

NEW TRUST ORDER

Te Ture Whenua Maori Act 1993, Section 244

In the Maori Land Court
of New Zealand
Waiariki District

IN THE MATTER of the Maori freehold land
known as TUMU KAITUNA 14

AT a sitting of the Court held at Rotorua on the 4th day of August 1999 before
Heta Kenneth Hingston, Esquire, Judge.

WHEREAS the Court on the 1st day of November 1994 did vest the Maori
freehold land known as Tumu Kaituna 14 in Trustees pursuant to Section 239
of Te Ture Whenua Maori Act 1993 AND did declare the Trusts upon which the
said Trustees shall hold the said land:

AND WHEREAS an application was made by Graeme Dennett to vary the terms
of Trust:

NOW THEREFORE upon hearing Graeme Dennett and being satisfied on all
things upon which it is required to be so satisfied THE COURT DOT H HEREBY
VARY the terms of the said Trust by making a new Trust Order under Section
244 of Te Ture Whenua Maori Act 1993 in substitution for the existing Trust
Order to the effect that the Trustees shall now and henceforth until further or
other Order of the Court hold the said land upon the Trusts subscribed hereto:

AS witness the hand of the Deputy Registrar and the Seal of the Court.


Deputy Registrar

1 Title

This Trust shall be known as the TUMU KAITUNA 14 TRUST and shall apply to the land known as Tumū Kaituna 14.

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 Maori 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.

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 whether by way of lease purchase exchange or otherwise PROVIDED HOWEVER that no purchase or exchange shall be effected except through the agency of the Maori Trustee or by such other means as shall ensure that the land so acquired can be vested in the appropriate beneficiaries as Maori freehold land and be made subject to the trusts hereof.

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 Advisory Trustees or in the furtherance of any of the objects of the Trust and, if approved by the Court, 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 and it is hereby agreed that the meeting fees shall be fixed at \$100.00 gross per meeting for each trustee attending to a maximum in each income year of \$12,000.00. Travelling expenses are also allowed at rates as approved from time to time by the Inland Revenue Department.

ix To promote title improvement projects

At their discretion to bring and prosecute in the Maori 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 Land Transfer Office.

x 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 to the beneficial owners in accordance with their shares the whole or such part of the net proceeds as the Trustees shall at their sole discretion from time to time determine with power to pay moneys to the Maori Trustee for the purpose of effecting a distribution to the beneficial owners.

xi 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.

xii 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.

xiii 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.

xiv 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.

xv 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.

xvi 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.

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 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 PROVIDED HOWEVER THAT any Trustee attending on Trust business not involving a trustee meeting shall be entitled to an attendance fee of \$100.00 plus travelling expenses at rates as approved from time to time by the Inland Revenue Department.

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 30 (1)(e) of the Maori Affairs Act 1953 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 30 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 Maori Land Court PROVIDED THAT he shall within 14 days thereafter file an application pursuant to Section 238 of Te Ture Whenua Maori 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 Maori 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 within 12 months of the establishment of this Trust and then from time to time and at least once every 3 years and a general meeting shall be called by the Trustees upon service of a notice of a requisition in writing signed by not less than 30 beneficial owners stating the purpose for which the meeting is required.
- ii No general meeting shall be deemed to be constituted unless at least 30 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 6 months of the said Balance date. PROVIDED HOWEVER if the accounts are prepared by a Chartered Accountant the audit requirements hereinbefore mentioned need not be adhered to.

- 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 Review of the Trust
- i The Trustee shall in the year 10th after the constitution of this Trust apply to the Court for a review of the Trust.
 - ii On any such review the Court may by order give such directions to the Trustees as it thinks fit, confirm the Trust Order without variation, vary the terms of the Trust Order in such manner as it thinks fit or make an order determining the Trust.
- e 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 7 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 8 and the Court has not otherwise directed, forthwith make application to the Court for an order reducing the number of 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 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 Maori Community Purposes

The Trustees may apply the whole or any part of any specified portion of the Trust income for Maori community purposes or for such Maori 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 Maori Act 1993.