

For Meeting 11 May 2018.

A SECTION OF ORT CHAIRMAN'S REPORT TO THE BOARD

I felt that with the way things were progressing at the moment I needed to put things in writing to ensure we record matters correctly and that these writings may be referred to later for reference. There are some issues that are causing stress to Trustees as we try to wrestle with the everyday running of this business as well as pursuing good processes we need to follow to keep this Trust moving forward and within our Trust Deed.

I don't usually write a report to this Board except when we are approaching an AGM or SGM. With tensions currently at a heightened level, I thought that we needed to be clinical about how we deal with a couple of matters that are causing concern to us as a Trust. I say clinical because we have tried the Tikanga route in the first instance, but in one critically important case, it has not worked.

SIGNING EASEMENT FOR TOP ENERGY

I begin this section of my report by saying we, the majority of Trustees, are very reluctant to go down this pathway and continue to offer Taoko Wihongi and Rachel Witana an easy way out of this by compliance with the ORT Trust Deed, by signing off the Top Energy easement as required by law. To not take up that opportunity is to force the majority of the Board to take legal action to ensure we all act as responsible Trustees.

This is the most contentious issue we have to deal with at this meeting, as there are two matters at play here. On the one hand two Trustees, out of six, are claiming that their stance on this matter is couched in Tikanga on the one hand, under tuku whenua etc. On the other hand they hold the view that they have the ability to choose how they will act when carrying out their fiduciary obligations to the Trust, even in contravention of the Trust Deed.

I spent some time researching this word fiduciary as I also chair a couple of other Boards who run into this question from time to time? I do that to try and get these two Trustees to understand their duties, in a fiduciary capacity as well as a legal sense. I do this also to try and head off any requirement to go to court and sort this problem out. In the past we have always dealt with any tense situation, disagreement, contention one with another, at Board level without fail. This time should be no different, but unfortunately it has come to this point?

I copy the following passages in the hope that it is of benefit to the two Trustees who have an alternate stance to what advice we have received from our legal counsel. This clarification from the dictionary:

Fiduciary duties exist to ensure that those who manage other people's money act in their beneficiaries' interests, rather than serving their own interests.

A fiduciary is a person who holds a legal or ethical relationship of trust with one or more other parties (person or group of persons). Typically, a fiduciary prudently takes care of money or other assets for another person. In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance, and trust in another whose aid, advice, or protection is sought in some matter. In such a relation good conscience requires the fiduciary to act at all times for the sole benefit and interest of the one who Trusts

A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.

To support this I quote section 5.2.5 of the ORT Trust Deed:

5.2.5 The powers of the Trustees may be exercised at a meeting of Trustees by a majority of Trustees and all such acts and proceedings arising shall be as valid and effectual as if all Trustees had concurred PROVIDED THAT where a Trustee notifies the Registrar of the Court in writing of his or her dissent from the majority decision of Trustees before the decision is implemented that the Trustee shall be absolved from any liability arising out of the decision.

I don't believe we can spell out any clearer our duty to ORT shareholders and beneficiaries. I am hoping, and it is not too late, for the two Trustees to rethink their positions.

I need to put in writing what transpired at the SGM on 24 March 2018, and what happened immediately after that SGM, regarding our dealings with Top Energy. I need to record that as Chairman of the Trust I explained clearly to the SGM that this was a matter for the Trustees alone, not the shareholders or beneficiaries. That this was merely an easement and if not agreed to by ORT, could be taken under the public works act to get this easement as it falls under the category of a *necessary community service*.

I also explained to the meeting that the land was never under threat of being taken and that we had done this before with a longer corridor of ORT land where Top Energy presently holds an easement over that piece of ORT whenua. At that time the easement conditions were never bought before the shareholders and beneficiaries but was dealt with, as it should have been, within the Board. There is just no rationale for this behavior. This now raises concerns as to why there is a fixation on bringing this easement before shareholders and beneficiaries?

I clearly explained that Top Energy had commissioned a valuation by Colliers International, registered valuers, on what land was required for an easement of some 284 meters or 1.4ha access across ORT land. A valuation of \$20,000 was the result. ORT then commissioned our own independent valuation by Moir McBain Valuations,

registered property valuers, on the same easement requirement. This valuation showed a value of \$10,108 exclusive of GST. After negotiations with Top Energy, we settled on the higher valuation of \$20,000.

These discussions began at our Board meeting on 23 June 2017 with Allen Burdette attending and giving us a comprehensive outline of what was required for this easement. This was followed up by Cedric Davenport, of which I have kept you all abreast updated. I copy an excerpt from those minutes;

Allan Burdett – Ngawha Geothermal Expansion Project (NGEP)

Points to note:

- Undertaking the design work for the first power station
- Allan submitted a proposal for a 110kv transmission line on Trust land.
- Proposal is to cross 1.4ha of land (behind the old shearers quarters on Te Pua Road)
- The Trust will not stand in the way of progress
- Easement compensation to be confirmed
- There are no benefits for the Trust
- Allan has been advised that the Chairman is the contact person
- Alan will send through maps to the Trust office with the proposed value of easement compensation within the next fortnight; on forward to Colleen.

By way of email resolution, it was resolved that ORT accepts the \$20,000 for the easement. I attach those in **APPENDIX 3** of this report.

We have been well briefed by our legal counsel and the advice that he has given us in various forms should have put an end to this issue. I want to copy a couple of those written advices that we have received from PJ. It is no different to what I have spelt out above:

26 March 2018 – from me to all Trustees

Tena Tatou katoa e nga Tarahiti

After the discussions at the ORT SGM on Saturday 24 March 2018, Te Tuhi Robust, Colleen Birmingham-Brown, Bruce Cutforth and I have had time to reflect on the decision we made to tender our resignations on the day. We have since had a korero and sought legal advice on what we could or could not do in this situation. One thing is for sure; our resignations are on the table if this issue of Trustee rogue behaviour is not addressed.

The advice that has come from our legal advisor is this:

Kia ora

First of all, I appreciate that you have all resigned on Saturday because your two fellow trustees were making your situation untenable.

Please note that until you are actually removed by order of the Maori Land Court, you do continue to be Trustees, with all the responsibilities and rights that the positions entail.

This means, among other things, that you continue for the present to be responsible to see that the finances and operations of the trust are run properly.

I am very disappointed to hear that apparently Taoko has sought benefit for one marae from a side payment from Top Energy; this is a blatant breach of trust, and in my opinion also a criminal activity under the Secret Commissions Act 1910.

The majority Trustees who are acting properly in their good conscience in the interests of all beneficiaries and according to their respective professional judgements should not allow themselves to be effectively railroaded like this.

Section 240 of TTWMA provides the jurisdiction of the Court:

Removal of trustee

The court may at any time, in respect of any trustee of a trust to which this Part applies, make an order for the removal of the trustee, if it is satisfied—

(a) that the trustee has failed to carry out the duties of a trustee satisfactorily; or

(b) because of lack of competence or prolonged absence, the trustee is or will be incapable of carrying out those duties satisfactorily.

It is the failure - and threatened continued failure - to carry out the duties satisfactorily that is the problem here. We could go into the lack of competence issue, even though we are so soon after appointment of Rachel and reappointment of Taoko.

On the matter of legal representation:

(a) I am acting as lawyer to the Trust Board.

(b) In event of dissension, and given the trust order and TTWMA provisions allowing majority rule, I am required to act as the majority instruct.

Regent Law will have to consider our position as legal advisers to the Trustees; we have no serious concerns as to take our - or any - legal advice, and that would be untenable for us.

We also fear destruction of all the good work you have put in over the years, and that is very sad.

I am copying John Parmenter in on this email, so he can be clear as to continuing financial management and busin

Nga mihi

PJ

27 March 2018: From PJ to Trustees:

Tena koe

Taoko did not come to see me this afternoon as planned. As I had not seen him some 20 minutes after the agreed meeting time, I phoned him.

Taoko then told me he did not need to see me because the issue he wanted to discuss, the matter of continuing Trustee obligations pending removal by the Maori Land Court, had already been answered in an email from me sent yesterday.

Taoko confirmed that he:

(a) thinks the amount of the Top Energy payment for the new electricity easement is a matter on which the Trustees should hold and be bound by a vote of ORT beneficiaries;

(b) had previously arranged a "side" payment to a marae as the price of his own agreement to an easement, without the knowledge at the time of the other Trustees;

(c) would only sign the present documents if a similar "side" payment will be made, despite that being in breach of trust and refused already by Top Energy.

(Incidentally, since the previous side payment have been illegal under the Secret Commissions Act and arranged by Taoko in breach of trust, then Taoko individually, and whoever received and dealt with its payment, personally are liable at law to pay the entire amount to ORT now.)

I confirmed that as I am acting for the ORT Trustees as a trust board, I am bound to follow the instructions of the majority of the Trustees when there is no unanimity on a particular matter. Taoko says he has received legal advice, but does not want to give me the details or get his adviser to contact me to discuss these issues.

Taoko advises that he is acting according to tikanga, an area of Te Ao Maori on which of course I do not have his depth and breadth of knowledge and understanding. All I can advise on is the formal statute and case law, and that is what I am doing.

It appears to me from what Taoko told me that this whole sorry mess is going to have to be resolved by the Maori Land Court. I had been thinking this morning that we could reach a lawful resolution without more money being wasted on unnecessary court proceedings, but it would appear not.

I should reiterate that the section 240 grounds for removal of a trustee for incompetence include a trustee consciously breaching their duties arising from the trust order under which they were appointed as trustee.

I then asked PJ whether it would be Ok if I approached Taoko to discuss this matter in depth. This is his advice:

Sonny tena ra koe

I think it would do no harm for you to approach Taoko - gently - to inform him that the majority trustees see no alternative but to apply to the Maori Land Court for the removal of him and Rachel, have resolved accordingly, and that I have been instructed to file an application urgently.

I have already explained to him that since the Trust Order allows majority decisions, as the Trust's lawyer I have to follow the instructions of the majority. Taoko appeared to understand and accept this.

I imagine the blow would be harder for him if I just turned up to serve the application with no foreshadowing of the event.

Mauri Ora

PJ

I rang Taoko on several occasions to try and talk to him about this matter to try and solve the issues he has, as close as possible to its point of origin. I finally got to speak with Taoko on 6 April 2018. The korero was long and I could see that the situation would only deteriorate further if we continued talking as he was resolute in what he was saying and I felt no amount of Tikanga or korero was going to shift his stance. That evening I then carefully penned and sent an email out to PJ and all Trustees which I copy below:

From: Sonny Tau <sonnytau@xtra.co.nz>

Subject: Korero with Taoko

Date: 6 April 2018 at 10:04:13 PM NZST

To: PJ Jones <peter@regent.law>

Cc: Te Tuhi Robust <tetuhirobust@gmail.com>, Taoko Wihongi <taokow@hotmail.com>, Rachel Witana <rachelwitana@gmail.com>, Colleen Bb <colleenbb16@gmail.com>, brunai <brunai@xtra.co.nz>

PJ Tena ra koe

It is with a real heavy heart that I pen this email.

As per my email earlier this week, I informed the Trust that I wanted to speak with Taoko, face to face, before anything legal was done about the situation ORT finds itself in regarding our legal obligations as responsible Trustees.

I didn't get to meet with Taoko face to face, but finally caught up with him on the phone today.

I asked Taoko if he was open to him and I sitting down and having a straight korero about the untenable situation we are in at the moment. Taoko felt that he was terribly hurt with what had transpired at the SGM and that he did not receive any money (cash) from Top Energy at any time.

I explained to Taoko that it was not about whether he personally received any money directly from Top Energy but that this was rather more around our legal obligation to act as responsible Trustees. Taoko also misunderstood that the letter read out at the SGM from Te Tuhi Robust was given to Colleen by me. I explained to Taoko that the letter read out at the AGM was the same letter that was read out at our Board meeting on Friday before the SGM.

I also explained to Taoko that not one of the Trustees had accused him of receiving cash from Top Energy but rather that he had asked Top Energy to do some work on his Marae before he would sign the first easement, which did happen. That he himself had told PJ, and substantiated by Russell Shaw, CEO of Top Energy, that he had again asked Top Energy for more money before he would sign this latest easement. I said to Taoko, if he was saying that by getting more money for his Marae before he would sign off the latest easement for Top Energy, was not Tikanga, I had real difficulty understanding that.

At the end of the day, Taoko has said that he is not prepared to back up on his position of not signing the easement because this was Whenua Tukuoho. He also said that he wanted Top Energy to pay an annual lease for the land rather than just a once of payment. That the Geothermal under the ground was worth more to us than lines across our land and we could not remove them.

Despite me trying my best to persuade Taoko to reconsider his position before inviting the court to sort this out, he was adamant that he would rather the court process put him off the

Trust for standing up for what he views as Tikanga, than signing the easement for Top Energy.

I further informed Taoko that shareholders were wanting to take this matter to court to remove both himself and Rachel Witana, rather than see all the work the Trust has achieved in the last ten years go backwards. I also told Taoko that the Trust will apply to the court for a determination on how we are able to move forward given the current situation we find ourselves in.

Taoko remained steadfast that he will not sign the easement for Top Energy.

Tatou ma, I have tried my best to reason with Taoko but as he says, he would rather the court put him of the Trust for standing up for his Tikanga than deal with Top Energy.

PJ, there is nothing further I can do.

Mauri Ora

Raniera.

At this point the ability to arrest this Trustee relationship declining situation and bring the Trust back onto an even keel looks remote. As our legal counsel informs us, he still awaits Taoko's legal advice so he could discuss the situation with this legal counsel and perhaps avoid the impending legal situation. So, I am unsure of what, if anything, further could be done other than to apply to the Court to enforce the applicable sections of the ORT Trust Deed and TTWMA 1993.

With that in mind we again sought advice from PJ who reiterated his advice of 27 March. On behalf of Te Tuhi Robust, Colleen Bermingham-Brown, Bruce Cutforth and I, as responsible Trustees, we advised PJ to file with the court an application under section 240 of the Te Ture Whenua Act 1993, to enforce our obligations under the ORT Tust Deed and remove both Taoko Wihongi and Rachel Witana as irresponsible Trustees.

On 13 April PJ sent out an email notifying all Trustees of an application having been submitted to the Court. I copy applicable email below:

From: Peter Jones <peter@regent.law>
Subject: RE: Korero with Taoko
Date: 13 April 2018 at 10:31:54 AM NZST
To: Sonny Tau <sonnytau@xtra.co.nz>
Cc: Te Tuhi Robust <tetuhirobust@gmail.com>, Taoko Wihongi <taokow@hotmail.com>, Rachel Witana <rachelwitana@gmail.com>, Colleen Bb <colleenbb16@gmail.com>, brunai <brunai@xtra.co.nz>, Heidi Tau <ironek.tau@hotmail.com>, John Parmenter <john@ncal.co.nz>

Tena koe

I attach for everyone's information the application that we have sent away for filing in the Court, together with our covering letter.

Taoko and Rachel, when we have a hearing date set by the Court, we will formally give you notice and serve not only the application but also any brief of evidence and preliminary legal submissions that have been prepared by then.

Our letter to the Court echoes Sonny's words that we are taking this step with heavy hearts. I myself appreciate the contributions to ORT that Taoko has made over many years, as well as those that Rachel has made in more recent times.

I appreciate also the sincerely-held beliefs that have led to the "minority" trustees refusing to sign the Top Energy documents, but as all Trustees know my legal opinion is that the refusal is breach of trust.

Naku noa, na

PJ

The application letter with all applicable information is attached below as **APPENDIX 1**.

On 17 April 2018 Arta Pita of the Maori Landcourt confirmed that the Application had been received and was waiting for a hearing date from the Judge. I copy that email below:

From: "Pita, Arta" <Arta.Pita@justice.govt.nz>

Received: 17 April 2018 12:01 pm

To: "peter@regent.law" <peter@regent.law>

Subject: Application A20180002884 - Omapere Taraire E & Rangihamama X3A Ahu Whenua Trust

Tena Koe Peter,

Attached for your record is a copy of the letter acknowledging receipt of the above application filed with the Court.

The letter and the receipt is also sent to you by post.

The application will be referred to the Court for direction.

Nga Mihi

Arta Pita (Mrs.)

Court Services | Mori Land Court | Taitokerau District

Ministry of Justice | Th o te Ture P +64 9 9839940 | Ext 59951 | Level 3 Manaia House | 41 Rathbone Street

| DX Box AX10086 | Whangarei arta.pita@justice.govt.nz | maorilandcourt.govt.nz

He pou herenga tangata, he pou herenga whenua, he pou whare korero

I have set out in **APPENDIX 3** of my report the email traffic around seeking consent to accept the Top Energy offer of \$20,000 as payment for this easement.

In the matter of Rachel Witana and her contribution to this situation, this needs discussing as she quite clearly stated in our last Board meeting, as well as the SGM, that if she was in a position to be able to sign off the easement with Top Energy, she would defy the ORT Trust Deed in favour of her own personal views. She also

supported the stance taken by Taoko on this matter. Whether that constitutes a breach of our Trust Deed will be known at the pending court hearing.

To assist clarify this situation we need a resolution to support the decision to apply to the Maori Landcourt to sort this kaupapa out.

Recommendation: *That after exhausting all avenues to prevent Court action and resolve the issue of Trust Deed compliance and acting as responsible Trustees, the ORT Board support application [A20180002884](#) to the Maori Landcourt under section 240 of the Te Ture Whenua Maori Act 1993.*

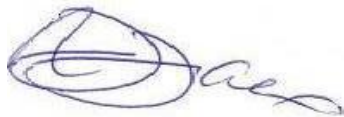
CONCLUSION

From my perspective taking this matter before the Shareholders and Beneficiaries was a serious mistake as they did not have the benefit of all the information and the context with which this matters arose and that it was a matter for the Board of Trustees, not the shareholders and beneficiaries.

Finally on this subject, I do not think the situation is irrecoverable, from my point of view, if the two Trustees review their stance on signing this easement with Top Energy. I do know that other Trustees have their own views on this and I welcome their expressions of their views.

Ko nga mihi mutunga ki wa tatou hoa rangatira, tane mai, wahine mai, me o tatou tamariki mokopuna e pupuritia ana i nga ahi kaa o te kainga kia mahana tonu ia tatou e mahi ana i nga mahi mo ORT. Ko ratou ke nga tohuhakahere (*sacrifice*) mo tenei mea te Maori e whakapau werawera ana mo tona Hapu, iwi, koia tena ko te utu. Ko te mea nui, kia whai hakaaro ano hoki tatou katoa ki te moemoea mutunga kore o ORT, ara, "*kia huri te whenua hei oranga mo te iwi.*"

Mauri Ora



Raniera .T. Tau

CHAIRMAN

APPENDIX 1



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info@regent.law
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12 April 2018

Our Ref: 34156

The Registrar
Maori Land Court
DX AX100861
WHANGAREI

Attention: Arta Pita

RE: Omapere Taraire E and Rangihamama X3A Ahu Whenua Trust
- **S 240 Application to Remove Taoko Wihongi and Rachel Witana**

It is with heavy hearts that we file the attached application.

Briefly, the circumstances are that two of the Trustees, having been a minority in one decision of the 6 Trustees in voting against a Trustee decision, are now refusing to take the steps required of all Trustees to implement the decision. We understand that they have further indicated that they might act similarly in other instances where their own views are minority ones.

Such clearly puts the Trust in an impossible situation where the Trust Order allows decisions to be made by majority and all third parties dealing with the Trust, commercially and otherwise, are aware of that fact.

The writer personally, and other Trustees, have also been told by Mr Wihongi that in the specific instance he had previously told the commercial third party affected that he would carry out the Trustees' decision if the third party were to make a financial contribution to a marae Mr Wihongi is associated with. This communication was not known to the other Trustees at the time it was made. Mr Wihongi informed us that he had done this before. In our view, this behaviour contravenes the provisions of the Secret Commissions Act 1910.

We attach a cheque for \$60 for the filing fee.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P W Jones', enclosed in a rectangular box.

P W JONES
Director

APPENDIX 3

EMAILS DEALING WITH CONFIRMATION OF SUPPORT FOR EASEMENT

From: Sonny Tau <sonny.tau@ngapuhi.org>

Subject: Re: Registered Valuation for Compensation Purposes - Te Pua Road, Kaikohe

Date: 28 September 2017 at 6:16:36 AM NZDT

Cc: Te Tuhi Robust <tetuhi.robust@wananga.ac.nz>, Bruce Cutforth <brunai@xtra.co.nz>, Colleen Bb <colleenbb16@gmail.com>, Taoko Wihongi <taokow@hotmail.com>, Rachel Witana <rachelwitana@gmail.com>, P W Jones <aucklaw@gmail.com>, John Parmenter <john@ncal.co.nz>, Sam Wihongi <sam.wihongi@omapere-rangihamama.com>

Kia Ora ano Tatou

Just following up on my emails to Trustees, 13 and 19 September 2017, regarding compensation for an easement application from Top Energy across ORT whenua on Te Pua Road, Kaikohe. I have kept you all up to date with regard to the process that we were using to come to an agreement with Top Energy about an acceptable level of compensation for this easement.

I sent you all a valuation which was completed by a valuer appointed by ORT, Moir McBain Valuers Limited, to compile a valuation for ORT which came to \$10, 108.00. There was a second valuation compiled by Colliers International who were appointed by Top Energy as agreed with Top Energy as a process. This valuation landed at \$20,000.00

If you read John Parmenter's email below you will see that in 2010, ORT was paid some \$20,000 for compensation when Top Energy run their lines across ORT whenua at that time. The land these lines run across at that time is much more than they have now. I am also aware that power companies have the power to invoke the Public Works Act 1981 and any settlements in excess of fair compensation due to commercial pressures cannot be used as evidence of market related compensation. John also makes this point in his email.

I have since spoken with both John and PJ on this and have come to the conclusion that the valuations are what they are and as John says in his last email on this kaupapa, ***'The valuer has used formula that are set out in Part V of the Public Works Act 1981. Those formula would be set.'*** I have also gone back to Top Energy and they have agreed to pay the higher of the valuations, i.e.: \$20,000 per the Colliers International quote.

In terms of the issue John raises around the compensation level in 2010, I am not familiar enough with those negotiations? I do know that Taoko for one was fully involved in those negotiations. I will follow up with Cedric Davenport as he informed me that he was involved in that as well.

In terms of the job I was tasked with, I have completed that and we now need a decision?

I also attach the Colliers International valuation report as well as the DRAFT easement agreement which PJ has in readiness for a decision to execute.

Mauri Ora

Sonny

From: Taoko <taokow@hotmail.com>

Subject: Re: Registered Valuation for Compensation Purposes - Te Pua Road, Kaikohe

Date: 19 September 2017 at 8:01:03 PM NZST

To: Sonny Tau <sonnytau@xtra.co.nz>

Cc: Rachel Witana <rachelwitana@gmail.com>, Te Tuhi Robust <tetuhi.robust@wananga.ac.nz>, Bruce Cutforth <brunai@xtra.co.nz>, Colleen Bb <colleenbb16@gmail.com>, John Parmenter <john@ncal.co.nz>, P W Jones <aucklaw@gmail.com>

Trustees two valuation is normal practice that would give us some movement for some decision making .

Just think how much \$ this company is making ? Those Power Lines perhaps will be there for Yonks ? And what happens if in the near future we go silly and set up our own Power Generation ? Do we have the right to get them removed off our land?

Sorry Whanau just opened up my mail to view this Document .

He whakaro noiho .

Naku na Taoko.

On 27 Sep 2017 20:26, "Te Tuhi Robust" <TeTuhi.Robust@wananga.ac.nz> wrote:

Tena koe Sonny

Thank you for all the information on this matter. I support the approach to be taken in brining about a successful conclusion for the Trust.

Te Tuhi

From: Colleen Bb <colleenbb16@gmail.com>

Subject: Re: Registered Valuation for Compensation Purposes - Te Pua Road, Kaikohe

Date: 28 September 2017 at 9:46:23 AM NZDT

To: Te Tuhi Robust <TeTuhi.Robust@wananga.ac.nz>

Cc: John Parmenter <john@ncal.co.nz>, Peter Jones <aucklaw@gmail.com>, Rachel Witana <rachelwitana@gmail.com>, Bruce Cutforth <brunai@xtra.co.nz>, Sam Wihongi <sam.wihongi@omapere-rangihamama.com>, Sonny Tau <sonny.tau@ngapuhi.org>, Taoko Wihongi <taokow@hotmail.com>

Morena and appreciate the update.

I support proceeding with the agreement, as advised below.

Mauri ora

Colleen

From: brunai <brunai@xtra.co.nz>

Subject: Re: Registered Valuation for Compensation Purposes - Te Pua Road, Kaikohe

Date: 28 September 2017 at 2:40:47 PM NZDT

To: Sonny Tau <sonny.tau@ngapuhi.org>, Rachel Witana <rachelwitana@gmail.com>

Cc: John Parmenter <john@ncal.co.nz>, Te Tuhi Robust <tetuhi.robust@wananga.ac.nz>, Colleen Bb <colleenbb16@gmail.com>, Taoko Wihongi <taokow@hotmail.com>, P W Jones <aucklaw@gmail.com>, Sam Wihongi <sam.wihongi@omapere-rangihamama.com>

Kia ora

I am in support of accepting the highest offer of compensation from top energy. Further I have every confidence in you Sonny achieving the optimum outcome for ORT.

Regards Bruce

From: Rachel Witana <rachelwitana@gmail.com>

Subject: Re: Registered Valuation for Compensation Purposes - Te Pua Road, Kaikohe

Date: 28 September 2017 at 12:34:49 PM NZDT

To: John Parmenter <john@ncal.co.nz>

Cc: Sonny Tau <sonny.tau@ngapuhi.org>, Te Tuhi Robust <tetuhi.robust@wananga.ac.nz>, Bruce Cutforth <brunai@xtra.co.nz>, Colleen Bb <colleenbb16@gmail.com>, Taoko Wihongi <taokow@hotmail.com>, P W Jones <aucklaw@gmail.com>, Sam Wihongi <sam.wihongi@omapere-rangihamama.com>

Kia ora Tatou

In reference to both valuations submitted by McBain and Colliers, it appears these appraisals are acceptable subject to the variation points provided for and by the Trust Account John Parmenter.

However, as mentioned in a previous email, not only is there room for improvement but also room for further discussion required in reference to the following;

1. Equity Shareholding Proposal with Top Energy.
2. ORT Ownership of this power connection as oppose to Top Energy.
ie: Instead of Top Energy paying ORT 20k, ORT should consider utilising this easement (our whenua) by installing the Power and Line connections ourselves thus taking full ownership.
3. As mentioned by Taoko in a previous email, ORT should also consider the possibilities of utilising the land in time for our own Power Generation Plant
ie: Geo Thermal.

Therefore subject to the above;

1. I do not agree that we should take the money and run as this proposal from Top Energy will be a revenue making project for years to come.

2. Te Ture Whenua - Public Work Act - With ORT as the owner this will also eliminate this problem. Looking after our whenua for all shareholders and beneficiaries as oppose to a "one off" immediate monetary gain.

Let's face it under this ACT they will in time look to expand the usage of ORT land with the support of the Crown and if ORT agrees to simply "taking the money" hence allowing Top Energy full access rights to this easement we will eventually lose land hectare by hectare and or more.....

Nga Mihi

Rachel Witana

From: Sonny Tau <sonny.tau@ngapuhi.org>

Subject: Re: Registered Valuation for Compensation Purposes - Te Pua Road, Kaikohe

Date: 28 September 2017 at 1:38:18 PM NZDT

To: Rachel Witana <rachelwitana@gmail.com>

Cc: John Parmenter <john@ncal.co.nz>, Te Tuhi Robust <tetuhi.robust@wananga.ac.nz>, Bruce Cutforth <brunai@xtra.co.nz>, Colleen Bb <colleenbb16@gmail.com>, Taoko Wihongi <taokow@hotmail.com>, P W Jones <aucklaw@gmail.com>, Sam Wihongi <sam.wihongi@omapere-rangihamama.com>

Tena Koe Rachel

I read with interest your email. As I said I have gone back to Top Energy and secured the compensation payment at the higher rate that has been deemed the value of this transaction. John has provided some narrative on how or why the quotes differ. That is beside the point but good advice at any rate.

I have gently canvassed further negotiations with Top Energy but understand that this will reduce the starting point to \$15K, which is normal negotiating tactics. The point is, whether you even get near a \$20K end point is the difficulty and something I am not prepared to risk?

I think your points 1&2 are not possible and we would not know where to begin with these kaupapa?

Your point 3 is something that ORT has never ever discussed or contemplated and given our present fiscal restraints I cannot see this advancing within the next 10 years at the very least.

Your second number point 1, **do I take it you do not agree with the two valuations and that we walk away from the offer and let Top Energy invoke the provisions of the Public Works Act 1981?**

Your second point 2, do you really think that Top Energy will agree to ORT putting up these power lines and then leasing them from us? These people have shown that they will not have a middle man potentially interfere with their business of supplying power to the Far North? By the way the Ture Whenua Act does not come into play here. The Public Works Act 1981 is designed to do just that, if there is no agreement on a negotiated price, Top Energy has the right to invoke the provisions of the Act that will get them what they want. For us to defend the indefensible is not good practice.

The last matter that I need to appeal to is the continuation of a good working relationship with Top Energy as we are heavily into negotiations with them over the Papakainga Scheme power provision costs as they currently sit. We believe they are very high and the likelihood of reducing that cost whilst holding them to ransom over this issue is counterproductive.

In explaining all that, I am very relaxed about moving aside and let someone else have a shot at getting this over the line. All I ask is that all the points I raise in this email be taken into consideration when engaging further with Top Energy.

My advice has not changed, I think we have a good deal here which has been well researched, so lets make a decision based on that.

Mauri Ora

Sonny

From: P W Jones <aucklaw@gmail.com>

Subject: Re: Registered Valuation for Compensation Purposes - Te Pua Road, Kaikohe

Date: 28 September 2017 at 3:22:02 PM NZDT

To: Sonny Tau <sonny.tau@ngapuhi.org>

Cc: Rachel Witana <rachelwitana@gmail.com>, John Parmenter <john@ncal.co.nz>, Te Tuhi Robust <tetuhi.robust@wananga.ac.nz>, Bruce Cutforth <brunai@xtra.co.nz>, Colleen Bb <colleenbb16@gmail.com>, Taoko Wihongi <taokow@hotmail.com>, Sam Wihongi <sam.wihongi@omapere-rangihamama.com>

Tena koutou

I think it is useful to recall the statutory provisions that Top Energy has to operate under. It is taking an interest in land, that is to say the easement. It has the power to take compulsorily.

Ultimately, it has power under the Public Works Act 1981 to *force* the situation exactly as it is now ie to instal the lines and pay compensation as assessed by valuation.

And the Act mandates just what type of compensation is payable. In simplistic terms, compensation is payable only as lump sums of money or (in some particular circumstances that do not arise here) as grants of other interests in the land taken or other land.

Deals on power or sharing the utility provider ownership of the power grid are just not options that are open to them - doubtless to their relief, because the reason we have quasi governmental bodies controlling electricity supply is that small private ownership has failed, repeatedly, to ensure consistent supply to the public in the past.

I trust this has helped to clarify.

Mauri ora

PJ