

VARIATION OF TRUST

Te Ture Whenua Māori Act 1993, Sections 244, & 219

In the Māori Land Court
of New Zealand
Tairawhiti District

IN THE MATTER OF

the Māori freehold land known
as Whareongaonga 5 Block

AND IN THE MATTER OF

The Whareongaonga 5 blocks
Trust

LAND INFORMATION
NEW ZEALAND
REFERENCES

GS6B/952 & GS2C/1385

AT a sitting of the Court held Gisborne on 1 May 2012 before Caren Leslie Fox, Deputy Chief Judge

WHEREAS application has been filed by Mr Ron Barber and Ben Tahata to vary terms of Trust over the above block

AND WHEREAS on 8 May 1997 at 141 Gisborne MB 265-272 the Court made orders vesting the Māori freehold land known as Whareongaonga 5 in Trustees and setting out the terms of the trust

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

IT IS HEREBY ORDERED that pursuant to Section 244 of the Te Ture Whenua Māori Act 1993 (the Act) the terms of the Trust are varied by the making of a new Trust Order

AND THE COURT FURTHER ORDERS AND DECLARES pursuant to Section 219 of the said Act that the trusts upon which the said Trustees shall now and henceforth hold the said interest until further or other orders of the Court are as set out in the terms attached hereto

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



m

TERMS OF TRUST

1. The Trust shall be known as **"THE WHAREONGAONGA 5 BLOCKS TRUST"**.
2. The Trustees shall have power to use, occupy and manage the land vested in the Trustees and to that end to do all or any of the things which they would be entitled to do if they were the beneficial owners of the land PROVIDED HOWEVER:-
 - (a) The Trustees shall have no power to sell or mortgage the "corpus land" of the Trust – namely Whareongaonga 5 Block (CFR GS 6B/952) and Lot 5 Deposited Plan 2925 (CFR GS 2C/1385) and any other land purchased by the Trust and held as "corpus land" of the Trust by Court Order.
 - (b) The Trustees shall have full power to purchase from Trust income, any estate or interest in land whether Māori Freehold Land or General Land and if the Trust has obtained an Order from the Court that such purchased freehold land be retained by the Trust "as an investment" then the Trustees shall have power to sell, lease, mortgage, subdivide or otherwise deal with such land held as "an investment".
 - (c) That the Trustees shall not lease the "corpus land" or any part thereof other than in accordance with the provisions of subclauses (n) or (p) of Clause 3 hereof.
 - (d) That no existing lease or other encumbrances affecting any land or lands owned by the Trust shall be prejudicially affected by this present order. Such land or lands shall remain subject to the lease or other encumbrances as fully as if there had been no change in the ownership, but all rights to which the Māori Trustee was entitled by contract or otherwise shall pass to and enure for the benefit of the Trustees of 'THE WHAREONGAONGA 5 BLOCKS TRUST'.
 - (e) That all existing charges and encumbrances and leases between the Māori Trustee and:
 1. Rose Thompson
 2. Selwyn Skudder and Martin Charteris
 3. Fletcher Challenge Forestsbe now apportioned to the Whareongaonga 5 Blocks Trust.
3. The Trustees shall have such powers and authorities as are necessary for the effective performance of the trusts herein contained including power:-
 - (a) To use occupy and manage the land or any part thereof for agricultural pastoral forestry or horticultural purposes, including the use of the land to provide a commercial return to the owners.
 - (b) To investigate whether the land could be more conveniently worked or dealt with in conjunction with any other land in the vicinity and to make and prosecute such applications to this Court for Orders of Aggregation of Ownership or Amalgamation of Title or otherwise as may seem appropriate to the Trustees in order to enable such land to be worked or dealt with together.
 - (c) To grant or obtain easements, licences or profits of any kind whatsoever over out of or in favour of the land vested in the Trustees.

- (d) To grant a forestry right in accordance with the provisions of the Forestry Rights Registration Act 1983 for a term not exceeding forty-two (42) years including any right(s) of renewal provided that:
 - (i) There shall be no compensation payable to the Grantee or any other person for improvements affected to the land by the Grantee in respect of any such forestry right, and
 - (ii) Any such forestry right granted shall impose no liability on the Trustees or the equitable owners of the land other than an obligation to permit the Grantee to exercise the rights granted
- (e) To enter into contracts or arrangements with the Crown or any local authority or any person, firm or corporation.
- (f) To employ and dismiss contractors, advisers, servants, agents and workmen.
- (g) At the discretion of the Trustees to purchase all or some of the shares of any equitable owner wishing to sell the same to the intent that any shares so purchased will be held in trust for all the remaining equitable owners.
- (h) To safeguard to the best of their ability any graves of Māori people or other places on the land of special significance to the owner.
- (i) To protest, appeal or make representations in relation to any entry or proposed entry on the land or the actual or proposed carrying out of any works on the land, or any proposed acquisition of the land or any part thereof by the Crown or a local authority or any other person or body for any purpose whatsoever.
- (i) To negotiate with the Crown or a local authority the terms of entry upon the land or of the carrying out of works on the land or the proposed acquisition of the land or any part thereof for a "public work" within the meaning of those words as defined in Section 2 of the Public Works Act 1981.
- (k) To negotiate for the settlement of compensation for land taken by the Crown or a local authority for a public work and to enter into any agreement thereon.
- (l) To commence proceedings for the determination of compensation for land taken for a public work or to commence proceedings for the recovery of money for any matter in relation to the land.
- (m) To defend or resist or take part in proceedings of any other nature relating to the land.
- (n) To institute or take part in such proceedings under the Resource Management Act 1991 in respect of the land or any other land in the vicinity as the Trustees may consider necessary or desirable in the interests of the equitable owners of the land vested in the Trustees.
- (o) To grant licenses to occupy to such individual equitable owners who wish to build dwellings on the land of such part or parts of the land for such purpose at such rent and subject to such covenants as the Trustees may determine

- (p) To consent to the erection of dwellings on the land by those individual equitable owners who have been granted a licence to occupy without partition of his, her or their interests and if any such equitable owners shall apply to any State Lending Institution (hereinafter called the Lender) for a loan to build on the land, the Trustees shall have power to enter into and execute such deed or deeds other than mortgages as may be required by the Lender for the repayment of loans granted by the Lender to any one or more of the equitable owners for the erection of dwellings on the land.
 - (q) To lease the land or part or parts thereof for successive terms each not exceeding 42 years inclusive of any right of renewal by such means and to such person as the Trustees shall determine and on the expiry or sooner determination of any such lease and as often as the same may occur the Trustees may again lease the land in such manner.
 - (r) To execute variations of and accept a surrender of any existing lease.
 - (s) To apply for and receive funding from varying sources
4. The Trustees shall apply the revenues arising from the operations of the Trust in paying the costs of administration of the affairs of the Trust and in furtherance of the objects of the Trust including:-
- (a) Payment of the costs and disbursements of and incidental to the making and prosecuting of the application to this Court for this order or in making a refund to any person who may have paid the same.
 - (b) Payment of title charges, if any.
 - (c) Setting aside reserves for contingencies or capital expenditure or for retaining in an accumulated profit account any portion of such money which the Trustees shall think it prudent not to pay under the next succeeding subclause.
 - (d) Payment of so much of the residue from time to time as the Trustees may in their absolute discretion determine to the equitable owners in accordance with their several shares PROVIDED HOWEVER:-
 - (i) That the Trustees shall be at liberty to pay such money to the Māori Trustee for distribution to the equitable owners if the Māori Trustee is willing to do so, and
 - (ii) If the Trustees shall make any such distribution then the Trustees shall not make any payment to any equitable owner whose share will be less than \$20.00 but shall accumulate the amounts payable to that equitable owner until the amount so accumulated exceeds \$20.00 and then pay the same to the equitable owner.
 - (iii) The Trustees shall decide the method of payment, including by direct credit to the Bank account of the equitable owner.
5. If the Income of the Trust in any one year exceeds \$10,000.00 the Trustees shall:-
- (a) 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 a date not later than the 30th day of November of each year file in the Court a Statement of Financial Performance made up to the 30th June together with a Statement of Financial Position as at the 30th June. Such document shall be open to public inspection during office hours without payment of any fee.
- (c) If such accounts are not prepared by a Chartered Accountant the Trustees shall cause each set of accounts to be audited by a person or firm qualified to audit the accounts of a Māori Incorporation.
- 6. The appointment or removal of Trustees shall be subject to:-
 - (a) The maximum number of Trustees shall be five (5).
 - (b) Any person who is not disqualified under the Companies Act 1993 may be appointed as a Trustee by an ordinary resolution of owners.
 - (c) Any Trustee may be removed from office by:-
 - (i) A notice in writing to the Board of Trustees signed by owners holding shares which carry not less than 51% of the total votes attaching to the shares of the Trust; or
 - (ii) An ordinary resolution passed at a meeting called for the purpose of, or for purposes that include removal of the Trustee.
 - (iii) Absence from two consecutive Trustee meetings without reasonable notice of absence.
 - (d) Notice of any meeting called for the purpose of removing a Trustee shall state that that is the purpose of the meeting.
 - (e) Following the appointment of the initial Trustees by the Māori Land Court, the Trustees shall hold office for two consecutive years unless they are removed in accordance with clauses 6(b) and 6(c).
 - (f) Any notice of appointment or removal of a Trustee may be comprised in one or more notices in writing and shall take effect from the time it is served on the Trustee.
 - (g) There is no shareholding qualification for Trustees.
 - (h) The Trustees may elect a Chairperson and (if they think fit) a Deputy Chairperson and determine the period for which each shall hold office.
 - (i) The office of Trustee is vacated automatically if the person holding that office:-
 - (i) dies; or
 - (ii) resigns that office in accordance with clause 6(j); or
 - (iii) is removed from office in accordance with this Trust Order.
 - (j) A Trustee may resign by delivering a signed notice of resignation in writing to the address for service of the Trust. The notice is effective when it is received at that address or at a later time specified in the notice.

m

- (k) The Trustees shall be subject to rotation in accordance with the following:-
- (i) At the second annual meeting of the Trust following the completion of this Trust Order by the Court and thereafter at each annual meeting one Trustee shall retire from office. A retiring Trustee shall hold office until the dissolution or of the meeting at which his/her successor is elected.
 - (ii) A retiring Trustee shall be eligible for re-election, unless he/she is disqualified in accordance with this Trust Order.
 - (iii) The Trustee to retire at an annual meeting shall be the Trustee who has been longest in office since their last election. As between persons who become Trustees on the same day those who retire shall unless they otherwise agree among themselves be determined by lot.
- (l) No person other than a Trustee retiring at the annual meeting shall be eligible for re-election to the office of Trustee at any general meeting unless:-
- (i) The person has been nominated by the Board of Trustees.
 - (ii) Not later than 5 (five) days before the date appointed for the annual meeting there has been delivered to the Board of Trustees notice in writing, signed by an equitable owner nominating a person for election together with notice in writing signed by that person expressing the person's willingness to be elected.
 - (iii) The Trustees shall have power at any time and from time to time appoint a replacement Trustee to fill a vacancy that may occur in accordance with this Trust Order.
 - (iv) The Board of Trustees shall apply to the Court for the appointment of any Trustee appointed after the date of this Trust Order.
7. The proceedings at meetings of equitable owners shall be governed by the following clauses:-
- (a) Reference to an equitable owner present at a meeting or entitled in vote at a meeting includes a reference to a proxy of an equitable owner.
 - (b) Written notice of the time and place of a meeting of owners must be sent to every owner entitled to receive notice of the meeting not less than 10 working days before the meeting.
 - (c) The notice must state the nature of business to be transacted at the meeting.
 - (d) The Chairperson of the Trust will chair any meeting of owners and in his absence a Chairperson shall be elected from the owners present.
 - (e) Owners only, shall have the right to vote at any meeting, and at the discretion of the Trustees the right to speak at any owners meeting by other than owners, shall be at the pleasure of the Trustees.

- (f) Voting shall be by a show of hands or voice vote, unless a poll is demanded.
- (g) Where two or more persons are registered as the holders of a share, the vote of the person named first in the owners register and voting on the matter must be accepted to the exclusion of the votes of the joint holders.
- (h) Unless a poll is demanded, a declaration by the Chairperson of the meeting that a resolution on a show of hands or voice vote is carried by the requisite majority or lost shall be conclusive evidence of the fact.
- (i) The result of a poll declared by the Chairperson of the meeting shall be deemed to be the resolution of the meeting at which the poll is demanded.
- (j) Owners may demand a poll be held, either before or after a vote by show of hands or voice vote by;
 - (i) At least three (3) owners having the right to vote at a meeting; or
 - (ii) An owner having the right to exercise at least ten (10) per cent of the total votes to be cast on the business to be transacted at the meeting; or
 - (iii) An owner holding shares that confer a right to vote at the meeting and on which the total amount is at least ten (10) per cent of the total amount of all shares that confer that right.
 - (iv) If a poll is taken, votes must be counted according to the votes attached to the shares of each equitable owner present in person or by proxy and voting.
- (k) An owner may exercise a right to vote by being present in person or represented by proxy under the following conditions:-
 - (i) A proxy for an owner is entitled to attend and be heard at a meeting of owners as if the proxy were the owner.
 - (ii) A proxy must be appointed by notice in writing that is signed by the owner. A proxy need not be an owner.
 - (iii) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is sent to the office, of the Trust, at least 48 hours before the time of holding the meeting.
 - (iv) A form for the appointment of a proxy shall be sent with the notice of meeting.
- (l) Postal votes shall not be permitted for owners meetings.
- (m) Minutes of all proceedings at a meeting of owners shall be kept.

✓

8. The proceedings of meetings of the Trustees shall be governed by:-
 - (a) The Chairperson, or in his absence the deputy chairperson or at the request of two Trustees may convene a meeting of Trustees.
 - (b) The notice of meeting shall include the date, time and place of the meeting and the matters to be discussed.
 - (c) The notice of meeting must be sent to the address or facsimile number which the Trustees provide for that purpose.
 - (d) A meeting of Trustees may be held either by the number of Trustees who constitute a quorum being assembled together at the place, date and time appointed for the meeting, or by telephone conference.
 - (e) The quorum necessary for the transaction of business at a meeting of Trustees is four (4). No business at a meeting of Trustees may be transacted unless a quorum is present. The owners may amend the quorum required under this clause in a general meeting.
 - (f) If a quorum is not present within 30 minutes after the time appointed for a meeting of Trustees, the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Trustees present will constitute a quorum.
 - (g) The Chairperson of the Trustees shall chair all meetings of the Trustees at which he or she is present. In the absence of the Chairperson, the Deputy Chairperson (if any) a person elected by the Trustees shall chair the meeting of Trustees.
 - (h) Each Trustee shall have one vote. A resolution of the Trustees is passed if it is agreed by all of the Trustees present or if a majority of the votes cast on it are in favour of it. A Trustee present at a meeting of Trustees may abstain from voting on a resolution.
 - (i) In the case of an equality of votes the Chairperson of the meeting of Trustees shall have a casting vote.
 - (j) The Trustees must ensure that minutes are kept of all proceedings at meetings of the Trustees. Minutes which have been signed correct by the Chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.
 - (k) The Trustees may regulate other proceedings of their meetings other than those set out in the above clauses 8(a) to (j).
9. Any remuneration payable to Trustees shall be subject to the ordinary resolution of owners in a general meeting.
10. The Trustees may apply to the Court from time to time for such variation of the trusts and powers contained in this Order as may then seem appropriate to the Trustees and the Trustees shall so apply not later than the 30th day of November 2031 when if no other variation shall seem appropriate to the Trustees the Trustees shall apply for an Order varying the present Trust Order by making a new Trust Order in substitution

therefore with the like trusts and powers as are herein contained but with the substitution for the year set out in this clause of the year 20 years after that year.

)

nd