

**IN THE MĀORI LAND COURT OF NEW ZEALAND
AOTEA DISTRICT****A20130002065
A20130002066**UNDER Sections 237 and 239, Te Ture Whenua Māori
Act 1993

IN THE MATTER OF Lake Rotoaira Trust

BETWEEN CHARLOTTE MAREWA SEVERNE, ERIC
WALTERS, JOHN ATIRAU HURA, PAULINE
HINEWAI RIHIA, RAKEIPOHO TAIAROA,
TE KANAWA PITIROI, TE MAARI KOAEA
GARDINER
Applicants

Hearing: On the papers

Counsel: Mr D H Stone

Judgment: 12 March 2013

RESERVED JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] By decision dated 19 July 2012 I appointed Pauline Hinewai Rihia, Eric Thomas Hura Walters, John Atirau Hura, Rakeipoho Taiaroa, Te Maari Koaea Gardiner, Te Kanawa Pitiroi and Charlotte Marewa Severne as responsible trustees for a period of 12 months or until further order of the Court.¹

[2] In addition, the interim trustees were directed to convene a general meeting of beneficial owners and provide the hui with information on the administration of the trust. Concerns had been expressed by the owners as to the lack of information and general meetings. Comment has also been made over the lack of financial reports. Once the trustees had completed those tasks I directed them to file a report on the outcome of the general meeting.

¹ *Rihia v Te Rūnanganui o Ngāti Hikairo - Lake Rotoaira Trust* (2012) 287 Aotea MB 44 (287 AOT 44)

[3] By application received on 6 December 2012 the trustees provided evidence on their compliance with those earlier directions. However, for unknown reasons, and contrary to those directions, the report from the trustees and supporting documents were not sent to me for consideration. Instead they were sent to another Judge. Then on 7 March 2013 I received and considered the file and the application.

[4] The trustees now seek, firstly, an extension of their term for a period of 18 months. Secondly, the appointment of Daniel Paranihi to replace Pauline Rihia who has resigned.

[5] The issues for determination are whether there is sufficient evidence before the Court to appoint a replacement trustee and whether it is appropriate to extend the current interim trustees' term.

The case for the trustees

[6] The trust chairperson, Dr Charlotte Severne, in an affidavit sworn on 20 February 2013, confirms that the Court's directions have now been complied with and that a general meeting of owners was held as directed. More relevant to the application, she confirms that there are still important outstanding tasks that require the trustees' attention. This is also mentioned in the annual report for 30 June 2012 with reference to the proposed privatisation of certain State Owned Enterprises.

[7] In addition, Dr Severne points out that as Pauline Rihia has now resigned and Daniel Paranihi was the next highest polling candidate in the recent election process, it would be appropriate to appoint him without the need to hold a further and costly election. The Court can be satisfied that Mr Paranihi is broadly acceptable to the beneficial owners given the significant support he received.

[8] Mr Stone as counsel also submitted that only a short period of time has elapsed between the election of November 2011, my earlier decision of July 2012 and the meeting of owners held in November 2012. He contended further that previous opposition to the appointments centred on process rather than the named individuals who were successful in the election.

[9] Counsel in addition submitted that Mr Paranihi is a member of one of the hapū associated with Lake Rotoaira and that he has significant experience and involvement in the activities and business of the hapū connected with the Lake and its environs.

[10] Mr Stone argued that the trustees were also actively involved in a number of priorities for the trust including a proposed review of the trust order. It was said that once a review was complete and their preferences of the beneficial owners ascertained following appropriate consultation, discussion decision, then an election of trustees would be held.

Discussion

[11] The law concerning the appointment of trustees as set out in my previous judgment and I need not encumber this decision with that material.² For an appointment of trustees the Court must be satisfied that, firstly, the nominee has sufficient ability, experience and knowledge and secondly, that the candidate is broadly acceptable to the beneficiaries of the trust. It is said that Mr Paranihi is suitably qualified and experienced given his involvement with tribal and hapū activities as set out in the evidence.

[12] Moreover, equally importantly, as the next highest polling candidate in an extensive electoral process, clearly he is broadly acceptable to the beneficiaries. Accordingly, I see no reason why he should not be appointed a trustee by way of replacement for Ms Rihia.

[13] As to the issue of extending the term of the current trustees, I am satisfied that the current incumbents have an appropriate mix of skills relevant to the challenges facing the trust both now and into the future. While it is preferable that in due course a further election should be held, following best practice, there is also an argument that where important discussions and negotiations are being undertaken, imposing a rotation system at a critical juncture can have potentially adverse effects and unintended consequences that may not be in the best interests of the beneficial owners.

[14] In the decision *Mitchell v Short – Pukeroa Oruawhata Trust* the Māori Appellate Court highlighted this point that had been raised in argument and acknowledged that where important discussions are mid stream that it is often more practical to maintain stability and consistency at a governance level until such time as those processes are complete.³

[15] In any event, it is apparent that trustees do not intend to undertake any irreversibly binding commitments without further dialogue with the beneficial owners as and when the need arises. For

² Ibid, at para [29]-[32]

³ *Pukeroa Oruawhata Trustees v Mitchell - Pukeroa Oruawhata Trust* (2006) 11 Waiariki Appellate MB 66 (11 AP 66) at para [42]

practical purposes then it seems obvious that an extension of the tenure of the current trustees will be in the best interests of the trust.

[16] For completeness I note that the annual accounts are qualified with reference to land valuations but apart from that, according to the auditors, the accounts fairly reflect the financial position of the trust.

Decision

[17] Daniel Paranihi is appointed a responsible trustee to replace Pauline Rihia who has resigned per section 239 of Te Ture Whenua Māori Act 1993 for a period of 18 months or until further order of the Court.

[18] The current interim trustees tenure due to expire on 18 July 2013 is extended for a further period of 18 months or until further order of the Court.

[19] The trustees will file with the Court in due course a copy of the minutes of the next general meeting of the trust.

[20] The Registrar is directed to provide a copy of this decision to those persons provided with my original judgment in this proceeding dated 19 July 2012.

Pronounce at am/pm in on
this day of 2013

L R Harvey
JUDGE