

**IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIARIKI DISTRICT**

A20190003497

UNDER Sections 19, 231, 238 and 240, Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Maraenui No 141 and other blocks

BETWEEN ANNE LEGALO APO, RANGI HUDSON,
JAMES CAMPBELL AND REBECCA BLACK
Applicants

AND ERIC HUDSON AND LORNE PAREKURA
GREEN
Respondents

A20180007764

UNDER Sections 239 and 244, Te Ture Whenua Māori Act
1993

AND BETWEEN ERIC HUDSON AND LORNE PAREKURA
GREEN
Applicants

AND ANNE LEGALO APO, REBECCA BLACK AND
RANGI HUDSON
Respondents

Hearing: 3 May 2019, 212 Waiariki MB 48-60
20 June 2019, 215 Waiariki MB 167-203
(Heard at Rotorua)

Judgment: 16 December 2019

JUDGMENT OF JUDGE C T COXHEAD

Tēnā koutou i ō tātou aituā maha e ngapu nei te whenua i tō rātou hinganga. Hēoi anō, e tāea te aha atu i te tangi, i te maumahara ki a rātou me tā rātou i mahi ai? Nō reira, waiho rātou ki a rātou, ko tātou ki a tatou.

Hei tīmatanga korero - Introduction

[1] This decision concerns the Te Kou Tiaki and Rangi Ataahua Green Whānau Trust (the trust). Two trustees want three trustees removed, and those three want the other two removed. It is not a happy whānau situation.

[2] The trust was created in 2004.¹ The current trustees are Anne Legalo Apo, Rebecca Black, James Campbell, Lorne Parekura Green, Eric Hudson and Rangi Hudson.

[3] Two of the applications are filed by Eric Hudson and Lorne Green. They seek the removal of Anne Apo, Rebecca Black and Rangi Hudson as responsible trustees of the trust and the appointment of Shane Hohepa and Lucy Mohamady as replacement trustees. They also seek a variation to the current trust order.

[4] There is another application filed by Anne Apo, Rangi Hudson, James Campbell and Rebecca Black. They seek a review of trust, enforcement of obligations, and the removal of Eric Hudson and Lorne Green as responsible trustees. They also seek an interim injunction to stop the current trustees from making any decisions in relation to the trust until a judgment is issued by the Court. During the proceedings, no arguments were advanced regarding this the injunction. In any case, as this is a final decision, an interim injunction will no longer be necessary.

Ngā kaupapa - Issues

[5] The issues for determination are:

- (a) Whether the trust order should be varied;
- (b) Whether any of the trustees should be removed; and

¹ 86 Opotiki MB 20-25.

- (c) Whether any of the replacement trustees should be appointed.

Ko te hātepe ture o te tono nei - Procedural History

[6] On 16 October 2018, Eric Hudson and Lorne Green filed an application seeking the removal of Anne Apo, Rebecca Black and Rangi Hudson (the first application). They also sought a variation to the trust order.

[7] Then, on 2 April 2019, Anne Apo, Rangi Hudson, James Campbell and Rebecca Black, filed an application seeking an interim injunction to stop the trust from making any further decisions pending an outcome from the Court, review of trust, enforcement of obligations, and the removal of Eric Hudson and Lorne Green (the second application).

[8] The first application came before me on 3 May 2019, with all parties present apart from Rangi Hudson, who sent in her apologies. At this hearing it became apparent that many of the documents filed by Eric Hudson and Lorne Green had not been served on Rangi Hudson, Anne Apo, and Rebecca Black. Both parties also raised concerns about unpaid rates on a block administered by the trust, known as Orete L2, L3B, H2B and K2C. At the end of the hearing, I made directions that Rangi Hudson was to file financial documents relating to the trust for the last three years to the Court, and also directed the documents filed by Eric Hudson and Lorne Green relating to the removal of trustees be served on Rangi Hudson, Anne Apo and Rebecca Black. I adjourned the matter for a special hearing.

[9] On 15 May 2019, all documents were served as directed. Bank statements and financial documents were filed on 28 May 2019 by Rangi Hudson.

[10] On 20 June 2019, I heard the first and second applications together. At this hearing, both parties raised several concerns about the dysfunctional nature of the trust. In particular, discussions pertaining to a lease agreement between the trust and a committee, established by the trustees, and a lease proposal for the block known as Matapapa 2A1, were raised. Several allegations relating to hostile behaviour from both parties, were also made. At the end of the hearing, I adjourned the matter for a written decision to be given.

Ko te tono tuatahi - The first application

Submissions of Eric Hudson and Lorne Green

Variation to trust order

[11] Eric Hudson and Lorne Green submitted that the trust order should be varied to ensure that there are a clear set of policies and procedures in place for the trustees to follow. They say Anne Apo, Rebecca Black and Rangi Hudson have failed to fulfil their trustee duties and have continued to act to the detriment of the trust.

[12] The grounds on which they seek a variation to the trust order can be summarised as:

- (a) The trust requires clear instructions, practices and procedures for effective management;
- (b) A resolution has been passed by the beneficiaries and trustees at a meeting held on 8 September 2018 confirming that the trust order should be varied; and
- (c) Due process has not been followed by Anne Apo, Rebecca Black and Rangi Hudson in relation to an application submitted to Te Whare Wananga O Awanuiarangi for funding. This is illustrative of the need for clear guidelines in the trust order.

Removal of trustees

[13] Eric Hudson, and Lorne Green also submitted that Anne Apo, Rebecca Black and Rangi Hudson should be removed as trustees. They seek the appointment of Shane Hohepa and Lucy Mohamady as replacement trustees.

[14] The arguments made by Eric Hudson and Lorne Green can be summarised as follows:

- (a) Anne Apo's removal was sought as she has tendered her resignation by way of e-mail on 23 July 2017. They further argued that Anne Apo has been an

inactive trustee over the past ten years including repeatedly failing to attend trust meetings;

- (b) It was submitted that Rangi Hudson as the treasurer and secretary of the trust acted with ulterior motives and dishonestly. However, I note that no evidence relating to these allegations has been filed;
- (c) The removal of Rebecca Black was primarily sought on the basis of non-attendance at trust meetings;
- (d) Eric Hudson and Lorne Green also raised concerns about the lack of financial accountability within the trust. They say that numerous requests for the trust's financial details were made to Anne Apo, Rangi Hudson and Rebecca Black, however these documents were never provided to them; and
- (e) Lastly, Eric Hudson and Lorne Green alleged that they have experienced unruly and threatening behaviour from Anne Apo, Rangi Hudson and Rebecca Black. They say this has prevented effective communication between the trustees.

Submissions of Anne Apo, Rangi Hudson, James Campbell and Rebecca Black

[15] Anne Apo, Rangi Hudson and Rebecca Black opposed the removal of themselves as responsible trustees. They say that, due to serious misconduct and hostile behaviour from Eric Hudson and Lorne Green, they were unable to actively participate in trust matters.

[16] They raised the following arguments:

- (a) The trust had a volatile environment, especially at hui, which meant participation and attendance at trust meetings was often difficult;
- (b) Anne Apo argued that she only tendered her resignation as she had experienced threatening behaviour from Lorne Green and Eric Hudson. However, after obtaining further information, she decided to rescind her resignation on 10 September 2019. She also says that whānau hui were

never transparent in terms of the issues that would be discussed, and they were never properly advertised; and

- (c) Rangi Hudson denied the dishonesty allegations made by Eric Hudson and Lorne Green. Rangi Hudson argued that she has always strived to keep accurate documentation of the trust such as trust meeting minutes and fulfil many roles including simultaneously being the treasurer and secretary of the trust.

Ko te tono tuarua - The second application

Submissions of Anne Apo, Rangi Hudson, James Campbell and Rebecca Black

[17] Anne Apo, Rangi Hudson, James Campbell and Rebecca Black seek the removal of Eric Hudson and Lorne Green as responsible trustees, enforcement of obligations and a review of trust.

[18] Their arguments can be summarised as:

- (a) A committee known as the Te Kou Tiaki and Rangi Ataahua Green Whānau Trust Planning and Development (the committee) was established by the trust to lease part of a block administered by the trust, known as Orete L2, L3B, H2B and K2C (the lease). The lease was between the trust and the committee. The purpose of the lease was to develop a camping ground for beneficiaries and the community to enjoy. However, it was argued by Anne Apo and Rangi Hudson that this lease agreement was signed without the authorisation from all of the trustees. Further, it was submitted that committee members, Lorne Green and Lucy Mohamady, have taken over the running of the trust, with the approval of Eric Hudson;
- (b) It was also argued that the lease was orchestrated by Lorne Green and Eric Hudson to curtail Daniel Green from leasing or occupying the block;
- (c) Further, it was argued that an application made for a community education grant from Te Apa Marae Kura, was filed without proper authorisation from all the trustees and failed to include the whānau trust's bank account

number. Instead, it was purported that Eric Hudson and Lorne Green opened a separate bank account, which was included in the application. They say this was an attempt to deceive the trust;

- (d) Rangi Hudson says she has tried to obtain records of the committee's financial position, however, Lucy Mohamady (chairperson of the committee) has repeatedly failed to provide such information;
- (e) They also argued that prospective lease proposals in relation to Matapapa 2A1 block has not been discussed with them, and Eric Hudson and Lorne Green have acted on their own accord. It was alleged that when Lorne Green was questioned about this, he was violent and hostile;
- (f) It was further argued that Eric Hudson and Lorne Green call and organise trust meetings without properly notifying all the beneficiaries; and
- (g) Anne Apo, Rangi Hudson, James Campbell and Rebecca Black also raised some arguments relating to a lack of transparency in decision-making from Eric Hudson and Lorne Green, and also made allegations of misappropriation of trust funds.

[19] Daniel Green, a beneficiary of the trust, supported the removal of Lorne Green as a trustee and submitted a plethora of evidence on this point to the Court. He says that Lorne Green has displayed unruly and threatening behaviour towards him, and at times he has had to seek the assistance of the police due to fears for his safety. The evidence submitted by Daniel Green includes personal log records of incidents that have taken place between himself and Lorne Green as well as images of damage done to his property on Matapapa 2A1 block.

Submissions of Eric Hudson, Lorne Green and Lucy Mohamady

[20] In response to the above allegations, Eric Hudson argued that the establishment of the committee was necessary due to rent arrears incurred on the part of the block administered by the trust. At the hearing, Eric Hudson agreed that the lease was not signed with the authorisation of the majority of the trustees, however, he contended it was

necessary in the circumstances and he was transparent about the formation of the committee with his fellow trustees.

[21] Further, Lorne Green contended that the lease agreement was necessary as no other building and development has been done on the land for the past forty years. Essentially, he argued the committee was formed as the trustees were dysfunctional and could not get along with each other. At the hearing Moana Peters, wife of Lorne Green, spoke in support of these contentions. Lorne Green stated that the committee also handled financial revenues, including putea deposited by the beneficiaries into the trust account as the trustees could not fulfil their responsibilities.

[22] Lucy Mohamady also appeared at hearing and submitted that as a beneficiary she has never been notified of any beneficiary meetings. However, she stated that Eric Hudson and Lorne Green have continued to act in the best interest of the trust.

[23] Arguments were also raised about a clean-up carried out on Matapapa 2A1, which the trust is a shareholder in. Eric Hudson and Lorne Green claimed that they were never notified of this and the remaining trustees have continued to exclude them in such activities.

Te Ture - The Law

[24] Section 231 of Te Ture Whenua Māori Act 1993 states:

231 Review of trusts

- (1) The trustees or a beneficiary of a trust (other than a kai tiaki trust) constituted under this Part may apply to the court to review the terms, operation, or other aspect of the trust.
- (2) There can be no more than 1 review of a trust within a period of 24 consecutive months.
- (3) The court may, on any review,—
 - (a) confirm the trust order for the trust without variation; or
 - (b) exercise its powers under section 244; or
 - (c) terminate the trust if the court is satisfied that there is a sufficient degree of support for termination among the beneficiaries.

[25] The Māori Land Court powers of review are extensive. Although there may be a need to look at matters of operational management, the Court is not concerned with day-to-day operational issues. In undertaking a review, the Court may invoke an armoury of powers, including s 238 of the Act, to enforce the obligations of the trust. The Court also has the power to direct the removal of trustees pursuant to s 240 of the Act.

[26] Section 240 of the Act provides:

240 Removal of trustee

The court may at any time, in respect of any trustee of a trust to which this Part applies, make an order for the removal of the trustee, if it is satisfied—

- (a) that the trustee has failed to carry out the duties of a trustee satisfactorily; or
- (b) because of lack of competence or prolonged absence, the trustee is or will be incapable of carrying out those duties satisfactorily.

[27] The leading authority on the removal of trustees is *Rameka v Hall*.² The Court of Appeal in this case held that there is a two-stage test to determine whether a trustee should be removed. Firstly, the court must be satisfied that the trustee has breached his or her responsibilities. Secondly, if so, the Court must decide whether it should exercise its discretion to remove the trustee. It is well established by now that the prerequisite for removal of a trustee is not a simple failure or neglect of duties but a failure to perform them satisfactorily. Accordingly, an assessment of the trustee's performance is necessary.³

Kōrerorero - Discussion

Should any of the trustees be removed?

Anne Apo

[28] Regarding the removal of Anne Apo as trustee, I note that she has tendered her resignation in 2017.

[29] In circumstances where a trustee has tendered their resignation, Judge Harvey in *Ngamoki-Cameron v Koopu – The Proprietors of Mangaroa and other blocks*

² *Rameka v Hall* [2013] NZCA 203.

³ *Rameka v Hall* [2013] NZCA 203 at [30].

Incorporated,⁴ found that a resignation was a unilateral act by the resigning trustee that does not require acceptance of the resignation from other trustees to have effect. Judge Harvey also found that, in the absence of any detailed procedural agreement between the parties, a resignation can only be withdrawn with the consent of the recipient.⁵

[30] That judgment also cited observations made in *Glossop v Glossop*,⁶ and the decision of the Employment Relations Authority in *Narbey v Pavlovich Coachlines Ltd*,⁷ as follows:⁸

[23] The question of rescinding a resignation was considered in *Glossop v Glossop* in relation to company directors:

I have no doubt that a director is entitled to relinquish his office at any time he pleases by proper notice to the company, and that his resignation depends upon his notice and is not dependent upon any acceptance by the company, because I do not think they are in a position to refuse acceptance. Consequently, it appears to me that a director, once having given in the proper quarter notice of his resignation of his office, is not entitled to withdraw that notice, but, if it is withdrawn, it must be by the consent of the company...

[24] In a different context I note that the Employment Relations Authority has also considered the issue of a purported rescinding or withdrawal of a resignation:

In her statement of problem, Ms Narbey complained that her resignation was neither questioned nor commented on by the Respondent and in her brief of evidence (24) spoke of being prepared to “rescind my resignation”. All of that demonstrates a misunderstanding on her part of the process of resignation.

There is a mistaken concept, held by some, concerning what they call “acceptance of a resignation.” Resignation, like dismissal, is a unilateral act. There is no requirement or obligation for the recipient of the act to “accept” anything. The deliverer of the unilateral decision (be it dismissal or resignation) is simply telling the recipient what is going to happen. Yes, sometimes an employer will endeavour to dissuade an employee from going through with a resignation but it is incorrect to describe such a response as “not accepting the resignation.”

[31] It is established law, as cited above, that once a trustee has tendered his or her resignation, it can only be withdrawn with the consent of the recipients. I do not have any

⁴ *Ngamoki-Cameron v Koopu – The Proprietors of Mangaroa and other blocks Incorporated* (2014) 91 Waiariki MB 279 (91 WAR 279).

⁵ *Ngamoki-Cameron v Koopu – The Proprietors of Mangaroa and other blocks Incorporated* (2014) 91 Waiariki MB 279 (91 WAR 279) at [25].

⁶ *Glossop v Glossop* [1907] 2 Ch 370 at 374.

⁷ *Narbey v Pavlovich Coachlines Ltd* ERA Auckland AA205/01, 3 December 2001.

⁸ *Ngamoki-Cameron v Koopu – The Proprietors of Mangaroa and other blocks Incorporated* (2014) 91 Waiariki MB 279 (91 WAR 279) at [23]-[24].

evidence filed before me to indicate the remaining trustees have consented to the withdrawal of her resignation. On this basis, Anne Apo should be removed as a trustee.

Removal of other trustees

[32] It is clear to me there is deep-seated personal animosity between the trustees. The evidence given before the Court illustrates this clearly and sadly paints a grim picture of the dysfunctional nature of the trust. There have also been many allegations of hostility, violence and bullying from both parties.

[33] In *Ellis v Faulkner*,⁹ Judge Carter emphasised the importance of effective communication between trustees and the necessity for trustees to work collaboratively with each other despite having diverging views. In this regard, Judge Carter made the following observations:¹⁰

This Court accepts that part of the duties of trustees is to consider fully matters that are put to the trustees and affect the operations and administration of the Trust, that they will have diverging views and that they are entitled to put their various views forward and have them considered. Healthy discussion and argument are part of any commercial forum. However, the Trust order indicates, as does section 227 of Te Ture Whenua Māori Act, that once a decision is made it is the majority that rules. Trustees who dissent are entitled to apply to the Court for directions, although as I have commented, their performance may be judged as the result of such action. They may also under section 227(6) have their dissent recorded.

Other than that, all trustees must be prepared to work with the majority to implement the decision which has been made. Where a trustee still takes a different view or regards himself as being separate from the majority of the trustees then dangers arise. If there are to be negotiations of a commercial nature then such attitude will be seen to be a sign of weakness. This is an element that Mr Faulkner brings to the Trust and his assertion that he is entitled to represent himself as a trustee separately from representation which the trustees have by majority agreed to, as evidenced in the Pihema case, clearly shows his lack of ability to work as a 'team man' and as part of the Trust. This is not the first time that Mr Faulkner has been on his own and while one can perhaps overlook a failing at a first occasion the fact that it has continued shows a propensity for it to happen again. This Court therefore finds that Mr Faulkner's inability to team and work with the trustees is enough to be considered a failure to carry out his duties satisfactorily and for this reason the Court agrees that the should be removed as trustee.

⁹ *Ellis v Faulkner* (1996) 57 Tauranga MB 7 (57 T 7).

¹⁰ *Ellis v Faulkner* (1996) 57 Tauranga MB 7 (57 T 7) at 9.

[34] The Court has found that, where there is evidence of abusive and threatening behaviour from a trustee, such behaviour cannot be tolerated, and removal is likely to result. In *Deputy Registrar - Ihaia Taueki Trust*, Judge Harvey held:¹¹

[23] As I have mentioned throughout this proceeding, the Court does not lightly remove trustees for cause... That said, I would be very concerned if any participant in a hui, beneficial owner or invitee, were threatened, intimidated or abused in any way whatsoever. Such behaviour would certainly not be in keeping with what the Court expects of trustees it appoints as custodians on behalf of all beneficial owners to ancestral lands handed down from ancestors from another time.

[24] Such activities should not and cannot be tolerated by any trustee or beneficial owner seeking to maintain the respect of the broader constituency and to a more limited degree, of the Court. I am confident that Mr Taueki will take into account these remarks to ensure that his behaviour never passes the threshold underscored in this decision. If that were to occur, then clearly the Court would have little alternative but to remove any such trustee who persisted in abusive and threatening behaviour to any beneficial owner or third party engaged to assist the Trust.

[35] It is essential that trustees be able to work together. Although trustees can have diverging opinions, they must ultimately act cohesively for the benefit of the trust. In the absence of a cohesive working relationship amongst the trustees, the only tenable option is often for some or all of the trustees to step down or be removed.

[36] From reviewing all the material that has been filed before the Court, it appears to me that this whānau trust is split. Anne Apo, Rangi Hudson, James Campbell and Rebecca Black are on one side, while Eric Hudson and Lorne Green, assisted by Lucy Mohamady, are on another side.

[37] Eric Hudson and Lorne Green seem to have captured the trust and have made significant decisions about trust lands and assets without consulting the remaining trustees. They have held meetings without notifying the other trustees, and in general their behaviour appears to undermine the majority of the trustees. The lease on Orete L2, L3B, H2B and K2C is an example of this behaviour. This lease was not signed with the majority of the trustees' authorisation and appears to have been implemented so that Daniel Green could not lease or occupy the property.

[38] While Eric Hudson and Lorne Green seem to have captured the trust, the other trustees have gone missing. They have explained why they have not been involved in trust

¹¹ *Deputy Registrar - Ihaia Taueki Trust* (2005) 161 Aotea MB 96 (161 AOT 96) at [23] – [24].

matters. The facts remain - that a trustee cannot undertake their duties satisfactorily if they do not participate in trustee matters.

[39] During the hearing Lorne Green suggested that all the trustees should resign and hand over the administration of the trust to the next generation. This was on the basis that his generation could not work together. This was the most sensible suggestion made during the hearing.

[40] Overall, I am satisfied there is sufficient evidence before the Court to warrant the removal of all the trustees. It is clear that the trust has reached a stage where it can no longer continue to operate effectively. The trust is dysfunctional. New trustees are needed.

[41] The Court will convene a meeting for the election of new trustees. The current trustees are to stand down at that election. They will not be eligible to stand again at the election.

Should any of the replacement trustees be appointed?

[42] Given my view that there is sufficient evidence before the Court to warrant the removal of all the trustees it is clear that fresh elections for all trustee positions will need to be held.

[43] The application to appoint Lucy Mohamady and Shane Hohepa as replacement trustees is dismissed. They are eligible to stand for election.

Should the trust order be varied?

[44] Section 244 of the Act provides for a variation of trust as follow:

244 Variation of trust

- (1) The trustees of a trust to which this Part applies may apply to the court to vary the trust.
- (2) The court may vary the trust by varying or replacing the order constituting the trust, or in any other manner the court considers appropriate.
- (3) The court may not exercise its powers under this section unless it is satisfied—

- (a) that the beneficiaries of the trust have had sufficient notice of the application by the trustees to vary the trust and sufficient opportunity to discuss and consider it; and
- (b) that there is a sufficient degree of support for the variation among the beneficiaries.

[45] In considering a variation of a trust order, the Court must be satisfied that the beneficiaries of the trust had sufficient notice of the application, sufficient opportunity to discuss and consider the proposal, and that there is evidence of a sufficient degree of support among the beneficiaries for the variation.

[46] Judge Harvey in *Naera v Fenwick – Whakapoungakau 24 Block*,¹² underscored the importance of adherence to s 244 as:¹³

[66] I consider that whenever a specific variation is proposed, then the beneficiaries are entitled to notice of the proposal with a degree of precision to provide certainty as to what exactly is to be altered. Put another way, it is not sufficient that a notice for a general meeting of beneficiaries states “variation” or “variation to trust order” without providing a clear indication as to the practical effect of the proposed variation. Otherwise the beneficiaries will not have received notice in the strict sense.

[67] For example, where a proposed variation is to alter the manner of voting from show of hands to shares, then the notice to the beneficiaries should make that point plain. It need not refer to the precise clause in the trust order but it should be clear to a lay audience as to what is intended and how it differs from the existing trust order. Another example is where it is proposed that trustees serve finite terms and may offer themselves for re-election. Again the notice need not refer to the relevant clauses and recite them exactly. It should be sufficient that the notice say that a variation is proposed to enable election of trustees by rotation on a triennial basis for example.

[68] Sufficient opportunity to consider the proposed variation and to discuss it is an obvious requirement in the legislation. The minutes of the general meeting of beneficiaries should record the discussion and any resolutions in support of or in opposition to the variation. The minutes should also record, where there is dissent or abstention, the number of owners who voted in opposition to the proposed variation and those whom abstained. This will then assist the Court in its consideration of whether the third element of the process has been satisfied, namely the extent to which there is evidence of sufficiency of support for the proposed variation

[47] Eric Hudson and Lorne Green argued that sufficient notice was provided to the beneficiaries through a published notice and through Facebook. At the hearing, Eric

¹² *Naera v Fenwick – Whakapoungakau 24 Block* (2010) 15 Waiariki MB 279 (15 WAR 279).

¹³ *Naera v Fenwick – Whakapoungakau 24 Block* (2010) 15 Waiariki MB 279 (15 WAR 279) at [66].

Hudson said even though variation to the trust order was not specifically listed on the notice, those that attended the meeting were informed of the variation and this issue had been continued from previous meetings.

[48] Before I can vary a trust order, I must be satisfied that beneficiaries of the trust had sufficient notice of the application, sufficient opportunity to discuss and consider the proposal, and that there is evidence of a sufficient degree of support. Generally, when a variation to a trust order is sought, a notice will specify that the variation of the trust deed will be a part of a notified meeting of beneficiaries and outline the nature of the proposed changes.

[49] The notice referred to by Eric Hudson and Lorne Green lists the items to be discussed as “trust order, [and] specific draft documents”. It does not, however, give notification to the beneficiaries that the trustees are intending to vary the trust.

[50] I note that, while the current trust order appears to be in the form of a standard ahu whenua trust order, there are some peculiar clauses in it, such as the establishment of a projects steering board, which does raise some questions for me. However, before I can vary the existing trust order, the statutory requirements must be fulfilled. In this case those statutory requirements as to notice have not been satisfied.

Kupu whakatau - Decision

[51] Pursuant to Te Ture Whenua Māori Act 1993 section 239 Anne Apo is removed as a responsible trustee as she has resigned.

[52] The applications for variation of trust and the appointment of trustees are dismissed.

[53] In terms of the applications for the removal of trustees I have found that all trustees should be removed, and new trustees should be appointed. This requires a meeting of owners and an election. Given the dysfunctional nature of the trust I have concerns as to the ability of the trustees to be able to convene a meeting of owners. Therefore, the Court will convene a meeting for the election of trustees within three months from the date of this

judgment. The current trustees are to stand down at that election. They will not be eligible to stand again at the election.

[54] Following that, a special sitting will be convened for hearing an application for the appointment of replacement trustees.

I whakapuaki i te 10.00am i Rotorua te 16 o ngā rā o Hakihea te tau 2019

C T Coxhead
JUDGE