts, such as trusts for animals or for the maintenance of monuments."

[66] The inherent jurisdiction may be modified or excluded by statute. This is the case in relation to the Court's equitable jurisdiction in relation to trusts. Section 8 of the Trust's Act provides:[26]

> **8 Inherent jurisdiction of court not affected**
>
> (1) The inherent jurisdiction of a court to supervise and intervene in the administration of a trust is not affected by this Act, *except to the extent that this Act provides otherwise*.

[67] Given Parliament intended to remove charitable trusts from the scope of ss 126 and 127 of the Trusts Act, I cannot accept the applicant's submission that it is open to the Court to exercise the same powers under the inherent jurisdiction. It is settled law that only the Attorney-General has standing to enforce the terms of charitable trusts, and the Trusts Act reflects this long-standing position. I am not willing to extend the inherent jurisdiction in a way that would create inconsistency with the Trusts Act. There would be far-reaching consequences for charities and the Crown should a court find individuals with an interest in their operation have standing to bring proceedings.

[68] The applicants did not refer to any case in which a court has granted relief to an individual or party under the inherent jurisdiction concerning a charitable trust. *Toailoa v Eliu* certainly involved a charitable trust, but the application was advanced under s 60 of the Charitable Trusts Act which confers a statutory jurisdiction for persons generally to apply for certain orders.[27] Nor do any of the other authorities cited by Mr Grove assist the applicants.[28] In *Paton v Acropolis Holdings Ltd*, the Court faced a conventional application for review of trustee decisions under ss 126 and 127 in respect of private trusts. While this Court made reference to the Court's "supervisory equitable jurisdiction", it was in the context of the enactment of ss 126 and 127 of the Trusts Act and did not suggest any residual power for the Court to review trustee decisions concerning charitable organisations.[29] It follows the applicant has failed to establish a legal basis on which it has standing to bring its claim, or jurisdiction for the Court to grant the relief it seeks.

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26 Emphasis added.
27 *Toailoa v Eliu*, above n 9, at [246]
28 *Paton v Acropolis Holdings Ltd*, above n 11; *Re K'aute Pasifika Trust* [2019] NZHC 2432 at [16]; and *University of Canterbury v The Attorney-General* HC Christchurch M292/86, 17 June 1987, at 10.
29 *Paton v Acropolis Holdings Ltd*, above n 11, at [55]–[59].

[69] This conclusion is sufficient to dispose of TCAS' application for an interim injunction. However, in case I am wrong in that conclusion I now turn to consider the remaining issues raised.

What does the Trust Deed require of the Trustees in relation to consultation?

[70] For TCAS, Mr Grove argued that cl 7.4 of the Trust Deed required the Trustees to undertake a "consultation" process as a lawful precondition of any vote to sell TSB.

[71] The applicant argues it is ultra vires the Trustees' powers to carry out a vote to approve the sale as all the "pre-requisites" to conduct the vote under the Trust Deed have not been satisfied. It is said this Court in *Holland v Jonkers* held that the principles relating to adequacy of consultation developed in the administrative law context are also applicable to assessing whether Trustees have complied with consultation requirements in a trust deed, when the trust in dispute has a "public character".[30] Relying on the decision of the Supreme Court of the United Kingdom in *R (Mosely) v Haringey London Borough Council*, Mr Grove argued that the requirements of a lawful consultation in the present case were, first, that it must occur at a time when the proposal was "still at a formative stage". Second, Toi Foundation is required to provide sufficient reasons for the proposal to sell in order to permit intelligent consideration and response. Third, adequate time must be provided for consideration and, finally, the product of consultation "must be conscientiously taken into account in finalising any statutory proposals".[31]

[72] TCAS alleges the consultation process has been inadequate and failed to comply with each of these requirements:

(a) The consultation did not occur when the proposal to sell TSB "was still a formative stage". Consultation did not begin until after the Foundation had already signed a conditional merger agreement to sell TSB.

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30 *Holland v Jonkers* [2021] NZHC 3469 at [259]–[283].

31 *R (Moseley) v Haringey London Borough Council* [2014] UKSC 56, [2015] 1 ALL ER at [25], citing with approval Hodgson J in *R v Brent London Borough Council* (1985) 84 LGR 168 at 189.

(b) It failed to provide adequate or sufficiently balanced information to enable residents of Taranaki to fairly consider the merits of the proposed sale.

(c) It failed to provide "alternative options for the future of TSB" as part of the consultation material.

(d) It failed to "conscientiously" take into account feedback during the consultation process. In effect TCAS claims the Trustees have predetermined the outcome of the vote and shut their minds to the views of the community.

[73] In support of the inadequate and unlawful consultation process, TCAS relies on the evidence of Mr Landrigan, the treasurer of the applicant, Dr Anderson and Mr Goldsack. According to their evidence, the applicant contends it is plainly arguable the process undertaken by the Foundation has been flawed and unfair.

Consideration

[74] To understand the scope of the obligation placed on Toi Foundation in relation to consultation, it is first necessary to examine the terms of the Trust Deed.

[75] Clause 2.1 of the deed sets out the purposes of the Trust:

> 2.1 **Purposes**: The Trustees hold and may distribute or apply the Trust Fund for any charitable, cultural, philanthropic, recreational or other purpose, provided that the purpose is directly or indirectly beneficial to the community principally in the Specified Area.[32]

[76] Clause 6 sets out the Trustee duties. It requires the Trustees to carry out the "mandatory duties" implied by the Trusts Act 2019,[33] and modified default duties to invest prudently, not to profit, to act for no reward, to act unanimously and to avoid conflict of interest.

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32 The "Specified Area" is defined in cl 21 as essentially being the Taranaki region.
33 Trusts Act 2019, ss 22–27 made applicable through the Community Trusts Act 1999, s 21(1).

[77] The critical provision is cl 7.4. It is an empowering provision regulating the sale of the TSB shares:

> 7.4 **Sale or disposal of Bank Shares**: The Trustees may, at any time, in accordance with a resolution passed by not less than 75% of the Trustees, sell or otherwise dispose of all or any of the Bank Shares, provided that:
>
> (a) in voting on such a resolution, the Trustees must have regard to the effect of the sale or disposal on the community in the Specified Area of the Trust;
>
> (b) before voting on any resolution where the sale or disposal of Bank Shares would result in the Trust relinquishing a controlling interest in the Bank, the Trustees must give the prescribed notice and consider any submissions received in response to that notice;
>
> (c) before voting on any resolution where the sale or disposal of Bank Shares would not result in the Trust relinquishing a controlling interest in the Bank, the Trustees may, but are not required to, give the prescribed notice; and
>
> (d) the prescribed notice referred to in paragraphs (b) and (c) must be published in one or more principal newspapers circulating in the Specified Area of the Trust and must:
>
> (i) state that the proposed resolution approving the sale or disposal will required to be passed by not less than 75% of the Trustees;
>
> (ii) specify the details of the proposed sale or disposal;
>
> (iii) state that any person residing in the Specified Area of the Trust may, within 28 days after the last publication of the notice, make written submissions to the Trustees regarding the proposed resolution;
>
> (iv) provide details of the address to which submissions may be sent; and
>
> (v) state the date of the last publication of the notice.

[78] When exercising their powers or performing their duties, the Trustees may also rely on professional advice pursuant to cl 11.1:

> 11.1 **Trustees may rely on advice**: The Trustees may, when exercising their powers or performing their duties, rely on reports, statements, financial data and other information prepared or supplied and on professional or expert advice given, by:

(a) an employee of the Trust whom the Trustees believe on reasonable grounds to be reliable and competent in relation to the matters concerned; and

(b) a professional adviser or expert in relation to matters which the Trustees believe on reasonable grounds to be within the person's expertise

[79] Trust deeds are generally construed by applying similar principles to those governing contractual interpretation.[34] More specifically, they are to be interpreted from a standpoint that is practical and purposive, rather than detached and literal.[35] The meaning of their provisions are to be interpreted objectively in the context of the whole document, relevant statutory background and factual matrix.[36] The nature of the trust in question and the modern commercial context in which it operates is also relevant.[37]

[80] The search for intention in relation to trusts deeds, as with contracts, is for the intention as revealed in the words used by the parties. The expressed intention of the parties is to be found in the answer to the question, "what is the meaning of what the parties have said?", not to the question, "what did the parties mean to say?"[38]

[81] Against those principles, I do not consider cl 7.4 has the effect TCAS suggests.

[82] First, the primary purpose of cl 7.4 is to enable the Trustees to "sell or otherwise dispose of" all or any of the bank shares. Provided the process requirements in the Trust Deed are followed, the provision is intended to enable a sale.

[83] The ultimate process requirement is a resolution passed by not less than 75 per cent of the Trustees. This supermajority is an important democratic safeguard. And in voting on such a resolution, the Trustees "must have regard to the effect of the sale … on the community". This is a mandatory consideration. The purpose of consultation prescribed by cl 7.4(b) is to facilitate the Trustees' consideration of the

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34 *New Zealand Maori Council v Foulkes* [2014] NZHC 1777, [2015] NZAR 1441 at [71].
35 *Re Courage Group's Pension Scheme* [1987] 1 All ER 528, [1987] 1 WLR 495.
36 *Pryor v Bulley* [2013] NZCA 559, [2015] NZAR 518.
37 *Harrison v Harrison* [2015] NZHC 2935, (2015) 4 NZTR 25-029 as cited in *Holland v Jonkers*, above n 30, at [109].
38 *Mercanti v Mercanti* (2016) 117 ASCR 222, [2016] WASCA 206 at [73].

effect of the sale on the community. To enable this to occur, the Trustees must give the "prescribed notice", and "consider any submissions received in response".

[84] The requirements of the prescribed notice are clearly set out in cl 7.4(d). The notice must:

> (a) be published in one or more local newspapers;
>
> (b) state that the proposed resolution "approving the sale" will be required to be passed by not less than 75 per cent of the Trustees;
>
> (c) specify "the details of the proposed sale";
>
> (d) state that any submission must be made within 28 days of publication of the notice, provide details of the address to which submissions may be sent and state the date of the last publication of the notice.

[85] It follows that cl 7.4 prescribes the specific process the Trustees must follow and the content of the prescribed notice that must be given before voting on a resolution to sell a controlling interest in TSB. They must give a prescribed notice specifying "the details of the proposed sale", invite written submissions from the community within 28 days, consider those submissions, and in light of those submissions have regard to the effect of the sale on the community. Clause 7.4 does not require:

> (a) the Trustees to consult before a tangible proposal for sale exists. On the contrary, the repeated reference to a "sale" contemplates a crystalised and tangible prospect of sale;
>
> (b) the identification of alternative "options", opposing viewpoints or a "pros and cons" analysis; nor
>
> (c) submissions from the community on the commercial merits of the proposed sale, or a referendum on the proposed sale. Of course, members of the community are free to comment on the merits of the

proposal if they wish, but the Trustees' focus is on the effects of a sale on the community.

[86] Nor do I consider that notice of the "details of the proposed sale" requires disclosure of the documents and details TCAS has sought from the Foundation. The details of the proposed sale are its essential terms. Provided the community receives that information, there is no further obligation on the Foundation. The confidential commercial advice Toi Foundation has received on the merits of the transaction is not part of the details of the proposed sale, or material which must be disclosed to the community or the applicant as part of the obligation in cl 7.4 of the Trust Deed.

[87] These conclusions follow from the Trust Deed and the Community Trusts Act. They impose on the Trustees of Toi Foundation the relevant duties and powers of decision. This includes a power to sell the shares in TSB. The Trustees are accountable to the Crown for the lawful exercise of those powers. While the philanthropic purposes of the Foundation are for the benefit of the community of Taranaki, its Trustees are appointed at the discretion of the Minister of Finance in accordance with the Trust Deed.[39] Similarly, it is the Governor-General who holds the power of removal, not the community of Taranaki.[40]

[88] It also follows that I consider the applicant's position misunderstands the consultation process. Contrary to the argument that consultation must occur at a "formative stage", cl 7.4 requires the community submissions process to occur once there is a concrete proposal to sell the TSB shares. The resolution the Trustees are to vote on refers to a specific proposal, not something abstract such as whether a sale in the future might be desirable. This conclusion is reinforced by the requirement to "specify the details of *the* proposed sale",[41] and that submissions are made "regarding the proposed resolution" for sale.[42] The Trustees could not "specify the details" of a sale that do not yet exist or invite submissions regarding a resolution that cannot be usefully formulated.

39 Community Trusts Act 1999, s 5(1) and cl 4.2 of the Trust Deed.
40 Community Trusts Act 1999, s 6.
41 Clause 7.4(d)(ii). (emphasis added)
42 Clause 7.4(d)(iii).

[89] Similarly, I am unable to accept that cl 7.4 requires the Trustees to provide alternative options to the proposed sale, or prevents the Trustees from advocating for a sale in respect of which they seek submissions. Their position is not a neutral one where the decision is left to the community. Their obligation is to ensure the capital of the Foundation is prudently invested, including where appropriate the sale of trust assets.

[90] For the foregoing reasons, I consider the applicant has proceeded on an incorrect interpretation of the requirements of cl 7.4, and to the extent its case is inconsistent with the interpretation set out above, I am unable to accept it is capable of serious argument.

Is it seriously arguable that the Trustees have not satisfied the requirements of the Trust Deed?

[91] While I consider the applicant has advanced its case on a misunderstanding of the effect of cl 7.4 of the Trust Deed, I accept that if the Foundation published information "specify[ing] the details of the proposed sale" that was materially misleading, or inaccurate, then the requirements of cl 7.4 would not have been met. As much of TCAS' case is based on such a claim, it is to that question I now turn.

[92] Dr Anderson's affidavit identifies a large number of issues about the notification information summarised by Mr Grove in submissions as follows:

> a. No specific details or evidence to support the Trustees' assertions about the urgent need to sell TSB were provided, or information about what other options may be available.
>
> b. The total sale consideration is described as $620 million made up of cash, equity and debt. However, no part of this $620 million will be paid by Heartland as cash upon settlement – with the only cash component being a $50 million dividend paid by TSB. This dividend should not be included in the overall consideration figure and therefore Heartland is only paying $570 million.
>
> c. The consultation information indicates the Trustees value TSB at $620 million. If so, it should be Heartland paying the $50 million dividend component of the purchase price.
>
> d. There is very limited information about how Heartland will refinance the vendor loan and subordinated debt.

e. The Trustees assert the vendor loan will earn a market interest rate. However, the accuracy of this claim is questionable.

f. The Trustees fail to adequately highlight that over half of the total sale consideration ($320 million) consists of loans from Toi Foundation to assist Heartland to purchase TSB.

g. The Trustees do not disclose the total sale consideration only amounts to 76 per cent of TSB's book value and no justification has been given as to why TSB is being sold at a discount.

h. The Trustees assert they have been advised by an independent firm that the sale consideration was "within … range of fair market value" but no details about this advice are disclosed.

i. The $250 million equity component of the sale consideration prices Heartland shares at $1.25. This is higher than the actual market price. No explanation has been provided about this.

j. No details of what legal protections Toi Foundation has against its shareholding in Heartland from being diluted are provided.

k. No details of the implications of going from a 100 per cent shareholding to a 17.5 per cent shareholding are provided.

l. The Trustees assert TSB requires a "multi-hundred-million-dollar" investment in IT but no evidence is provided. There is no information about whether this investment will improve returns.

m. The consultation information released during the first consultation period did not include any information from TSB's latest 2026 annual report, including that TSB paid an increased dividend and recently made significant investments in IT.

n. The Trustees' assertion that TSB should be sold because significant capital investment is required cannot be reconciled with statements in recent TSB annual reports (most 2023) that TSB has already been making significant capital investments.

o. No alternative options for TSB's future are provided.

[93] These points lead the applicant to submit that the notification materials were misleading or inadequate. In support of this general submission, Mr Grove advanced five specific points at the hearing. He argued:

(a) The sale price is $200 million lower than the book value of TSB.

(b) Heartland Group is not paying any cash as part of the sale because the $50 million dividend is coming from TSB's own capital.

(c) The notification materials misleadingly suggested annual dividends for TSB was only $11 million when the annual accounts for the most recent year indicated dividends 65 per cent higher — of $16.5 million.

(d) The notification materials misleadingly suggested there will be no loss of any local jobs.

(e) They also suggested that Co-operative Bank and SBS Banks had been approached to explore sale options when a subsequent media report indicated that had never occurred.

Consideration

[94] Having considered carefully the applicant's evidence to support these claims and measured it against the material published by Toi Foundation on 2 June and 9 and 14 July 2026, I am not satisfied there is a serious question the Trustees have failed to comply with the notice requirements of cl 7.4 of the Trust Deed or published information which is materially inaccurate, misleading or incomplete.

[95] As Mr Smith KC, for the respondents, suggested, the evidence of Dr Anderson and Mr Landrigan conflates the notice and consultation requirements of the sale process with information they would wish to see in order to comment more accurately on the commercial merits of the transaction. While Dr Anderson and Mr Goldsack would like to see much greater detail, including the professional advice the Foundation has obtained, that information does not form part of the "details of the proposed sale" which must be publicly notified. It would be surprising if such material was required to be disclosed to the public given its obvious commercial sensitivity and the fact that the prospective purchaser, Heartland Group, is a publicly listed company with disclosure obligations on the ASX and NZX exchanges. I agree with Mr Smith that all of the essential terms of the proposed sale have been made available to the Taranaki community for their consideration and comment.

[96] Turning to the four criticisms made by Mr Grove at [72] above, TCAS' claim the Foundation failed to consult at a "formative stage" is inconsistent with the terms of cl 7.4 of the Trust Deed and I do not consider it is capable of serious argument. The

claim that the consultation information is one-sided or indicates support for the merits of a sale also fails because cl 7.4 does not impose a requirement of complete neutrality. It would be surprising if that was the case given the Trust Deed empowers the Foundation to sell the shares, and that in turn requires a process of exploration and decision-making about potential purchasers and the merits of various sale scenarios. Having undertaken that process and identified a preferred purchaser, the Trustees are permitted to convey what they see as the merits of the proposed sale, provided that in doing so they do not mislead. It is then for community members to consider whether they agree. Nor did cl 7.4 require the Foundation to present a range of options for sale, and the process provided more than the minimum of 28 days for community consideration and submissions.

[97] Finally, I am not persuaded on the evidence the applicant has made out a serious question to be tried on the basis of the five factual allegations made above at [93] concerning the merits and rationality of the proposed sale.

[98] First, it is not unusual for a market value of a firm to be less than its book value. Dr Anderson acknowledges this in his evidence.

[99] Second, I do not accept the $50 million dividend by TSB to the Foundation on completion of the merger — and enabled by it — does not comprise cash consideration or "real money" released to the Foundation from the sale. Nor do I accept there is anything misleading about this aspect of the sale consideration in the notification materials.

[100] Third, Mr Grove's suggestion the notification materials misled the public about the dividends payable by TSB by failing to disclose a $16.5 million dividend in the latest tax year overlooked both the disclosure of that information in the second notification materials release on 9 July, and the fact that the relevant accounts had not been completed and were not available when the initial notification materials were published in June 2026.

[101] Similarly, the claim that the notification materials misled the community about the possibility of restructuring or job losses lacks support in the terms of the statements made by the Foundation in the notification materials. The emphasis in the published materials is on a commitment, if a sale proceeds, to a Taranaki-based hub for the newly merged bank.

[102] Finally, I do not consider the allegation that the notification materials were misleading regarding prior negotiations with SBS or Co-operative Bank is capable of serious argument. The relevant question and answer were:

> Did Toi Foundation have discussions with SBS Bank, The Co-operative Bank, Kiwibank, or any other New Zealand-owned banking institutions, and if so, why were those options rejected in favour of Heartland?
>
> The names of potentially interested parties are strictly confidential and we will not make any comment. Every party involved signed very strict and legally binding confidentiality agreements.
>
> We have explored multiple options. What I can confirm is that Heartland's proposal was the most compelling offer in all respects.

[103] Based on both the publicly available and confidential information before the Court, I do not consider this statement was materially inaccurate or misleading.

[104] Overall, the Trustees' notification materials went beyond the bare requirements of cl 7.4. In addition to the prescribed notices and details of the proposed sale, the Foundation published an information booklet, fact sheet, a key information sheet, supplementary FAQs, held five public information sessions, and engaged directly with community groups. I am not persuaded there is a serious question to be tried on a possible breach of cl 7.4 of the Trust Deed on the basis that the notification materials were inaccurate, incomplete or misleading.

Is it seriously arguable that a sale is so unreasonable that no reasonable trustee could approve it?

[105] Dr Anderson identifies a number of what he considers are significant strategic risks associated with the proposed sale:

a. By exchanging a 100 per cent shareholding in TSB for a 17.5 per cent shareholding in Heartland, Toi Foundation will be giving up control over the bank it owns shares in.

b. Heartland has a demonstrated history of issuing new shares when it needs to raise finance. Every time Heartland issues new shares Toi Foundation will have to invest more into Heartland or else its shareholding will be proportionally reduced (diluted).

c. The proposed sale would increase Heartland's New Zealand asset base by 170 per cent. Heartland has acknowledged the stated synergies of the merger may not be achieved.

d. A key reason given for selling TSB is the ongoing investment required to upgrade TSB's IT assets. No information about whether integrating Heartland's existing IT assets into TSB will address this issue is provided.

e. Heartland is a publicly listed company, meaning the value of Toi Foundation's 17.5 per cent shareholding in Heartland could change at any time. Heartland's share price been on a downward trend since peaking in late 2021 / early 2022.

f. The redemption profile of the vendor financing provided by Toi Foundation is controlled by Heartland. Heartland can choose to refinance and repay the loans early if interest rates fall, forcing Toi Foundation to reinvest at a lower interest rate. Toi Foundation cannot sell this debt on a secondary market.

g. Repayment of the $264 million vendor loan depends on Heartland refinancing. If Heartland cannot obtain refinancing, then Toi Foundation will likely have to agree to extend the loan.

h. There are no details or evidence of protections or guarantees for maintaining jobs in Taranaki after TSB is sold.

i. Fisher Funds, Toi Foundation's other major investment, heavily relies on a partnership with TSB. No information has been provided about the effect of selling TSB on this partnership.

[106] These points lead the applicant to submit that Toi Foundation cannot lawfully vote in favour of a sale as any such decision would be perverse, capricious and irrational, in the sense that no reasonable trustee could make such a decision.[43]

[107] In large part the criticisms made by Dr Anderson, Mr Goldsack, and Mr Landrigan about the merits of the proposed sale are based on an interpretation of the publicly available information and concerns about what additional information might reveal in terms of the commercial sense of the proposal. But as I have observed,

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43 *Paton v Acropolis Holdings Ltd*, above n 11, at [59].

consultation with the community in terms of cl 7.4 of the Trust Deed does not involve disclosure of information of this nature.

[108] The fact the applicant's witnesses have not had access to important commercial information and that they have questions arising from what is publicly known does not amount to a serious question concerning the reasonableness of the proposed vote. The short point is at this stage, neither the applicant nor the Court have access to the information the Trustees have obtained, or the professional advice they have received from a range of advisers. That advice, as Mr Ussher has deposed, has been provided by reputable professional services firms and consultancies. As Mr Smith described it, what the Court has been presented with by the applicant's witnesses are a series of critiques, preferences, and desires for more information. At its highest, the applicant has been unable to go further than raise a series of queries about the commercial merits of the sale and preferences for local retention of the Bank assets. This does not amount to an arguable case that the sale decision would be out of the bounds of reason.

[109] For these reasons, I am unable to accept that there is a serious question to be tried on this basis.

Is it seriously arguable that a sale would be ultra vires because the Foundation has predetermined the outcome of the vote?

[110] This issue can be addressed briefly given my previous conclusions.

[111] Mr Grove contended that the decision of the Foundation to sell the TSB shares would be ultra vires because the Trustees had predetermined the outcome of the upcoming vote.

[112] Predetermination in the context of decision-making by a charitable trust involves a relatively high standard, namely that the Trustees have closed their minds to the outcome of the vote. To succeed at trial, TCAS would be required to establish on the balance of probabilities that in fact the minds of the Trustees were not open to

persuasion and so, if they did address themselves to the community submissions, they simply "went through the motions".[44]

[113] The evidence does not satisfy me there is a serious question to be tried on this score. The case for the applicant is speculative and based on unsustainable inferences drawn from the consultation materials themselves.

[114] It is unsurprising that the Trustees might wish to support a sale when seeking community views. They were clearly concerned enough about a range of factors to look at diversification and alternative uses of the Trust's capital. But the evidence is a long way from raising a serious question the Trustees have, either individually or collectively, closed their minds to any outcome other than a sale.

Can the Court compel the respondents to make an application under s 133 of the Trusts Act?

[115] The final issue relates to TCAS' claim for an order "requiring the Trustees to apply for directions approving the sale pursuant to s 133 of the Trusts Act".

[116] Section 133 provides that a *trustee* may apply to the court for directions about the trust property, or the exercise of any power or function by the trustees.

[117] I do not consider there is a serious question capable of bona fide argument in relation to this aspect of TCAS' claim. First, as I have found, the applicant lacks standing to bring proceedings against the Foundation.

[118] Second, s 133 is discretionary. It provides that trustees "may" apply for directions. The discretion is vested in trustees. It does not confer a power on the Court to compel the Trustees to bring such an application. TCAS was unable to provide an authority in which a Court has required trustees to exercise their discretion to seek directions under s 133. I agree with counsel for the respondent on their submission that:

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44 See Hanna Wilberg *Administrative Law in Aotearoa New Zealand* (Hart, Oxford, 2025) at 103; and *CREEDNZ v Governor-General* [1981] 1 NZLR 172 (CA) at 194, per Richardson J.

> What the applicant seeks is to use s 126 to compel the Trustees to exercise their discretion under s 133. That would allow a non-beneficiary to obtain, through s 126, a power than not even a beneficiary possesses: the ability to require a trustee to apply for directions.

[119] For these reasons I do not consider this point is capable of serious argument.

Conclusion on serious question to be tried

[120] For the foregoing reasons, even if I had concluded TCAS had standing to bring this claim, it has failed to establish a serious question to be tried on the merits of its allegations. While I do not discount the possibility that with discovery and further evidence at trial it might strengthen its position, as the evidence currently stands I consider its claims are legally and factually weak. In some important respects I consider they are untenable.

Where does the balance of convenience lie?

[121] This important aspect of the Court's inquiry was touched on only briefly by the applicant in oral submissions.

[122] Mr Grove contended there would be no harm caused by an injunction because, even if the Trustees' vote is delayed, and therefore the sale, "all that occurs is delay".

[123] I am unable to accept this submission. The confidential information provided by the Foundation persuades me that there are significant risks created by a delay of the vote by the Foundation. While TCAS has provided an undertaking as to damages by Mr Landrigan, he has candidly accepted the undertaking is, essentially, worthless.

[124] Given the risk of harm to the Foundation and its charitable purposes as a consequence of an interim injunction, the absence of a credible undertaking, is in my view, decisive on the balance of convenience. Even if I had concluded there was serious question to be tried on the merits, I would not have been inclined to exercise the discretion to grant relief given the inability of the applicant to remedy any harm caused to the Foundation as a consequence of an interim injunction.

What are the overall interests of justice?

[125] Standing back and considering the overall interests of justice, I consider the risk of harm that might arise to the Foundation and its charitable purposes from the grant of interim relief clearly outweighs the claimed harms advanced by the applicant. There is a rational basis for the Foundation's consideration of a potential sale of TSB. While it is understandable that a significant proportion of the Taranaki community would prefer that the Bank remains wholly owned by the Foundation, there is a financial trade-off from continuing ownership. These competing and difficult questions are matters the Community Trusts Act and executive Government have given to the Trustees to resolve.

[126] Overall, I am satisfied the interests of justice do not favour the grant of an interim injunction even if there had been jurisdiction to grant one in the terms sought.

The prospective costs application

[127] The applicant seeks prospective costs to be paid by Toi Foundation to cover its legal costs, including expert fees, for this interlocutory injunction application. TCAS sought to have this application be heard in advance of the injunction application. However, given there was no available court time prior to the injunction hearing to accommodate a "pre-trial" hearing, Grau J directed the applications would be heard together.[45]

[128] Costs orders are ordinarily retrospective. They are made after the merits of the substantive case have been determined. Prospective costs orders are made before the merits are determined, and only in exceptional circumstances where necessary in the interests of justice.[46]

[129] The Supreme Court set out the test for granting prospective costs orders in a proceeding involving matters of public interest in *Whakatōhea Kotahitanga Waka*

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[45] *Taranaki Community Accountability Society Inc v Ussher* HC Wellington CIV-2026-443-32, 12 August 2026.

[46] *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira O Waiōweka* [2024] NZSC 119, [2024] 1 NZLR 418 at [44].

(Edwards) v Ngāti Ira O Waiōweka.[47] Whether an order is necessary in the interests of justice will generally depend on five considerations:[48]

> First, the case must raise an issue of very significant general or public importance. While the additional presence of some individual or private interest does not exclude the possibility of a PCO, the greater the individual- or private-interest dimension, the less likely it is that a PCO will be made. Secondly, the applicant's stance on the relevant issue or issues must be seriously arguable. Thirdly, the applicant must be genuinely impecunious, in that it is unable with reasonable diligence to raise the funds required to make its argument effectively on those issues, and therefore unable to do so without the order being made. Fourthly, in standing back to consider whether an order is necessary to avert injustice, the position of the respondent is relevant, including its conduct in the litigation, any broader responsibilities it may have, and any unjust advantage likely to accrue to it absent the order. It must, therefore, be just that the respondent be made to bear the burden of a PCO before the merits have been determined. Finally, the court must consider all reasonable alternatives to the making of the order, and any appropriate limits on its extent and duration. Where a PCO is made, the amount awarded should be no more than is necessary to avert injustice.

[130] I accept the proceeding raises an issue of importance for the people of Taranaki and that the applicant is genuinely impecunious. However, for reasons already given I have concluded the applicant lacks standing and has not established a seriously arguable case. I am therefore not satisfied that it would be appropriate to grant a prospective costs order.

Conclusion and result

[131] The applications for an interim injunction and prospective costs are dismissed.

[132] Costs would ordinarily follow the event. My preliminary view is that the respondent is entitled to costs on a 2B basis together with reasonable disbursements. I would certify for second counsel.

[133] If the parties are unable to resolve costs, they have leave to apply by way of memoranda that should not exceed five pages in length including appendices.

[134] At the request of the respondent, there will be a temporary non-publication order in relation to this judgment and the result until 8am tomorrow, 25 August 2026.

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47 Above n 46.

48 At [44].

The judgment is to be provided to counsel, the parties and Heartland Group in accordance with the terms of an accompanying minute.[49] The purpose of the temporary non-publication order is to ensure Heartland Group is permitted an appropriate window to prepare any necessary market disclosure statements.

Isac J

Solicitors:
Foy & Halse, Auckland for Plaintiff
MinterEllisonRuddWatts, Wellington for Defendants

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