

Ruapuha Uekaha Hapu Trust

Minutes of Special General Meeting held on Saturday 24th October, 2015 at Tokikapu Marae, Waitomo Caves commencing at 10am.

Attendance:

Peter Douglas, Miria Davis, Tamarapa Lloyd, Stephen Keung, Hiria Kohe-Love, John Koning, Norman Tane, Josephine Anderson, Danny Lurman, Chrissy Toroa, Betty Matthews, Patricia Turu, Cindy Keung, Chuck Davis, Cecilia Hodson, Rob Hodson, Lynn Green, L.D Tane-Stockler, Georgina Gibbons, Rangiawatea Tane, Miriama Koroheke, Maude Green, Tame Hemara-Wahanui, Joe Tapara, Te Ata Brown, Des Te Kanawa, Puihi Tapara, Eric Tane, Bill Tane, John Pioi Waamu (Hughes), Gerald & Erin Tuoro (Te Kare), Terry Tane, Hera Douglas, Carol Murray, Esme Astle, Kahu Edwards, Lloyd Keung, Benjamin Davis, Moro Davis Jnr, Moro Davis Snr, John Anderson, Benjamin Davis, Sonny Carnachan, Waipua Teddy, Riki Brown, Carolynne Roberts, Greg Roberts, Eugene Carnachan, Clarrie Tapara, Paula Carr, Newa Carr, Joe Tapara, CJ Hemara.

Apologies:

Cairyn Hodson-Tomokino, Taylah Hodson-Tomokino, Renee Hodson, Hurihia Davis-Reedy, Marea Pollock, Erana Pollock, Kohatu Pollock, Mere Love, Kore Hemara, Lana Henry, Josie Henry, Pania King, Thomasina King, Arohanui King, Mahinui King, Ani Johnson, Tai Johnson, Orini Johnson, Tai Jnr Johnson, Mereana Johnson, Huti Johnson, Wi Miraki Johnson, Bebe Love, Hinerangi Tane-Van der Burg, Hakahaka Tane, Wikitoria Tane, Ratema Tane, George & Valma Hemara-Wahanui, Greg & Sharon Te Kanawa, Emma Tira Green, Mereana Tapara, Emily Tapara, Tyson Tapara, Ninakaye Tanetinorau-Searancke, Uekaha Taanetinorau, Ariana Hemara-Wahanui, Ngahuia Hemara-Wahanui, Trish Davis, Mike Gibbons, Ngahuia Anderson, Charlotte Ashby, Waiata Ashby, Aaron Ashby, Walter Anderson, Thomas Toroa, Thomas Haereiti, Jo-Ella Hura Tapara, Crystal & Sierra Keung, Jacob Keung, Judy Davis, Melanie Davis, Pakihiwi Green, Greg Roberts, Judy Davis, Melanie Davis.

Mihi: Huia Davis opened the hui.

Peter Douglas thanked everyone for attending the hui and recapped the purpose of the hui by reading out the panui sent to beneficiaries.

“Following a reserved decision dated 24 August 2015 on the review of trust, the Maori Land Court has directed that the Trustees of the RUHT develop a new trust order for the RUHT in consultation with the beneficiaries. The RUHT has therefore called this Special General Meeting to explain to the beneficiaries the overall concept and guiding principles for the new trust order. At this meeting the RUHT and its advisors will explain the proposed trust order and answer any questions from beneficiaries. The RUHT will hold a workshop on Saturday, 28 November 2015 at Te Korapatu Marae, Hangatiki starting 10am where beneficiaries can further consider the new trust order and make suggestions about content and structure”.

Peter went through the Agenda items and asked that attendees record their attendance and apologies. Peter advised that John Koning, legal adviser for the RUHT would give a summary of the Reserved Decision. The judgment required the trustees to develop a new trust order based on the vision statement and the strategic plan that the RUHT had developed and presented to the Court in the most recent of its hearing. An overview of these documents would be given by Tamarapa Lloyd. Peter finished his introduction by encouraging attendees to ask questions.

Summary of the Reserved Decision by Judge Milroy dated 24 August 2015

John spoke to his power point presentation and traversed the history of litigation leading to the Reserved Decision dated 24 August 2015;

- Application filed by Norman Tane on 15 January 2006
- Application filed by Adrian Martin on 20 February 2006
- Application filed by the RUHT on 4 October 2006
- First hearing in Maori Land Court took place on 16 October 2007
- 31 judicial conferences occurred between 2007 and 2014
- There was a preliminary determination by the Maori Land Court on jurisdiction to vary beneficial interests
- There was an appeal to Maori Appellate Court on who was entitled to vote on any new trust order which in effect triggered a test on who was the class of beneficiary and could that class be changed
- A decision was released by the Maori Appellate Court
- Following the release of that decision a postal vote was conducted by the Maori Land Court in October and November 2014
- A final hearing took place in the Maori Land Court on 7-8 July 2015
- Nearly 10 years in litigation

Reserved Decision of Judge Stephanie Milroy

John referred to the date and minute book reference number of Judge S Te A Milroy's decision at 104 Waikato Maniapoto MB 95-162 dated 24 August 2015.

The main points of the Reserved Decision are;

- The new trust order should give trustees the necessary powers and discretions to give effect to Wai 51 settlement and provide for an ever expanding class of beneficiary. Currently there are 4000 beneficiaries registered with the Trust. As time goes by this will continue to increase so the view of Judge Milroy is that the Trustees need to have a wide set of powers to be able to deal with an expanding class of beneficiary.
- Judge Milroy's view is that a standard form ahu whenua trust order can be modified for the particular requirements of RUHT.

- Judge Milroy also made some findings that the proposal from Norman Tane and Adrian Martin would not provide the right balance between current and future generations. The postal vote indicated there was insufficient support for their proposal and it was not an appropriate basis to vary the trust order and should not be put to the beneficiaries again.

John explained that the above points had been taken directly from the judgement and in effect are Judge Milroy's orders and directions arising from those 10 years of litigation. John went on to say that Judge Milroy concluded;

- 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.
- The directions to the trustees of the RUHT are 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;
 - e. The applications by Messrs Tane and Martin are dismissed.

John finished by saying that these directions could be found in paragraph 120 to 122.

Question from the floor: What does beneficial entitlement relate to in Item A?

John advised that in the current trust order the word beneficiaries refers to to all the descendants of the owners in whom the land was vested by order of the Court at Te Kuiti pursuant to Section 436 of the Maori Affairs Act 1953 on 2 October 1990. In the vesting orders, the class of beneficiary are all the descendants of the 22 owners of Hauturu East 8 at the time the land was taken. In the Reserved Decision of Judge Milroy, she states there can be no amendment in the new trust order to the class of beneficiary as defined in the current trust order. In terms of beneficial entitlement, there can be no amendment to the trust order as proposed by Norman and Adrian, which involved certain individuals getting different amounts. In effect, all the descendants have to be treated equally with no difference between what they may receive from the Trust regardless if they are an adult or a child.

Question from the floor: Are the original owners the ones on the plaque?

John clarified that the 22 owners he was speaking of were the owners at the time of the taking of the land and it was their descendants who are the beneficiaries of the RUHT. Effectively, Judge Milroy is saying there can be no change to that in this trust order.

Vision Statements:

John discussed the background to the development of the Vision Statements.

- It had been a recommendation from the Maori Appellate Court and adopted by Judge Milroy that instead of developing a trust order to go to the beneficiaries for consideration that both parties develop Vision Statements outlining the guiding principles and visions that would be used to develop a new trust order.

RUHT filed their Vision Statement with the Maori Land Court. Key points of the RUHT's Vision Statement included;

- A background section outlining a comprehensive history of Hauturu East 8. This would give some context to the history of the land and how and why the RUHT was formed as the entity for the Wai 51 settlement. This would be set out clearly in the front of a new trust order.
- The Vision Statement also made it clear that a fundamental object of the RUHT is the preservation and promotion of Wai 51 settlement.
- There should be no change to the class of beneficiary or beneficial entitlement.
- That the RUHT will retain a discretion to make distributions directly to beneficiaries.
- That the RUHT can make grants for Maori community purposes.

Distributions to the Four Whanau Trusts

John revisited a direction of the Maori Land Court (2008) that prevented the RUHT from making any further distributions to the four whanau trusts.

- This direction was endorsed by the Maori Appellate Court.
- John quoted from the current trust order the following clause "to distribute funds to the various whanau trusts as approved by a general meeting of owners on the basis that if the percentage of distribution is subsequently amended or altered and the trust adversely affected require adjustment and such adjustment shall be made out of the future sum set aside for distribution".
- John explained that this clause empowered the trustees to make distributions to the four whanau trusts who would then deal with their beneficiaries. However, distributions to the whanau trusts were problematic for Judge Milroy and the Maori Appellate Court as the whanau trusts were not themselves beneficiaries of the RUHT.
- Another concern was that the four whanau trusts were not established on the same grounds with the same object's and terms. As a consequence there was a certain degree of inconsistency.
- The Maori Land Court and the Maori Appellate Court findings were that distributions to the four whanau trusts had to stop.

- Distributions to individuals can be made, however the RUHT does not want to leave the four whanau trusts completely out in the cold. Section 218 of the Te Ture Whenua Maori Act allows grants for Maori community purposes which in effect allows a Trust to make distributions to non-beneficiaries and the RUHT would like to include this clause in the new trust order.

Question from the floor: Can the Trust make distributions through that clause to the whanau trusts?

John answered maybe and outlined that grants for Maori community purposes is strictly in accordance with Section 218 in the Act. It could be a grant to the marae. This is not a distribution or dividend but a grant. If the RUHT doesn't have that power in its trust order, in law it cannot make any grant or payment to a marae, kohanga or anything that develops a Maori community in Waitomo or elsewhere. If you don't have that power you can't do it.

These types of grants are discretionary and it is up to the trustees at the time to determine the amount of the grant or even whether they should make grants. Grants to the four whanau trusts could be made under a Maori community purposes clause being included in the new trust order.

John gave an outline of the key points of the RUHT's Strategic Plan

- The RUHT was established as part of Wai 51 settlement and therefore must provide benefits to all beneficiaries.
- Maintaining an ongoing relationship with all four whanau trusts arose out of the settlement.
- The role of the RUHT as kaitiaki for the caves and land on Hauturu East 8.
- The RUHT developing a long term strategy before the lease expires in 2027.

Process for adopting a new trust order

John talked about the process for adopting a new trust order;

- The principles and structure for a new trust order were to be discussed at this Special General Meeting.
- A workshop was scheduled for the 28th November for the beneficiaries to come and have further input that could also include a session on the terms, clauses, powers and discretions within the new trust order.
- Following the workshop the trustees would consider and if appropriate incorporate that feedback into a new trust order to be approved at an AGM scheduled for 20th February 2016.

John spoke of having to achieve this in a fairly compressed timeframe - six months as directed by the court.

Structure of a new trust order

John went over the sections that would be included in the new trust order;

- Background
- Objects
- General powers
- Specific powers
- Trustee duties and obligations
- General meetings
- Trustee appointment and removal
- Trustee meetings

John advised that this is an outline of how a standard form ahu whenua trust is currently structured;

- Within the Background section the history of the land and the claim would be recorded.
- Objects are the key section in any trust order.
- Trustees must exercise their powers and discretions to achieve the objects so it's the key empowering provision.
- Some of the objects will come from the existing trust order.
- The new trust order will include any arrangements under Wai 51 to ensure the retention of Hauturu East 8 for current and future generations. This is a primary object of the trust to ensure the retention of the land for future generations.
- There will be some new objectives added into the trust order to give effect to the Vision Statement and the Strategic Plan so as to preserve and to protect the Wai 51 Settlement. An example might be to operate tourism and other businesses at Waitomo.
- There will be some objects that relate to the retention of the land and some objects that relate and empower the trustees to run businesses at Waitomo.
- There may be objects to preserve the environment catchment around Waitomo in particular Hauturu East 8.
- There will be general clauses at the end that the trustees can do anything to achieve the objects or incidental to the objects.
- Trustees have a general power under the Te Ture Whenua Maori Act to deal with the land and the assets as if they were the actual and absolute owners themselves of that land and assets.
- General powers are always usually subject to certain express restrictions. For most trusts throughout New Zealand there is usually an express restriction on the sale of the trust land, the corpus land. This means that while trustees have all those general powers they can never sell Hauturu East 8 (selling the land would be a breach of trust).
- Trustees cannot gift the land eg if the trustees wanted to resettle the trust they would have to do that by gifting the trust land to the new trust. This cannot be done as the land must remain within the RUHT in perpetuity. So there are protections because the general powers are subject to any express restrictions.
- General powers are also subject to any procedural limitations contained in the specific powers. Ahu whenua trusts approved by the Maori Land Court have a small section on general powers and then they list a whole lot of other specific powers. These specific

powers do not mean that is all the trust can do because trustees have a general power which allows them to do whatever they want with it as if they owned it. However, if there are any restrictions in any of those specific powers they also restrict the general power.

- In the current trust order there are about five specific powers including “to employ, to invest, to pay own costs, to take over existing obligations”.

John explained that other specific powers will be included in the new trust order to clarify existing requirements under the Te Ture Whenua Maori Act. John explained the following issues;

- Alienation of trust land not only refers to the sale of trust land but also to a lease or a licence over trust land.
- John clarified the difference between investment land and corpus land – an example of that might be that the trust has some capital funds and it goes and purchases a dairy farm in Waitomo. The dairy farm land would not be treated as corpus lands. It would simply be treated as an investment. The Te Ture Whenua Maori Act already provides for a distinction between core (corpus) land of the trust and investment land so there’ll be a specific power in the new trust order to acquire investment land.
- To promote title reconstruction and improvement such as granting easements or aggregational things of that nature.
- The new trust order will contain some new specific powers which are not in the current trust order including, to make grants to beneficiaries eg tangihanga, kaumatua grants etc. John advised if you’re going to have a policy like that you should make it clear and it should also have another clause in the trust order that says ‘to make grants in accordance with the policy from time to time adopted or determined by the trustees. This makes it clear and the trustees will inform the beneficiaries from time to time what the policy is on kaumatua grants etc.
- Another topic discussed included the promotion of business development and to deal with trust assets.

In John’s view much of this is mechanical and most of it will come from the standard form ahu whenua trust order. It will allow the trust to deal with its own assets, to operate and administer the trust and run its business’s if that’s what the trustees decide to do. The new trust order will have the full powers of a comprehensive trust.

Question from the floor: The national government is proposing a legislative law change, changes to the Te Ture Whenua Maori Legislation. Will the RUHT be monitoring that situation in regards to our assets?

John requested that he answer that question at the end of his presentation.

Registration of Beneficiaries

Key points on this topic;

- A new trust order will add an expanded duty to keep a register of beneficiaries.
- Inspection of the registry can take place subject to reasonable restrictions on access.
- Beneficiaries are obliged to give notice of change of details.
- Disclosure of information is required by law.

The Court acknowledges that keeping an up-to-date register is never easy for any ahu whenua trust. It will require a significant amount of time and investment to do that and the additional burden on the RUHT is that it is a class of beneficiary defined by descent so the trust cannot rely on the record of the Maori Land Court. It will have to operate its own quite sophisticated register. Steps have been taken in that regard to register beneficiaries online.

Beneficiaries will be able to inspect the database but subject to some reasonable restrictions i.e. a beneficiary can look at a database that shows the name, perhaps the sex of another beneficiary. However, personal details like birth dates and addresses will not be available. It is important to achieve a balance between requirements of the trust order and privacy for individual beneficiaries.

There is a requirement on beneficiaries to give a notice of change of details and the Trustees are only required to disclose information as required by law. That will be a slightly larger section on a roll of beneficiaries.

Records of Accounts

Key points of this topic

- The RUHT is required to continue to prepare annual reports, financial statements and audited accounts.
- There will be a new obligation in the trust order that RUHT keeps minutes whether hard copy or in electronic form.

General Meetings

Noted by John that the current trust order doesn’t have a great deal in regards to general meetings so new additions will be an enhancement for the beneficiaries’ sake.

Key points for consideration on this topic;

- In the new trust order there will be an obligation to hold AGM.
- It will set out in general terms what the business of the AGM is.
- There will be a procedure for calling and holding SGM which will follow what is done in the Waikato Maniapoto District.
- New procedures for notice requirements for all general meetings will need to be adopted. Currently a lot of older trust orders send out notices in the post but the trustees may have a range of options which best suit beneficiaries at that point and time. That might be a notice in the Herald or in the Waikato Times. It could also be by email or it could still be by hard copy. Or it could be a notice on the RUHT website. It will have a range of things to allow the trustees to give proper notice for general meetings.
- It will also include a new quorum requirement for a general meeting.

- The voting procedure will be by one beneficiary one vote and consider how voting will take place; by a show of hands, voice vote or a default to secret ballot.
- Quorums was one of the issues that the Maori Land Court does have trouble with. There are some trusts that have two thousand owners and struggle to get a quorum of 30. Quorums have to be balanced between being sufficient that a resolution could be binding on all the beneficiaries but can't be so high that general meetings consistently lapse because quorums are not met.

Trustees

- The Maori Land Court will continue to remove, appoint and replace trustees by order of the court under part 12.
- There should be a provision for retirement by written notice if somebody wants to retire.
- Trustees can file a resignation letter to the chairperson.
- There will need to be some provisions in the trust order to make it clear when a resignation takes effect. That is one of the issues that some ahu whenua trusts have. Trustees have resigned but it might take six to seven months or maybe longer before they are replaced in the Maori Land Court. The law is that that a person who has resigned is still in law a trustee even though they may have resigned from any responsibilities and play no further part in it. The new trust order might have to have some provisions which actually say when you resign it takes effect immediately. Needs to be a requirement to go to the court as soon as possible

Election of Trustees

- Election at an AGM is the most common method in the Waikato, Maniapoto District. It's not in Wairakei and a lot of the trust orders don't have any provision for any rotation or election of trustees.

Rotation Clause

- There will be a rotation clause.
- The rotation clause may not kick in until one or two years after the date of commencement of the new trust order and the person who has been on the longest will then automatically rotate off.
- They retire by rotation but they can offer to stand for re-election and they can get back on the Trust if re-elected.
- At the AGM new candidates can be put forward. If there is two or more candidates there will be an election.
- There needs to be provision for slightly extended grounds to apply to the Maori Land Court to remove a trustee if they are not discharging their duties.

Advisory Trustees

There can be advisory trustees;

- In the past the RUHT has had trustees who have been nominated by the four whanau trusts. There were numbers attached to each of the whanau trusts. That will not be possible in the future under the new trust order. One of the options the beneficiaries might like to consider is that each of the four whanau appoint an advisory trustee.
- Advisory trustees are entitled to attend trustee meetings but they have no power to vote and the trust assets are not vested in them. This may be something that the trustees and the beneficiaries would like to consider. They are also appointed by the Maori Land Court and there could be a provision that this can either be done by nomination or election. John followed by saying this was a suggestion.

Remuneration of Trustees

- John recommended that Trustees develop a code of conduct. The code of conduct would not be in the trust order. It would sit alongside the trust order and it would outline what is expected of trustees i.e. what their conduct should be, how they're expected to behave and that would be binding on them. It is also common in the business world that a certain standard of contribution and conduct is required of a trustee.

Trustee's Fees

- John recommended that a commercial model for trustees fees be adopted i.e. a Remuneration Pool; it is not a per meeting fee for every trustee.
- The Remuneration pool is determined annually by the trustees and the beneficiaries are notified.
- From the Remuneration pool the trustees decide amongst themselves what their Remuneration might be.
- This option is more performance based.
- The Remuneration pool has to be reasonable.
- It has to reflect the trust's performance and it would also have to be based against other benchmarking from other trusts and the size and the operation of the business. This is a more a modern way of doing it rather paying a meeting fee.

Question from the floor: Question in relation to Tanetino Orau Whanau Trust - Since 2008, two Trustees have passed away and we haven't replaced them due to the Maori Land Court saying there are no more appointments of trustees. Is their (the deceased) obligations to the trust is that carried on by the rest of the trustees and can we appoint new ones or does that go back to the family?

John advised that Tanetino Orau Whanau Trust is constituted by the Maori Land Court. The other trusts are private trusts that are like any other family trust and subject to general principles of trust law and the trustee act. With those three trusts, their appointment/retirement is dealt with under their trust order and you don't have to go to the court because they are not subject to the jurisdiction of the Maori Land Court. With most private trusts if somebody retires they execute a deed of retirement and then depending on what the trust deed says about appointments they appoint someone new.

Trusts under the Te Ture Whenua Maori Act are different. The law would be if you had five trustees and one passed away and that deceased trustee is not removed the four surviving trustees carry on and have full powers and that the majority decisions would apply to those surviving trustees.

In regard to an ahu whenua trust you have to go to court, file an application, give the Maori Land Court copies sometimes of the original copies of the notice of the Annual General Meeting, attendance list, what the vote was etc. It can take up to three months to be listed in the Panui. It may take a further two or three months to get to a hearing. It can take six or seven months to re-appointment someone.

Peter added the practice that John has suggested is that the new trustee elect actually starts in office the day after the AGM and the old trustee that has resigned or retired by rotation, they finish after the AGM. That is not strictly correct to the way the Maori Land Court actually operates. The Courts view is that you're not actually a trustee until there is a sealed and signed order of appointment. But as John said that could take 12 or more months and it is just not practical to operate with a trustee who has retired or resigned for that long. A new trust order will better deal with that.

Question from the floor. Is voting online an option?

John stated that there will be a provision for postal voting, voting by electronic means that will have an empowering provision i.e. it won't actually prescribe how that's to be done but it will allow voting other than being present in person. In John's view Trusts should consider this as there is relatively low turn-out at meetings and postal voting is quite expensive.

John spoke about trustee meetings;

- There are standard provisions for trust meetings that are in the standard form ahu whenua trust order.
- There is provision that trust meetings can be held by teleconference with certain restrictions and or skype or some other means.
- Technology can be used and the RUHT should adopt them subject to certain safe guards. The person on the other end has to be there for the duration of the meeting.
- There will be a new provision which will be adopted or adapted from the standard form ahu whenua trust order from the Maori Land Court that will give clear guidelines on conflict of interests. The purpose of this section is for the early identification and management of conflicts. A conflict of interest will actually be defined to assist trustees and beneficiaries. Where a trustee has a conflict he or she must not participate in the discussion or the vote. This is the law as it currently is. It'll be summarised and put into the trust order.

New Clause for Delegation and Indemnity;

- Trustees will be given an express power to delegate.
- Under the current law trustees cannot do this, trustees must exercise their responsibilities themselves they can't in law delegate to anybody unless they have a power to delegate and that there are terms of delegation. An example might be the delegation of decisions for Education Grants. Those sort of things that the full trustees don't need to do can be delegated to a committee subject to some terms from the actual trust. The trustees will however, retain a power to limit or revoke any delegation.
- Indemnity relates to a standard liability and indemnity clause for trustees. An example is there is no such body or entity called the RUHT. The RUHT is actually the trustees in their personal capacity. If there's a conflict over a contract and there are damages awarded against the trustees the trustees in theory pay out of their own pocket and get an indemnity back from the trust.
- It would be considered fair for trustees to take out indemnity insurance to cover them which is fair and reasonable in this day and age and particularly if the trustees are involved with business or third parties.
- There will also be a provision in the new trust order that trustees will be entitled to rely on legal advice or other expert advice and if they do so on reasonable grounds then there won't be any liability.

Proposed Changes to Te Ture Whenua Maori Bill

- Anticipated there will be big changes to the current regime.
- This Trust under the new Bill would no longer be an ahu whenua trust.
- There will no longer be Maori Incorporations. They will be collapsed into one entity called a Rangatapu and there are two versions; one is a Rangatapu that is a private trust and the RUHT would fall into this category; the other Rangatapu are corporate entities which include incorporations and they would have standard terms and provisions.
- The RUHT would have to register as a Rangatapu. It would have to then confirm that the trust order complies with Schedule 3 in the proposed Bill which has certain provisions in it. There will be some transactional costs, the structure will change and it will be significantly different.

John understands you won't go to the court to appoint any trustees under the new Bill. RUHT trustees will no longer be trustees. They will be called kaitiaki and every year they will file an annual return which will state who the trustees are and contact details for the trust. There will be no appointment of trustees by the court anymore.

John understands it has changed after the submission process and what is being contemplated now is that existing ahu whenua trusts and incorporations will continue to operate as ahu whenua trusts and incorporations under their existing governance arrangement. For the RUHT that would be the new trust order and for an incorporation their constitution. It is likely that there will be three different types of entities; existing ones and the new Rangatapu. John is not sure whether or not there's a sunset clause that after 10 years the RUHT will have to adopt to the new regime.

Question from the floor: If you have to register as a kaitiaki every year does that mean the appointment of trustees are going to be for a year?

John answered that in the new trust order there will be minimum provisions under the new Bill regarding rotation of trustees and a maximum term of three years. John feels that three years is a little short and it is his view that there needs to be a balance between what happens in Waiariki where you are appointed for life and three years. It takes a while for a trustee to learn the business, learn their obligations and begin to work with the existing trustees and three years is too short. John understands that might be changing. John went on to advise that the Maori Land Court will simply become a court like the district court. There will be a registrar but there will be no facilitation and research function with the court staff any more. They are moving into a multi departmental service called the Maori Land Service. At this stage no one knows what the new department will look like.

Question from the floor: Would the RUHT look at becoming an incorporated society rather than an incorporation?

John stated he would not be recommending that for two reasons; the RUHT was established as a trust under the Wai 51 Settlement and was formed under Section 438 and now continues as an Ahu Whenua Trust under the Te Ture Whenua Maori Act and; during the 10 years of litigation there is a finding that if the structure of the RUHT is changed or that there is a resettlement of it, the interests go back to the beneficial owners. John stated he did not wish to get into that debate about that because that has been settled.

Question from the floor: Can that be achieved, changing it to an incorporation?

John answered it can't be achieved because of the particular circumstances of RUHT. If it was a normal ahū whenua trust it would be straight forward but this is no ordinary trust. In every other ahū whenua trust in this country the beneficial owners are the beneficiaries because that is what the Act says. However, in the RUHT the beneficial owners are not the beneficiaries and until the trust is terminated they have no interest or role in this trust. That is the unusual and unique feature of this trust and to preserve the Wai 51 settlement you would need to maintain it as the RUHT, as a trust.

There was further discussion on the merits of changing to an incorporated society however, John gave his view that once the new trust order is approved and adopted and without too much interference from the new Bill the RUHT will be able to govern and regulate this trust for at least 10-20 years. By February next year there will be more detail about what the new Bill looks like and whether it imposes any mandatory requirements on a trust order and if so we will have to look at that. The new bill proposes certain minimums for trust orders such as rotation of trustees using a maximum term of three years. That is likely to change to a longer term. Peter continued by saying that becoming an incorporated society is not on the table.

John reiterated specific things that Judge Milroy asked the Trust to put to the beneficiaries;

- **Election of trustees** - in the judgment Judge Milroy states "discussion should include election of trustees so that the trust order you will be presented with before the workshop will include a straight forward provision for an election of trustees at an AGM".
- There will be a slight transitional provision to allow some stability for the Trust so that when the trust order is adopted there's not a wholesale election.
- It may start with one rotation after the commencement and then it will slowly move through and get into the regular elections. It won't use the system of a whānau trust nominating somebody. Trustees will be elected to represent all the beneficiaries to the best of their ability and skills.

Peter pointed out if you have ten people who run for office then the top five would be the ones elected as the trustees.

Question from the floor: Who nominates the people?

John answered that the beneficiaries do using a nomination process. In other trust orders a standard nomination form is circulated to the beneficiaries. It may require two other beneficiaries to nominate and sign the form. There may be a provision to provide a short resume or CV or experience which is circulated at the election. Another way to do it is the nominees get up and give a short presentation at the AGM. You could just do it on the papers. The process has to be transparent. Anybody that is a beneficiary can put their name forward to be a trustee.

You can also have independent trustees. The statutory provision is that you don't have to be a beneficiary or a beneficial owner to be a trustee of an Ahu Whenua Trust. Some trusts have made a practice of having their accountant or an expert in a particular industry on their trust. You can have a provision where the trustees could co-op independent trustees. It is not difficult and can be covered more at the workshop

Major Transactions Clause

- The requirement of consent of beneficiaries to significant business ventures or investments was another topic that Judge Milroy had said must be discussed with the beneficiaries' i.e. Major Transaction clause.
- John explained that in some company constitutions and in other trusts where there is a transaction or some debt that involves fifty percent of the net value of the trust assets or some other marker or bench mark then that transaction must go back to the beneficiaries for approval.
- For example if the trustees wanted to perhaps mortgage all of Hauturu East 8, that would probably trigger a major transaction clause that would then have to go back to the beneficiaries.
- A major transaction clause is not difficult to draft but needs to be agreed upon what an appropriate trigger would be. It can't be so low that the trustees are consistently coming back to the beneficiaries, but it can't be so high that it would never actually ever operate. Should be somewhere in the middle.

Question from the floor: Would you be able to mortgage our corpus lands?

Some trusts have that ability. They can't sell the corpus lands because that's prohibited but they can mortgage it. Some trusts still retain that power others don't. Some trusts have actually excluded it so that you cannot alienate by sale, gift or mortgage the corpus land. It's entirely a

discussion between the beneficiaries and the trustees. An example of where it has gone wrong is Matauri X in the far north. They didn't mortgage their land but used it as a guarantee. So the beneficiaries and Trust need to discuss this more.

Question from the floor: This mortgaging element with the corpus land. Is there anything within the Trust statement that gives any indication it would lead in that direction in their vision statement?

Peter answered that we have stated that we might want to resume the operation of the Glowworm Caves before 2027. So if we were going to do that we should have the ability to buy out the interest that operated at the moment. In order to do that you might need to raise some debt. So you know sometimes debt is quite a good discipline but you would not want to be reckless.

John explained the possibility of mortgaging the lease to raise capital. In his view Judge Milroy may also want the beneficiaries to not only consider mortgages but also using HE8 as a guarantee (referring to what had happened with Matauri X). John gave other examples of Trusts using their corpus land to reckless borrow. The beneficiaries have to be sure the trustees have enough powers to be able to run the business. Given that Hauturu East 8 was returned through the Wai 51 Settlement and had been alienated by compulsory acquisition for more than ninety years beneficiaries and the Trustees had to think carefully about whether or not in the future trustees can mortgage it and potentially lose it.

There is nothing in the act that prevents the mortgaging of corpus lands. You might want to say Trustees cannot mortgage Hauturu East 8 but it can mortgage its other investment land so it's a balance between some commercial opportunities that the Trust will clearly have in the future but also preserving Hauturu East 8 for future generations.

John finished by saying that the trust order would follow a structure and be based on the principles discussed. There would be no surprises in it. John didn't think it was particularly controversial and follows a standard trust order in the Waikato District with some changes that reflect the particular needs of the RUHT. Peter thanked John for his presentation.

Peter introduced Tamarapa Lloyd from EY Tahi. Tamarapa gave a brief talk on what he was helping the Trust with which related to the trust order being aligned to the strategic direction of the Trust as outlined in the Vision Statements of the Trust. Tamarapa would be running a workshop on the 28 November for beneficiaries and their aspirations for the Trust. It would look at the;

1. Strategy – What is the outline/purpose of the trust over the next three years, five years, ten years, what does that look like?
2. Structure – What is the structure of the trust? The legal structure. The people and capability that sit within it and the resourcing that might be required.
3. Systems - What are the systems that will enable that structure to operate? What is the structure that reinforces and allows the strategy to take affect?

Tamarapa hoped to see everyone at the workshop.

After a few questions regarding the education grants Peter closed the meeting.