

**ORDER VARYING THE TERMS OF TRUST**

Te Ture Whenua Māori Act 1993, Section 244

In the Māori Land Court  
of New Zealand  
Waikato Maniapoto District

**IN THE MATTER** of Tapuiwahine A 12 Block

LINZ Reference: SA13B/380

AT a sitting of the Court held at Hamilton on the 21<sup>st</sup> day of October 2021 before Terena Marahi Wara, Judge

WHEREAS on the 28<sup>th</sup> day of January 2021 the Court did vest the said block in trustees pursuant to sections 239(1) and (3) of Te Ture Whenua Māori Act 1993

AND WHEREAS on the 3<sup>rd</sup> day of February 2020 the Court did declare the trusts upon which the said trustees shall hold the said block

AND WHEREAS an application was filed by the trustees of Tapuiwahine A12 trust to vary the terms of the said trust

NOW THEREFORE the Court pursuant to Section 244 of Te Ture Whenua Māori Act 1993 DOES HEREBY VARY the terms of the trust made on the 3<sup>rd</sup> day of February 2020 by making a new trust order in substitution for the existing order to the effect that the said trustees shall now and henceforth hold the said block until further or other order of the Court as set out in the terms attached hereto

AS WITNESS the hand of the Judge and the Seal of the Court

  
**JUDGE**

The seal of the Maori Land Court of New Zealand is circular. It features a central coat of arms with a crown on top, flanked by two figures. The text "THE MAORI LAND COURT" is written along the top inner edge, and "OF NEW ZEALAND" is written along the bottom inner edge.

**SCHEDULE****A. Title**

This Trust shall be known as the **Tapuiwahine A12 Trust** and shall apply to the Māori freehold land known as **Tapuiwahine A 12 Block**

**B. Object**

1. The object of the Trust shall be to provide for the use management and alienation of the land and any other property or assets of the trust to the best advantage of the beneficial owners or the better habitation or user of land by beneficial owners and to carry on any one or more businesses, undertakings, or enterprises either upon the land or part or parts thereof, or in connection with some user of the land, which will directly or indirectly assist in the better utilisation of the resources of the land or any other trust property or the commercial realisation thereof for the beneficial owners.
2. To ensure the retention of the land for the present Māori beneficial owners their successors and assigns.
3. To represent the beneficial owners on all matters relating to the land and for the use and enjoyment of the facilities associated therewith.

or That whereas the said land is presently subject to the provisions of Part II of the Māori Affairs Restructuring Act 1989 the powers of the trustees are to be read subject to all the rights and powers of the Chief Executive of the Ministry of Māori Development given under the said Part II for so long as the said land is so subject but the object of this trust is to seek the release of the land from the said Part II and for the trustees to assume responsibility for the use management and alienation of the same upon such release being effected.

**C. Powers**

The Trustees are empowered:-

**General**

In furtherance of the objects of the trust and except as hereinafter may be limited to do all or any of the things which they could be entitled to do if they were the absolute owners of the land **PROVIDED HOWEVER** that the trustees shall not alienate the whole or any part of the fee simple by gift or sale other than by way of exchange on the basis of land for land value for value and then effected by Court Order or in settlement of a proposed acquisition pursuant to the Public Works Act or similar statutory authority.

**Specific**

Without limiting the generality of the foregoing but by way of emphasis and clarification as well to extend or define the powers of the trustees it is declared that the trustees are empowered:-

1. **To Buy**

To acquire any land or interest in land whether by way of lease, purchase, exchange or otherwise **PROVIDED HOWEVER** that no land exchange shall be effected except by a resolution of the majority of the beneficial owners passed at a General Meeting followed by an order of the Māori Land Court **AND** to acquire and sell, hire, or otherwise deal in any vehicles, plant, chattels or equipment;

2. To Subdivide  
To subdivide the land in any manner permitted by law into such subdivisions or parts as may seem expedient to them;
3. To Improve  
To develop and improve the trust lands and to erect thereon such buildings fences yards and other constructions or erections of whatsoever nature as may seem necessary or desirable;
4. To Permit Occupation Enjoyment and to make Special Provisions for Owners  
At the Trustees' discretion in any arrangement made for the use of the land to reserve or otherwise provide for any one or more of the beneficial owners to personally occupy use or otherwise enjoy such defined part or parts of the land as the Trustees shall determine upon terms and conditions determined by the Trustees in general consultation with the beneficiaries.
5. To Consent to the Erection of Dwellings  
To consent to the erection of dwellings on the said land by those beneficial owners who have been granted a right to occupy by the Trustees without partition of their interest and to enter into and execute such Deed or Deeds as required by any State Loan Department or any other recognised lending institution for the repayment of loans granted by such body to any one or more of the beneficial owners for the erection of dwellings on the said land. Subject to the rights of the State Loan Department or lending institution as the lender, to remove dwellings erected on the said land to do all such things and exercise all such powers for the purpose set out above as if the Trustees owned the said land absolutely.
6. To Employ  
To engage, employ and dismiss managers, secretaries, servants, agents, workmen, solicitors, accountants, forestry or other consultants, surveyors, engineers, valuers and other professional advisers required to carry out the powers of the trustees and to fix their remuneration;
7. To Borrow  
To borrow money for the purpose of the furtherance of any of the trusts or powers herein contained whether or not with security over all or any real or personal property of the trust;
8. To Set Aside Reserves
  - (a) To set aside such reserves as the trustees in their discretion shall think fit for contingencies or for capital expenditure or for expansion in accordance with the objects of the trust or in connection with any business carried on by the trustees pursuant thereto, or to retain in an accumulated profit account any portion of the profits which the trustees think it prudent not to distribute to the beneficial owners; and
  - (b) The trustees shall also consider that while the trust receives regular income, the reserves, as described in 8(a) above, shall not fall below the minimum amount of SIXTY THOUSAND DOLLARS (\$60,000.00).
9. To Lend or Invest  
To lend all or any money coming into their hands upon any securities in which trust funds may be invested by trustees in accordance with the Trustee Act 1956 or in accordance with any other statutory authority;

10. To Join with Others  
To enter into arrangements or agreements or contracts whether in the names of the trustees or jointly or in partnership with any other person or organisation;
11. To Lease  
To lease the whole or any part or parts of the said lands from year to year and for any term of years at such rent and upon such covenants and conditions as the trustees shall think reasonable and to any persons corporate body and/or Her Majesty the Queen and to accept surrenders of leases thereof and to rent the lands. No lease shall provide for payment of compensation for improvements effected by the lessee and no lease shall be granted for a term in excess of seven (7) years unless a resolution to such effect has formally been passed by the beneficial owners at a meeting convened for such purpose.
- PROVIDED that the trustees may at their discretion alienate by way of lease or licence to any beneficial owner or any blood relative of a beneficial owner free of rent or otherwise upon terms more favourable to a lessee than might be given if the land were dealt with on the open market without favour;
12. To Protect Wahi Tapu  
To safeguard to the best of their ability any graves of the Māori people and all historic or sacred places in or upon the land for the time being vested in them.
13. To Acquire Interests  
To acquire the undivided share of any beneficial owner in any of the said blocks of land for the benefit of the remainder of the beneficial owners of that block of land
- AND for the purposes of this sub-paragraph the term "beneficial owner" includes any person holding an interest as aforesaid in a representative capacity whether as executor, administrator, or trustee, and the Official Assignee and the Māori Trustee.
14. To Pay Costs and Reimburse Trustees  
From the revenues derived from the operation of the trust to pay all costs expenses and disbursements incurred by them including the costs of any person employed by them in the administration of the trust or in the furtherance of any of the objects of the trust and to reimburse the trustees for all their out-of-pocket expenses incurred in their attendance to the affairs of the trust.
15. Māori Community Purposes  
The trustees may apply the whole or any part of any specified portion of the Trust income for Māori Community Purposes or for such Māori Community Purposes as the Court may specify, and, in such case the Trustees may apply any part of such specified portion of Trust income in accordance with section 218 of Te Ture Whenua Māori Act 1993
- 15A. Distribution to Motiti Marae  
The trustees, having satisfied themselves prudent, may effect distribution of 25% net income per annum to Motiti Marae to assist with maintenance, and upgrade to current marae facilities.
- The dollar amount, based on the 25% net income per annum, shall be determined by an accountant upon completion of financial accounts.

16. To Distribute

The trustees may effect distribution of profits if any (including accumulated profits and realised capital profits) in any financial year to the beneficial owners in direct proportion to their relative interest in the land, such distributions at all times being subject to:-

- (a) the trustees having satisfied themselves that prudent and adequate provision has been made for the payment or reservation of other amounts which are properly to be paid or reserved as hereinbefore provided and
- (b) the trustees having determined themselves the amount as being available for distribution in that financial year; and
- (c) the trustees having been authorised to so distribute by express resolution at a general meeting of the beneficial owners called for that purpose an amount not exceeding that determined in accordance with this paragraph

PROVIDED however that any unclaimed monies payable to any beneficial owner by way of such distribution(s) so long as such monies remain unclaimed shall be available to the trustees for investment, the income from which shall be deemed to be sole property of the trust, the capital amount only being available for payment upon a claim being lawfully established by the beneficial owner or person(s) claiming through him

PROVIDED FURTHER that the trustees shall pay to the Māori Trustee or other chargeholder or assignee the share of any person in respect of an assignment charge or mortgage in favour of the Māori Trustee or other chargeholder or assignee upon receipt of request(s) to do so by the Māori Trustee or other chargeholder or assignee.

17. Number of Trustees

The trust must, at all times, have no less than five (5) Trustees and no more than seven (7) trustees.

18. Meetings of Trustees

- (a) Notwithstanding anything to the contrary hereinbefore contained or implied the trustees shall exercise the powers vested in them only in manner to be determined by the trustees at trust meetings and the trustees may adjourn and otherwise regulate such meetings as they think fit.
- (b) All policy and proposals other than day to day administration and implementation of policy shall be determined at trust meetings called for such times and places as the trustees shall determine.
- (c) The trustees shall elect a chairperson of the trustees, appoint a secretary to the trust estate and appoint some place to be the notified office of the trust estate and from time to time thereafter shall in the like manner fill any vacancy in the office of the chairperson or secretary and may change the notified office. Particulars of such elections and appointments and all changes therein shall be supplied immediately to the Registrar.
- (d) Meetings of the trustees shall be called by the chairperson or may be held at such times and places as may be fixed by resolution of the trustees. Any two (2) members may at any time require the chairperson to summon a meeting. Not less than three (3) clear days' notice of any meeting shall be given to every member of the trustees.

- (e) If at any meeting the chairperson is not present at the time appointed for holding the same, the members present shall choose one (1) of their number to be chairperson, and the person so chosen shall have and may exercise at that meeting all the powers of the chairperson.
- (f) The powers and authorities hereby given to or vested in the trustees may at any time be exercised by the majority of the trustees from time to time appointed and all acts and proceedings of such majority of the trustees shall, in such case, be as valid and effectual as if they had all concurred herein.
- (g) No trustee meeting shall be deemed to be constituted unless a majority of the number of trustees appointed are present in person or via electronic communication including but not limited to telephone conference or skype throughout the meeting.

PROVIDED HOWEVER that where a trustee notifies the Registrar of the Māori Land Court and dissents in writing from the majority decision of the trustees before the decision is implemented, that trustee shall be absolved from any personal liability arising out of the implementation of that decision.

19. General Meetings of Beneficiaries

General meetings of beneficial owners shall from time to time be held as hereinafter provided:

(a) Annual General Meeting

Annual General Meetings shall be held from time to time, at least once every three (3) years and to be no later than at least three (3) months prior to the next rent review. The meeting is to be held at a place and time fixed by the trustees having regard to the convenience of the beneficial owners.

(b) Special General Meeting

(i) A special general meeting of the beneficial owners may be convened at any time by the trustees and shall be so convened:-

- a. Upon a direction by the Court; or
- b. Upon a requisition in writing signed by not less than ten (10) of the beneficial owners;

(ii) Any requisition for the calling of a special general meeting shall state the purpose for which the meeting is required and shall be served on the Chairperson or the Secretary of the trustees, who shall lay the same before the trustees;

(iii) On receipt of any requisition made in accordance with subclauses (i) and (ii) of this paragraph or any direction by the Court for the calling of a special general meeting, the trustees shall fix a time and place therefore and convene a special general meeting accordingly. Such special general meeting shall be held within three (3) months after the receipt of such requisition or direction.

20. Notice of General Meeting

The trustees must take all reasonable steps to notify the Beneficial Owners that a General or Special Meeting of Beneficial Owners is to be held ("Notice").

- (a) Notice may be facilitated by notifying Beneficial Owners directly in writing by a preferred method such as by letter or email where it is reasonable to do so (e.g. Where the Trust has the mail and email addresses of the Beneficial Owners and doing so is inexpensive); and
- (b) Where direct notification is not possible, by publishing notice in any one or more of the following ways:
  - (i) In a daily newspaper circulating in the district where the Corpus Land is situated;
  - (ii) By any electronic means (such as a website) associated with the Trust and the Beneficial Owners; and
  - (iii) Broadcasting over the local iwi radio station.

21. Special Resolutions to be considered at next General Meeting

Any beneficial owner may give notice in writing to the trustees of any special resolution that he intends to move at a special general meeting or at the next available general meeting of the beneficial owners, and in any such case the written notice of the meeting shall include notice of the intended special resolution.

No resolution shall be moved at any general meeting unless notice thereof has been included in the written notice of the meeting.

22. Business of General Meeting

The business of an annual general meeting shall be:-

- (a) To receive and consider the balance sheet, the profit and loss account, and the reports and statements usually annexed or attached to the balance sheet and, if thought fit, to adopt the same after hearing the auditor's report;
- (b) To elect persons to fill vacancies in the membership of the trustees;
- (c) To appoint an auditor or auditors;
- (d) To appoint a share valuer;
- (e) To decide, in any case where the trustees have determined that an amount of money is available for distribution by way of dividend to the beneficial owners, what part (if any) of that amount shall be paid for other purposes;
- (f) To consider any proposed special resolution of which notice has been duly given and is included in the written notice of the meeting;
- (g) To consider and if thought fit dispose of such other matters as may properly be brought before the meeting.

23. Chairperson

At every general meeting of the beneficial owners the chairperson of the trustees shall preside if he is present, and if he is absent the meeting shall appoint some other person present to be chairperson of the meeting.

24. Postponement

At any time before the time fixed for the holding of any general meeting of the beneficial owners the chairperson of the trustees may postpone the meeting to some other time or may appoint some other place of meeting, as he may deem expedient, and notice of any such altered time or place shall be duly given.

25. Quorum

No meeting of the beneficiaries of the Trust shall be constituted or be deemed to be constituted unless there is present in person or via electronic communication including but not limited to teleconference and skype throughout the meeting, the quorum prescribed by this Trust Order;

A quorum shall consist of not less than seven (7) qualifying beneficial owners personally present throughout the meeting.

26. Lack of Quorum

(a) If at the time and place appointed for any such meeting or within one (1) hour after such time, there is not a quorum present, or if for any other reason the meeting cannot be held, the trustees shall forthwith fix another time within twenty-one (21) days thereafter and a place for the holding of the meeting and shall give not less than fourteen (14) days notice of the meeting by advertisement published twice in one or more daily newspapers circulating in the district in which the trust land is situated. If at the new time and place, or within one (1) hour after such time there has not been a quorum present, the meeting shall lapse.

(b) Where any general meeting lapses as aforesaid, the certified balance sheet, the profit and loss account and the other reports and statements hereinbefore referred to shall forthwith be transmitted by the chairperson to the Registrar of the Court at Hamilton.

27. Adjournment

The chairperson may, with the consent of the meeting, adjourn any meeting from time to time and from place to place.

28. Voting

(a) Every beneficial owner present in person or by proxy shall be entitled to vote on any resolution considered by the beneficial owners.

(b) A person acting as proxy for any other beneficial owner(s) shall be entitled to vote separately for each person for whom he so acts.

(c) Any person who is the duly appointed trustee for a beneficial owner in respect of his shares may attend vote and act at any meeting of the beneficial owners either personally or by proxy in the same manner and on the same conditions as if he were the beneficial owner.

(d) On any resolution submitted to a vote of beneficial owners the resolution shall be deemed to be carried if the beneficial owners who either personally or by proxy vote in favour of the resolution are the beneficial owners of a larger aggregate share of the equitable interest in the land than the beneficial owners who vote either personally or by proxy against the resolution.

29. Proxy

- (a) A proxy must be an owner or the wife, husband, son, daughter, step-daughter, step-son, father, mother, brother, sister, uncle or aunt of an owner. An exception is a trustee for a person under disability within the meaning of Part XII of Te Ture Whenua Māori Act 1993 who may appoint any person of full age and capacity.
- (b) If an owner giving the proxy is opposed to:-
- (i) Any exchange
  - (ii) Any lease
  - (iii) Any other proposed resolution

he is entitled to direct his proxy to vote against any of these. If he wishes to give any such directions he must write in the space provided on the proxy, such directions as he requires, namely:

- 1) I direct my proxy to vote against any exchange;
- 2) I direct my proxy to vote against any lease of the land;
- 3) I direct my proxy to vote against the proposed resolution.

- (c) The persons following are qualified to act as witness:

Solicitor of the High Court  
 Justice of the Peace  
 Licenced Interpreter of the Māori Language  
 Registered Medical Practitioner  
 Officiating Minister  
 Registered Nurse  
 School Teacher  
 Officer of the Ministry of Justice  
 Chartered or Registered Accountant

- (d) This proxy form when completed must either be handed in at the meeting or lodged with the Secretary of the trust before 10.00am on the working day before the meeting.

30. Instrument of Appointment

- (a) No person shall be entitled to vote as proxy at a meeting unless the Chairperson of the meeting is satisfied that the instrument containing his appointment is prima facie in order.
- (b) If any instrument of appointment is ruled by the Chairperson to be out of order, the reason for the ruling shall be certified on the instrument.
- (c) The Chairperson of the meeting shall, on request, give to any person entitled to vote at the meeting an opportunity to inspect any instrument of appointment which has been lodged and to raise any objection to the instrument.

31. Cancellation and Lapse of Appointment

- (a) An appointment as proxy may be cancelled by the person who has given the proxy by writing signed by him and either lodged at the notified office of the trust before 10 a.m. on the last working day before the day of the meeting or lodged with the Chairperson of the meeting.

- (b) An appointment as proxy shall lapse on the death of the person giving the proxy or on the cancellation of the appointment as provided in subclause (a) of this paragraph.
- (c) If a person who has appointed a proxy attends the meeting personally and notifies the Chairperson that he is present and the Chairperson notifies the meeting accordingly the proxy shall not vote for him after the Chairperson's notification; but the validity of voting which has already been completed prior to that notification to the meeting shall not be affected thereby.

32. Minutes

The proceedings of every general meeting of the beneficial owners shall be recorded in a minute book. The minutes of every meeting shall be signed by the chairperson of that meeting as soon as possible and shall be read and after any necessary amendment, confirmed at the next succeeding meeting. Upon signature by the chairperson such minutes shall be receivable as prima facie evidence of the matters stated in the minutes. Upon confirmation and signature by the chairperson of that succeeding meeting, such minutes shall be receivable as conclusive evidence of the matters stated in the minutes.

33. Accounts and Reports

- (a) The trustees shall cause to be kept proper books of account in which shall be kept full true and complete accounts of the affairs and transactions of the Trust.
- (b) At each general meeting of the beneficial owners the trustees shall produce reports and accounts for each year in respect of which they have not earlier presented reports and accounts to a general meeting.
- (c) When the annual income is in excess of twenty thousand dollars (\$20,000.00) the trustees shall cause each annual set of accounts to be audited by a person who is a member of the New Zealand Society of Accountants or a member fellow or associate of an Association of Accountants constituted in some part of the Commonwealth outside New Zealand and for the time being approved for the purpose of the audit of company accounts by the Minister of Justice by notice published in the Gazette. The appointment of a partnership by the firm named to be the auditors of the Trust shall be deemed to be the appointment of all the persons who are partners in the firm at the time of the appointment.
- (d) The foregoing provision requiring audit shall not take effect so long as the rent from the block is being received and distributed by the Māori Trustee.

34. Qualifications, Disqualifications and Removal of Trustees

- (a) It shall not be necessary in the case of any person elected or appointed as a trustee that he be a beneficial owner in any of the said lands.
- (b) No person shall be disqualified from being elected or from holding office as a trustee by reason of his employment as a servant or officer of the trust estate or of his being interested or concerned in a contract made by the trustees where the gross value of that contract (not being a contract for personal services) does not exceed ONE THOUSAND DOLLARS (\$1,000.00)

PROVIDED that a trustee shall not vote nor take part in the discussion on any matter before the trustees that directly or indirectly affects his remuneration or the terms of his employment as a servant or officer of the trust estate or that directly or indirectly affects any contract in which he may be interested or concerned in any way whatsoever howsoever.

- (c) A trustee may be replaced by application to the Court if he/she resigns, dies, becomes of unsound mind, is declared bankrupt, commits an offence resulting in imprisonment for a period of six (6) months or more or continues to be absent from three (3) consecutive meetings without leave or approval of the trust.
- (d) Any change to the membership of the trustees as provided for in clauses 21, 22 and 34(c) above can only be effected by application to an order of the Māori Land Court pursuant to sections 239 and/or 240 of Te Ture Whenua Māori Act 1993.

35. Register of Equitable Owners

- (a) For the purpose of distribution of profits and the holding of general meetings, the trustees shall keep in the office of the Trust a register of equitable owners and such register shall disclose the following matters:-
  - (i) The names and sexes of the equitable owners;
  - (ii) If any equitable owner is under any disability the nature of the disability and the name of any trustee appointed in respect of his interests;
  - (iii) The relative interest of each equitable owner;
  - (iv) The postal addresses of the equitable owners so far as addresses are known to the trustees.
- (b) The trustees shall ensure that the information contained in the register is at all times correct and for this purpose the Registrar of the Court on application and on payment of the prescribed fee shall forward to the trustees a compiled list of owners certified correct as at the date of the last entry on the ownership schedule for the block.

36. Review of Trust

The trustees shall in the third year after constitution and thereafter at five (5) yearly intervals apply to the Court for a review of the trust.

37. Variation of Trusts

Nothing herein shall restrict the right of the trustees or of any beneficial owner to apply to the Māori Land Court pursuant to the provisions of Section 244 of Te Ture Whenua Māori Act 1993 for a variation of this Trust Order to increase, reduce or otherwise vary the powers hereby given to the trustees.