

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2017-404-259
[2018] NZHC 3398**

BETWEEN

STEWART NGAWAKA, MARILYN
STEPHENS, MARK ANTHONY
McMATH, ALLAN JOHN MOORE, HORI
TE MOANAROA PARATA and Elders and
registered members of NGĀTI REHUA-
NGATIWAI KI AOTEA
Plaintiffs

AND

NGĀTI REHUA-NGATIWAI KI AOTEA
TRUST BOARD
First Defendant

Continued ...

Hearing: 21 November 2018

Appearances: R Harrison for the Plaintiffs
No appearance by or for the First Defendant
S E Wroe for the Second to Fifth Defendants

Judgment: 18 December 2018

JUDGMENT OF PALMER J

*This judgment was delivered by me on 18 December 2018 at 3.30 p.m.
pursuant to r 11.5 of the High Court Rules 2016.*

Registrar/Deputy Registrar

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Counsel/Solicitors:
Mr R Harrison, Harrison Stone, Auckland
Ms S E Wroe, Barrister, Auckland
Roimata Smail, Smail Legal Ltd

Continued ...

YVONNE JEWEL WIKI
Second Defendant

CATHERINE HOPE MUNRO
Third Defendant

NICOLA MARIE ATARIA MACDONALD
Fourth Defendant

RODNEY NGAWAKA
Fifth Defendant

Summary

[1] The plaintiffs and defendants are two groups of beneficiaries of the Ngāti Rehua – Ngātiwai ki Aotea Trust Board (the Trust Board). They disagree about various aspects of the administration of the Trust, a proposed Treaty settlement and the basis on which beneficiaries should be registered and trustees elected. There has been no Annual General Meeting since January 2016 and there are currently no trustees.

[2] In this interlocutory application, the defendants apply for appointment of interim trustees, including an independent interim chair, and for directions. Both groups agree interim trustees should be appointed but disagree about who they should be. Both groups agree an independent interim trustee should act as chair and have a casting vote. I appoint interim trustees and an independent interim chair and make directions about implementing a process to resolve disputes over registrations and the database to enable trustee elections to be held.

What has happened?

The Trust and Trust Board

[3] Ngāti Rehua - Ngātiwai ki Aotea has mana whenua and mana moana over Aotea, Great Barrier Island, and environs. There are two marae, Kawa and Motairehe, on Aotea and two marae, Whananaki and Matapouri, on the mainland. The Trust Board is constituted under a trust deed dated September 1985 to administer, develop, improve and manage property for the benefit of Ngāti Rehua – Ngātiwai ki Aotea people and to promote employment, Māori place names, conservation, resettlement and the spiritual and moral well-being of all people. The Trust does not appear to have significant land assets. I understand Ngāti Rehua and a related Ngātiwai hapū, Ngāti Manuhiri, descend from two brothers.

[4] Clause 19(a) and (d) of the Trust Deed requires an AGM to be held no later than 30 November each year. Clause 19(d) provides a resolution passed by a majority at an AGM is binding upon trustees. Clauses 19(e) and (f) provide resolutions signed by a majority of trustees, after all have been notified, are valid but a dissenting trustee

may formally request a meeting of beneficial owners and address that meeting if comprised of at least 60 per cent of beneficiaries.

[5] Clause 30 of the Trust Deed requires there be at least five trustees, all appointed for a two-year term, with two trustees retiring every two years but being eligible for re-election. The plaintiffs say that, in 2003, an AGM amended the Trust Deed to require a minimum of two trustees must be permanent residents of Aotea Island though the defendants say the amendment may not have been completed.

[6] The plaintiffs, registered members of the Trust including previous trustees, are unhappy with the current administration of the Trust and negotiation with the Crown of a proposed Deed of Settlement of Ngāti Rehua's claim of breach of the Treaty of Waitangi. The defendants include the most recent trustees and promote the current proposed settlement.

Conflict

[7] Mr Michael Beazley, a founding trustee and first chair, has given evidence supporting the plaintiffs. He submitted claim Wai 678 to the Waitangi Tribunal in 1996. In 2009, he was appointed a negotiator along with Ms Valmaine Toki, another former trustee and Mr Spencer Webster.¹ In December 2009 the Crown accepted the Trust Board's Deed of Mandate.² An interim Agreement in Principle was signed in June 2011.³ In October 2012 Ms Nicola Macdonald became acting chair and then chair. In 2013, she became a negotiator and Mr Beazley and Ms Toki ceased being negotiators.⁴

[8] The last AGM was held on 16 January 2016. Later in 2016, rumours circulated of a settlement being negotiated with the Crown. In August and October 2016, the plaintiffs' group held hui over concerns about communication with the Trust and, on 28 October 2016, a hui they say was attended by more than 100 kaumātua, kuia and beneficiaries. Mr Beazley's evidence is the hui was attended by a wide range of

¹ Affidavit of Michael Beazley of 22 February 2017 [Beazley February 2017] at [9].

² Beazley Exhibit MB9, Memorandum of Counsel for the Crown in response to application for urgency to the Waitangi Tribunal of 3 February 2017 at [10].

³ Beazley February 2017 at [11].

⁴ At [15]-[6].

beneficiaries with concerns about the way in which the Trust was operating.⁵ They made various requests for information, a special general meeting and annual general meeting. Those requests were declined by trustees.⁶

[9] The defendants organised a hui on 3 December 2016 which endorsed a proposed settlement. The Trust Board and the Crown initialled a proposed Deed of Settlement with the Crown on 19 December 2016. Mr Beazley applied to the Waitangi Tribunal to have Wai 678 heard urgently. A ratification process organised by the defendants favoured the settlement by 57 per cent. However, the evidence before me is that the proposed Treaty settlement is now “on hold”.⁷ Ms Wroe, for the defendants, advises the Crown has indicated it will hear from the plaintiff group about their mandate concerns. Mr Harrison, for the plaintiffs, advises the Crown is copied into everything in this proceeding and is abiding the court’s decision on this application.

Legal proceeding and attempts to hold AGMs

[10] In February 2017, the plaintiffs filed this proceeding seeking to remove the defendants from the Trust Board and direct fresh elections. The parties agreed to appoint an independent chair, Mr Kieran Raftery QC, of an AGM scheduled for May 2017. The AGM was abandoned.

[11] In May 2017, the parties agreed to a process to review the voting database and registrations. This was the subject of a consent judgment by Muir J who made the following orders by consent:⁸

1. Elections NZ (ENZ) will oversee the registration, proxies and election of trustee process. This will involve the Trust providing ENZ with the database and/or access to it in order to undertake this responsibility independently of the parties to this proceeding.
2. The contact details of the person(s) at ENZ are to be provided to beneficiaries through counsel and on the Trust website as soon as reasonably practicable.
3. Beneficiaries will be able to contact ENZ directly to:

⁵ At [21].

⁶ At [22]–[23].

⁷ Second affidavit of Terrence Hohneck of 20 September 2018 [Hohneck 2] at [23].

⁸ *Ngawaka v Ngati Rehua-Ngatiwai ki Aotea Trust Board* [2017] NZHC 1155 at [5].

- (a) inquire about the status of their registration and of whanau members;
 - (b) inquire about the status and number of proxies submitted by them to the previous AGM and the number and identity of those accepted;
 - (c) register on the data base in advance of the AGM and will be assisted by ENZ to enable this to occur; and
 - (d) Submit proxies for verification and confirmation. The submission of proxies to ENZ shall be at least five days before the AGM and must comply with the material requirements contained in the proxy precedent on the Trust's website. As far as possible the precedent form should be used.
4. All proxies submitted to the previous AGM that followed the correct requirements, i.e. submitted on the official proxy form (or one not materially different) by a registered proxy holder and registered proxy and confirmed by the kaumātua previously undertaking this task shall be accepted.
 5. A Kaumātua committee, consisting of 10 in total (five from each side) shall be established to work with ENZ to ensure the integrity of the data base and registration especially in relation to whakapapa.
 6. ENZ will specify a meeting date and location in Auckland for the Kaumātua Committee to review the data base and registrations/proxies to assess their integrity and make final and binding determinations on the question of whakapapa and thus those entitled to vote. The composition of the Kaumātua committee shall not be dictated to by either party and in the event of any differences within the committee they shall be determined by majority vote. On the day of the next AGM, 24 June 2017 beneficiaries may present in person and register, the issue of proxies having been determined in accordance with paragraph [3](d) above.
 7. The parties shall notify ENZ and each other of their five Kaumātua to make up the committee by 2 June 2017 including contact details. The involvement of Kaumātua Committee and any meetings with ENZ to determine whakapapa shall be independent of the parties.

[12] The kaumātua met on 3 July 2017, as arranged by Mr Raftery. There was disagreement as to various procedural matters and no decisions were made. Elections NZ reported on 5 July 2017 about the registrations, database and proxies and the meeting.⁹ The two groups of kaumātua met and made their decisions separately. Both groups approved 46 of the 847 registrations. The remaining 801 registrations were

⁹ Ngati Rehua AGM: Chief Returning Officer Report on Proxy and Registration Process from Warwick Lampp of Elections NZ of 5 July 2017, Exhibit A to affidavit of Pam Armstrong of 16 October 2018 [Armstrong].

deadlocked, including four candidates and 12 proxy holders (representing 531 proxies).¹⁰ The vast majority of these were approved by the plaintiff kaumātua group but rejected by the defendant kaumātua group. The plaintiff kaumātua group queried the whakapapa of 428 currently registered members.

[13] Elections NZ considered “the voting database is potentially compromised, as is the election process” and recommended “kaumātua from both parties with appropriate administrative support review all records, determine whakapapa and create a database that can withstand scrutiny by any party”. On 6 July 2017, the parties agreed to postpone the AGM and discuss with the independent chair how the process set out in the consent judgment would be implemented.¹¹

[14] On 27 November 2017, by consent, I confirmed the appointment of Ms Macdonald, Ms Catherine Munro and Mr Rodney Ngawaka, the third and fifth defendants, as interim kaitiaki, or trustees, to deal with any administrative or day-to-day issues but not any major decisions affecting the future of the Trust, until determination of an application for interim orders.¹² On 21 February 2018, those applications were resolved by consent of the parties, as recorded in consent orders by Duffy J.¹³ She appointed the then-Māori Trustee, Mr Jamie Tuuta, as independent interim trustee until 18 July 2018 and directed him to take steps to give effect to Muir J’s earlier consent judgment.

[15] On 26 May 2018, the Māori Trustee organised a kaumātua validation hui, with Elections New Zealand (ENZ) in attendance. There is contested evidence about what happened at this and the next hui. There appears to have been some level of agreement on some criteria for dealing with new registrations.¹⁴ However, the two groups of kaumātua met separately and came to different decisions, using different processes, about registration of electors:¹⁵

¹⁰ At [6].

¹¹ Minute of Edwards of 6 July 2017.

¹² Minute of Palmer J of 27 November 2017 at [3].

¹³ *Ngawaka v Ngati Rehua-Ngatiwai Ki Aotea Trust Board* [2018] NZHC 213.

¹⁴ Hohneck 2 at [7].

¹⁵ Exhibit NM1 to the fourth affidavit of Nicola Macdonald of 20 September 2018, letter from the Maori Trustee of 9 August 2018, at 1.

- (a) The plaintiff kaumātua group approved a large proportion of the new applications but queried 505 of the 1,621 names on the Trust’s voting database as their names and whakapapa were not known. These included a large number of names they were concerned were moved onto the Ngāti Rehua- Ngātiwai ki Aotea database from the database of Ngāti Manuhiri, known as the WiTaiawa line. A number of them were attributed to a few addresses linked to Mr Mook Hohneck.¹⁶ They did not review registrations for compliance with form.¹⁷ Mr Beazley questions the Ngāti Rehua – Ngātiwai whakapapa, but not the registered beneficiary status, of Mr Mook Hohneck, who is on the defendants’ kaumātua committee and chair of the Ngāti Manuhiri Settlement Trust.¹⁸
- (b) The defendant kaumātua group endorsed the 1,621 names on the database. They narrowed down over 600 new applications to 422 by removing applications by those who were deceased, underage, duplications and proxy forms.¹⁹ They approved 62 of the 422 applications for admission to the master database, declined 40 and put aside 320 who had not filed completed forms or accompanying identification. Among the 40 declined were Ms Toki, a former trustee, negotiator and current plaintiff who has a home on Aotea, as well as others with apparent whakapapa links but who had not supplied identification.²⁰

[16] On 6 June 2018, a further kaumātua validation hui was held, without ENZ. On 9 August 2018, the then Māori Trustee, Mr Jamie Tuuta, reported there was some agreement on individual applications and agreement that whāngai and step-children not be included at this point in time but disagreement about the status of registration forms that were incomplete or without identification and disagreement about the 505

¹⁶ Affidavit of Kelly Klink of 12 October 2018 [Klink] at [7-9]; affidavit of Michael Beazley of 16 October 2018 [Beazley October 2018] at [26]; affidavit of Pam Armstrong of 16 October 2018 at [14]; affidavit of Stewart Ngawaka of 11 October 2018 at [9].

¹⁷ Affidavit of Kelly Klink at [5]; Beazley October 2018 at [33].

¹⁸ Beazley, October 2018 at [4]-[7].

¹⁹ Hohneck 2 at [7].

²⁰ Hohneck 2 at [11]; Klink at [19]; Beazley October 2018 at [34].

names queried.²¹ The evidence is that there was agreement the 62 additional names be entered on the master database.²² But the plaintiffs' kaumātua group disagreed with the rejections by the defendants' group on the basis of technical issues with the application forms rather than on the basis of whakapapa.²³

[17] In his report, Mr Tuuta considered both sides “appear entrenched in their respective views”. He did not consider an AGM “can realistically proceed while kaumatua remain so divided regarding the integrity of the Trust’s beneficiary database and how to move forward”. He considered it would be most useful for the Court to provide further guidance regarding the database and form of application, such as ensuring the Trust’s registration form is used and fully complete. Once those issues are worked through he considered “there should be no reason why the remaining process for trustee elections envisaged in the consent order of Muir J cannot be fully implemented”. Mr Tuuta also noted there are a number of matters before the Trust requiring urgent attention including: Marine and Coastal Area application; harbour negotiations; engagement with the Auckland Council; and engagement with the Department of Conservation. The Office of the Māori Trustee has since advised that the newly appointed Māori Trustee does not have capacity to act as independent trustee.

[18] On 18 August 2018, a hui called by the plaintiffs sought appointment of interim trustees to oversee continuation of the whakapapa validation process by kaumātua in accordance with the Consent Judgment. Ms Toki and Mr Aperahama Edwards were nominated.

[19] In November 2018, the plaintiffs filed a second amended statement of claim, alleging misconduct, misuse of trust funds, breach of trustee duties by defendants, particularly by Ms MacDonald, and unauthorised action by the administrator contracted by the Trust Board, Ms Ngairé Pera. They seek declarations and directions concerning appointment of trustees, review of the voting database, reviews of transactions and contracts and repayment of trust funds.

²¹ Exhibit NM1 to the fourth affidavit of Nicola Macdonald of 20 September 2018, letter from the Maori Trustee of 9 August 2018.

²² Hohnneck 2 at [11]; Beazley October 2018 at [32].

²³ Beazley October 2018 at [33]; Armstrong at [26].

Application

[20] The second to fifth defendants now apply for orders appointing interim trustees and an independent interim chair and directions. The plaintiffs do not oppose appointment of the interim trustees proposed by the defendants but propose their own two trustees be appointed as well. They agree an independent interim chair should be appointed. They oppose the directions sought by the defendants and seek alternative directions.

1 Who should be appointed interim trustees?

Law of appointment of trustees

[21] There is no dispute between the parties about the relevant law. Section 51(1) of Trustee Act 1956 empowers the court to appoint a new trustee “whenever it is expedient” to do so and it is “inexpedient, difficult or impracticable so to do without the assistance of the court”. In fulfilling its duty to see a trust properly executed, a court must give considerable weight to the settlors’ intentions and to the welfare of the beneficiaries.²⁴

Submissions

[22] The defendants apply for appointment of Mr William Davies and Ms Hillarey MacGregor as interim trustees until the next AGM for the ongoing administration of the Trust. Mr Davies and Ms MacGregor have sworn they do not intend to stand for election at the AGM.²⁵ Ms Wroe, for the defendants, submits Mr Davies and Ms MacGregor have the appropriate mana, knowledge of tikanga and understanding of the Trust and the hapū to be appointed as interim trustees. She submits a reduction to three trustees, and waiving any requirement for two trustees to be permanent residents of Aotea, is appropriate. The defendants object to Ms Toki and Mr Edwards as trustees as having spearheaded the campaign to unravel the settlement and object to the appointment of Ms Toki as not being of whakapapa descent.

²⁴ *Vlaar v Van der Lubbe* [2016] NZHC 2398, (2016) 3 NZTR 26-022 at [26].

²⁵ Davies at [9].

[23] The plaintiffs seek Ms Toki and Mr Edwards be appointed as interim trustees in addition to Mr Davies and Ms MacGregor. Ms Toki has also sworn in an affidavit that she does not intend to stand as a permanent trustee.²⁶ Mr Harrison, for the plaintiffs, advised me at the hearing that Mr Edwards is in the same position, though he does not say so in his affidavit. Mr Harrison submits Ms Toki and Mr Edwards have the professional skills and experience suited to administering the Trust and have the backing of the August 2018 hui. He submits Ms Toki set out her whakapapa in an affidavit, has been a registered beneficiary since the early 1990s, a trustee from 2003 to 2007 and then negotiator with the Crown. He submits there should be balance amongst the trustees as steps towards reconciliation. He adds appointment of five trustees is consistent with the Trust Deed.

Appointment of trustees

[24] It is clear interim trustees are required, to undertake the day-to-day administration of the trust. The tasks involved do not appear onerous. Counsel do not agree all the tasks identified by the Māori Trustee are required. But routine administration does need to be undertaken for the trust to be properly administered until the trustees are properly elected at an AGM.

[25] On the information available to me, I cannot judge the relative numbers of the plaintiff and defendant groups. Indeed, that question is at the heart of the current dispute over whakapapa and who should be registered and who not. I do not express a view on that. It will be resolved via the sensible mechanism to review the voting database and registrations that is reflected in the court orders made in Muir J's consent judgment of May 2017. For present purposes, it suffices that I am satisfied there is a genuine dispute amongst two significant groups of beneficiaries of the Ngāti Rehua – Ngātiwai Trust Board. I consider there is a need for the composition of interim trustees to reflect an even-handed or balanced approach between those two groups, until trustees can be elected.

[26] In this context, I consider it is appropriate to appoint Mr Davies, Ms MacGregor, Ms Toki and Mr Edwards as interim trustees. The Trust Deed requires

²⁶ Affidavit of Valmaine Toki of 16 October 2018 at [34].

five trustees. I am not prepared to leave either the plaintiffs or the defendants without trustees in whom they have confidence. To do so would invite further suspicion, resentment and division, whether justified or not. These interim trustees will have to cooperate sensibly in undertaking the day-to-day administration of the trust. I am sure they can do so.

[27] In performing their function, none of these trustees is “representative” of one group of beneficiaries or another. Each of them owes, to all beneficiaries, the exercise of their independent judgment unclouded by animus concerning the wider dispute. They must act consistently with the Trust Deed. Where there is a deadlock between them, after constructive discussion of the interests of the beneficiaries, that will be resolved by the interim independent chair.

[28] I appoint Mr Davies, Ms MacGregor, Ms Toki and Mr Edwards as interim trustees on the basis that none of them will stand for election as trustees at the next AGM. Counsel should confirm that with each of them individually and advise me if that is not correct. I appoint them until 30 June 2020, with the expectation that will be sufficient time for trustees to be elected. If trustees are elected at a general meeting, the appointment of these interim trustees will cease.

2 Who should be appointed as interim independent chair?

Submissions

[29] Both parties agree an independent interim trustee, with a casting vote if necessary, should be appointed as chair by the Court. They do not agree on who that person should be. Initially, the plaintiffs proposed a particular candidate but I was concerned he may not be seen as sufficiently independent of the plaintiffs. The defendants proposed another or that the New Zealand Law Society or Te Hunga Rōia Māori o Aotearoa, the Māori Law Society, should appoint one.

Appointment of independent interim chair

[30] At the hearing, the parties agreed to a process I suggested for selecting an independent interim trustee. I indicated I considered the nominated candidates should:²⁷

- (a) have a good understanding of tikanga Māori and how trusts work;
- (b) have the mana to command the respect of the trustees and beneficiaries;
- (c) have the diplomatic skills to work constructively with people with entrenched differences;
- (d) not be directly affiliated with any of the parties or have any other conflicts of interest; and
- (e) not necessarily be a lawyer, though that may be an advantage.

[31] The role of the independent interim chair will be:

- (a) to chair meetings of the trustees as required to ensure the day-to-day administration of the trust; and
- (b) to facilitate the processes required to determine registrations, the database, the holding of an AGM and the election of trustees.

[32] I consider that is likely to take up to 18 months.

[33] To select the interim independent chair, I invited Te Hunga Rōia to nominate up to three potential candidates they consider would be suitable for the role, with supporting curriculum vitae, who they have confirmed would be available. Te Hunga Rōia nominated two such candidates and the nominations were provided to the parties for comment. I thank Te Hunga Roia for performing this useful role. Both parties have indicated they are comfortable with both nominees.

²⁷ Minute No 2 of Palmer J, 21 November 2018.

[34] On the basis of the nomination information, and the parties' comments, I appoint Mr Tama Potaka as independent interim chair until 30 June 2020 or until trustees are elected at an AGM. I understand his nomination is subject to his employers' sign-off and his preference is to undertake the role for 12 months. If his employer's sign-off is not forthcoming or the 18-month term is not acceptable to Mr Potaka I appoint the other nominee, Mr Tu'inukutavake Afeaki as independent interim chair.

[35] The information available to me indicates there is little funding in the Trust with which to remunerate the independent chair. I make no orders regarding funding of the trustees' activities as trustees. However, in facilitating the processes required for a valid database, registrations, elections and appointment of new trustees I consider it is desirable to appoint the independent interim chair as counsel assisting the court.²⁸ In the unusual circumstances of this trust, this is a function that is fundamental to the Court's role of supervising trusts to ensure they are validly executed. In performing that function, the chair will receive modest remuneration as counsel assisting, as organised by the High Court Registry.

3 What directions should be made?

[36] The Court has inherent supervisory jurisdiction to make directions to trustees for the proper administration of a trust. Trustees and beneficiaries are also able to apply for court directions under ss 66 and 67 of the Trustee Act 1956. A trustee acting under direction of the court is protected under s 69 of the Act. Under s 71 of the Act, the Court is empowered to order the costs incidental to any application to be paid out of trust property or by such persons as "may seem just".

Submissions

[37] The defendants seek directions regarding: approving the 62 new registrations (only) for postal voting; holding the AGM as soon as reasonably practicable;

²⁸ For a previous proceeding in which independent counsel assisting was appointed to obtain and report on the views of beneficiaries of a trust with warring trustees, see *New Zealand Māori Council v Foulkes* [2014] NZHC 1777, [2015] NZAR 1441 at [37].

authorising Ms Pera to fulfil her duties until the interim trustees are appointed; and the defendants' costs of the proceeding and application be paid from the Trust funds.

[38] The plaintiffs oppose the directions sought and seek compliance with the consent judgment and that beneficiaries wishing to register to vote be given the opportunity to do so. They want the defendants to hand over the database to ENZ to oversee the registration, proxies and election of trustees, though they are concerned postal voting is open to abuse. They oppose authorising Ms Pera to carry out activities and oppose the defendants' costs being met from the trust fund.

Directions

[39] There is a serious dispute amongst different groups of beneficiaries of the Trust. The subject matter of the dispute is not for me to determine here, but disputes within hapū are not unusual in the context of Treaty settlements. The key objective must be to resolve the disputes that have arisen over registration and the database which have impeded the holding of elections and an AGM since 2016.

[40] To this end, I direct the interim independent chair, as counsel assisting the Court, to facilitate the implementation of the consent judgment procedures. The parties agreed to those procedures, they have the legal authority of the High Court behind them and they are sensible.

[41] I make the following further comments and directions about how the consent judgment should be implemented:

- (a) As required by consent order [1], ENZ must be provided with the database and/or access to it, in order that ENZ may oversee the registration, proxies and election of trustee process.
- (b) Reasonable steps should be taken by the independent chair and ENZ to ensure all beneficiaries are encouraged to contact ENZ directly about the status of their registration and that of whanau members, and to have a reasonable period for new registration applications to be made in the correct form before their validity is assessed.

- (c) The reports of ENZ and of the Māori Trustee give reasons to doubt the integrity of the current database. The Kaumātua Committee will have to review not only each new application for registration but also the validity of each other registration on the existing database (as per consent orders [5] and [6]).
- (d) The Kaumātua Committee will proceed according to the tikanga of Ngāti Rehua – Ngātiwai. They will, collectively, need to decide whether they deliberate in closed or open sessions. They will, collectively, need to decide whether to invite the independent interim chair, or an agreed alternative, to chair their proceedings (but without a casting vote), if required.
- (e) The Kaumātua Committee will need to meet together, collectively, with ENZ in attendance to assist. They will need to discuss the whakapapa and decide the registration of each individual and whanau, including decisions about the WiTaiawa registrations. They will need to meet for as long as it takes to get consensus or, failing that, to make a decision by majority vote of the ten kaumātua (as provided in consent order [6]). They should make decisions on the merits, rather than on the basis of technicalities. If applications lack required information the applicant should be given the opportunity to provide it.

[42] All this may take time. The independent interim chair will need to take steps to get the processes moving as soon as practicable in the new year. But it is essential for the beneficiaries to have confidence in the resulting database over the long-term.

[43] I do not have enough information to make directions regarding Ms Pera's activities. That will need to be the subject of discussion and decision by the five interim trustees.

[44] Neither do I consider directions should be made at this point about whether the costs of this litigation should be met from trust funds. The trust funds appear to be very limited. They will be required to meet other costs of the trust. Here, the

defendants did not get everything they sought in this application. And I am not convinced the dispute was necessary. At this stage, it seems to me what I have ordered could have been agreed between the parties had there been more constructive willingness to do so. Unnecessary procedural costs should not be reimbursed from beneficiaries' trust property.²⁹ Whether this application was unnecessary or not may become clearer as the proceedings progress. For the present, I reserve the decision on the costs of this application to be determined in light of the outcome of the proceeding as a whole.

Result

[45] I make the following orders:

- (a) I appoint Mr William Davies, Ms Hillarey MacGregor, Ms Valmaine Toki and Mr Aperahama Edwards as interim trustees until 30 June 2020 or new trustees are elected (whichever occurs sooner) on the basis none of them will stand for election as trustees at the next AGM.
- (b) I appoint Mr Tama Potaka as independent interim chair until 30 June 2020 or until trustees are elected at an AGM, as long as he obtains sign-off from his employer and is prepared to undertake the role for 18 months. Otherwise, I appoint the other nominee, Mr Tu'inukutavake Afeaki as independent interim chair until 30 June 2020.
- (c) I appoint the independent interim trustee chair to:
 - (i) chair meetings of the trustees as required to ensure the day-to-day administration of the trust, including having a casting vote where reasonable efforts to find consensus fail and the other trustees are deadlocked; and
 - (ii) as soon as practicable in 2019, facilitate the processes required for the regularisation of registrations and database, the holding

²⁹ *New Zealand Māori Council v Foulkes* [2015] NZHC 489, (2015) 4 NZTR 25-003 at [31].

of an AGM and election of trustees, for which function the interim trustee chair will act as counsel assisting the court, and will receive modest remuneration as arranged by the Registry.

- (d) To facilitate implementation of Muir J's consent judgment:
- (i) ENZ must be provided with the database and/or access to it in order to oversee the registration, proxies and election of trustee process.
 - (ii) Reasonable steps should be taken by the independent chair and ENZ to ensure all beneficiaries are encouraged to contact ENZ directly about the status of their registration and that of whanau members, and to have a reasonable period for new registration applications to be made in the correct form before their validity is assessed.
 - (iii) The Kaumātua Committee will have to review not only each new application for registration but also the validity of every other registration on the existing database.
 - (iv) The Kaumātua Committee will proceed according to the tikanga of Ngāti Rehua-Ngātiwai. They will, collectively, need to decide whether they deliberate in closed or open sessions and whether to invite the independent interim chair, or an agreed alternative, to chair their proceedings (but without a casting vote), if required.
 - (v) The Kaumātua Committee will need to meet together, collectively, with ENZ in attendance to assist.
 - (vi) The Kaumātua Committee will need to discuss the whakapapa and decide the registration of each individual and

whanau including decisions about the WiTaiawa registrations.

(vii) The Kaumātua Committee will need to meet for as long as it takes to get consensus or, failing that, to make a decision by majority vote of the ten kaumātua.

(viii) The Kaumātua Committee should make decisions on the merits, rather than on the basis of technicalities. If applications lack required information the applicant should be given the opportunity to provide it.

(e) I reserve costs.

(f) I reserve leave for either of the parties, or the independent interim chair, to apply for further directions, as required.

Palmer J