

In the High Court of New Zealand
Tauranga Registry
I Te Kōti Matua o Aotearoa
Tauranga Moana Rohe

CIV-2021-470-

under: the Trusts Act 2019 and Part 18 of the High Court
Rules 2016

in the matter of: an application under sections 130 and 133 of the Trusts
Act 2019 by **William Beau Holland, Natalie Anne
Bridges, Peter John Blackwell, Peter John Farmer,
Mark Edmond Arundel and Tina Lynn Jennen**, as
trustees of the Tauranga Energy Consumer Trust
First plaintiffs

and in the matter of: an application under section 133 of the Trusts Act 2019
of: by **William Beau Holland, Natalie Anne Bridges,
Peter John Blackwell, Peter John Farmer, Mark
Edmond Arundel and Tina Lynn Jennen**, as trustees
of the TECT Charitable Trust
Second plaintiffs

Interlocutory application for directions as to service and
representation

Dated: 13 May 2021

Reference: M D Arthur (michael.arthur@chapmantripp.com)
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INTERLOCUTORY APPLICATION FOR DIRECTIONS AS TO SERVICE AND REPRESENTATION

To the Registrar of the High Court at Tauranga

This document notifies you that—

The applicants, William Beau Holland, Natalie Anne Bridges, Peter John Blackwell, Peter John Farmer, Mark Edmond Arundel and Tina Lynn Jennen as trustees of the Tauranga Energy Consumer Trust (**TECT**), and William Beau Holland, Natalie Anne Bridges, Peter John Blackwell, Peter John Farmer, Mark Edmond Arundel and Tina Lynn Jennen as trustees of the TECT Charitable Trust (the **2002 Charitable Trust**) apply to the Court for orders:

Service

- 1 Directing that service of this proceeding, including the orders made on this application, be effected by:
 - 1.1 sending a notice (in essentially the same form as the notice attached to the affidavit of TECT Chairman, Bill Holland) to anyone who was a Consumer (as defined in the TECT Trust Deed) as at 28 January 2021, or who has since become a Consumer, explaining that the Trustees have filed an application to the Court for orders under section 133 of the Trusts Act 2019, with information on how Consumers can access online, download or request a copy of the documents filed in this proceeding, by way of:
 - (a) mail to those whom TECT has a current postal address; and
 - (b) email to those whom TECT has a current email address.
 - 1.2 advertising a notice of the proceedings (in essentially the same form as the advertisement attached to the Holland affidavit) in the Bay of Plenty Times and the Weekend Sun;
 - 1.3 serving the Attorney General (in respect of charitable beneficiaries);
 - 1.4 serving the counsel appointed as independent counsel by the Court; and
 - 1.5 publishing all documents filed to date in this proceeding and a copy of the above notice and advertisement to Consumers on TECT's website.
- 2 Directing that no notice of proceeding is required in this proceeding.

3 Directing that no initial disclosure is required in this proceeding.

4 Directing that evidence in this proceeding is to be by way of affidavit.

Representation

5 Appointing Jane Anderson QC as Independent Counsel to assist the Court in this proceeding by ensuring that a complete and balanced view is before the Court when determining this proceeding, including any relevant information and arguments in opposition to the orders sought by the first and second plaintiffs.

6 Directing that the reasonable fees and disbursements of the Independent Counsel shall be met out of the assets of TECT, on the basis that the fees are a necessary and reasonable expense related to the management and maintenance of the TECT Trust Fund and to the affairs of TECT.

7 Directing that the Independent Counsel:

7.1 is permitted, but not obliged, in her sole discretion, to seek information from TECT, seek and/or receive comments and information from beneficiaries and otherwise consult with any of them, take expert advice, call evidence and cross-examine any witness; and

7.2 in carrying out her role, including the steps she may take in her discretion as set out in paragraph 7.1 above, the Independent Counsel is not acting for beneficiaries as a whole or any of them.

Hearing date

8 Directing that the matter will be set down for a full day hearing on the first available date after 20 September 2021 in order to hear the applicants' application for orders under section 133 of the Trusts Act 2019.

Rights of appearance and timetable

9 Directing that:

9.1 any person directed to be served or the Attorney-General, should they wish to be heard, and any other person who seeks leave to appear, must file, and serve on the first and second plaintiffs, a notice of appearance or a statement of defence and, any affidavits on which they intend to rely by 2 July 2021;

9.2 by 9 August 2021 the Independent Counsel must file and serve any evidence on which the Independent Counsel intends to rely at the hearing;

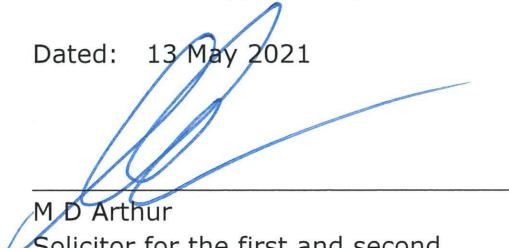
- 9.3 by 23 August 2021 the first and second plaintiffs must file and serve any further evidence on which they intend to rely at the hearing; and
- 9.4 the plaintiffs must file and serve their submissions no later than two weeks before the hearing;
- 9.5 any other party, and Independent Counsel, must file and serve their submissions no later than one week before the hearing;
- 9.6 leave be reserved for any party to seek a telephone conference if it appears necessary to adjust the timetable.

Grounds

- 10 The grounds on which each order is sought are as follows:
 - 10.1 the applicants have filed a statement of claim seeking directions from the Court under s 133 of the Trusts Act 2019 that the applicants' decision to vary the TECT trust deed, wind up the 2002 Charitable Trust, establish a new community trust, and make various transfers and distributions to effect the restructure are proper exercises of their powers;
 - 10.2 the persons interested are:
 - (a) current beneficiaries of TECT, defined as "Consumers";
 - (b) future beneficiaries of TECT (ie future Consumers);
 - (c) the Charitable Trust and its beneficiaries (defined as the "Charitable Consumers" being every Consumer that is a charitable body); and
 - (d) the Attorney-General as is appropriate in respect of the second plaintiff (being a charitable trust under the Charitable Trusts Act 1957);
 - 10.3 the directions sought will enable all persons affected by the substantive application to receive proper and sufficient notice of the application and rights of representation and opposition in relation to the application, such that personal service is not necessary;
 - 10.4 the directions sought will help to secure the just, speedy and inexpensive determination of the proceeding; and
 - 10.5 Jane Anderson QC has consented to be appointed as Independent Counsel.

- 11 The application is made in reliance on:
- 11.1 rules 1.2, 4.27, 5.24 and part 18 of the High Court Rules;
 - 11.2 the affidavit of Bill Holland, Chairperson, TECT;
 - 11.3 memorandum of counsel of Jane Anderson QC, confirming her availability and consent to be appointed as Independent Counsel; and
 - 11.4 the memorandum of counsel filed in support of this application.
- 12 The application is made without notice to any other party on the ground that rule 18.7(2) of the High Court Rules 2016 requires that this application be made without notice.
- 13 I certify that:
- 13.1 the grounds set out in paragraph 10 on which the applicants rely are made out; and
 - 13.2 all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

Dated: 13 May 2021



M. D. Arthur
Solicitor for the first and second
plaintiffs