

Article 5 Tomokia

1. Readers will be aware that there has been long running litigation in the Maori Land Court relating to a review of the RUHT. These proceedings were originally filed in 2006 and have involved two hearings in the Maori Land Court and an appeal to the Maori Appellate Court. There have been 31 judicial conferences and other interim applications and rulings.
2. As part of the proceedings there have also been two consultation hui with the beneficiaries in April 2013 and August 2014 which culminated in a postal vote conducted by the Court in November 2014. The results of this postal vote have been covered in a previous article in Tomokia.
3. On 24 August 2015 the Court released its final decision on the applications filed by Mr Tane, Mr Martin and the RUHT. This decision is available to download on the RUHT website.
4. In the final decision Judge Milroy dismissed the applications filed by Mr Martin and Mr Tane. Her Honour held that there was insufficient support for a change to beneficial entitlement as proposed by Tane/Martin. In particular, the Court held that their proposal for a mandatory distribution regime would not allow the RUHT to strike the right balance between current and future generations.
5. Judge Milroy went on to conclude that the Tane/Martin proposal was not an appropriate basis to vary the trust order and should not be put to the beneficiaries again.
6. Judge Milroy concluded that the RUHT must retain a discretion over distributions to ensure adequate future provision for an ever expanding class of beneficiary. Her Honour also held that the Wai 51 settlement requires the RUHT to retain wide powers to meet changing circumstances and investment opportunities.
7. The Court held that a standard form trust order can be appropriately modified to take into account the unique characteristics of the RUHT being the governance entity for the Wai 51 settlement where the class of beneficiary is defined by descent. The Court also concluded that any new trust order must allow the RUHT to make a wide range of grants to beneficiaries and for Maori community purposes to give better effect to the Wai 51 settlement.
8. The outcome of these long running proceedings is best summarised by the Court's conclusion:

[120] For the reasons given above I determine that the variation of the trust order will follow the proposal of the RUHT trustees. I confirm that the RUHT is to develop a draft ahu whenua trust order with comprehensive provisions.

[121] There are directions to the trustees of the RUHT as follows:

- a) The trustees are to consult with the beneficiaries to develop a new trust order consistent with the vision statement and strategic plan set out by the RUHT trustees. There is to be no amendment to the class of beneficiary or beneficial entitlement. Discussions should include election of trustees (including rotation of trustees), and the requirement of consent of beneficiaries to significant business ventures or investments and to mortgaging the corpus lands. Other provisions relating to Maori community purposes should also be included for discussion;
- b) The preparation of a detailed trust order, consultation with beneficiaries, and confirmation of the varied trust order by the beneficiaries at a general meeting is to take place within six months;

- c) The interim order limiting the purposes for which the RUHT may make expenditure or advances is discharged, provided that no further dividends may be declared in favour of the four whanau trusts;
- d) The trustees are to report to the Court within six months as to the resolutions reached in relation to the advances set out at paragraphs [110] to [117] above.

[122] The applications by Messrs Tane and Martin are dismissed.

9. The RUHT now intends to undertake an intensive round of consultation with the beneficiaries to develop a new trust order in accordance with the directions in the final decision.