

**I TE KOOTI PĪRA MĀORI O AOTEAROA  
I TE ROHE O TE WAIARIKI**

*In the Māori Appellate Court of New Zealand  
Waiariki District*

**AP-20260000004755**

**AP-20260000004756**

**APPEAL 2026/13**

**APPEAL 2026/14**

WEHENG  
*Under*

Sections 58 and 59, Te Ture Whenua Māori Act  
1993

MŌ TE TAKE  
*In the matter of*

Tōrere Pā Reserve & other blocks

I WAENGA I A  
*Between*

GARRY WATSON, RACHELL MIO, HEKE  
COLLIER AND KATENE WILLIAMS  
Ngā Kaitono pira  
*Appellants*

Kōtitanga:  
*Hearing*

10 August 2026, 2026 Māori Appellate Court MB 503-539  
(Heard at Rotorua)

Kooti:  
*Court*

Judge M P Armstrong (Presiding)  
Judge R P Mullins  
Judge A H C Warren

Kanohi kitea:  
*Appearances*

J Koning for Appellants

Whakataunga:  
*Judgment date*

13 October 2026

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**TE WHAKATAUNGA A TE KOOTI**  
*Reserved Judgment of the Court*

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*(Ka haere tonu ngā taipitopito kēhi ki te whārangi kei raro)*  
*(Proceedings continued overleaf)*

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*(Ngā taipitopito kēhe e toe ana)*  
*(Proceedings continued)*

ME  
*And*

LINDA STEEL ON BEHALF OF TE KAHUI O  
PAKEKE O NGĀI TAI  
Te Kaiurupare pīra Tuatahi  
*First Respondent*

ME  
*And*

DIANE GRACE ANDERSON AND NGAROMA  
WENCY REWI  
Ngā Kaiurupare pīra Tuarua  
*Second Respondent*

**Hei tīmatanga***Introduction*

[1] Four separate but related Māori reservation trusts at Tōrere are once again before this Court after the latest attempts to reset them have broken down (Tōrere Trusts).<sup>1</sup> Previously, this Court directed the Lower Court to convene a judicial conference to explore with the people of Ngāi Tai a process to set separate terms of trust for each of the Tōrere Trusts, following which a properly constituted election of new trustees would follow.

[2] Four of the six incumbent trustees now challenge the processes and decisions made by the Lower Court in implementing the directions of this Court. They say that the directions and subsequent decisions of the Lower Court were made in error and that the process needs to restart. They also say that the Presiding Judge should have recused herself, given her personal domestic relationship with a beneficiary of the Tōrere Trusts.

[3] There are two separate appeals. The first appeal relates to the recusal issue, under s 58 of Te Ture Whenua Māori Act 1993 (the Act). The appeal is made on the basis that the decision not to recuse was a final decision of the Court (the recusal appeal).

[4] The second appeal is made under s 59 of the Act with the leave of the Lower Court, on the basis that the Lower Court made a series of preliminary or provisional determinations in error when seeking to set the terms of trusts for the Tōrere Trusts (the determinations appeal).

[5] The appeals are opposed by Te Kahui Pakeke o Ngāi Tai and the two other incumbent trustees, Diana Anderson and Ngaroma Rewi.

**Te Horopaki***The context to these appeals*

[6] Mr Koning for the appellants helpfully set out a fulsome background relevant to both appeals.<sup>2</sup> We summarise that background as the factual basis upon which we consider the arguments.

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<sup>1</sup> The four Māori reservations relevant to this appeal are: Tōrere Reserve No.4 (Tōrere and Manakiao), Tōrere Pa Reserve, Tōrere Reserve No.2 (Beach, River and Stores Depot) and Tōrere Urupas (Hanoa, Te One, Owahainene and Opeperu).

<sup>2</sup> Submissions for the Appellants dated 3 August 2026, at paras 7– 61

[7] On 3 October 2025, the Māori Appellate Court delivered its judgment in *Watson v Van der Broek - Torere Pa Reserve and Others*, annulling all orders previously made by the Māori Land Court pursuant to s 56(1)(b) of the Act.<sup>3</sup>

[8] Consequently, the election results and the vote adopting the Charter as terms of trust were declared to be of no effect. The Court directed the Māori Land Court to convene a judicial conference under s 67 of the Act to reset both the election process and the process for establishing terms of trust and identified six individuals who were to remain as trustees in the interim pending further orders and the completion of a new election process (s 67 judicial conference).

[9] In response to those directions, the Presiding Judge issued a series of direction minutes between December 2025 and March 2026. On 22 December 2025, the Presiding Judge issued the first direction minute.<sup>4</sup> She explained that the purpose of the s 67 judicial conference was to begin a lawful process for reconstituting the Tōrere Trusts, noting that the reservations had operated for many years without valid terms of trust and that the Charter adopted in 2018 lacked legal effect beyond the marae reservation.

[10] Following submissions from the appellants, the Presiding Judge issued a second direction minute setting down the date and venue for the s 67 judicial conference for 1 February 2026.<sup>5</sup>

[11] After receiving further submissions from the appellants seeking to adjourn the s 67 judicial conference to 2 March 2026, the Presiding Judge issued a third direction minute declining this request.<sup>6</sup>

[12] The s 67 judicial conference proceeded on 1 February 2026 at Te Kura ō Tōrere.

[13] The Presiding Judge summarised the way forward as a two-stage process. The first stage involved putting in place practical interim arrangements to allow the trustees and marae committee to function effectively during the transition period. The second stage involved

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<sup>3</sup> *Watson v Van der Broek – Torere Pa Reserve and Others* [2025] Māori Appellate Court MB 470 (2025 APPEAL 470).

<sup>4</sup> 357 Waiariki MB 159-161.

<sup>5</sup> 358 Waiariki MB 137-142.

<sup>6</sup> 359 Waiariki MB 261-262.

developing and adopting terms of trust for each of the Tōrere Trusts and then moving to elections under those new arrangements. The Presiding Judge advised that she would prepare draft terms of trust for discussion and consultation with beneficiaries.<sup>7</sup>

[14] Following the formal conclusion of the s 67 judicial conference, the Presiding Judge met with the trustees, their counsel and members of the marae committee to discuss interim administrative arrangements. No transcript or recording of that meeting was made.

[15] On 3 February 2026, the Presiding Judge issued a fourth direction minute recording what she described as agreements reached at the s 67 judicial conference and setting out the process for developing and adopting new trust orders.<sup>8</sup> The Presiding Judge directed that those draft terms of trust be circulated for beneficiary consultation, and for discussion at another hui to be held on 23 February 2026. The Presiding Judge would then amend the terms of trust for circulation to the beneficiaries, with a final hui being held on 17 March 2026 for the beneficiaries to vote on whether to adopt the new trust orders. The minute also directed Māori Land Court staff to give notice of the 17 March hui.<sup>9</sup>

[16] The notice, which was set out in the fourth minute, recorded that the meeting on 17 March 2026 was “upon the direction of the court and pursuant to clause 14 of the Māori Reservation Regulations 1994”.<sup>10</sup>

[17] On 9 February 2026, the appellants applied for the Presiding Judge’s recusal. The application alleged apparent bias and predetermination arising from the Presiding Judge’s conduct at the s 67 judicial conference, and further relied on her domestic relationship with a member of Ngāi Tai and beneficiary of the Tōrere Trusts.

[18] In a judgment delivered on 12 February 2026, the Presiding Judge rejected both grounds<sup>11</sup> and held that neither her management of the s 67 judicial conference nor her responses to submissions gave rise to an appearance of bias or predetermination. She further concluded that her relationship did not create any conflict of interest because any benefit her

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<sup>7</sup> 380 Waiariki MB 54-97 at 79-80.

<sup>8</sup> 362 Waiariki MB 295-299.

<sup>9</sup> 362 Waiariki MB 295-299 at 296-297.

<sup>10</sup> 362 Waiariki MB 295-299 at 297.

<sup>11</sup> *Mio – Tōrere Pā Reserve* (2026) 363 Waiariki MB 47 (363 WAR 47).

partner might receive from the proceedings was remote, non-financial, and shared generally with other members of Ngāi Tai. The application for recusal was therefore dismissed.

[19] Thereafter, a hui was convened on 23 February 2026 at Tōrere Marae. No recording or transcript were made of this meeting.

[20] On 6 March 2026, the Presiding Judge issued a fifth direction minute.<sup>12</sup> This minute recorded that, provided that the beneficiaries supported the new terms of trust at the hui on 17 March 2026, the Presiding Judge would then dismiss the six extant applications relating to the conduct of the former trust and its trustees, simply because the entity that the applications related to will no longer exist.<sup>13</sup> The Presiding Judge also directed that at the 17 March 2026 hui she would check in with the current trustees as to whether they were prepared to resign as trustees prior to an election at the next annual general meeting, as provided for in the new terms of trust. If the trustees were not prepared to voluntarily resign, the Presiding Judge would take steps to remove them from office under reg 3(f) of the Māori Reservations Regulations 1994 (the Regulations).<sup>14</sup>

[21] A final hui was convened on 17 March 2026 at Tōrere Marae, with no recording or transcript.

[22] It is the recusal decision of 12 February 2026, and the preliminary determinations made on 6 March 2026 that form the subject matter of the present appeals.

### **Ngā take** *The issues*

[23] Considering those facts, the issues we need to determine include:

#### Recusal Appeal

Was the recusal decision a final order of the court; and if it was

Should the Presiding Judge have recused herself?

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<sup>12</sup> 364 Waiariki MB 208-215.

<sup>13</sup> 364 Waiariki MB 208-215 at 209.

<sup>14</sup> 364 Waiariki MB 208-215 at 211-212.

Determinations Appeal

[24] There is a preliminary issue concerning the scope of the leave granted by the Lower Court under s 59 of the Act. Subject to that answer, if some or all the following four determinations are in fact preliminary and/or provisional ones, then the issues are whether errors of law have occurred in respect of:

- (1) The conduct of the s 67 judicial conference;
- (2) The dismissal of the six extant applications;
- (3) The decision setting the terms of trust;
- (4) The removal of the current trustees; and

[25] What relief, if any, should be given in the circumstances?

[26] We now address each issue.

**Kōrerorero**

*Discussion*

Recusal appeal

*Was the recusal decision a final order of the Court?*

[27] The issue is whether the recusal decision of the Lower Court is a final order and subject to an appeal per s 58 of the Act.

[28] The Māori Appellate Court can hear appeals that are brought under two circumstances. First, s 58 of the Act provides for appeals where there has been a final order:

**58 Appeals from Maori Land Court**

- (1) Except as expressly provided to the contrary in this Act or any other enactment, the Maori Appellate Court shall have jurisdiction to hear and determine appeals from any final order of the Maori Land Court, whether made under this Act or otherwise.

- (2) Any such appeal may be brought by or on behalf of any party to the proceedings in which the order is made, or any other person bound by the order or materially affected by it.
- (3) Every such appeal shall be commenced by notice of appeal given in the form and manner prescribed by the rules of court within 2 months after the date of the minute of the order appealed from or within such further period as the Maori Appellate Court may allow.

[29] Secondly, s 59 provides for appeals where there has been a provisional or preliminary determination:

**58 Appeals from provisional determinations**

- (1) By leave of the Maori Land Court, but not otherwise, an appeal shall lie to the Maori Appellate Court from any provisional or preliminary determination of the Maori Land Court made in the course of any proceedings.
- (2) Any such appeal may be brought by or on behalf of any person who is materially affected by the determination appealed from, or who would be bound by an order made in pursuance of it.
- (3) The Maori Land Court may decline leave where it is satisfied that the interests of justice and of the parties would best be served by completing the proceedings before any appeal is made to the Maori Appellate Court.
- (4) When leave to appeal is so given, the Maori Land Court may either stay further proceedings in the matter or continue the same, but no final order shall be made until the appeal has been finally disposed of or dismissed.
- (5) When any such appeal has been determined by the Maori Appellate Court, no further appeal shall lie at the suit of any person from any final order made in those proceedings by the Maori Land Court, so far as the order conforms to the determination of the Maori Appellate Court.
- (6) Where no leave to appeal is sought against any provisional or preliminary determination by the Maori Land Court in any proceedings, the Maori Appellate Court may decline to hear any appeal against the final order of the Maori Land Court made in those proceedings if it is satisfied that the appellant had a reasonable opportunity to appeal against the provisional or preliminary determination and that the point that would be in issue on the appeal is substantially the same as that to which the provisional or preliminary determination related.

[30] The orthodox position is that, in most circumstances, a recusal decision is not a final decision or order of the court, but rather an interlocutory one.<sup>15</sup> That means that such a decision can only be appealed once the lower court has finally determined the substantive

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<sup>15</sup> See the discussion in *Davis v Mihaere* [2012] 2012 Māori Appellate Court MB 641.

proceedings. It would not be considered a preliminary or provisional decision and even if it did, no leave has been applied for or granted per s 59 of the Act.

[31] Mr Koning relied on *Takamore v Tawhara* to support the view that a recusal decision is a final order, capable of an appeal per s 58.<sup>16</sup> However, in *Takamore*, which relied on *Rudd v Hurunui*, the Court was dealing with circumstances where the substantive decisions and orders were final and where the recusal issue was considered to be one of the grounds of appeal.<sup>17</sup> In that sense it was an appeal against a final order of the Court.

[32] The factual situation here is different. No final orders have been made. Given this we find that the recusal decision was clearly an interlocutory one and there is no basis to consider the recusal appeal under s 58 of the Act. This is not a situation whereby we can apply s 71 of the Act to remedy a clear defect in an application, given that the only option available to Mr Koning is an appeal application under s 59 – which requires leave of the Court. There is no basis in law for this Court to grant such leave, based on the clear wording of s 59.

[33] We have no basis to hear and determine the recusal appeal, and it is dismissed.

#### Determinations appeal

##### *What determinations were granted leave to appeal?*

[34] In its application for leave per s 59 of the Act, the appellants were seeking leave in respect of the four separate determinations noted above. In its leave decision, the Lower Court only expressly referenced the determination to dismiss the six extant applications. There is no explicit reference to the other three determinations. As noted, there is no basis for this Court to grant leave of its own motion. Given that, we need to decide, whether leave was granted to all four determinations.

[35] On balance, in the absence of any explicit indication that leave was declined, we are prepared to find that the Presiding Judge was granting leave in respect of all four separate

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<sup>16</sup> *Takamore v Tawhara – Waioeka Papakāinga 25* [2025] Māori Appellate Court MB 436 (2025 APPEAL 436).

<sup>17</sup> *Rudd v Hurunui – Horowhenua 11 Part Reservation* [2018] Māori Appellate Court MB 123 (2018 APPEAL 123).

determinations. It makes little sense, given how interrelated the four determinations are, to grant one determination and not the others. Parties should not be left guessing on what determinations were made or not.

[36] We now consider whether each determination was preliminary or provisional.

*What is considered a preliminary or provisional determination for the purposes of s 59?*

[37] The Act does not define “provisional or preliminary determination”. Therefore, the meaning must be ascertained from the statutory wording, context and cross referenced to relevant authorities.<sup>18</sup>

[38] The starting point is that a preliminary or provisional determination must be a determination of fact or law for the purpose of making orders to dispose of the substantive proceeding, but which is provisional or preliminary to any such final orders being issued.<sup>19</sup> That naturally requires an assessment of each determination to firstly consider what specific matters of fact and/or law were determined.

*Were the determinations ones of fact or law?*

[39] We find that three of the four determinations were ones of fact or law.

[40] The determination to dismiss the six extant applications was the Lower Court exercising its jurisdiction to dismiss applications per r 6.28 of the Māori Land Court Rules 2011 (the Rules). We find this was a determination of fact and law. Factually, the Lower Court determined there was no utility in any of the six extant applications, given where things had landed. That assessment was a factual one, on the evidence before the Lower Court. In deciding the utility question, the Lower Court then proceeded to exercise dismissal powers, presumably under r 6.28 of the Rules. Those powers have the legal effect of bringing the applications to an end and in turn affect the legal rights of the applicants.

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<sup>18</sup> *Davis v Mihaere – Torere Reserves Trust* [2012] Māori Appellate Court MB 641 (2012 APPEAL 641) at [18].

<sup>19</sup> *Davis v Mihaere – Torere Reserves Trust* [2012] Māori Appellate Court MB 641 (2012 APPEAL 641) at [23].

[41] Setting terms of trust is, for the most part, a determination of law.<sup>20</sup> They set the nature and extent of trustee’s legal powers for the relevant trusts. The decision to set the terms of trust is an exercise of discretion per s 338(8) the Act.

[42] Removing trustees is both a determination of fact and law. Findings as to why they ought to be removed is a question of fact. The actual basis to remove and the exercise of discretion under the specific provisions of the Act is one of law.

[43] The criticisms in the way the s 67 judicial conference was conducted by the Presiding Judge are process issues, and do not give rise to any obvious determinations of law or fact. On that basis, these issues do not fall under s 59 as a “provisional or preliminary determination” susceptible to appeal.

*Are the live determinations preliminary, provisional or final?*

[44] There is a clear distinction between a preliminary and provisional determination. A provisional determination is a conditional determination. That is, the court has decided a matter of fact or of law, but it is conditional upon some further event or step taking place, before a final determination is made. Whereas a preliminary determination is an initial decision or ruling on a specific issue that arises early in proceedings, often before the substantive issues are addressed.

[45] We find two of the three live determinations were conditional ones and meet the requirements of s 59 of the Act.

[46] The determinations dismissing the six extant applications and the setting of new terms of trust were made conditional upon the outcome of the beneficiaries’ hui on 17 March 2026. The Lower Court was going to make final orders on both matters, if the beneficiaries supported the terms of trust. The Presiding Judge noted that although she thought it would be unlikely, it was nevertheless possible the hui of 17 March 2026 would not confirm the revised draft trust orders and, considering that possibility, she asked staff to apply the date 18 March 2026 (the day after the hui) to the orders to dismiss the various applications. The

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<sup>20</sup> In some contexts it could involve a determination of fact, i.e. if the Court is obligated to assess whether the views of beneficiaries support setting the terms, in setting the terms, is essentially a finding of fact, based on evidence before the Court.

Presiding Judge further added that if the draft trust orders were not confirmed after that hui, she would re-date or withdraw those orders.<sup>21</sup>

[47] The determination that the appellants be removed as trustees, should they not resign prior to the election, is in a slightly different category. In that situation, no determination was made.

[48] Provided the beneficiaries supported and approved the new terms of trust, clause 36 of the trust order provided that, at the annual general meeting, and at the resignation of all the current trustees, an election of new trustees shall constitute the commencement of the rotation cycle of trustees. In her minute dated 6 March 2026, the Presiding Judge recorded that at the hui on 17 March 2026 she would check in with the current trustees as to whether they are prepared to resign as trustees at the annual general meeting, which would allow them to be eligible for re-election as supported by reg 3(h) of the Regulations. However, if any of those trustees did not wish to resign, the Presiding Judge recorded the Court would then take steps to remove them from office under reg 3(f) of the Regulations. The Presiding Judge further recorded that, in any event, whether voluntarily or by court removal, there will be no extant trustees when the elections for the four trustees take place.

[49] This is an interesting approach. It appears it was subject to the outcome of the 17 March 2026 hui, in that there was to be a “check in” with the incumbent trustees before that pathway was to be locked in. However, our understanding is that hui did not proceed as proposed and was cut short after the appellants declared they were appealing the recusal decision and preliminary determinations.<sup>22</sup> Given further steps were to occur and because there was no live application before the Lower Court to address the removal of the incumbent trustees, it is neither a provisional nor preliminary determination. At best it might be considered a discussion point raised by the Judge.

[50] Even if it could be considered a provisional or preliminary determination, we agree with Mr Koning that there was no basis for the trustees to be removed in the manner proposed by the Presiding Judge. There was no live application before the Court and therefore no

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<sup>21</sup> 364 Waiariki MB 208-215 at 209.

<sup>22</sup> 2026 Māori Appellate Court MB 503 (2026 APPEAL 534) at 534.

basis to replace trustees per reg 3(f) of the Regulations in circumstances where no formal hearing was to take place.

[51] Having found that s 59 applies to two of the determinations, we now assess whether they were made in error.

*Dismissing the six extant applications*

[52] The appellants argue that there was no jurisdiction to dismiss the six extant applications. We accept there was no specific notice to the appellants about the dismissal as the s 67 judicial conference was convened under s 67 and not under the six extant applications. There was nothing to suggest the Lower Court was sitting in respect of the six extant applications.

[53] That said, the issue of the six extant applications was discussed at the s 67 judicial conference, including an exchange between the Presiding Judge and Mr Gear as to their status and utility, considering the reset directed by this Court. Whilst there were certainly discussions, and Mr Gear made his clients' views on the status of those applications explicitly clear, at no point did the Presiding Judge indicate she was going to proceed to make an order, provisional or otherwise, dismissing the six extant applications. When asked by Mr Gear whether the six extant applications were going to be dismissed, the Presiding Judge replied she wanted to "find the practical way forward so it may be that they will be adjourned."<sup>23</sup>

[54] It is trite law that the Lower Court cannot make substantive orders at a s 67 judicial conference. As matters progressed, the Lower Court invoked its ability under s 37(3) of the Act to exercise powers under s 338(8) of the Act, which is the provision that enables the Court to set terms of trust. The question is whether its ability to make orders dismissing the six extant applications fell under that provision, given the Lower Court was proceeding with dismissal of its own motion.

[55] The problem with that approach is twofold. First, powers 338(8) does not empower the Court to dismiss unrelated applications. Secondly, where the Court invokes powers under

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<sup>23</sup> 380 Waiariki MB 54-97 at 70.

s 37(3), it must ensure that affected parties have notice of its intention to exercise those powers.<sup>24</sup> On the evidence before us, after the s 67 judicial conference, no notice was given to the appellants, nor were the appellants given an opportunity to address the Court before the determination was made.

[56] The Presiding Judge knew the appellants did not want the six extant applications dismissed and given the failure for them to be heard, is a clear breach of natural justice, and therefore an error of law. That provisional determination must be revoked.

*Setting new terms of trust*

[57] The appellants raised three issues with this determination:

- (a) The Presiding Judge drafted, amended and presented the terms of trust to the beneficiaries in the form of a draft final order;
- (b) The appellants and beneficiaries were not afforded a reasonable opportunity to discuss and consider the terms of trust; and
- (c) The Presiding Judge proposed to grant a final order adopting the terms of trust that she had drafted, amended and presented to beneficiaries contrary to s 66(3) of the Act,

[58] Whilst it might seem unorthodox for a Presiding Judge to draft terms of trust, s 338(8) of the Act makes it clear it is the Court's role to set these terms. This is a bespoke power given to this Court, aimed perhaps at ensuring terms of trust are consistent with the Act and general trust law, as most trustees are not professional trustees and will not always have the necessary resources for legal advice. Given this fact, there is little wrong in principle with a Judge proposing terms of trust and generally working with beneficiaries and trustees to explore appropriate terms.<sup>25</sup> That said, principles of natural justice, proper process and transparency need to be carefully managed. Judges also need to be mindful that they do not become de facto legal advisors by workshopping a legally enforceable trust instrument. The

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<sup>24</sup> *Tatere v Te Aute Trust Board - Mangatainoka No 1BC No 2C, Tamaki 2A2A (Balance)* [2013] Māori Appellate Court MB 243 (2013 APPEAL 243) at [111].

<sup>25</sup> We note also that in order to help customers, the Court has developed template terms of trust that Judges have had considerable input into. These templates are found on the Māori Land Court website.

appropriateness of taking such a hands-on approach, will naturally depend on the context that presents itself.

[59] Mr Koning takes issue with the status and nature of the two-hui convened by the Presiding Judge on 23 February 2026 and 17 March 2026. In respect of the 23 February hui, the concern is that the Presiding Judge effectively workshopped and approved the new terms of trust. The 17 March hui was convened by direction of the Court and reg 14 of the Regulations for the beneficiaries to vote to adopt the new trust orders. Mr Koning says there were no staff present at either hui and no sound recordings or transcripts were created. He acknowledges the 17 March hui did not proceed in substance, but argues these hui were not hearings or steps in proceedings before the Lower Court.

[60] The Court has jurisdiction to order a meeting of beneficiaries per reg 14 of the Regulations. Clearly that power envisages the meeting being managed by the trustees, but that is subject to Court order.<sup>26</sup> The Presiding Judge here decided that she would manage the hui. That fact was notified, and it was very clear what the purpose of the hui was for. We nonetheless agree these hui could not be considered hearings and it follows that no legal or factual determinations could be made at these hui.

[61] These hui were in effect part of the engagement process directed by the Presiding Judge to ensure all beneficiaries had a chance to have input and to maintain a level of control over process issues that had plagued the Tōrere Trusts for some time previously. In that sense we understand why the Presiding Judge managed things this way.

[62] We do not find any error in the fact these hui were called for and managed by the Presiding Judge. Whilst other Judges might not take such an approach, it is not an error in and of itself, and in fact could be considered consistent with s 17(2)(c) and (f) of the Act.

[63] The error of law in our view is that the Presiding Judge moved directly from the feedback from the hui on the terms of trust to a formal, yet conditional, determination setting those terms. This was done without notifying and proposing to hold a formal hearing of an application to set the new terms of trust. The Presiding Judge rather convened another hui.

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<sup>26</sup> Māori Reservation Regulations 1994, reg 14(2).

There was also no application. As noted above using s 37(3) of the Act to introduce a s 338(8) application/order is problematic given the need to comply with natural justice.

[64] The failure to hold a formal hearing and failure to give notice before using powers per s 37(3) are both errors of law.

*What relief should be provided?*

[65] Aspects of the determinations appeal are successful.

[66] The provisional determinations relating to the setting of the terms of trust and the dismissing of the six extant applications are revoked per s 56(1)(b) of the Act.

[67] The incumbent trustees are to remain in place until further order of the Lower Court and until the new terms of trust have been ordered by the Lower Court, if that happens.

[68] In deciding what should happen next, we are mindful, on the one hand of the strong support amongst beneficiaries to reset the Tōrere Trusts including the proposed terms of trust prepared by the Presiding Judge. On the other hand, the view of the appellants that they only seek terms of trust for the Tōrere Pā Reserve Trust (Marae trust). That position can be advanced at the final hui and hearing we will direct, but it will be up to the Presiding Judge in exercising her discretion whether that will be accepted.

[69] On that basis, we direct a final hui of the beneficiaries to be facilitated by an independent lawyer, to ascertain the support or otherwise for the draft terms of trust prepared by the Presiding Judge in the Lower Court and to address any legal issues arising from the draft terms of trust. That independent lawyer will report back to the Lower Court on the process and outcome of that hui including how any legal issues were addressed. The independent lawyer is also directed to prepare and lodge, in consultation with the incumbent trustees, an application to set the terms of trust.

[70] To avoid further delays, this Court will appoint the independent lawyer per s 70(3)(b) of the Act and their reasonable fees will be covered by an order made under s 98 of the Act. We direct the Registrar to take responsibility for notifying the hui and direct the incumbent

trustees to take all necessary steps to assist the Registrar and the independent lawyer to hold the hui prior to Christmas 2026.

[71] Following the hui, we direct a formal hearing in the Lower Court on notice for all beneficiaries to be able to make submissions on the draft terms of trust before final orders are considered. We direct the Lower Court to set this down as a special fixture in February/March 2027.

[72] On the question of the status of the incumbent trustees, acknowledging that terms of trust have not been adopted, the incumbent trustees are to remain in office until further order of the Lower Court, i.e. if and when orders setting the terms of trust are made and a new election process is held.<sup>27</sup> Based on the current draft trust order, the incumbent trustees shall voluntarily stand down prior to the first AGM and be eligible for re-election.<sup>28</sup> All trustees are reminded of their duties to act reasonably and in good faith, as well as their ability to seek directions of the Lower Court, if and when issues arise in this intervening period.

[73] To avoid doubt the six extant applications are to remain live and are to be addressed once the terms of trust have been ordered (whether that is at the same or subsequent hearing).

### **Whakataunga** *Decision*

[74] For the reasons above:

- (a) Per s 56(1)(g) of the Act the recusal appeal is dismissed.
- (b) Per s 56(1)(b) of the Act the provisional determinations relating to the setting of the terms of trust and the dismissing of the six extant applications are revoked. All other aspects of the determinations appeal are dismissed per s 56(1)(g) of the Act.

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<sup>27</sup> As directed by the Māori Appellate Court in *Mio – Tōrere Pā Reserve* (2026) 363 Waiariki MB 47 (363 WAR 47) at [68].

<sup>28</sup> All four draft trust orders have different internal numbering because of the description of the history of each Māori reservation. As per clause 37 of the draft Tōrere Pa Reserve Trust Order and clause 36 of the other trust orders.

(c) We issue directions as set out above.

(d) There will be no order of costs.

**I whakapuakina i te 3:00pm, i Waikato, i te tekau ma toru o ngā rā o Whiringa-ā-nuku  
i te tau 2026.**

*Pronounced at 3:00pm in Hamilton, on this 13<sup>th</sup> day of October 2026.*

M P Armstrong  
**JUDGE (Presiding)**

R P Mullins  
**JUDGE**

A H C Warren  
**JUDGE**