

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

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

AP-20250000005332

WĀHANGA
Under

Section 58, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Kiwinui Trust

I WAENGA I A
Between

John Keepa
Te Kaitono pira
Appellant

ME
And

Enid Leighton, Wilhelm Johann Studer, Regan
Studer, Brooke Marama Studer and Daniel Ratahi
as Trustees of the Kiwinui Trust
Ngā Kaiurupare pira
Respondents

Nohoanga:
Hearing

11 August 2025
(Heard at Rotorua)

Kooti:
Court

Judge W W Isaac (Presiding)
Judge A M Thomas
Judge N R Milner

Kanohi kitea:
Appearances

Natalie Coates for the Appellant
Kylie Katipo for the Respondents

Whakataunga:
Judgment date

29 August 2025

TE WHAKATAUNGA Ā TE KOOTI
Reserved Judgment of the Court

He kupu whakataki

[1] I te 12 o Noema 2023, i whakatūria ai e te Taratī Ahu Whenua o Kiwinui tētahi hui ā-whānui. I taua hui rā, i whakaputaina ai ētahi whakataunga, tae atu ki te whakarereke i ngā tikanga o te Taratī me te kopou i ngā tarahitī tūturu, tarahitī tohutohu anō hoki.

[2] I te 19 o Noema 2024, i whakamana ai te Kooti i ngā ōta e ai ki ngā putanga o te hui ā-whānui e whakarereke nei i ngā tikanga o te Taratī e āhei ai te kopou i ngā tarahitī tohutohu, e kopoutia ana a Regan Studer rātou ko Daniel Ratahi, ko Brooke Studer hei tarahitī tūturu, e kopoutia ana hoki a Rick Tauroa hei tarahitī tohutohu.¹

[3] E pīra ana a Tristram John Te Kooti Keepa i ngā ōta kua tukuna. Hei ko tāna, kāhore i tukuna ki ngā kaiwhaipānga te wā e tika ana mō te tuku pānui me te whai wāhitanga ki te whai whakaaro ki ngā rerēketanga e marohitia nei. Me tana kī hoki, kāhore e tika ana ngā taunakitanga i tae ki te Kooti kia āhei ai te whakatau i te taumata o te tautoko o ngā kaiwhaipānga.

[4] E whakahē ana te Taratī i te tono pīra me te kī ake he tika tā te Kooti whakatau. Ahakoa tā rātou whakaae i reira ētahi hapa mō te tukunga atu o te pānui, i

Introduction

[1] The Kiwinui Ahu Whenua Trust held a general meeting on 12 November 2023. At that meeting, a number of decisions were made, including to vary the terms of the Trust and appoint responsible and advisory trustees.

[2] On 19 November 2024, the Court made orders as per the general meeting outcomes varying the terms of the Trust to allow the appointment of advisory trustees, appointing Regan Studer, Daniel Ratahi and Brooke Studer as responsible trustees, and appointing Rick Tauroa as an advisory trustee.¹

[3] Tristram John Te Kooti Keepa appeals the orders made. He says the beneficiaries were not provided with sufficient notice or opportunity to consider the proposed variation of trust. He also says there was not sufficient evidence for the Court to determine that the proposed trustees were broadly acceptable to the beneficiaries.

[4] The Trust opposes the appeal and says the Court made the right orders. While they agree that there were irregularities in the notice that was advertised, ultimately,

¹ 327 Waiariki MB 52–59a (327 WAR 52–59).

te mutunga iho, i whai wāhi atu ngā kaiwhaipānga ki te āta whakaaro ki ngā rerekētanga o te ōta taratī e marohitia nei, ka mutu, i māraakerake te kite atu i te tautoko mō ngā kopoutanga ā-tarahitī tūturu, ā-tarahitī tohutohu anō hoki.

[5] I tō mātou whakaaro ake ki te pātai, mena rānei i hē te Kooti i tana tuku i ngā ōta, me whakautu mātou i ēnei take e toru:

- (a) āe rānei, e tika ana te wā mō te tuku pānui ki ngā kaiwhaipānga mō ngā rerekētanga ki te ōta taratī me te kopoutanga o ngā tarahitī e marohitia nei;
- (b) āe rānei, e tika ana te whai wāhitanga atu o ngā kaiwhaipānga ki te āta whakaaro i ngā rerekētanga ki te ōta taratī me te kopoutanga o ngā tarahitī e marohitia nei; wai hoki
- (c) āe rānei, e pai ana te taumata o te tautoko o ngā kaiwhaipānga ki ngā tarahitī e marohitia nei.

[6] I mua i te tahuri ki ēnei take, me mātua titiro mātou ki ngā whakaarotanga tuatahi i puta ake i tēnei tono pīra: tuatahi,

they say the beneficiaries were provided the opportunity to consider the proposed variations to the trust order, and that support was clearly provided for both the responsible and advisory trustee appointments.

[5] In considering whether the Court made an error in granting the orders, we must determine three issues:

- (a) whether the beneficiaries had sufficient notice of the proposed variation to the trust order and appointment of trustees;
- (b) whether the beneficiaries had sufficient opportunity to consider the proposed variation to the trust order and appointment of trustees; and
- (c) whether the proposed trustees were broadly acceptable to the beneficiaries.

[6] Before turning to these issues, we firstly address preliminary matters raised in this appeal: first, an application for leave

he tono whakaaetanga kia tuku tōmuri, tuarua, he tono whakaaetanga kia tuku taunaki anō.

Ngā whakaarotanga tuatahi

Whakaaetanga kia tuku tōmuri

[7] E mea ana a wehenga 58(3) o Te Ture Whenua Māori Act 1993 (“te Ture”) rātou ko rr 8.8, ko 8.14 o te Māori Land Court Rules 2011 (“ngā Tikanga Kooti”) me tuku tētahi pānui pīra i mua i te 2 marama mai i te rā o te miniti me te ōta e pīratia nei, ki te kore, me whai whakaaetanga nā te Kooti kia tuku tōmuri.

[8] I tēnei kēhi, e pīratia ana tētahi ōta i tukuna i te 19 Noema 2024, nā, i tukua te pānui pīra i te 28 Apereira 2025. He toru marama neke atu te rahinga o te tuku tōmuri. E inoi ana te kaitono pīra kia whakaae mātou ki tana tono pīra ahakoa te tōmuri o te tuku i te pānui pīra.

[9] E āhei ana te Kooti Pīra Māori te whakamahi i tana ake mana ki te whakaae i te tuku tōmuri o tētahi tono pīra. Engari, me tuku te kaitono pīra i ngā whakahaerenga ā-ture e pēnā ana ki mua i te Kooti mutu kau ana i tana mōhio ki ngā āhuatanga o te ōta e pīratia nei.

to appeal out of time, and secondly, an application for leave to adduce further evidence.

Preliminary matters

Leave out of time

[7] Section 58(3) of Te Ture Whenua Māori Act 1993 (“the Act”) and rr 8.8 and 8.14 of the Māori Land Court Rules 2011 (“the Rules”) require a notice of appeal to be filed within two months of the date of the minute of the order appealed from unless the Court grants leave for late filing.

[8] In this case, the order appealed is dated 19 November 2024 and the notice of appeal dated 28 April 2025. That is just over three months late. We are being asked by the appellant to allow him the right to appeal notwithstanding the late filing of the appeal notice.

[9] The Māori Appellate Court may exercise its discretion and grant leave to appeal out of time. However, the appellant must bring such proceedings before the Court as soon as possible after becoming aware of the terms of the order for which an appeal is sought.²

² *Greenaway – Paenoa Te Akau* [2017] Māori Appellate Court MB 44 (2017 APPEAL 44) at [7], citing *Ross – Part Rangatira E Block* (1998) 1 Waiariki Appellate MB 111 (1 AP 111) at 114.

[10] I whakakotahitia e te Kooti Pira Māori i te kēhi *Matchitt v Matchitt* ngā mātāpono whai take mō te whakatau i tētahi tono kia whakaaengia te tuku tōmuri. Ko te aronga nui, ko te tahuri ki ngā āhuatanga o te matatika. Me whai wāhi atu ēnei take e whai ake nei ki tētahi tātaritanga:

- (a) te rahinga o te tōmuritanga kia tukua te tono pira me ngā take e pērā ai;
- (b) ngā whanonga o ngā hunga;
- (c) te whānui o te whakahāwea i puta i te tōmuritanga;
- (d) te pitomata o tēnei tono pira kia angitū; ka mutu
- (e) āe rānei ka puta tētahi take tūmatawhānui i tēnei tono pira.

[11] I tana kimi i te whakaaetanga kia tuku tōmuri te tono pira, i mea atu a Mr Keepa, nā te wā o te Kirihimete me te ruamarama i puta i taua taima i tōmuri ai te tuku i te tono pira, nā konā i uaua te kimi rōia. Hei

[10] The Māori Appellate Court in *Matchitt v Matchitt* consolidated the relevant principles for determining an application for leave to appeal out of time.³ The overarching consideration is where the overall interests of justice lie.⁴ Such inquiry involves considering the following relevant factors:⁵

- (a) the length of the delay in filing the appeal and the reasons for it;
- (b) the parties' conduct;
- (c) the extent of prejudice caused by the delay;
- (d) the prospective merits of the appeal; and
- (e) whether the appeal raises any issues of public importance

[11] In seeking leave to appeal out of the time, Mr Keepa stated that that the delay in filing the appeal arose because the two-month period fell over the Christmas break in which it was difficult for him to instruct

³ *Matchitt v Matchitt – Te Kaha* 65 [2015] Māori Appellate Court MB 433 (2015 APPEAL 433).

⁴ *Matchitt v Matchitt*, above n 3, at [20], citing *Robertson v Gilbert* [2010] NZCA 429 at [24].

⁵ *Greenway*, above n 2, at [8], citing *Matchitt v Matchitt*, above n 3, and *Koroniadis v Bank of New Zealand* [2014] NZCA 197 at [19]. See also *Tana v Gilbert – Pukahakaha East 5B4* [2023] Māori Appellate Court MB 206 (2023 APPEAL 206) at [4]; *Reti v Reti-Steel* [2023] Māori Appellate Court MB 274 (2023 APPEAL 274) at [7]; and *Harihona v Heta – Te Pupuke C1B1* [2025] Māori Appellate Court MB 167 (2025 APPEAL 167) at [20].

ko tāna, ko te wā tuatahi i whai wā ia ki te pērā, ko te mutunga o Pēpuere 2025, waihoki, kua tokangia te hono rōia i te mutunga o Maehe 2025.

[12] Kāhore te Taratī i whai tūranga i te take mō te tono kia whakaaengia te tuku tōmuri, nā, ka whai noa i tā te Kooti e kī ai. Heoi anō, i whakamahara noa te Taratī kua oti kē ā ngā tarahitī hou whakawhiti ōkawa mai, ki te whakaaetia te tono me te whakakore i ngā ōta, tērā pea ka whakataumahatia te haere o te Taratī.

[13] Ki tā mātou, ehara i te mea i tōmuri rawa te tuku i roto i te toru-marama, ka mutu, i whai whakaaro mātou ki te āhuatanga o tā te kaitono pīra ngana ki te kimi rōia i ēnei wā nei, arā ko te wā o ngā hararei Kirihimete. Me tā mātou kī, kāhore ngā whanonga o te kaitono i whakaroa ake i tēnei tōmuritanga, ehara, i te tino whai ia kia tīmata tētahi rōia i tēnei whakahaerenga ā-ture. E marama ana mātou ki tā te Taratī i kī ai tērā pea mā te whakakore i ngā ōta e taumaha ai te haere o te Taratī, engari kāhore mātou e whakaae ana ka noho mātāmua taua whakahāweatanga, ka mātāmuri te tū mai o tēnei tono pīra.

[14] Nō reira, nā runga anō i ngā āhuatanga o te matatika e whakaae ana mātou ki te tono kia tuku tōmuri tēnei tono

counsel. He advised that the earliest he was able to do so was the end of February 2025 and instructions were secured at the end of March 2025.

[12] The Trust takes no position on the leave to file out of time application and will abide the decision of the Court. However, the Trust noted that the handover and induction of the new trustees has been completed and if leave is granted and orders overturned, this could impact on the continuity of the Trust.

[13] We do not consider the three-month delay to be at the extreme end of late filing and take into account the attempts the appellant made to instruct counsel over this period, which included the Christmas holidays. We note that the conduct of the appellant did not add to this delay, and we consider that he was actively attempting to instruct counsel to bring these proceedings. While we take into account the Trust's submission that to overturn the orders could impact the continuity of the Trust, we do not consider this prejudice outweighs the need to hear this appeal.

[14] Accordingly, we find that the interests of justice weigh in favour of granting the application to appeal out of

pīra. Ka tahuri mātou ināianei ki te tono kia tuku taunaki anō.

Whakaaetanga kia tuku taunaki anō

[15] Mā wehenga 55(2) o te Ture me r8.18 o ngā Tikanga Kooti e tuku ki te Kooti Pīra Māori te āheinga kia whakaaetia te tuku i ngā taunaki anō, ki te tukua te tono i mua i te kotahi marama kei mua tonu i te tū mai i te nohoanga mō te tono pīra, ka mutu, i āta whakatakoto te tono i te āhua me te hanganga o ngā taunakitanga ka tukua.

[16] Tērā pea ka whakamahi te Kooti Pīra Māori i tōna ake mana kia whakaaetia te tuku taunaki anō mena, ki tana titiro, me pērā kia tae atu ai ki tētahi whakataunga e tika ana mō tētahi kēhi.

[17] I te 23 Hūrae 2025, i tukuna rā e Mr Keepa tētahi kōrero taurangi mō tēnei tono pīra. I mea mai a Mr Keepa, kāhore i āwhinatia ia e tētahi rōia i te kōtitanga tuatahi, nā, ko ngā mōhiohio i tukuna e ia ki tana taunaki e hāngai ana ki ngā take me titiro e tēnei Kooti, arā ko ngā mōhiohio mō te kaute pōti ki te hui ā-whānui, kāhore i mua i te Kooti Whenua Māori. I mea atu ia, e hāngi pū ana ki ngā whakamātautau ā-ture me titiro mātou kia tae atu ai ki tētahi whakataunga e tika ana mō tētahi kēhi.

time. We now turn to consider the application to adduce further evidence.

Leave to adduce further evidence

[15] Section 55(2) of the Act and r 8.18 of the Rules provide the Māori Appellate Court with the ability to allow further evidence to be adduced if an application for leave is filed not less than one month before the hearing of the appeal and the application clearly discloses the nature and form of the evidence to be adduced.

[16] The Māori Appellate Court may exercise its discretion and grant leave to adduce further evidence if, in its opinion, it is necessary to enable it to reach a just decision in a case.

[17] Mr Keepa provided an affidavit for this appeal on 23 July 2025. Mr Keepa says he was not legally assisted in the initial hearing and the information he provides in his evidence relates directly to the issues that must be considered by this Court, specifically information about the general meeting vote count that was not before the Māori Land Court. He says this evidence speaks directly to the legal tests we must consider and is necessary to reach a just decision.

[18] Ko taua āhua tonu tō te Taratī, kāhore ōna tūranga mō te tono, heoi anō, ki te whakaaetia te tuku taunaki anō, e kimi ana rātou i te āheinga ki te whakautu, ki te tuku i ā rātou kōrero mō te hui ā-whānui.

[19] E mōhio ana mātou, i te hui ā-whānui a Mr Keepa, ka mutu, i tuku ia i tana kōrero ki a Kaiwhakawā Wara i te kōtitanga tuatahi. Wai hoki, i tuku ia i tētahi imēra ki te Kooti i mua i te tūnga mai o te Kōtitanga, e rārangitia nei ōna āwangawanga mō ngā putanga o te hui ā-whānui me ngā ōta tērā pea ka tukuna e te Kooti.

[20] Ki tā mātou titiro, ahakoa kei te kōrero taurangi a Mr Keepa ētahi anō taipitopito moroiti nei mō te kaute pōti o te hui ā-whānui, ka mutu, i pai ake pea te whakakotahi mai i ngā kōrero, ekore pea ngā taunaki anō ka tukuna e āwhina mai i ō mātou whakaaro kia tau ai ki tētahi whakataunga e tika ana.

[21] Hei tāpiri noa, i tukuna te tono kei waho kē atu i te wā e tika ana, arā, he rua wiki neke atu i mua i te tūnga mai o te kōtitanga, e tukitukihia ana ki a r 8.18(3). Kāhore mātou e kite ana i tētahi tino take o te whakakore i te whai i taua tikanga kōti.

[18] Again, the Trust takes no position on the application, however, should the evidence be allowed, they seek the opportunity to respond with their own account of the general meeting.

[19] We note that Mr Keepa was at the general meeting and provided his own account to Judge Wara at the initial hearing. Furthermore, he provided an email to the Court prior to that hearing setting out his concerns with the general meeting outcomes and potential orders that the Court might make.

[20] While there might be more particular detail in Mr Keepa's affidavit around the general meeting vote count and it is perhaps more succinctly set out, in our assessment, the further evidence sought to be filed is unlikely to materially assist us and is not necessary for us to reach a just decision.

[21] In addition, the application is filed out of time being just over two weeks before the hearing, which contravenes r 8.18(3). We do not consider that there is any proper basis to excuse compliance with that rule in this case.

[22] Mō ngā take i rārangitia ai ki runga, kāhore mātou e whakaae ana ki te tono kia tuku taunaki anō, ā kāti ka tahuri mātou ki ngā take matua e pīratia nei.

[22] For the reasons above, we decline the leave sought to adduce further evidence and turn to consider the substantive issues on appeal.⁶

Te ture

The law

[23] E mea ana a wehenga 244:

[23] Section 244 of the Act provides:

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.

[24] Ka kopou te Kooti i ngā tarahitī e ai ki w 222 o te Ture. E mea ana a wehenga 222(2):

[24] The Court appoints trustees in accordance with s 222 of the Act. Section 222(2) provides:

222 Appointment of trustees

...

- (2) The Court, in deciding whether to appoint any individual or body to be a trustee of a trust constituted under this Part of this Act,—
 - (a) Shall have regard to the ability, experience, and knowledge of the individual or body; and

⁶ We note that at the hearing there was a request from the public gallery to provide further evidence in relation to this appeal. No formal application to adduce further evidence had been filed in advance of the hearing. This request was declined by the Court.

- (b) Shall not appoint an individual or body unless it is satisfied that the appointment of that individual or body would be broadly acceptable to the beneficiaries.

[25] I *Naera v Fenwick – Whakapoungakau 25 Block*, i kōrerohia te take o te hirahiratanga kia tuku pānui atu ki ngā kaiwhaipānga, kia whai wāhi hoki rātou ki te āta whakaaro ki ngā rerekētanga ki ngā tikanga taratī e marohitia nei:

[25] In *Naera v Fenwick – Whakapoungakau 25 Block*, the importance of providing notice and sufficient opportunity to beneficiaries to consider proposed variations to trust terms, was discussed:⁷

[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.

...

[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.

Kōrerorero

Discussion

E tika ana te wā mō te tuku tonō?

Was there sufficient notice?

[26] I te 27 Oketopa 2023, i whakatairangahia te panui mō te hui ā-whānui ki te niupepa o te *Whakatane Beacon*. E pēnei ana ngā kōrero o te pānui:

[26] On 27 October 2023, notice for the general meeting was advertised in the *Whakatane Beacon* newspaper. The notice for the meeting stipulated that:

- (a) two trustee positions were available for election at the meeting;

⁷ *Naera v Fenwick – Whakapoungakau 24 Block* (2010) 15 Waiariki MB 279 (15 WAR 279).

- (b) nominees needed experience in governance and relevant skills;
- (c) nominees had to be a shareholder in the land;
- (d) nominations must be lodged no later than 27 October 2023 with the trust secretary, Goldsmiths accountants of Whakatane; and
- (e) no nominations will be accepted from the floor on the day.

[27] E whakaae ana te Taratī, he hē i roto i te pānui, ka mutu, kāhore i āta whakatakotohia te rerekētanga, te kopoutanga o ngā tarahitī tohutohu, wai hoki te wāteatanga o te tūranga o te tarahitī tuatoru. Heoi anō, e whakawhirinaki atu ana te Taratī ki te korenga o ngā tāngata i whakahē i ngā whakaaro ki te hui ā-whānui, ki te kōtitanga anō hoki, hei tā rātou, me titiro ki ērā mea anō nei he pānui. I mea rātou, i te mutunga iho, i tukua ngā whakataunga nā runga i te hiahia kia noho mai ai ko ngā tarahitī kounga, whai wheako anō hoki.

[27] The Trust acknowledges the deficiencies in the notice and that there was no clear stipulation of the variation, of the advisory trustee appointment and the additional third trustee's position that would be available. However, the Trust relies on the fact that there was no opposition to the proposals at the general meeting or the hearing, and that this should be taken into consideration as notice. They say that, ultimately, the decisions were made to ensure they had capable and experienced trustees.

[28] E māraakerake ana te kite, kāhore i tukua tētahi pānui i mua i te tūnga mai o te hui ā-whānui e whakamōhio atu ana:

[28] It is clear to us that there was no notification before the general meeting that:

- (a) ka kimihia tētahi rerekētanga ki ngā tikanga o te taratī kia tū mai ai ngā tūranga tarahitī tohutohu

- (a) a variation to the terms of trust would be sought to create advisory trustee positions;

(b) ka kopoutia ngā tarahitī
tohutohu ki te hui; nā

(c) ka whakawāteahia te
tūranga tarahitī tuatoru.

(b) advisory trustees would be
appointed at the meeting; or

(c) there would be a third trustee
position available.

[29] E ai ki a *Naera v Fenwick*, ki te whakaarohia tētahi rerekētanga ake, e tika ana kia whiwhi ai ngā kaiwhaipānga i tētahi pānui mō aua whakaaro i āta rārangitia ai ngā taipitopito mō aua rerekētanga e marohitia nei. Ka kī ake mātou i konei mō tēnei kēhi, ko tēnei rerekētanga e marohitia nei, he rerekētanga ake e tika ana kia whiwhi ai ngā kaiwhaipānga i tētahi pānui i āta rārangitia ai ngā taipitopito. Kāhore i tukua tērā.

[29] As noted in *Naera v Fenwick*, whenever a specific variation is proposed, beneficiaries are entitled to notice of the proposal with a degree of precision to provide certainty as to what exactly is to be altered. We consider the proposed variation in this case to be a specific variation where the beneficiaries were entitled to notice with a degree of precision. They were not provided that.

[30] Ka kī ake mātou, kāhore ngā kaiwhaipānga i whiwhi i tētahi pānui i te wā e tika ana mō ngā rerekētanga ki te ōta taratī me te kopoutanga o ngā tarahitī tohutohu e marohitia nei.

[30] We find that the beneficiaries did not have sufficient notice of the proposed variation to the trust order and appointment of advisory trustees.

E tika ana te whai wāhitanga atu?

Was there sufficient opportunity?

[31] Ko taua āhua tonu, e ai ki a w 244(3) o te Ture, me whiwhi ngā kaiwhaipānga i tētahi wāhi ki te matapaki, ki te āta whakaaro anō hoki ki ēnei take.

[31] Similarly, as per s 244(3) of the Act, the beneficiaries should have been given sufficient opportunity to discuss and consider these proposals.

[32] E ai ki ngā miniti o te hui ā-whānui me ngā taunakitanga kua tukuna mai ki te

[32] According to the general meeting minutes filed and the evidence provided at

kōtitanga, ko te hātepe i whāia rā ko te whakahaere i te pōtitanga mō ngā tūranga tarahitī e rua, katahi ka wehe ngā kaitirotiro ki te kaute i ngā nama me te whakī atu i ngā tāngata i tuatahi atu, i tuarua hoki. Whai muri, i whakamōhio atu te kaitirotiro hei te wā titoki ka rīhaina tētahi o ngā tarahitī o ināianei, nō reira, me piki hoki te tangata tuatoru ki te rāngai kopou hei tarahitī, me te tuawhā ka noho mai hei tarahitī tohutohu.

[33] I te kōtitanga, i whakaae ai te Taratī, kāhore ngā miniti i kapo i tētahi kōrerorero, mua mai muri mai rānei i te pōtitanga, mō ngā take e marohitia nei. E ai ki ngā miniti, kua tukuna noa ngā take ki te hui katahi ka whakamanahia ahakoa te korenga o te tū mai i tētahi matapakinga.

[34] E mea ana te Taratī, i tuku te Kaiwhakawā i tana whakawātanga nā runga i te āhua o ō ngā kaiwhaipānga tautoko ki ngā take i te hui ā-whānui. Me tā rātou i kī ai, he tika tana whai pērā.

[35] Kāhore mātou i te whakaae. Ka tahuri anō ki *Naera v Fenwick* me tana ki “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

the hearing, the process that was followed included the vote on the two responsible trustees’ positions, the scrutineers then tallied the results and advised the hui of the two highest polling candidates. Following which, the scrutineer advised the hui that one of the current trustees would be resigning shortly and therefore the third highest polling candidate would be appointed alongside the fourth polling candidate as an advisory trustee.

[33] The Trust agreed at the hearing that there was no discussion recorded in the minutes, either prior to the vote or after the vote, with respect to the proposals. As the minute reads, the proposals were simply put to the hui and accepted with no discussion.

[34] The Trust says the Judge made her assessment based on the fact that the beneficial owners agreed to the proposals at the general meeting. They say she was right to do so.

[35] We disagree. Again, we refer to *Naera v Fenwick* that states “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

opposition to the variation”. Hei toai anō i tā te Taratī whakaae, kāhore tonu ngā miniti i rikoata i tētahi matapakihanga, kāhore hoki i tukuna tētahi mōtini kia tautokohia te take.

[36] Hei tāpiri ake, kāhore i whai wāhi atu ngā kaiwhaipānga ki te tuku i tō rātou ingoa hei whakaaro mā ngā tūranga. I whakakapi noa ngā tūranga i ngā tāngata i whiwhi i ngā pōti iti ake kua tukuna i mua tonu i ngā tautapanga mō ngā tūranga tarahitī tūturu e rua i whakatairangahia ai ki te pānui.

[37] Ka kī ake mātou, kāhore ngā kaiwhaipānga i whiwhi i te whai wāhitanga e tika ana kia whakaarohia ngā rerekētanga ki te ōta taratī me te kopoutanga o ngā tarahitī e marohitia nei.

E pai ana te taumata o te tautoko?

[38] E mea ana a wehenga 222(2) o te Ture, i mua i te kopoutanga o tētahi tarahitī, me tahuri te Kooti ki ngā āheinga, ngā wheako me ngā mātauranga o te tangata, o te rōpū rānei, ka mutu, tē taea te kopou i tētahi tangata, rōpū rānei ki te kore ia e kite i te tautoko o ngā kaiwhaipānga ki taua kopoutanga.

the variation”.⁸ As agreed by the Trust, the minutes do not record any discussion at all, and neither was a resolution put to support the proposal.

[36] In addition, there was no opportunity for beneficiaries to put their name forward to be considered for the positions. The positions were automatically filled with the lowest polling candidates that had put in advance nominations for the two responsible trustee positions that were advertised.

[37] We find that the beneficiaries did not have sufficient opportunity to consider the proposed variation to the trust order and appointment of trustees.

Were the trustees broadly acceptable?

[38] Section 222(2) of the Act states that before appointing any trustee, the Court must consider the ability, experience and knowledge of the individual or body, and cannot appoint a person or body unless it is satisfied that the appointment would be broadly acceptable to the beneficiaries.

⁸ *Naera v Fenwick*, above n 7, at [68].

[39] I *Clarke v Karaitiana*, i kōrerotia e te Kōti Pira te whānuitanga o tō te Kooti ake mana e ai ki w 222(2), me te kī atu:

[39] In *Clarke v Karaitiana*, the Court of Appeal commented on the breadth of the Court's discretion under s 222(2), stating:⁹

... The importance of the views of the beneficial owners of the trust is underlined by s 222(2)(b) which forbids the Court from appointing a trustee unless the Court is satisfied that the appointment of that person will be broadly acceptable to the beneficiaries.

...

... Nevertheless, the Court would ordinarily give substantial weight to the views of the owners as demonstrated by the outcome of the election. If the Court is minded not to appoint the leading candidates as elected by the owners, it must still be satisfied the requirements of s 222(b) are met. For that purpose, the Court would need to have appropriate evidence before it. The outcome of an election at a meeting of owners is a useful means of obtaining such evidence.

[40] Inā hoki, i kī atu mātou kāhore e tika ana te wā mō te tuku pānui (ka mutu, i tēnei kēhi kāhore he pānui), kāhore hoki e tika ana te whai wāhitanga atu ki te matapaki me te āta whakaaro ki te tūranga o te tarahitī tuatoru me ngā tarahitī tohutohu, e mārama ana te kite tē taea e te Kooti te tuku ōta nā runga i te mōhio e pai ana te taumata o te tautoko o ngā kaiwhaipānga ki te kopoutanga. Kāhore i reira te taunakitanga. Nā te korenga o ngā ngā hiahia o ngā kaiwhaipānga i tae ki mua i te Kooti, kāhore i a te Kooti te āheinga ki te tahuri tika atu ki ō rātou tautoko.

[40] Because we have found that there was not sufficient notice (or in this case, any notice) or sufficient opportunity to discuss and consider the third responsible trustee position and the advisory trustee positions, it goes to follow that the Court could not have made orders being satisfied that the appointment was broadly acceptable to the beneficiaries. The evidence required simply was not there. The views of the beneficial owners could not have been given appropriate weight as they were not before the Court.

⁹ *Clarke v Karaitiana* [2011] NZCA 154 at [51]–[52].

Whakataunga

[41] E whakaaetia ana ngā wāhanga o te tono pīra e whai take ana ki te whakarerekētanga o te taratī me ngā kōpoutanga tarahitī.

[42] Ka whakamanatia ngā ōta e ai ki Ture Whenua Māori Act 1993:

(a) wehenga 56(1)(a), e whakaūngia ana te ōta i tukuna rā ki 327 Waiariki MB 52–59 i 19 Noema 2024 e kopoutia nei a Marama Studer rāua ko Regan Studer hei tarahitī tūturu; ā

(b) wehenga 56(1)(b), e whakakorehia ana te ōta i tukuna rā ki 327 Waiariki MB 52–59 i 19 Noema 2024 e whakarerekētia nei ngā tikanga o te taratī, e kopoutia nei hoki a Daniel Ratahi hei tarahitī tūturu, a Ricky Tauroa hei tarahitī tohutohu.

[43] Ka ki ake mātou i konei, ki te hiahia te Taratī kia whakarerekēhia ana tikanga e āhei ai te kopou i ngā tarahitī tohutohu, e

Decision

[41] The appeal is upheld in respect to the variation of trust and trustee appointments.

[42] Orders are made pursuant to Te Ture Whenua Māori Act 1993:

(a) section 56(1)(a), confirming the orders made at 327 Waiariki MB 52–59 on 19 November 2024 appointing Marama Studer and Regan Studer as responsible trustees; and

(b) section 56(1)(b), revoking the orders made at 327 Waiariki MB 52–59 on 19 November 2024 varying the terms of trust, appointing Daniel Ratahi as responsible trustee and Ricky Tauroa as advisory trustee.

[43] We note that should the Trust wish to vary its terms to enable the appointment

taea ana mā te tika o te tuku i te pānui mō of advisory trustees, this can be done with
tētahi hui ā-whānui. proper notice at a general meeting.

I whakapuakihia i te 5:00pm i Te Whanganui-a-Tara, i te rā 29 o te marama o Akuhata i te tau 2025.

Pronounced at 5.00pm in Wellington on this 29th day of August 2025.

W W Isaac (Presiding)
KAIWHAKAWĀ
JUDGE

A M Thomas
KAIWHAKAWĀ
JUDGE

N R Milner
KAIWHAKAWĀ