

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE TAIRĀWHITI
In the Māori Land Court of New Zealand
Tairāwhiti District

AP-20230000027163
A20230001843

WĀHANGA <i>Under</i>	Sections 269(6) and 280, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Nuhiti Q Māori Incorporation
I WAENGA I A <i>Between</i>	MICHAEL KENNETH RAYMOND FERRIS Te kaitono <i>Applicant</i>
ME <i>And</i>	PROPRIETORS OF NUHITI Q Ngā kaiurupare <i>Respondents</i>

Nohoanga: 14 August 2023, 122 Tairāwhiti MB 27-94 (122 TRW 27-94)
Hearing (Heard at Gisborne)

Kanohi kitea: A Evans for the applicant
Appearances N Milner for the respondents

Whakataunga: 30 November 2023
Judgment date

TE WHAKATAUNGA A KAIWHAKAWĀ A M THOMAS
Judgment of Judge A M Thomas

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Kei ngā reo pāorooro, kei ngā pari kārangaranga puta noa i te rohe o Te Tairāwhiti, tēnā koutou. Mātua rā, e tika ana kia mihia rātou kua whetūrangitia rā i roto i ngā marama kua hori, kei te whatitoka o ngā whakaaro tonu rātou, moe mai rā. Tauārai o te pō ki a rātou, tītoko o te ao marama ki a tātou, tihei mauri ora. Ko te aumihi nui tēnei e rere atu nei ki a koutou, ki te hunga e whai take nei ki tēnei tono, tēnā koutou katoa. Ā kāti, ki te kēhi.

He kupu whakataki

[1] Kua tukuna e Michael Ferris Snr (“Mr Ferris”) ngā tono e rua ki mua i te Kooti. Ko te tono tuatahi, he tono e ai kī w 19(1)(b) o Te Ture Whenua Māori Act 1993 (te Ture) e kimi nei i tētahi ōta tāriakia aukatihia te whakaputaina āna e ngā Kaipopuri o te Koporeihana o Nuhiti Q (te Koporeihana) mai i te whare kei 60 Arero Road, Mangatuna, Gisborne.

[2] Ko te tono tuarua, he tono e ai kī w 280 o te Ture e kimi nei i tētahi tiro-tirohanga mō ngā mahi a te Koporeihana. Kua tukuna te tono nā runga i ēnei take e whai ake nei:

- (a) Kāhore te Kōmiti Whakahaere (COM, te Kōmiti) i whai i tētahi mōtini kaupuri hea kua whai mana;
- (b) E māharahara ana te kaitono me ētahi atu kaupuri hea i te āhua o tō te Koporeihana whaihua me te āhua o ngā mahi whakahaere o āna rironga; ā
- (c) E māharahara ana te kaitono me ētahi atu kaupuri hea i te āhua o ā te kaiurupare whakahaere i ngā hui me ngā pōtitanga, nā runga i tō rātou tūranga hei kōmiti.

Ko te Horopaki

[3] I whakatūria te Koporeihana o Nuhiti Q e tētahi ōta o te Kooti Whenua Māori i te rā 17 o Hūrae 1981 mō ētahi poraka whenua ki te Kooti Whenua Māori o te rohe o te Tairāwhiti. Ko ngā mema e noho nei ki te COM i tēnei wā, ko Diane Ada Larsen (Chair) rātou ko Dirk

Introduction

[1] Michael Ferris Snr (“Mr Ferris”) has filed two applications with the Court. The first is an application pursuant to s 19(1)(b) of Te Ture Whenua Māori Act 1993 (the Act) seeking an injunction preventing his eviction from the property at 60 Arero Road, Mangatuna, Gisborne by the Committee of Management of Nuhiti Q Incorporation (the Incorporation).

[2] The second is an application pursuant to s 280 of the Act seeking an investigation into the affairs of the Incorporation. The application is made upon the following grounds:

- (a) That the Committee of Management (COM, the Committee) refused to act on a valid shareholder resolution;
- (b) That the applicant and a number of shareholders are concerned about the profitability of the Incorporation and the prudent management of its assets; and
- (c) That the applicant and a number of shareholders are concerned about the manner in which the respondents as a committee conduct meetings and elections.

The Background

[3] The Nuhiti Q Incorporation was constituted by order of the Māori Land Court dated 17 July 1981 over several blocks in the Tairāwhiti Māori Land Court District. The current COM members are: Diane Ada Larsen (Chair), Dirk Bullivart, Anthony Naden,

Bullivart, ko Anthony Naden, ko Kahukaraiti Brown, ko Nadia Whaitiri-White, ko Vasitta Naden, ko Rosita Rapihana.

Kahukaraiti Brown, Nadia Whaitiri-White, Vasitta Naden and Rosita Rapihana.

[4] He kaupupuri hea, he kaiwhaipānga hoki a Mr Ferris nō te Koporeihana. I ngā wā kua pahure, he mema ia ki te COM, ka mutu, i roto i te 31 me te hawhe tau ki muri, he kaimahi ia nō te Koporeihana, hei kaiwhakahaere pāmu.

[4] Mr Ferris is a shareholder and beneficiary to the Incorporation. He has been a member of the COM in the past and has also been employed by the Incorporation for 31 and a half years as a farm manager.

[5] Hei wāhanga o tana tūranga mahi, ka noho ia ki te whare ki 60 Arero Road, Gisborne, kei reira tonu ia e noho ana. Kāhore a Mr Ferris i te utu rēti. Ka noho te whare ki runga i te whenua e kīa nei, ko Waipare Block.

[5] As a part of his employment package, he has resided at the house located at 60 Arero Road, Gisborne, where he currently still resides. Mr Ferris does not pay rent. The house is on the land known as the Waipare Block.

[6] Ko te Waipare Block, he whenua e noho ana i raro i te mana o te Karauna, engari e rīhi atu ana ki te Koporeihana e ai kī te pukapuka rīhi i timataria i te rā 19 o Noema 2021 mō ngā tau e 33.

[6] The Waipare Block (or Waipare Station) is a Crown-owned block, which is leased by the Incorporation under a current deed of lease for a term of 33 years from 19 November 2021.

[7] I puta mai tēnei kēhi i te whakataunga a te Koporeihana kia whakamutua te mahi pāmu, ko taua whakataunga rā i tuku i te marama o Pēpuere 2021, ka whakatinana ai i te toenga o te tau o 2021. Nā taua whakataunga i whakakore ai te tūranga mahi o Mr Ferris hei kaiwhakahaere pāmu. I te rā 8 o Oketopa whiwhi ai a ia tana pānui kia oti marika tana mahi i roto i te rua wiki.

[7] This case arose out of the Incorporation's decision to exit farming, which was made in February 2021 and progressively implemented throughout the 2021 year. As a result of that decision, Mr Ferris' position as farm manager was disestablished. He was given two weeks notice of his redundancy on 8 October 2021.

[8] I tuku a Mr Ferris me ētahi atu i tētahi pānui ki te COM kia karangahia he pōti ā-kaupupuri hea mō tētahi mōtini motuhake.

[8] Mr Ferris and others made a special requisition, or formal request, to the COM calling for a special resolution to be put to a vote of shareholders.

[9] I whakatūria tētahi hui ā-tau (AGM) i te rā 4 o Tīhema 2021, i pōtihia tēnei mōtini motuhake, nā, kua pāhihia. I tū hoki ētahi pōtitanga ki tēnei AGM. Ko te huarahi anahe e wātea ana mō te tuku pōti, ko te tuku pōti ā-poutāpeta.

[9] On 4 December 2021, an annual general meeting (AGM) was held where this special resolution was voted on and was passed. Elections were also held at this AGM. The only method of voting provided was by way of postal vote.

[10] Ka whai mai ko te AGM i te rā 3 o Tīhema 2022, i pōtitia tētahi mōtini motuhake

[10] A subsequent AGM was held on 3 December 2022 where a special resolution

e pā ana ki te panonitanga o tā te Koporeihana tuhinga whakatau tikanga kia whakakorehia te āheinga ki te pōti ā-hea, nā, kua pāhihia. I tū hoki ētahi pōtitanga ki tēnei AGM. Ko taua āhua tonu, ko te huarahi anehe e wātea ana mō te tuku pōti, ko te tuku pōti ā-poutāpeta.

[11] I tuku ōkawa atu te COM i tētahi pānui ki a Mr Ferris kia puta ia i te whare kei 60 Arero Road i mua i te rā 15 o Hānuere 2023.

[12] Kāhore e whāia nei tētahi mahi ki te whakaputa i a Mr Ferris i tēnei wā.

Ko te Hātepe Ture o te Tono

[13] I te rā 27 o Hānuere 2023, i tū ai tētahi hui ā-kaiwhakawā, kātahi ka tuku ōta tāria mō tētahi wā te Kooti e aukati ana i tā te COM whakatinana i tā rātou whakatau ki te whakaputa i a Mr Ferris tae noa ki te wā ka oti marika ngā tonu matua ki mua i te Kooti.¹

[14] Nā te rōia mō te Koporeihana i tuku take mō te whānuitanga o tō te Kooti mana ki te tuku ōta tāria e ai kī w 19(1)(b) mena he whenua e noho ana i raro i te mana o te Karauna te whenua. Nā te Kooti i whakatau te take ki tohutoro 117 Tairāwhiti MB 216 – 223 me tana kī ake, mena ka tirohia whānuitia te whakamāramatanga mō te kupu, “property”, kei a te Kooti te mana whakatau ki te tuku i tētahi ōta tāria.²

[15] I te rā 14 o Maehe 2023, i tū anō ai tētahi hui ā-kaiwhakawā, kātahi ka tohua te Kairēhita kia whakarite ia i tētahi tangata e tika ana ki te whakahaere i tētahi tirohanga mō ngā mahi a te Koporeihana ka tuku ai i tētahi rīpoata e whai take nei ki ngā tautohenga te kaitono.³

[16] I te rā 5 o Mei 2023, i kōpoua ai a Mr Giles Hailwood hei Āpiha Mātai (EO) e ai kī w

regarding amending the Incorporations constitution to remove the ability to vote by way of shareholding, was voted on and passed. Elections were also held at this AGM. Again, only a postal voting method was provided.

[11] The COM officially requested Mr Ferris to vacate the premise at 60 Arero Road, Gisborne effective 15 January 2023.

[12] No steps have been taken to enforce Mr Ferris’ eviction

Procedural History

[13] On 27 January 2023, a judicial conference was convened, and the Court granted an interim injunction preventing the COM from implementing its decision to evict Mr Ferris until such a time as the substantive matters before the Court have been concluded.¹

[14] An issue of whether the Court had jurisdiction to grant an injunction pursuant to s 19(1)(b) where the land is Crown-owned was raised by counsel for the Incorporation. The issue was dealt with by the Court at 117 Tairāwhiti MB 216 – 223, the Court found that by taking a broader definition of the term “property” the Court had jurisdiction to grant the interim injunction.²

[15] On 14 March 2023, a further judicial conference was convened, and the Registrar was directed to commission a suitable person to conduct an investigation into the affairs of the Incorporation and to report on the circumstances relating to the allegations by the applicant.³

[16] On 5 May 2023, Mr Giles Hailwood was appointed as the Examining Officer (EO)

¹ 117 Tairāwhiti MB 110 (117 TRW 110).

² 117 Tairāwhiti MB 216 – 223 (117 TRW 216-223).

³ 117 Tairāwhiti MB 48 (117 TRW 48), at [19].

280(1) o te Ture kia whakahaerehia te tiroirohanga o ngā mahi a te Koporeihana. Kua tukuna e Mr Hailwood ngā rīpoata e rua, i tuhia i te rā 3 o Hūrae 2023 me te rā 8 o Akuhata 2023. Nā te tokorua, nā Mr Hailwood rāua ko Mr Richard Smith te rīpoata tuarua i tuhi.

[17] I te rā 14 o Akuhata 2023, i whakaritea ai kia noho ngā tono ki tētahi hui ā-kaiwhakawā, nā ka haere te rā, nā runga anō hoki i ngā whakaaetanga, i panonihia taua hui kia noho hei kōtitanga matua. I tae atu ngā tāngata nō ngā taha e rua. I tuku atu a Mr Ferris i āna kōrero taunaki hei tautoko i ngā tono. I tuku atu a Diane Larson rātou ko Anthony Naden, ko Kahukaraiti Brown i ā rātou kōrero taunaki mō te Koporeihana. Nā te EO hoki i kōrero ki āna rīpoata.

[18] Nā ngā rōia nō ngā taha e rua i tuku tāpaetanga ki te Kooti, i te āhei hoki rātou ki te tuku i ngā uiui kōkirikiri ki ngā kaikōrero me ngā EO.

[19] I te mutunga o te kōtitanga, i tuku kupu whakahau te Kooti ki ngā taha e rua kia tukuna mai tētahi manatu rōia e whakamōhiotia nei mena ka whai rātou i tētahi whakaaetanga rānei, ka whai rātou i tētahi whakataunga nā te Kooti mō ēnei take rānei.

[20] I te rā 18 o Akuhata 2023, i tukuna ai te rōia a te kaiurupare tētahi manatu e inoi ana kia tukuna ngā kupu whakahau ki te EO kia whakaritea tētahi rīpoata anō e tukuna nei i ngā kupu ārahi ki te COM mō tā Mr Ferris tono kia whakatauhia he whakaaetenga i waho i te Kooti. I te rā 22 o Akuhata 2023, i tuku te Kooti i ngā kupu whakahau kia whakaritea e te EO tētahi anō ripoata mō ērā arahitanga ka tuku ai ki te COM.

for the investigation of the Incorporation's affairs pursuant to s 280(1) of the Act.⁴ Two reports have been received from Mr Hailwood, dated 3 July 2023 and 8 August 2023. The later report was a joint report prepared with Mr Richard Smith.

[17] On 14 August 2023, the applications were set down for a judicial conference, which on the day, and by consent, moved into a substantive hearing. The hearing was well-attended with support for both parties present. Mr Ferris gave evidence in support of his applications. Ms Diane Larson, Mr Anthony Naden and Ms Kahukaraiti Brown gave evidence on behalf of the Incorporation. The EO also presented his reports.

[18] Counsel for the applicant and counsel for the Incorporation provided submissions to the Court and were both given the opportunity to cross-examine the witnesses and the EO.

[19] At the conclusion of the hearing, the Court directed parties to file memoranda indicating whether an agreement out-of-Court will be pursued, or whether a Court decision is required.

[20] On 18 August 2023, counsel for the respondent filed a memorandum requesting the EO be further directed to file a report that provides independent advice to the COM regarding Mr Ferris' proposal for an agreement out-of-Court. On 22 August 2023, the Court directed a further report be prepared by the EO to provide this advice to the COM.

⁴ 118 Tairāwhiti MB 54-55 (118 TRW 54-55).

[21] I te rā 28 o Akuhata 2023, i tukuna rā e Mr Ferris tētahi tono ki te COM mō tētahi whakaaetanga hei whai mā rātou katoa i waho i te Kooti.

[22] I te rā 30 o Akuhata 2023, i tukuna rā te rīpoata tuatoru o te EO ki te Kōmiti, i tukuna rā hoki tētahi kape ki te Kooti.

[23] I te rā 4 o Hepetema 2023, i tae mai tētahi manatu ki te Kooti e whakamāramahia nei te whakakorenga ā te Kōmiti i tā Mr Ferris tono i tukuna rā i te 28 o Akuhata 2023, e kimihia nei hoki i tētahi whakapuakanga nā te Kooti.

Ko ngā tāpaetanga a te kaitono

[24] E mea ana te kaitono, kāhore te COM i te mahi i runga i te āta tūpatō, i te āta whakaaro me te matatau ki āna mahi, ā, e kimihia nei tā te Kooti whakamahi i tōna mana e ai kī w 280(7) o te Ture ki te tuku kupu whakahau anō. Ka noho mai ko ngā take e toru ngā take e pēnā ai, arā ko te kore i whai i tētahi mōtini motuhake, ko te mahi whaihua o te Koporeihana me te āhuatanga o ngā whakahaere i ngā hui me ngā pōtitanga.

Ko te take tuatahi kia tiro tirohia

[25] Tuatahi ake, e mea ana te kaitono, kāhore te COM i whai i tētahi mōtini kaupupuri hea kua whai mana.

[26] I tētahi pānui i tukuna ai i te rā 9 o Noema 2021, i whakatakoto ai a Mr Ferris me ētahi atu i tētahi mōtini motuhake hei whakaarotanga ki te AGM o 2021 ka tū ā te rā 4 o Tihema 2021, e mea ana me hurikōaro te Koporeihana i tā rātou whakatau ki te whakamutu i te mahi pāmu me te whakakore i te tūranga o Mr Ferris hei kaiwhakahaere pāmu tae atu ki te wā kia wānangahia whānuitia e ngā kaupupuri hea ēnei take.

[21] On 28 August 2023, a proposal for a potential agreement out of Court was provided by Mr Ferris to the COM to consider.

[22] On 30 August 2023 a third EO report was provided to the Committee and a copy filed with the Court.

[23] On 4 September 2023, the Court received a memorandum advising of the Committee's decision not to accept the Mr Ferris's proposal of 28 August 2023 and requesting the Court make a determination on the applications.

Applicants' submissions

[24] The applicant says the COM have not acted prudently, reasonably and competently and seeks that the Court exercise its jurisdiction pursuant to s 280(7) of the Act to issue further directions. This is based on the three grounds for investigation, as set out above, being the failure to action a special resolution, the profitability of the Incorporation and the conduct of meetings and elections.

First ground for investigation

[25] Firstly, the Applicant says the COM refused to act on a valid shareholders resolution.

[26] By requisition dated 9 November 2021 Mr Ferris, and others proposed a special resolution for consideration at the 2021 AGM, which was scheduled for 4 December 2021, that the Incorporation reverse its decision to exit farming and terminate Mr Ferris' role as farm manager until the shareholders have had time to consider these matters in full.

[27] I taua AGM, i pōtitia te mōtini motuhake mā te tuku hea. I whakaae te 82,863.947 o ngā hea, i whakahē te 81,822.837 o ngā hea.⁵

[28] E tāpaetia ana e te kaitono, whai muri i te pāhi i te mōtini, kāhore te COM i whai i te whakatau a ngā kaipupuri hea

Ko te take tuarua kia tiro tirohia

[29] Tuarua ake, e māharahara ana a Mr Ferris me ētahi atu kaipupuri hea i te āhua o tō te Koporeihana whaihua me te āhua o ngā mahi whakahaere o āna rironga

[30] E mea ana rātou, kāhore te COM i te tino whai mōhiotanga mō ngā aupiki me ngā auheke ka hua ake i tā rātou whakamutu i te mahi pāmu, waihoki, ko te mōreareatanga o tā rātou aro whāiti ki te mahi pāmu waro anahe.

[31] Ka tāpaetia e te kaitono, kāhore te COM i te tuhi, i te whakaatu atu anō hoki i ngā tuhinga pūtea mā tētahi huarahi e whai nei i te huna kore, ka mutu, kāhore rātou i tuku wā kia wānangahia aua tuhinga pūtea i te wā o ngā AGM.

Ko te take tuatoru kia tiro tirohia

[32] Tuatoru ake, e māharahara ana a Mr Ferris me ētahi atu kaipupuri hea i te āhua o ā te kaiurupare whakahaere i ngā hui me ngā pōtitanga.

[33] Kāhore te COM i te whakahaere i ngā hui nā runga i te ngaiotanga, i te mahi tuku mōhiotanga me te āheinga kia kōrero tahi ngā kaipupuri hea. Ka tae atu tēnei ki te whakatau kia whakatūria ngā hui ā-ipurangi. Ka kōrero hoki te Kōmiti ki ngā kaipupuri hea i runga i te riri.

[27] At the AGM, the special resolution was voted on by way of shareholding. 82,863.9473 were in favour and 81,822.837 were against.⁵

[28] The applicant submits that following this resolution the COM failed to abide by the decision of the shareholders.

Second ground for investigation

[29] Secondly, Mr Ferris and a number of other shareholders are concerned about the profitability of the incorporation and the prudent management of its assets.

[30] They say that the COM have failed to properly inform itself about the implications of exiting farming and the risk of limiting the Incorporation's portfolio to carbon farming only.

[31] The applicant submits that the COM have failed to record and present financials in a transparent way to shareholders and have failed to allow discussion of those financials by shareholders at AGMs.

Third ground for investigation

[32] Thirdly, Mr Ferris and a number of shareholders are concerned about the manner in which the Committee conducts meetings and elections.

[33] The COM has failed to conduct meetings professionally and in a way that is informative and allows for meaningful shareholder engagement. This includes the decision to hold meetings virtually. The Committee has also interacted with shareholders in an aggressive manner.

⁵ This is 50.3% for and 49.7% against of 164,686.78 shares that voted.

[34] E mea ana rātou, kāhore tonu te COM i te kōrero tahi ki ngā kaupupuri hea, kāhore hoki i tukua mōhiohio ki ngā kaupupuri hea ki mua i ngā AGM.

[35] Hei whakakapi ake, ka tāpaetia e te kaitono, kāhore te COM i te whai i te ture mō te tuku pānui, mō te āhua anō hoki o ngā mōtini motuhake, waihoki, o ngā pōti.

[36] Hei tāpiri ake, kua tāpaetia e te rōia mō te kaitono, kāhore te EO i te whakahaere i tētahi tirotirohanga mārika.

[37] E kimi ana a te kaitono i ngā kupu whakahau pēnei, e ai kī w 280(7)(e) o te Ture:

- (a) E whakahau ana kia arotakehia katoatia ngā tukanga me takohanga o te Kōmiti;
- (b) E whakahau ana kia whakotihia e ngā mema o te COM o ināianei ngā akoranga mō te taha mana whakahaere;
- (c) E whakahau ana kia kōpoua tētahi tangata ngaio motuhake ki te COM kia arahina tā te Koporeihana koke whakamua;
- (d) E whakahau ana kia whakaritea tētahi kape ā-hiko mō te rēhita pānga, kia whakawāteahia hoki ki te aromātai ā-ipurangi;
- (e) E whakahau ana kia kīa ake, nā te mōtini motuhake o 2021 i herea te COM kia āta whakaarohia te tono kē o 6 o Oketopa 2021 a Mr Ferris e tukuna nei i tētahi kōwhiringa kia kore ai te Koporeihana i mate ki te whakamutua te mahi pāmu;
- (f) E whakahau ana kia āta whakaarohia e te COM tētahi tono e tukuna nei tētahi tūranga mahi ki te kaitono kia whakapaitia a Waipare Block.

[34] They say the COM have failed to maintain regular contact with shareholders and provide all relevant information to shareholders leading up to AGMs.

[35] Lastly, the COM have failed to comply with relevant legislation in respect of notice and special resolutions, as well as voting.

[36] In addition, counsel for the applicant has submitted that a thorough investigation was not conducted by the examining officer.

[37] The applicant seeks directions pursuant to s 280(7)(e) of the Act as follows:

- (a) A direction that a full review of procedures and obligations of the Incorporation COM be undertaken;
- (b) A direction that the current members of the COM undertake governance training;
- (c) A direction appointing a qualified independent person to the COM to help guide future progress for the Incorporation;
- (d) A direction that the Incorporation's interests register be kept in electronic form, and made available for inspection online;
- (e) A direction that the 2021 special resolution required the COM to consider in good faith Mr Ferris' alternative proposal made on 6 October 2021, that would not require the Incorporation to exit farming; and
- (f) A direction that the COM consider, in good faith, an alternative proposal by the applicant regarding the clean-up of Waipare block.

Ko ngā tāpaetanga a ngā kaiurupare

[38] E mea ana te COM, nā runga i ō rātou takohanga, e tika ana te whakatau kia whakamutua te mahi pāmu i ngā hipi me ngā kau, kia hokona atu ngā kararehe, kia aukatihia marika hoki i te pāmu.

[39] Hei whakautu i tā te kaitono take tuatahi mō te tirohirohanga, e mea ana te COM, ahakoa te pāhīhia ō te mōtini motuhake ki te AGM, kua kore he āheinga ki te whakamana i te whakatau ki roto i te mōtini. Hei tāpiri ake, kua hokona atu te katoa, tōna katoa nei, o ā te Koporeihana kararehe, ka tuku ai te moni hua ki te whare pēke hei utu whakaheke i tā te Koporeihana nama kāhore i utua.

[40] E mea ana te COM, kāhore i a te Koporeihana ngā kararehe ki te ū tonu ki te mahi pāmu, waihoki, kua whakamutua ia i te mahi pāmu e ai kī te whakataunga me ngā mahi kua mahia i mua i te tuku i te mōtini.

[41] Mō te take o tō Mr Ferris tūranga mahi, e mea ana te COM, i tukuna tētahi pānui whakakore mahi ki a Mr Ferris i te rā 7 o Oketopa 2021 (ka timata a te 22 o Oketopa 2021). Hei tā te COM, i te pūare ia kia whakaarohia tētahi whakaaetanga rētihanga mō te whare whai muri i te rā 20 o Oketopa 2021. Hei tā rātou, kua whakakorehia taua tono.

[42] I whakamōhītia mai e te COM tā rātou tono o te Waipare Block, me ētahi atu poraka whenua e rua pea, ki te kaitono hei rīhi, ka mutu, mā te Koporeihana e utu ngā tāke kaunihera me te inihua, waihoki, ka noho rēti kore mai te kaitono me tana tama ki te whare, ka noho hoki ko te waka o te kaiwhakahaere o te pāmu ki tōna mana. I whakakorehia te tono e Mr Ferris.

[43] Hei whakautu i tā te kaitono take tuarua mō te tirohirohanga, te mahi hē i te whakahaere

Respondent's submissions

[38] The COM say the decision to exit sheep and beef farming, including selling stock and ceasing farming operations, was the right decision and was one the COM was obliged to make.

[39] In response to the applicants first ground for investigation, the COM say that while the special resolution made at the AGM was passed, the decision and powers the resolution related to had already been exercised and given effect. Significantly, the Incorporation stock, or almost all of it, had been sold, with the proceeds applied to reduce debt to the Incorporation's bank.

[40] The COM say that the Incorporation no longer had stock to farm, and it had exited farming in accordance with the decision made and actions taken prior to the special resolution being passed.

[41] With respect to the employment of Mr Ferris, the COM say that a notice to terminate employment was provided to Mr Ferris on 7 October 2021 (effective on 22 October 2021). The COM advised that it was prepared to consider a tenancy agreement in respect of the dwelling at a fair market rental for the period past 20 October 2021. The applicant, they say, declined the offer.

[42] The COM advised the Court that they also offered the Waipare Block, and possibly two other blocks of land to the applicant to lease, with the Incorporation agreeing to cover rates and insurance for a period, plus a period of rent-free accommodation for the applicant and his son, and ownership of the Incorporation farm manager vehicle. This offer was rejected by Mr Ferris.

[43] In response to the second grounds for investigation, mismanagement of the

i ngā rironga o te Koporeihana, e mea ana te COM, i mua i te whakataua, i whai te COM i ngā whakamārama mō te horopaki me ngā mōhiotia o tō te Koporeihana tūranga mō te take pūtea, tae atu ki te hekenga wariu o te pāmu mō te Koporeihana, ngā tohutohu a ngā kaitohutohu motuhake, tae atu ki ētahi i kōpoua e te Kooti.

[44] E tahuri ana a te COM i te kitenga a te EO me tana kī ake, he tika te whakataua a te COM kia whakamutua te mahi pāmu kia aukati ai te whakaheke tonu i tā rātou pūtea.

[45] Hei whakautu i te take tuatoru mō te tiroirohanga, e whai take nei ki te āhua o te whakahaere i ngā hui me ngā pōtitanga, e mea ana te COM he tika te whakataua kia whakahaerehia ngā hui mā te ipurangi mō te hauora me te haumarutanga te take, ka mutu, kāhore i herea te arero pātai o ngā kaupupuri hea. Hei tā te COM, kāhore rātou i whai i ngā whanonga whakatumā, tūkinō anō hoki, ka mutu, kāhore he taunakitanga whai kiko ki te hāpai i taua tautohenga.

[46] Kua whai whakaaro te COM ki te wā o te tuku pānui mō te AGM 2022 me tā rātou whakaae kāhore tērā i te whai i te Māori Incorporation Constitution Regulations 1994 (ngā Waeture). I whakaaro ake te COM, e tika ai te tuku pānui, tērā pea ka tuku anō atu te mōtini motuhake ki te AGM e whai mai nei.

[47] Mō te kōrero a te EO, me tana kī ake, “the COM looks to have operated in a way to manufacture a certain outcome that was desired”, kāhore te COM i te whakaae ki tana whakapae me tā rātou kī ake, e hē ana tētahi whakaaro kua mahi rītaha, kua whai te COM i tētahi kaupapa kua whakatakotohia kētia.

[48] Mō ngā tūtohutanga e whā a te EO:

- (a) E tautoko ana te COM kia arotakehia āna tukanga me ōna takohanga;

Incorporation’s assets, the COM say the decision made by the COM was informed by circumstances and information including the Incorporation’s financial position, the farm being loss-making for the Incorporation and advice received from independent advisors, including those appointed by the Court.

[44] The COM point to the finding of the EO that the decision made by the COM to exit farming was correct and was made from a necessity to avoid further financial loss.

[45] In response to the third grounds for investigation, regarding the conduct of meetings and elections, the COM say that the decision to have virtual meetings was warranted for health and safety reasons and no shareholders were prevented from asking questions or commenting. The COM say they have not engaged in aggressive or abusive behaviour and there is no reliable evidence to support any such allegation.

[46] The COM acknowledge that the notice period for the 2022 AGM was inadequate and did not align with the Māori Incorporation Constitution Regulations 1994 (the Regulations). The COM proposed putting the special resolution again at the next AGM to allow for a sufficient notice period.

[47] In terms of the examining officer’s comment, “the COM looks to have operated in a way to manufacture a certain outcome that was desired”, the COM does not agree with that assumption and note that any suggestion of predetermination or bias on the part of the COM is rejected.

[48] In terms of the four recommendations made by the EO:

- (a) The COM agrees to a review of its procedures and obligations;

- | | |
|--|--|
| <p>(b) E tautoko ana te COM kia whāia ngā akoranga mō te mana whakahaere;</p> <p>(c) E pūare ana te COM kia tonoa e te Kooti tētahi tangata ngaiiao motuhake kia noho ki te Kōmiti. E tika ana kia āta whakatakotohia te hātepe mō te pōtitanga, mō te kōpoutanga rānei, ka tuku ai taua tapahanga ki te AGM hei whakaaro mō ngā kaupurihea;</p> <p>(d) Kua whakaritea kētia e te COM tētahi rēhita pānga.</p> | <p>(b) The COM agrees to further governance training;</p> <p>(c) The COM is open to the Court proposing a “qualified independent” person to be elected or appointed to the Committee, subject to the process of election or appointment being put to the next AGM to gauge the views of the shareholders; and</p> <p>(d) The COM already maintains an interest register.</p> |
|--|--|

Ko ngā Ripōata a ngā Āpiha Mātai

[49] Nā runga anō i tā te EO i kī ai, i aro noa te rīpoata tuatahi ki ēnei take e rua:

- (a) Tirohia te whakataunga a te COM kia whakamutua te mahi pāmu me te hātepe i whāia; ā
- (b) Tirohia te whakakoretanga o ngā tūranga mahi a ngā kaimahi pamū o Nuhiti me te mahi whakaputa whare.

[50] I te mutunga iho, i whakatauhia e te EO, he tika te whakatau a te COM kia whakamutua te mahi pāmu. Hāunga tērā, i kī hoki ia, “that the COM looks to have operated in a way to manufacture a certain outcome that was desired. Me ana kupu, he was not saying the outcome is incorrect, but it does raise questions about the process in which these key decisions were made”.

[51] I whakaraupapa mai ia i ētahi tūtohutanga:

- (a) The COM to have a full review of procedures and obligations;
- (b) Members of the COM to undertake training in governance;
- (c) That Nuhiti Q appoint a qualified independent person to the COM to help guide future progress;

The Examining Officer’s Reports

[49] As set out by the EO, the first report addressed two issues:

- (a) Investigating the COM’s decision to exit farming and process of decision; and
- (b) Investigating the termination of employment of Nuhiti farm staff and eviction from housing.

[50] The EO came to the conclusion that the COM’s decision to exit farming was the right decision. He did, however, note “that the COM looks to have operated in a way to manufacture a certain outcome that was desired”. He pointed out that he “was not saying the outcome is incorrect, but it does raise questions about the process in which these key decisions were made”.

[51] He set out a number of recommendations:

- (a) The COM to have a full review of its procedures and obligations;
- (b) Members of the COM are to undertake training in governance;
- (c) That Nuhiti Q appoint a qualified independent person to the COM to help guide future progress;

- (d) The Incorporations interests register must be kept in a physical or an electronic form, and made available.

[52] I tohua e te Kooti kia whakaritea tētahi rīpoata tuarua kia aro noa ki ētahi take kāhore i matapakihia ki tā te EO rīpoata tuatahi. Ko ēnei ngā kitengā anō a te EO i taua rīpoata:

- (a) The farming operation was not a viable business;
- (b) The consultation process with Mr Ferris was robust;
- (c) The COM have provided full financial disclosure to the shareholders by way of annual reports. The documents are comprehensive, clear and meet accepted financial reporting standards;
- (d) There appears to be extensive dialogue at meetings in respect of finances;
- (e) There has been no evidence provided to support any unprofessionalism by current members of the COM;
- (f) The COM has maintained contact with the shareholders and meets regularly. The minutes appear to be informative and the discussions robust.
- (g) For the requisition dated 10 November 2021, which challenged the decision to exit farming, to have been effective, a special general meeting should have been called in accordance with r 2(1)(b) of the Regulations. It was not and the majority of the stock had been sold before the requisition was received.
- (h) There seems to be a failing from the outset with the special resolution put

- (d) The Incorporations interests register must be kept in a physical or an electronic form, and made available.

[52] A second report was directed by the Court to address a number of issues that were not discussed in the EO's first report. The EO further found that:

- (a) The farming operation was not a viable business;
- (b) The consultation process with Mr Ferris was robust;
- (c) The COM have provided full financial disclosure to the shareholders by way of annual reports. The documents are comprehensive, clear and meet accepted financial reporting standards;
- (d) There appears to be extensive dialogue at meetings in respect of finances;
- (e) There has been no evidence provided to support any unprofessionalism by current members of the COM;
- (f) The COM has maintained contact with the shareholders and meets regularly. The minutes appear to be informative and the discussions robust.
- (g) For the requisition dated 10 November 2021, which challenged the decision to exit farming, to have been effective, a special general meeting should have been called in accordance with r 2(1)(b) of the Regulations. It was not and the majority of the stock had been sold before the requisition was received.
- (h) There seems to be a failing from the outset with the special resolution put

at the 4 December 2022 AGM, in that, no proper notice was given to the shareholders and the postal vote appears to be questionable. It appears then that the COM have not acted strictly in accordance with the Regulations.

Ko ngā take

[53] E rua ngā take ki tēnei kēhi hei whakawā māku.

- (1) Tuatahi ake, āe rānei, i whai mana te hātepe o ngā pōtit ā-poutāpeta i whāia rā ki te AGM i te tau 2021 me te tau 2022?
- (2) Tuarua ake, āe rānei kua ngoikore te pae o tō te kōmiti whanonga whakahaere kia pai ai tā te Kooti whakamahi i tōna mana e ai kī w 280(7) o te Ture?

Te Ture

Take Tuatahi – Ngā Pōti

[54] I whakaraupapahia e te Waeture te hātepe e whāia nei mō ngā pōti.

12 Right to Vote

- (1) A shareholder may exercise the right to vote either –
 - (a) by being present in person or by proxy or by duly appointed attorney; or
 - (b) if the shareholders by special resolution have so determined at an earlier meeting, by postal vote.
- (2) Any person who is, by virtue of a kai tiaki trust established under [section 217](#) of the Act, the trustee for any shareholder in respect of his or her shares, or who is the duly appointed attorney of any shareholder, may attend, vote, and act at any meeting of the incorporation, either personally, by

at the 4 December 2022 AGM, in that, no proper notice was given to the shareholders and the postal vote appears to be questionable. It appears then that the COM have not acted strictly in accordance with the Regulations.

The Issues

[53] There are two issues that I must determine:

- (1) Whether the postal voting implemented at the 2021 and 2022 AGM was valid; and
- (2) Whether the standard of conduct of the committee has been sufficiently lacking to warrant an exercise of the Courts jurisdiction pursuant to s 280(7) of the Act.

The Law

Issue One – Voting

[54] The process to be followed with respect to voting is set out in the Regulations.

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 - (a) by being present in person or by proxy or by duly appointed attorney; or
 - (b) if the shareholders by special resolution have so determined at an earlier meeting, by postal vote.
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proxy, or by postal vote, in the same manner and on the same conditions as if that person were the shareholder.

- (3) Where 2 or more persons are registered as the holder of a share, the vote of the person named earliest in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- (4) The chairperson of a general meeting of shareholders is not entitled to a casting vote.

20 Postal Votes

- (1) If the shareholders, by special resolution, have so determined at an earlier meeting, a shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this rule.

[55] I tuku a Waeture 1(1) i te whakamārama mō te mōtini motuhake:

special resolution, in relation to a Maori incorporation, means a resolution that has been passed at a general meeting of shareholders of the Maori incorporation, being a general meeting of which not less than 21 clear days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given

[56] Mā Waeture 3 e whakatakoto ngā here ki te taha o ngā pānui:

Notice of meeting

- (1) A general meeting of shareholders (whether an annual general meeting or a special general meeting) shall be convened by notifying shareholders in writing of the time and place of the meeting and of the business proposed to be transacted at the meeting
- (2) Where a special resolution will be considered at the meeting, the notice

proxy, or by postal vote, in the same manner and on the same conditions as if that person were the shareholder.

- (3) Where 2 or more persons are registered as the holder of a share, the vote of the person named earliest in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- (4) The chairperson of a general meeting of shareholders is not entitled to a casting vote.

20 Postal Votes

- (1) If the shareholders, by special resolution, have so determined at an earlier meeting, a shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this rule.

[55] Regulation 1(1) defines a special resolution as follows:

special resolution, in relation to a Maori incorporation, means a resolution that has been passed at a general meeting of shareholders of the Maori incorporation, being a general meeting of which not less than 21 clear days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given

[56] Regulation 3 governs the notice requirements:

Notice of meeting

- (1) A general meeting of shareholders (whether an annual general meeting or a special general meeting) shall be convened by notifying shareholders in writing of the time and place of the meeting and of the business proposed to be transacted at the meeting
- (2) Where a special resolution will be considered at the meeting, the notice

must provide for no less than 21 clear days' notice of the date of the meeting.

- (3) Where no special resolution will be considered at the meeting, the notice must provide for no less than 14 clear days' notice of the date of the meeting.
- (4) The notice of meeting shall be
- (a) posted to every shareholder whose postal address is recorded in the share register; or
 - (b) given in such other manner as the shareholders, by special resolution, may have determined at an earlier meeting.
- (5) The notice shall specify that no person shall vote as attorney or proxy at the meeting unless a copy of the power of attorney or notice of appointment is lodged at the office of the incorporation not later than 48 hours before the time fixed for the meeting or such later time as the chairperson of the committee may allow.

[57] Whai muri i tētahi tiroirohanga mō ngā whakahaerenga o ngā pōtitanga, mā wehenga 269(6) o te Ture e tuku ngā kōwhiringa e wātea ana ki te Kooti.

269 Committee of Management

The court may, on the application of any shareholder or officer of the incorporation, investigate the conduct of any election of a member or members to the committee of management, and may either—

- (a) confirm the appointment of the person or persons elected; or
- (b) declare the election invalid and order a new election to be held.

Take Tuarua – Te whanonga whakahaere

[58] Ka whakaraupapa mai a wehenga 280 o te Ture te mana o te Kooti ki te tuku tiroirohanga ki ngā mahi a ngā Koporeihana

must provide for no less than 21 clear days' notice of the date of the meeting.

- (3) Where no special resolution will be considered at the meeting, the notice must provide for no less than 14 clear days' notice of the date of the meeting.
- (4) The notice of meeting shall be
- (a) posted to every shareholder whose postal address is recorded in the share register; or
 - (b) given in such other manner as the shareholders, by special resolution, may have determined at an earlier meeting.
- (5) The notice shall specify that no person shall vote as attorney or proxy at the meeting unless a copy of the power of attorney or notice of appointment is lodged at the office of the incorporation not later than 48 hours before the time fixed for the meeting or such later time as the chairperson of the committee may allow.

[57] Section 269(6) of the Act provides the options available to the Court following the investigation into the conduct of an election.

269 Committee of Management

The court may, on the application of any shareholder or officer of the incorporation, investigate the conduct of any election of a member or members to the committee of management, and may either—

- (a) confirm the appointment of the person or persons elected; or
- (b) declare the election invalid and order a new election to be held.

Issue Two – Standard of Conduct

[58] Section 280 of the Act sets out the jurisdiction of the Court to investigate the affairs of Māori Incorporations. Section 280(1)

Māori. E tukua ana a Wehenga 280(1) i te mana ki te Kooti kia kōpoua tētahi āpiha mātai ki te tiroiro i tētahi Koporeihana Māori.

[59] I whakatakotohia e wehenga 280(6) me 280(7) i te mana o te Kooti whai muri mai i tētahi o ērā tiroirohanga, e pēnei nei:

- a) E karangahia ana he hui;
- b) E tangohia ana ngā mema o te Kōmiti;
- c) E kōpoutia ana ngā mema tāpiri;
- d) E whakatārewahia ana te mana o te Kōmiti;
- e) E whakaūngia ana ngā herenga, ngā aukatinga rānei ki runga i te Kōmiti;
- f) E tukuna ana ngā kupu whakahau mō te whakahaeretanga o te Koporeihana;
- g) E whakatārewahia ana te tikanga whakatau a te koporeihana;
- h) E whakamanahia ana kia whakakorehia te koporeihana;
- i) E tukuna ana ngā take ki te Attorney-General kia hāmenetia.

[60] I *McCleery v Waihaha 3D2 Incorporation* i whai whakaaro te Kooti Pīra Māori ki te take o te pae o ē ngā mema kōmiti whanonga whakahaere i tētahi kōmiti whakahaere Koporeihana.⁶

Persons who put themselves forward as candidates for a Committee of Management are, in effect, representing to the owners that they are competent and capable to administer the assets of the Incorporation. On this premise we would expect the minimum standard to be that of prudent and competent administration in the management of the assets and business of the Incorporation.

...

The yardstick is prudent, reasonable and competent management and if, having

provides that the Court may appoint an examining officer to investigate a Māori Incorporation.

[59] Subsections 280(6) and 280(7) of the Act set out the powers of the Court following such investigation, which include:

- a) Calling a hearing;
- b) Removing Committee of Management members;
- c) Appointing additional members;
- d) Suspending the Committee's powers;
- e) Imposing conditions or restrictions on the Committee;
- f) Giving directions on the management of the incorporation;
- g) Suspending the constitution of the incorporation;
- h) Ordering that the incorporation be wound up; and
- i) Referring matters to the Attorney-General for prosecution.

[60] In *McCleery v Waihaha 3D2 Incorporation*, the Māori Appellate Court considered the standard of conduct of members of a Committee of Management of an Incorporation.⁶

Persons who put themselves forward as candidates for a Committee of Management are, in effect, representing to the owners that they are competent and capable to administer the assets of the Incorporation. On this premise we would expect the minimum standard to be that of prudent and competent administration in the management of the assets and business of the Incorporation.

...

The yardstick is prudent, reasonable and competent management and if, having

⁶ *McCleery v Waihaha 3D2 Incorporation* [1997] 1 Waiariki Appellate MB 67 (1 AP 67) at 77.

regard to the circumstances, the Court finds a standard of administration which is lacking the Court is entitled to exercise its jurisdiction under section 280(7).

[61] Waihoki, i *Bramley v Hiruharama Ponui Incorporation* i matapakihia e te Kooti Pira Māori te take o te mahi a tētahi koporeihana me te kī ake me ine ki te taha o ngā mātāpono o te Ture, ka mutu, me titiro mena rānei kei reira tētahi mōreareatanga e mārāma ana ki ngā rironga o te koporeihana, ki ngā pānga anō hoki o ngā kaupuri hea.⁷

[7] In our view unsatisfactory performance must be measured against the principles in the Act. They are contained in the preamble and section 2.

[8] The key principles for the purposes of this appeal are that the Court should encourage:

- (a) retention of Māori land, in the hands of its owners;
- (b) the utilisation and development of that land; and
- (c) control of that land by the owners, through their representatives.

[9] Whether governance performance has been satisfactory or not must depend then on whether there is a clear and present apprehension of risk to the incorporation asset or to the wider interests of the incorporation shareholders as a result of action or inaction of the committee. It is not every unsatisfactory act or omission which should lead to removal, but those that go to the principles of the Act. To adopt any other approach, would lead to removal being the primary remedy available for any technical breach of the Act. We do not think that wholesale removal of Māori governance members

regard to the circumstances, the Court finds a standard of administration which is lacking the Court is entitled to exercise its jurisdiction under section 280(7).

[61] Further, in *Bramley v Hiruharama Ponui Incorporation* the Māori Appellate Court discussed that the performance of an incorporation must be measured against the principles of the Act, and must depend on whether there is a clear risk to the incorporation assets or shareholders' interests:⁷

[7] In our view unsatisfactory performance must be measured against the principles in the Act. They are contained in the preamble and section 2.

[8] The key principles for the purposes of this appeal are that the Court should encourage:

- (a) retention of Māori land, in the hands of its owners;
- (b) the utilisation and development of that land; and
- (c) control of that land by the owners, through their representatives.

[9] Whether governance performance has been satisfactory or not must depend then on whether there is a clear and present apprehension of risk to the incorporation asset or to the wider interests of the incorporation shareholders as a result of action or inaction of the committee. It is not every unsatisfactory act or omission which should lead to removal, but those that go to the principles of the Act. To adopt any other approach, would lead to removal being the primary remedy available for any technical breach of the Act. We do not think that wholesale removal of Māori governance members is consistent

⁷ *Bramley v Hiruharama Ponui Incorporation* [2006] 11 Waiariki Appellate MB 144 (11 AP 144) at [7]-[9].

is consistent with the principles of the Act or the intentions of the legislature.

He Kōrerorero

[62] Kua tuku wero a Mr Ferris mō te hohonutanga o ā ngā EO rīpoata.

[63] Kua tukuna mai ngā rīpoata e toru e tahuri nei ki ngā take katoa i roto i te tono. I whai whakaaro te EO ki ngā taunakitanga me ngā tuhinga katoa i tukuna rā ki te Kooti, i whakahaere hui me ngā uiui, ko reira hoki he kitenga me ngā tūtohutanga ki roto i ngā ripoata.

[64] Kua whai wāhi ngā taha e rua ki te tuku pātai ki te EO, ka mutu, i te kōtitanga kua whakaae mai te kaitono ki te whakapae, he tiroirohanga mārika tēnei, waihoki, kāhore he tuhinga anō e tika ana me whai e te EO.

[65] E tautoko ana ahau i tā te rōia mō te kaitono i kī ai, mā te kiko o te rīpoata o te EO e tau ai mena rānei ka whakamahi te Kooti i tōna mana e ai kī w 280(7) o te Ture me te āhua o taua whakamahinga. Nā runga anō i taua take, i tohua e te Kooti kia tukuna mai he rīpoata tuarua kia mārama ai ngā EO, kia whai ai hoki rāua i te whānuitanga o te tiroirohanga. I tuku hoki te Kooti i ngā kupu whakahau kia tae atu te EO ki te kōtitanga ki te whakautu i ngā pātai a ngā taha e rua mō ngā ripoata.

[66] Ki te pānui mai i ngā rīpoata e toru hei rīpoata kotahi, e whakaae ana ahau kua tahuri te rīpoata ki ngā take katoa a te kaitono, ā, he tiroirohanga mārika tēnei.

[67] Ahakoa kua tukuna e Mr Ferris te tono e a kī w 280 o te Ture, e whakaae ana ahau kia noho mai hoki ngā take ki roto i te tono me ngā take i tohea rā e te kaitono, ki raro i taku mana e ai kī w 269(6) o te Ture.⁸ Ka mutu, e tino mārama ana ki roto i te kōrero taunaki a A

with the principles of the Act or the intentions of the legislature.

Discussion

[62] Mr Ferris has challenged the thoroughness of the EO reports.

[63] Three reports were provided, which addressed all matters in the application. The EO considered all evidence and documentation filed with the Court, conducted hui and interviews, and the reports made findings and recommendations.

[64] Opportunity was provided to all parties to question the EO and furthermore, the applicant himself agreed at the hearing that the investigation was thorough and there was no other documentation for the EO to consider.

[65] I agree with Counsel for the applicant that whether the Court will exercise its jurisdiction under s 280(7) of the Act, and the nature in which the jurisdiction is exercised, is largely dependent on the contents of the EO's report. It was for this reason that a second report was directed by the Court to ensure the scope of the investigation was understood and complied with. The Court also directed the EO to attend the hearing to answer questions parties had of the reports.

[66] I consider that the reports, read together, address all the issues raised by the applicant and a thorough investigation was conducted.

[67] While Mr Ferris has filed the application pursuant to s 280 of the Act, I am satisfied that issues regarding the exercise of my jurisdiction pursuant to s 269(6) of the Act have been set out in the application and were argued by the applicant.⁸ Furthermore, it is

⁸ Section 280 refers to the investigation of a corporation's affairs while s 269(6) refers to investigating the conduct of a corporation's election.

Searancke i te hiahia kia werohia te hātepe o te pōtitanga, kia werohia anō hoki āna putanga.

[68] I whakahaeretia e te EO tētahi tiroirohanga mō te hātepe o ngā pōtitanga o te tau 2021 me 2022, i puta hoki ngā tūtohutanga me ngā kitenga.

[69] I runga i tērā, ka aro ahau ki ngā take i puta ake i ēnei whakahaerenga ā-ture mō te take o te hātepe pōtitanga, waihoki, mō te whakamahi atu i ngā pōti ā-poutāpeta.

Ngā Pōti ā-Poutāpeta ki te AGM 2021

[70] I mua i te tū mai o te AGM 2021, e ono ngā mema kōmiti, arā ko Michael Ferris Snr (te kaitono) rātou ko Patricia Ferris, ko Diane Larsen, ko Anthony Naden, ko Kahu Brown, ko Mike Nepia, me tētahi tūranga e wātea ana. I te AGM 2021, i mate a Michael Ferris me Patricia Ferris ki te huri tūranga, i mate hoki te whakakā tūranga wātea. I te hiahia a Michael me Patricia ki te noho tonu engari kāhore rāua i angitū i ngā pōtitanga. Ko ngā mema hou o te COM kua pōtitia, ko Vasitta Naden rātou ko Rosita Rapihana, ko Nadia Whaitiri White.

[71] I te AGM 2021 hoki, i pōtitia, i pāhīhia anō hoki te mōtini motuhake a Mr Michael Ferris, e ngana nei ki te huri kōaro i te whakatau kia whakamutua te mahi pāmu.

[72] I whakahaerehia ngā pōti katoa mā te tuku i ngā pōti ā-poutāpeta. Kua whakamōhītia ngā kaupuri hea te āhua o te tuku pōti ā-poutāpeta i roto i te pānui o te AGM i tukuna i te rā 10 o Noema 2021, i kī rā:

PLEASE NOTE – Due to the AGM being held virtually this year, voting on the election and special resolution will also be done by way of post or email. Further information regarding this process, along with voting forms for the Election and

clear in the evidence of A Searancke that a challenge to the elections process and the subsequent results was intended.

[68] An investigation into the 2021 and 2022 election processes was undertaken by the EO, findings and recommendations were made.

[69] I therefore address the issues that have arisen in the course of this proceeding with respect to the election process and, more specifically, the use of postal voting.

Postal Voting at the 2021 AGM

[70] Prior to the 2021 AGM, there were six committee members, being Michael Ferris Snr (the applicant), Patricia Ferris, Diane Larsen, Anthony Naden, Kahu Brown, Mike Nepia and one vacant seat. The 2021 AGM required the rotation of both Michael Ferris and Patricia Ferris and the filling of one vacant seat. Michael and Patricia both put their hand up for re-election and were unsuccessful in the elections. The three new COM members elected were, Vasitta Naden, Rosita Rapihana and Nadia Whaitiri White.

[71] Also at the 2021 AGM, Mr Michael Ferris' special resolution, attempting to reverse the decision to exit farming, was voted on and passed.

[72] The votes were conducted entirely by way of postal voting. Shareholders were made aware that voting would be conducted by way of postal voting in the notice of the AGM dated 10 November 2021 where it stated:

PLEASE NOTE – Due to the AGM being held virtually this year, voting on the election and special resolution will also be done by way of post or email. Further information regarding this process, along with voting forms for the Election and

Special Resolution below and proxy forms will be sent out after the closing date for nominations.

[73] Kāhore i tukuna tētahi mōtini motuhake mō te take o te whai i te pōti ā-poutāpeta anahe ki tētahi hui o mua kāhore hoki i tukuna tētahi mōtini motuhake ki te AGM 2021.

[74] Kāhore i a te Kōmiti te mana ki te kī ake e tika ana kia tukua ngā pōti ā-poutāpeta. Kua māraakerake te kitea i ngā Waeture, e wātea ana te tuku pōti ā-poutāpeta mena kua whakamanatia ki tētahi mōtini motuhake o ngā kaupupuri hea ki tētahi hui whānui.

[75] Nō reira, e pēnei nei taku kitenga mō tēnei take, nā te korenga o te whai i ngā Waeture mō ngā pōtitanga me te mōtini motuhake ki te AGM 2021, i ture kore ai ngā whakaritenga, i mana kore ai anō hoki ngā pōti.

Ngā Pōti ā-Poutāpeta ki te AGM 2022

[76] I mua i te tū mai o te AGM 2022, e whitu ngā mema kōmiti, ko Diane Larsen rātou ko Anthony Naden, ko Kahu Brown, ko Mike Nepia, ko Vasitta Naden, ko Rosita Rapihana, ko Nadia Whaitiri White. I te AGM 2022, i mate a Diane Larsen rātou ko Kahu Brown, ko Mike Nepia ki te huri tūranga, i te hiahia a Diane me Kahu ki te noho tonu, kāhore a Mike i te hiahia kia pērā. I angitū rāua i ngā pōtitanga kia noho tahi ki te taha o te mema hou o te kōmiti, ko Dirk Bulloivart.

[77] I pōtitia, i pāhīhia hoki taua mōtini motuhake e pā ana ki te panonitanga o tā te Koporeihana tuhinga whakatau tikanga kia whakakorehia te āheinga ki te pōti ā-hea.

[78] I whakahaerehia ngā pōti katoa mā te tuku i ngā pōti ā-poutāpeta. Kua whakamōhiotia ngā kaupupuri hea te āhua o te

Special Resolution below and proxy forms will be sent out after the closing date for nominations.

[73] The decision to limit voting to postal votes was not put to the shareholders prior by special resolution, nor was a retrospective special resolution moved at the 2021 AGM.

[74] The Committee was not entitled to decide that voting could be by postal votes only. The Regulations are clear, a postal vote is only permissible if it has been authorised by a special resolution of the shareholders at a general meeting.

[75] I therefore find that the failure to comply with the Regulations means that the voting conducted at the 2021 AGM with respect to the elections and the special resolution were not executed pursuant to the legislative requirements and are therefore are invalid.

Postal voting at the 2022 AGM

[76] Prior to the 2022 AGM, there were seven Committee members, being Diane Larsen, Anthony Naden, Kahu Brown, Mike Nepia, Vasitta Naden, Rosita Rapihana and Nadia Whaitiri White. The 2022 AGM required retirement by rotation of Diane Larsen, Kahu Brown and Mike Nepia. Diane and Kahu both sought re-election, Mike did not. They were both successful for re-election as well as the new committee member, Dirk Bulloivart.

[77] There was also a special resolution that was voted on regarding shares, which came out in favour of voting by show of hands.

[78] The votes were conducted entirely by way of postal voting. Shareholders were made aware that voting would be conducted by way

tuku pōti ā-poutāpeta i roto i te pānui o te AGM i tukuna i te rā 10 o Noema 2022, i kī rā:⁹

***PLEASE NOTE** – Due to the AGM being held virtually this year, voting on the election will be done by way of post or email. Further information regarding this process, along with voting forms for the election and proxy forms will be sent out after the closing date for nominations.*

Voting will close after the AGM on Monday 19 December 2022 at 10:00am.

[79] Kāhore i whakahaeretia tētahi mōtini motuhake mō tēnei whakataū, kāhore hoki i pāhīhia tētahi mōtini motuhake ki te AGM 2022 e whakaaetia ana te tuku pōti ā-poutāpeta anahe.

[80] Kāhore i a te Kōmiti te mana ki te kī ake e tika ana kia tukua ngā pōti ā-poutāpeta.

[81] Nō reira, e pēnei nei taku kitenga mō tēnei take, nā te korenga o te whai i ngā Waeture mō ngā pōtitanga me te mōtini motuhake ki te AGM 2022, i ture kore ai ngā whakaritenga, i mana kore ai anō hoki ngā pōti.

[82] E ai kī ngā kōrero ki runga, ahakoa kāhore a Mr Ferris i tino whai i w 269(6) o te Ture, e whakaae ana ahau ko ngā take ki roto i te tono me ngā take i tukuna rā ki tēnei whakahaerenga e inoitia nei ki te Kooti kia tirohia ngā whakahaerenga mō te pōtitanga i ngā mema ki te COM, nā konā, e wātea ana ahau ki te whakaū i te kōpoutanga rānei, ki te kī ake rānei he mana kore te pōtitanga. Ka whakawhānui ake ahau i tēnei ki te toenga o te whakataū.

of postal voting in the notice of the AGM dated 10 November 2022 where it stated:⁹

***PLEASE NOTE** – Due to the AGM being held virtually this year, voting on the election will be done by way of post or email. Further information regarding this process, along with voting forms for the election and proxy forms will be sent out after the closing date for nominations.*

Voting will close after the AGM on Monday 19 December 2022 at 10:00am.

[79] No prior special resolution was conducted for this decision neither was a special resolution passed at the 2022 AGM to allow for voting to be postal voting only.

[80] The Committee was not entitled to stipulate voting could be by postal votes.

[81] I therefore find that the failure to comply with the Regulations means that the voting conducted at the 2022 AGM with respect to the elections and the special resolution were not executed pursuant to the legislative requirements and are therefore invalid.

[82] As set out above, while the applicant has not specifically relied on s 269(6) of the Act, I am satisfied that the grounds relied upon in the application and through the course of the proceeding, requesting the Court's investigation into the conduct of an election of a member or members to the COM. Therefore, I may either confirm the appointments, or declare the election invalid. I address this in more detail later in the decision.

⁹ The wording is almost identical to the 2021 notice, with the exception of the mention in 2021 of the special resolution.

Kua ngoikore te pae whanonga whakahaere?

[83] I a au e huritao nei mena rānei ka whakaae ahau ki tā te kaitono e hiahia nei, arā, te tuku i ētahi atu whakahaunga e ai kī w 280(7), me tino tautoko ahau i te whakapae kua ngoikore tō te COM pae whanonga whakahaere. Ko taua pae rā, ko te whakahaere i ngā rironga me ngā mahi pakihī o te Koporeihana i runga i te āta tūpato, i te āta whakaaro me te matatau ki āna mahi.

E arokore ana ki tētahi mōtini kua whai mana a ngā kaupupuri hea

[84] Nā runga i taku kitenga ki runga e kīa nei kua mana kore te pōti o Noema 2021 mō te mōtini motuhake, kāhore e tika ana kia hāmenetia te COM mō tā ratou kore i whai i tētahi mōtini mana kore.

[85] Heoi anō, kua rongō ahau i ngā kōrero taunaki a te COM e mea ana ahakoa he mana kore, he whai mana te mōtini, tē taea e rātou te hurikōaro i te whakataua inā hoki, kua hokona kē atu te 80% o ngā kararehe. Nā te tōmuri o te tuku i te mōtini motuhake, i noho mana kore ai ia.

[86] Hei tāpiri ake, i tukuna e te COM ngā tono taimahi anō ki a Mr Ferris, engari kua whakakorehia. E haere tonu ana taua āhuatanga. Kua whakakorehia e te COM te tono whakamutunga a Mr Ferris engari kua whakamōhio mai te COM e pai ana ki a rātou te tuku pātai ki te kairīhi o Waipare Block me te hunga e whakapai ana i te rohe whai muri i te Huripari mō ngā mahi, tērā pea, e wātea ana ki a Mr Ferris rāua ko Michael.

[87] I te mutunga iho, mō te take o te kore i whai i tā ngā kaupupuri hea mōtini, kāhore au e whakaae ana kua tae tō te COM whanonga whakahaere ki tētahi pae o te ngoikore e tika

Standard of conduct lacking?

[83] In considering whether to make further directions pursuant to s 280(7) of the Act, as sought by the applicant, I must be satisfied that the COM acted in such a way that their standard of conduct was lacking. That standard being the prudent, reasonable and competent administration in the management of assets and the business of the Incorporation.

Refusing to act on a valid shareholders resolution

[84] Given my finding above that the vote on the November 2021 special resolution was invalid, it goes to follow that the COM cannot be held to account for failing to act on an invalid resolution.

[85] However, I do recognise the COM's evidence in that the ability to act on the resolution, be it invalid or valid, of reversing the decision to exit farming was impossible, given over 80% of the stock had been sold. The special resolution was made too late to have any meaningful effect.

[86] Additionally, further employment proposals were made by the COM to Mr Ferris and were rejected. I note that this is ongoing. The latest counter-proposal by Mr Ferris has been rejected by the COM, however, the COM have advised they are prepared to make enquiries to the lessee of the Waipare Block, and to other parties involved in post-Cyclone clean up in the wider rohe, about Mr Ferris and Michael Ferris Jnr being engaged with this work.

[87] Ultimately, I do not consider the standard of conduct of the COM lacking to warrant the exercise of the Courts jurisdiction pursuant to s 280(7) of the Act in respect of a failure to action the shareholder's resolution.

ana kia whakamahia te mana o te Kooti e ai kī w 280(7) o te Ture.

Ngā māharahara mō tō te Koporeihana whaihua me te mahi whakahaere o āna rironga

[88] Nā tētahi reta i tukuna rā i te rā 29 o Āpereira 2019, i tuhi ai a te whare pūtea o te Koporeihana ki te COM mō tā rātou nama kāhore i utua e pā ana ki te mahi pāmu. I mea atu tēnei reta, kua takahia ngā whakaritenga kua whakaaetia, waihoki, kāhore te whare pūtea i te hiahia, i te āhei anō hoki ki te tuku ratonga. I whakawātea te whare pūtea i te toru marama ki te Koporeihana kia kimihia he kaiwhakarato pūtea hou. I taua wā, ka noho nama a Nuhiti Q ki te whare pūtea mō te utu e pātata ana ki te \$579,000.00.

[89] I te 5 Tīhema 2019, i kōpoua e te Kooti ngā tarahitī kaitiaki e rua ki te COM, i whakahautia anō hoki kia tirohia e te COM tana nama kāhore i utua.

[90] I te tau 2020, i whakaingoatia e te COM a Kylee Potae nō BDO kia āwhinatia ngā mahi whakarite me ngā take pūtea, tae atu ki te take o te nama kāhore i utua. E māraakerake ana te kitea i ngā whakawhitinga kōrero a te whare pūtea, he raru ki tai te āhua o tā rātou pūtea.

[91] I te marama o Hānuere 2021, i tētahi hui COM, kua pāhi te mōtini kia whakamutua te mahi pāmu nā te kino o te taha pūtea. I pēnei rātou nā runga anō i te whakaaro ki te haere tonu te Koporeihana i tā rātou mahi, tae atu ki te tahi marama ka hipa, ka pau katoa ā rātou moni.

[92] I a Āpereira 2021, i tuhia tētahi tuhinga kōrero hei whakaaro mā te COM mō te āhua o tā rātou whai i te whakatau kia puta ai i te mahi pamū, hei whakaaro hoki i te tono kia whakakorehia ngā tūranga mahi e toru.

Concerns on profitability of the Incorporation and the prudent management of its assets

[88] By letter dated 29 April 2019, the Incorporation's bank wrote to the COM regarding the existing debt for the farming business. It recorded that the overdraft arrangements agreed to had been breached and that the bank was no longer willing or able to provide banking services. The bank gave the Incorporation three months to find a new bank provider. At that time, Nuhiti Q owed the bank approximately \$579,000.00.

[89] On 5 December 2019, this Court appointed two kaitiaki trustees to the COM and directed the COM to address its bank debt.

[90] Kylee Potae of BDO was engaged by the COM in 2020 to provide support around administrative and financial issues, including helping to address the bank debt. It is clear from the on-going communication with the bank that the financial position was serious.

[91] At a COM hui on January 2021, the resolution to exit farming due to financial constraints was passed. This was because if the Incorporation continued as they were, within one month, all its funds would be exhausted.

[92] In April 2021, a consultation document was prepared for the COM to consider how to progress following the decision to exit farming and to consider the proposal to disestablish the three farm positions.

[93] Nā te kōrero taunaki kua tukuna mai, e mārama ai ahau i ngā kikino pūtea i mua i te COM me te tino hiahia kia whakaarohia ētahi atu huarahi. Kāhore i tipakohia noa te whakataua kia whakamutuata mahi pāmu. I whakatauhia whai muri i ngā kōrero me ngā whakawhitinga whakaaro, ka mutu, kua pena hei pāinga mō te āpōpō o te Koporeihana me āna kaipupuri hea

[94] Kāhore i tukuna tētahi taunakitanga ki te Kooti e whakaatuhia nei ngā mahi āta whakaaro kore, āta tūpato kore anō hoki mō te whakahaere i ngā rironga.

[95] E tautoko ana i ngā kitenga o te EO i rārangiāhia ai ki [52](a) – (f), ā, kāhore au e whakaae ana kua tae tō te COM whanonga whakahaere ki tētahi pae o te ngoikore e tika ana kia whakamahia te mana o te Kooti e ai kī w 280(7) o te Ture.

Ko te whakahaere i ngā hui me ngā pōtitanga

[96] Hei tōai i taku kitenga ki runga, kāhore ngā pōtitanga i tū i ngā AGM e rua kua hori (2021 me 2022) i whai i ngā herenga ture, nō reira, he mana kore. Heoi, ehara i te mea ka kī ake ahau mā tērā hē anahe e whakaheke te pae o te whanonga whakahaere ki tētahi ngoikoretanga kia whakamahia ai te mana o te Kooti e ai kī w 280(7) o te Ture.

[97] Kua aro mai te COM ki tā rātou hē ki te hātape o ngā pōtitanga, ka mutu, e ngana ana ki te muru i taua hara kia koke tonu, tae atu ki ngā inoi ki te Kooti kia whakamāramahia mai te take o ngā mōtini motuhake.¹⁰

[98] Hei tāpiri noa, kua whakaae mai rātou ki ngā tūtohunga katoa i tukuna mai ai e te EO.

[93] It is clear from the evidence provided that the financial difficulties the COM were facing meant that consideration of other viable avenues was required. The decision to exit farming was not made lightly. It was made following discussion and consultation and done for the benefit of the future of the Incorporation and its shareholders.

[94] No evidence has been provided to the Court to show that the COM have acted incompetently or imprudently in terms of the management of assets.

[95] I agree with the findings of the EO listed at [52](a) – (f) above and therefore do not consider the standard in conduct of the COM lacking to warrant the exercise of the Courts jurisdiction pursuant to s 280(7) of the Act.

Conduct of meetings and elections

[96] As I have found above, the elections held at the past two AGMS (2021 and 2022) did not follow the legislative requirements and are invalid. However, I do not consider that this alone amounts to a standard of conduct that is lacking so as to warrant the exercise of the Court’s jurisdiction pursuant to s 280(7) of the Act.

[97] The COM have recognised the error and provided a pathway to rectify that fault, including seeking direction from the Court as to how to proceed with special resolutions.¹⁰

[98] Furthermore, they have agreed to the recommendations that have been provided by the EO.

¹⁰ See minute issued contemporaneously with this judgment 122 Tairāwhiti MB 98-100 (122 TRW 98).

[99] Mō te take o te āhua o te whakahaere hui, e tautoko ana ahau i ngā kitenga a te EO, inā rā, kāhore i tukuna mai ētahi taunakitanga hei hāpai i te whakapae kua ngaio kore te mahi a ngā mema o te COM. Kōrero tahi ai rātou ki ngā kaipupuri hea, hui tahi ai rātou, waihoki, kua kī ngā miniti i ngā mōhiohio, kua pakari ngā matapakinga i ngā hui.

[100] Kua mātaihia ngā tautohenga mō ngā whanonga whakatumā o ngā mema kōmiti me taku kite, tērā pea he riri, he tohe kē ki te taha whanaungatanga mō ētahi whānau kua rerekē ō rātou whakaaro ki ngā take. Ehara i te mea mā te whakaaro rerekē e kīa ai he takahi kawenga tēnā.¹¹

[101] Mō tēnei take, e aro ana ki ngā mātāpono o te Ture i ngā kupu whakamahuki me w 2, waihoki ki te take kāhore tētahi mōreareatanga e mārāma ana i tēnei wā, ki ngā rironga o te koporeihana, ki ngā pānga hoki o ngā kaipupuri hea ka puta ake i tētahi mahi, mahi kore rānei, a te kōmiti, kāhore au e whakaae ana kua tae tō te COM whanonga whakahaere ki tētahi pae o te ngoikore e tika ana kia whakamahia te mana o te Kooti e ai kī w 280(7) o te Ture.

Te Whakataunga

[102] I whai whakaaro ahau ki ngā tāpaetanga a ngā rōia, ki ngā kōrero taunaki nā ngā taha e rua, ki ngā rīpoata a ngā EO anō hoki mō ngā take e toru i tukuna rā e te kaitono.

[103] Ko te aronga matua o te Kooti ki raro i s 269(6), kia mātua mōhio mena rānei kua whai tētahi pōtitanga i ngā here o te Ture me ngā Waeture.¹² Kua kī ake ahau, kāhore i pērā i te AGM o 2021 me 2022, nā konā, kua mana kore te hātepe pōti i whāia rā.

[99] With respect to the manner in which meetings are conducted, I agree with the findings of the EO that no evidence has been provided to support any unprofessionalism by current members of the COM. They have maintained contact with the shareholders, they meet regularly, and the minutes appear to be informative and the discussions robust.

[100] The allegations regarding the abusive behaviour of committee members have been examined and I have found them to be a breakdown of relationships and tension between whānau who have presented differing views on matters. The mere existence of such differences does not itself amount to a breach of duty.¹¹

[101] Taking into account the principles of the Act contained in the Preamble and s 2, and the fact that there is no clear and present apprehension of risk to the Incorporation assets or to the wider interests of the shareholders as a result of action or inaction of the committee, I do not consider the standard in conduct of the COM lacking to warrant the exercise of the Court's jurisdiction pursuant to s 280(7) of the Act.

Decision

[102] I have considered the submissions of counsel, the evidence provided by both parties and the examining officers reports with respect to the three grounds provided by the applicant.

[103] The Court's primary function under s 269(6) is to ensure that an election occurs in accordance with the Act and the Regulations.¹² I have found that this did not occur at the 2021 and 2022 AGM and therefore the voting process undertaken was invalid.

¹¹ See 325 Aotea MB 43 at [45] per Judge Harvey.

¹² *Neho - Muriwhenua Incorporation* (2014) 84 Taitokerau MB 189 (84 TTK 189) at [29].

[104] Ka whakamana ahau i ngā ōta me ngā kupu whakahau e whai ake nei:

- (a) E ai kī w 269(6)(b) o te Ture, e whakamana ana te Kooti i tētahi ōta e kiā nei, kua mana kore te pōtitanga me ngā mōtini motuhake i pōtitia rā i te AGM 2021 me 2022. Nō reira, ko aua mema o te COM i noho rā i mua i te AGM 2021, arā ko Michael Ferris Snr, ko Patricia Ferris, ko Diane Larsen, ko Anthony Naden, ko Kahu Brown, ko Mike Nepia; me tētahi tūru e wātea ana, ko rātou hoki ngā mema o te COM i tēnei wā nei.
- (b) I roto i te rua marama, me whakarite te Koporeihana i tētahi SGM mō te take noa iho o tētahi pōtitanga hou kia whakapihia ngā tūranga o Michael Ferris Snr, Patricia Ferris, Diane Larsen, Kahu Brown, Mike Nepia, inā hoki me mate rātou ki te huri tūranga, kia whakakāia hoki tētahi tūranga e wātea ana.

[105] Nō muri i taku āta whakaaro ki ngā tohe me ngā kōrero taunaki mō te take o te pae o tō te COM whanonga whakahaere, e whakaae ana ahau, kāhore ngā taunakitanga i tukuna rā ki te Kooti i whakaatu atu i ā te COM mahi āta whakaaro kore, mahi āta tūpato kore mō te whakahaere i ngā rironga me te taha pakihia o te Koporeihana, ki tētahi taumata e tika ana kia whakamahia te mana o te Kooti e ai kī w 280(7) o te Ture.

[106] Hei tāpiri noa, kāhore ngā rīpoata a ngā EO i tautuhi mai i tētahi raru nui e kiā ai e tika ana kia hau mai te Kooti ki te whakamahi i tētahi anō tirotirohangā. Kua whai whakaaro te Kōmiti i ngā amuamu mō ā rātou mahi, nā, kua whakaaetia kia whakatinanahia ngā tūtohunga a te EO.

[107] Ko ngā kupu whakahau e kimihia nei e te kaitono ki kōwae [37](a) – (d) ki runga, ko

[104] I make the following order and directions:

- (a) Pursuant to s 269(6)(b) of the Act, the Court makes an order declaring the election and special resolutions voted upon at the 2021 and 2022 AGM to be invalid. The current members of the COM are therefore those members that were on the COM prior to the 2021 AGM, being Michael Ferris Snr, Patricia Ferris, Diane Larsen, Anthony Naden, Kahu Brown and Mike Nepia; with one vacancy.
- (b) The Incorporation is to undertake a new election at a SGM to be held within the next two months for the sole purpose of conducting an election to replace Michael Ferris Snr, Patricia Ferris, Diane Larsen, Kahu Brown, Mike Nepia due to rotation; and one vacant seat.

[105] Having carefully considered the arguments and the evidence in respect of the standard of conduct of the COM, I am satisfied that the evidence provided did not show that the COM have been imprudent and incompetent in their administration in the management of assets and business of the Incorporation to a degree that would warrant the exercise of the Court's jurisdiction pursuant to s 280(7) of the Act.

[106] Furthermore, the EO reports do not identify any current issues sufficient to warrant the serious step of further intervention and investigation from the Court. The Committee have considered the complaints made against them and agreed to implement the recommendations made by the EO.

[107] The directions sought by the applicant at paragraph [37](a) – (d) above are the

ngā tūtohunga a te EO. Hei tōai noa, kua whakaae mai a te COM ki ēnei tūtohunga, ka mutu, ko ētahi kua whakatinanahia kētia.

[108] Mō te take o ngā kupu whakahau e kimihia nei e te kaitono ki kōwae [37](e) me (f) ki runga, ki a au nei, kua whai whakaaro kē a te COM ki ēnei i te wā o te mutunga o te kōtitanga me tā rātou whakaae ki te tahuri ki tā Mr Ferris tonu.

[109] E tika ana me whai wā te COM ki te whakatinana i ngā tūtohunga kua whakaaetia ki te kōtitanga, kia tutuki ai ngā hua e mea ana rātou e taea ana te pāhawa.

[110] Hei whakakapi ake, kāhore te kaitono i te kimi kia whakatūturuhia te ota tāria, kāhore hoki i tukuna ngā tāpaetanga hei whakaaro māku kia whakatūturuhia te ota tāria. Kua tukuna te ota tāria mō tētahi wā nā runga i te whakatau ka haere tonu noa iho tōna mana ka tae noa atu ki te wā ka oti marika ngā tono matua ki mua i te Kooti.¹³

[111] Kua oti te tono matua ināianei. Kua whakakorehia te ota tāria mō tētahi wā, ka mutu, ā tōna wā, mā te COM e whakamōhio mai ki te Rēhita te whakatau ka puta ake i te SGM.

I whakapuakihia i te 4:30pm, i Te Whanganui a Tara, i te rā 30 o te marama o Noema i te tau 2023.

Pronounced at 4:30pm in Wellington on this 30th day of November 2023.

A M Thomas
KAIWHAKAWĀ
JUDGE

recommendations set out by the EO. As noted, these same recommendations have been agreed to by the COM and are, in part, already being implemented.

[108] With respect to the directions sought by the applicant at paragraph [37](e) and (f) above, I consider these have already been contemplated by the COM, when following the hearing, the COM agreed to consider Mr Ferris' proposal.

[109] The opportunity should now be given to the COM to implement the recommendations agreed to at the hearing and achieve the outcomes that they say are possible.

[110] Lastly, the applicant has not sought a permanent injunction, and neither were submissions advanced for my consideration to make the injunction permanent. The interim injunction was made on the grounds that it was only in effect until such a time as the substantive matters before the Court have been concluded.¹³

[111] The substantive application is now concluded. The interim injunction is discharged, and I leave it to the COM to notify the Registrar of the outcome of the SGM in due course.

¹³ 117 Tairāwhiti MB 110 (117 TRW 110).