

**NEW TRUST ORDER**

Te Ture Whenua Māori Act 1993, Section 244  
The Māori Land Court Rules 2011, Rule 7.5(2)(b)

In the Māori Land Court  
of New Zealand  
Waiariki District

**IN THE MATTER** of Te Whaiti-Nui-A-Toi Block  
(306668)

AT a sitting of the Court held at Rotorua on the 4th day of February 2019 before Patrick John Savage, Judge

WHEREAS application has been filed by Murray Lloyd Patchell for variation of trust

AND WHEREAS on the 4th day of June 2015 the Court declared the trusts upon which the Trustees shall hold the said land

NOW THEREFORE the Court upon reading and hearing all evidence adduced in support thereof and being satisfied on all matters upon which it is required to be so satisfied

DO TH HEREBY VARY the terms of the said Trust by making a new Trust Order pursuant to Section 244 of Te Ture Whenua Māori Act 1993, to the effect that the Trustees shall now and henceforth until further or other Order of the Court, hold the said land upon the terms attached hereto

AND IT IS HEREBY DECLARED, pursuant to Rule 7.5(2)(b) of the Māori Land Court Rules 2011, that this Order do ISSUE IMMEDIATELY from the office of the Court

AS WITNESS the hand of a Deputy Registrar and the Seal of the Court.



## TERMS OF TRUST

### 1 Title

This Trust shall apply to the Māori freehold land known as **Te Whaiti-Nui-A-Toi Block**.

### 2 Objects

Except as hereinafter may be limited the objects of the Trust shall be to provide for the use management and alienation of the land to best advantage of the beneficial owners or the better habitation or use by beneficial owners, to ensure the retention of the land for the present Māori beneficial owners and their successors, to make provision for any special needs of the owners as a family group or groups, and to represent the beneficial owners on all matters relating to the land and to the use and enjoyment of the facilities associated therewith.

### 3 Powers

The Trustees are empowered:

#### (a) 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 would 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 or by partition as hereinafter provided.

#### (b) Specific

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

##### (i) To buy

To acquire any land or interest in land shares or assets whatsoever whether by way of lease purchase exchange or otherwise.

##### (ii) To subdivide

To subdivide the land in any manner permitted by law into such subdivisions or parts as may seem expedient to them, and to bring applications before the Court for partition orders to allocate such allotments amongst the owners in accordance with their entitlement.



(iii) 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.

(iv) To employ

To engage employ and dismiss managers secretaries servants agents workmen solicitors accountants consultants surveyors engineers valuers and other professional advisers required to carry out the powers of the Trustees and to fix their remuneration.

(v) 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.

(vi) To set aside cash reserves

To accumulate income and to set aside such reserves as the Trustees in their discretion shall think fit for contingencies or for capital expenditure or to meet the cost of any investigation or in giving effect to any proposal as referred to in the immediately preceding subclause and so 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.

(vii) To lend

To lend all or any of the 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 upon first or second mortgage or contributory mortgage approved by a resolution of the beneficial owners at a properly constituted meeting.

(viii) To pay own costs

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 and of any Trustees or in the furtherance of any of the objects of the Trust, including also the reasonable fees costs and travelling expenses of the Trustees in attending the meetings of the Trust or in respect of any Trust business, at a meeting fee of \$300.00 gross for each Trustee for each meeting or attendance to trust business meeting plus travelling expenses as found from time to time for Inland Revenue Department rates.

In the case of Trainee Trustees, the meeting attendance fee shall be \$150.00 gross, plus travel allowance.

An annual honorarium is to be paid to the Chairman of the Trust. The honorarium will be fixed at \$3,500.00 gross in addition to Trustees meeting fee payments.



(ix) To promote title improvement projects

At their discretion to bring and prosecute in the Māori Land Court on behalf of the beneficial owners any applications for amalgamation of titles, aggregation of owners, the inclusion of any further lands in this Trust order, the exclusion of any lands from this Trust order, the variation of this Trust order to increase reduce or otherwise vary the powers hereby given to the Trustees or to bring any other application for orders within the jurisdiction of the Court that might facilitate the operation of the Trust AND where appropriate as a matter of priority arrange all necessary surveys and effect registration of the Partition or other orders constituting title to the lands under the Trust in the office of Land Information New Zealand.

(x) To dispose of income

To apply to the Court from time to time for orders pursuant to section 245 of Te Ture Whenua Māori Act 1993 declaring income is held for charitable purposes.

(xi) To distribute

Subject to their being satisfied that proper provision has been made for reserves as referred to in clause 3 (b) (vi) hereof to distribute dividends to the beneficial owners in accordance with their shares or by way of grants in lieu of dividends to shareholders, on such terms as agreed with owners, the whole or such part of the after tax profit as the Trustees shall in their sole discretion from time to time determine.

(xii) To permit occupation and enjoyment by the owners

At their discretion to reserve in any lease or licence 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 having regard to the comparative shareholdings and if any such right is reserved licensed or otherwise provided for but to one or some only of the beneficial owners then the Trustees will determine the extent to which participation in rentals and profits are to abate for the purposes of receiving the benefit of such reservations licences or provisions or otherwise be adjusted.

(xiii) To make other special provisions for beneficiaries

At their discretion to alienate by way of lease or licence to any beneficial owner or to any blood relative of a beneficial owner at a reduced rent or otherwise upon terms more favourable to the lessee than those obtainable on the open market for so long as that person or his executor or administrator remains in possession of the land PROVIDED THAT such proposal has first been approved by the resolution of a meeting of beneficial owners called by the Trustees.



(xiv) 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 the Housing New Zealand Corporation or the Chief Executive Officer of Te Puni Kōkiri 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 Housing New Zealand Corporation or the Chief Executive Officer of Te Puni Kōkiri as the lenders to remove dwellings erected on the said land and 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.

(xv) 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 person, corporate body and/or Her Majesty the Queen and to accept surrenders of and vary the leases thereof.

(xvi) To take over existing leases

To assume all the rights duties powers and obligations heretofore held by the lessors under any lease having force or effect of any of the lands or of any part or parts thereof and to assume and to have all the rights duties powers and obligations that may have accrued to the former Trustees of any of the lands the trusts in respect of which have been cancelled on the making of this Trust order with power to enter into variations of any such lease and/or to negotiate and accept a surrender of any such lease whether in whole or in part and to obtain and enforce any judgment decision or ruling or to effect any settlement or compromise with regard thereto.

(xvii) To farm

To farm and develop the land themselves with power to appoint farm managers and other persons for that purpose, subject to a majority consent of Trustees.

(xviii) To represent owners

To prosecute from time to time in the appropriate tribunal such objection to zoning or proposed zoning such application for re-zoning of the said land, such application for specified departure from such zoning and such application for conditional use in any current zoning or otherwise howsoever the Trustees in their absolute discretion may determine, AND to represent the beneficial owners on any negotiations or questions of compensation for lands taken under the Public Works Act or other statutory authority with the Government or any local authority.



- (xviii) (i) To form Companies and to subscribe for and acquire shares in companies under the Companies Act and to adopt and change the constitutions to further the interests of the Trust to enable the company to be managed to facilitate the overall objects of the Trust provided that any Trustee may be paid directors fees, including those based on fees expected to be paid to directors in commercial enterprises of a similar business which the directors are involved and the Trustees are entitled to retain the same provided that the Trustees shall ensure that the details of such fees are included in the annual accounts of the company or companies.
- (ii) To invest all or any of the money coming into their hands in such manner and upon any securities as the Trustees shall think fit in accordance with the powers of investment given to the Trustees by the Trustee Act 1956 provided also that the Trustees shall have the right to retain the initial assets of the Trust and any assets transferred to the Trust and without the obligation to diversify investments.

#### 4 Personal Interest of Trustees

Notwithstanding any general rule of law to the contrary no person shall be disqualified from being appointed or from holding office as a Trustee or as a representative of the Trust by reason of his employment as a servant or officer of the Trust or by his being interested or concerned in any contract made by the Trustees PROVIDED THAT he shall not vote or take part in the discussion on any matter that directly or indirectly affects his remuneration or the terms of his employment as a servant or officer of the Trust or that directly or indirectly affects any contract in which he may be interested or concerned PROVIDED FURTHER THAT if a Trustee is employed by the Trust in any capacity whatsoever he shall not be paid any fees, costs, remunerations or other emolument whatsoever until same has been approved by the Court.

#### 5 Protection of Trustees

In any case where any Trustee is of the opinion that any direction determination or resolution of a meeting of the Trustees or general meeting of beneficial owners conflicts or is likely to cause conflict with the terms of this Trust or with any rule of law or otherwise to expose it to any personal liability or is otherwise objectionable then, and in reliance upon section 238 of Te Ture Whenua Māori Act 1993 and of the Trustee Act 1956 he may apply to the Court for directions in the matter PROVIDED HOWEVER that nothing herein shall make it necessary for him to apply to the Court for any such directions.

#### 6 Protection of Minorities

In any case where any Trustee or beneficial owner feels aggrieved by any direction determination or resolution of a meeting of the Trustees or of any act or omission of the Trustees he may:



- (i) give to the Trustees notice of his intention to have the matter complained of referred to the beneficial owners and then PROVIDED THAT within 14 days thereafter he is able to file a requisition supporting that notice executed by not fewer than seventy-five (75) beneficial owners then the Trustees shall fix a time and place and convene a general meeting accordingly in manner hereinafter provided; PROVIDED FURTHER that if the Trustees fail to convene a general meeting within a reasonable time or he is dissatisfied with the resolution of this matter by the general meeting he may:
- (ii) give to the Trustees notice of intention to have the matter complained of referred to the Māori Land Court PROVIDED THAT he shall within 14 days thereafter file an application pursuant to section 238 of Te Ture Whenua Māori Act 1993 and section 68 of the Trustee Act 1956 requesting the Court review any such act or omission of the Trustees and/or give directions as to any contemplated act or omission of the Trustees arising from the resolution of the general meeting of beneficial owners or any other reason; OR pursuant to section 244 of Te Ture Whenua Māori Act 1993 for the variation of this Trust order to make particular provision for the matter in dispute and in either case serve a copy thereof upon the Trustees AND upon and following receipt of a notice of intention as aforesaid and for as long as the matter remains unresolved, but then PROVIDED the further particulars are filed within 14 days, and except as may be necessary for the avoidance of an action by any third party affected or as may be directed by a Court on application for injunction, directions or the like, the Trustees shall take no steps or no further steps as the case may be to implement or otherwise give effect to or enable the continuance of the matter complained of.

## 7 Obligations

### (a) General meetings

- (i) The Trustees shall call a general meeting of the beneficial owners at least once every three (3) years and a general meeting shall be called by the Trustees upon service of a notice of requisition in writing signed by not less than twenty (20) beneficial owners stating the purpose for which the meeting is required.
- (ii) At general meetings of the beneficial owners any resolution that the meeting wishes to vote on, including voting on election of Trustees, shall be determined by a show of hands; or at the request of the Trustees prior to or at the meeting, by postal voting or by a poll vote.
- (iii) In the event that the Trustees do not request such a poll vote, five (5) beneficial owners at the meeting may request the Trustees to call for a poll vote.
- (iv) Proxy votes shall be allowed for general meetings.
- (v) No general meeting shall be deemed to be constituted unless at least twenty (20) beneficial owners are present in person throughout the meeting.



(b) To Report to the Court

Any Trustee at any time, upon being required to by the Court, shall file in the Court a written report and make himself available to the Court for questioning on the report or any matter relating to the administration of the Trust or to the performance of his duties as a Trustee.

(c) Reports and Accounts

(i) The Trustees shall cause to be prepared Annual Reports and audited proper accounts of the assets and liabilities and of the income and expenditure for each year ending on the 31st day of March or such annual Balance date as the Trustees may from time to time fix upon and shall file a copy of such report and accounts with the Registrar of the Court within six (6) months of the said Balance date.

(ii) At each general meeting 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.

(d) Replacement of Trustee

Upon the death, resignation or removal by the Court of a Trustee the surviving Trustees shall:

(i) where the number of Trustees is less than four (4) ensure that the next general meeting of beneficial owners considers a possible replacement, AND then make application to the Court for an order replacing such Trustee;

(ii) where the number of Trustees is not less than five (5) and the Court has not otherwise directed, forthwith make application to the Court for an order reducing the number of Trustees.

(e) Rotation of Trustee

(i) Trustees are appointed for a five (5) year term, with one (1) Trustee a year, drawn by lot, required to retire at an Annual General Meeting commencing from the Annual General Meeting to be held in the year 2007 at which an election shall be held for the retiring Trustee position and any other vacancy that may have arisen.

(ii) Nominees for election must have either:

(1) Seven (7) years' experience in Māori land governance or administration or in law, commerce or management; or

(2) An NZQA approved tertiary qualification in Māori land administration or business administration, or management.

(iii) Any retiring Trustee may stand for re-election and may be subsequently re-appointed by the Court.

(iv) Following each of the Annual General Meetings the Trustees shall apply to the Māori Land Court to appoint the Trustee elected by majority vote.





(f) Trainee Trustees

To appoint and remove Trainee Trustees in terms of the policy approved at the AGM of owners on 8 November 2014 at Te Whaiti provided that such Trainees shall not have any responsibilities, duties, liabilities or accountabilities of the Court appointed Responsible Trustees.

8 Removal of Trustees

- (a) The Court, for sufficient cause, may at any time remove a Trustee from office.
- (b) In addition to the grounds upon which a Trustee might be removed by the Court, it shall be sufficient cause for removal that:
- (i) a Trustee has not complied with the provisions of clause 7 (b) and 7 (c) (i) hereinbefore;
  - (ii) a Trustee has failed to carry out the duties of his office satisfactorily;
  - (iii) a Trustee has absented himself from three (3) consecutive, properly convened meetings of the Trust without reasonable excuse;
  - (iv) because of physical or mental infirmity or prolonged absence a Trustee is or will be incapable of carrying out his duties satisfactorily;
  - (v) a Trustee has become a bankrupt;
  - (vi) a Trustee is convicted of any offence whereby he is sentenced to prison and is still serving such sentence.

9 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 a case, the Trustees may apply any part of such specified portion of the Trust income in accordance with section 218 of Te Ture Whenua Māori Act 1993.

