

**ORDER TO VARY THE TERMS OF TRUST**

Te Ture Whenua Maori Act 1993, Section 244

In the Maori Land Court  
of New Zealand  
Aotea District

**IN THE MATTER** of the land  
known as Owhaoko B East,  
Owhaoko D1, Owhaoko D4B,  
Owhaoko D7B Pt and Owhaoko  
D8B

**AND**

**IN THE MATTER** of the Owhaoko  
B and D Trust

**AT A SITTING** of the Court held at Whanganui on the 7<sup>th</sup> day of December 2004,  
before Layne Ross Harvey, Judge

**WHEREAS** on the 27<sup>th</sup> day of February 1996 at 57 Aotea Minute Book 27-35 the  
Court made orders constituting an Ahu Whenua Trust over the lands shown above,  
and vesting the lands in trustees

**AND WHEREAS** on the 30<sup>th</sup> day of June 1997 at 74 Aotea Minute Book 1-8 and on  
the 29<sup>th</sup> day of April 1999 at 91 Aotea Minute Book 73-74 the Court made orders  
varying the terms of the said trust

**AND WHEREAS** on 7<sup>th</sup> day of September 2000 at 100 Aotea Minute Book 283-284,  
and on the 21<sup>st</sup> day of January 2003 at 124 Aotea Minute Book 50-53 and on the 13<sup>th</sup>  
day of July 2004 at 141 Aotea Minute Book 287-294 the Court made orders replacing  
trustees

**AND WHEREAS** application has been made to the Court to vary the terms of the  
said Trust

**NOW THEREFORE** the Court, pursuant to Section 244 of Te Ture Whenua Maori  
Act 1993 **DO TH HEREBY VARY** the terms of the trust made on the 29<sup>th</sup> day of April  
1999 at 91 Aotea Minute Book 73-74, by making a new trust order in substitution for  
the existing trust order

**AS WITNESS** the hand of the Deputy Registrar and the Seal of the Court



2.

**SCHEDULE**

1 **Title**

This Trust shall be known as "Owhaoko B and D Trust" and shall apply to the Owhaoko B and D Blocks namely:

Owhaoko B East  
Owhaoko B1B  
Owhaoko D1  
Owhaoko D3  
Owhaoko D4B  
Owhaoko D8B  
Owhaoko D7B Part

2 **Objects**

The objects of the Trust shall be:

Except as hereinafter may be limited to provide for the use management and alienation of the land and any other property or assets of the Trust and to carry on any one or more businesses, undertakings or enterprises either upon the land of part or parts thereof, in connection with some user of the land, which will directly or indirectly assist in the better utilisation of the resources or the commercial realisation thereof for the Beneficial Owners.

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 or the powers vested in the Trustees by the Trustee Act 1956 but by way of emphasis and clarification as well to extend the powers of the Trustees it is declared that the Trustees are empowered:

3.

- 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 unless they are satisfied that the land so acquired can be vested in the appropriate beneficiaries as Maori freehold land **AND** to acquire and sell, hire or otherwise deal in any vehicles, plants, chattels or equipment;
- ii) **To subdivide**  
To subdivide the land in any manner permitted by law into such Subdivisions or parts as may seem expedient to them;
- 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, forestry or other consultants, surveyors, engineers, valuers and other professional advisers required to carry out the powers of the Trust 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 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;
- vii) **To lend or invest**  
To lend or invest 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;
- viii) **To operate 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;

4.

- ix) **To lease or grant licences**  
To lease the whole or any part or parts of the said lands from year to year or for any term of years or to grant licences at such rent or consideration 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;
- x) **To represent owners**  
To prosecute from time to time in the appropriate tribunal such objection to zoning or proposed zoning such application for rezoning 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 on any matter including lands taken under the Public Works Act or other statutory authority with the government or any Local Authority;
- xi) **To pay outgoings and expenses**  
To pay all rates, taxes, assessments and outgoings in respect of any property of the Trust and all expenses incurred in relation to the management and administration of the Trust or otherwise incurred in the exercise by the Trust of its powers hereunder;
- xii) **To pay own costs**  
From the revenues derived from the operation of the Trust to pay the proper and lawful charges, commissions, disbursements and fees of members of the Trustee together with their reasonable travelling allowances or a refund of expenses actually and reasonably incurred in attending Trust meetings, conferences of the Trustee and general meetings of the Beneficial Owners and in addition each member of the Trust shall be entitled to receive a fee for each meeting at which they shall attend such fee to be as fixed from time to time by the Trustees;
- xiii) **To take applications to the Maori Land Court**  
At its discretion to bring and prosecute in the Maori Land Court on behalf of the Beneficial 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;
- xiv) **To distribute to owners**  
To distribute to the Beneficial Owners in each block in accordance with their shares, the whole or such part of the nett proceeds apportioned to that block as the Trustees shall at their sole discretion from time to time determine;

5.

xv) **To permit occupation or enjoyment to owners**

At its 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 comparative share holdings or to use the land for some recreational purposes such as hunting or, in the case of the Trustees, issuing permits or licences to hunt deer or other animals to make such concessions to Beneficial Owners whether in reduction of licence fees or otherwise as the trustees may from time to time decide; 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 those persons receiving the benefit of such reservations, licenses or provisions or otherwise be adjusted;

xvi) **To make other special provision 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 free of rent or otherwise upon terms more favourable to the open market without favour **PROVIDED HOWEVER** that such proposal has been approved by each of those in attendance at the general meeting of the Beneficial Owners of those lands affected called by the Trustees after due notice of such meeting and of the terms of the proposed lease or licence have been given by it in manner hereinafter provided for the calling of general meetings;

xvii) **To consent to the erection of dwellings**

To consent to the erection of dwellings on the said lands 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 to execute such deed or deeds as required by the lending institution for the repayment of loans granted by any 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 lending institution 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;

xviii) **To make general welfare payments**

At its discretion from time to time or annually to apply funds to a representative tribal body of Ngāti Tamakōpiri, Ngāti Whitikaupeka and or Ngāti Tama Whiti or some general welfare or education scheme, purpose, facility directly or indirectly related to the Beneficial Owners or any group thereof including the application of funds to Kaumātua, assist marae with tribal hui expenses provided that such payments are approved by majority vote of those in attendance at a meeting of the Beneficial Owners called by the Trust after due notice of such meeting has been given by them in manner hereinafter provided for the calling of general meetings;

- xix) **To protect wāhi 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 lands for the time being vested in it;
- xx) **To investigate access**  
To investigate and prosecute applications to this Court for the access to the Owahaoko B and D blocks;
- xxi) **To enter into a Kawenata**  
Subject to the prior consent of a General Meeting of Beneficial Owner's to grant a covenant (kawenata) to Ngā Whenua Rāhui or any other Crown agency for a term not exceeding 25 years.

#### 4 **Obligations of Trustees**

- (a) Notwithstanding any general rule of law to the contrary no person shall be disqualified from being appointed or from holding office as a Trustee by reason of their employment as a servant or officer of the Trust or by their being interested or concerned in any contract made by the Trustees **PROVIDED THAT** they shall not vote or take part in the discussion on any matter that directly or indirectly affects their remuneration or the terms of their employment as a servant or officer of the trust or that directly or indirectly affects any contract in which they may be interested or concerned.
- (b) Any Trustees at any time, upon being required to by the court, shall file in the court a written report and make themselves available to the court for questioning on the report or any matter relating to the administration of the trust or to be performance of the duties as a Trustee.
- (c) **Review of the Trust Order:**
  - i) The Trustees shall apply to the court for a review of the Trust Order in the tenth year after the constitution of this Trust and at the completion of each ten year period thereafter;
  - ii) On any such review the Court may by order give such decisions 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.
- (d) Upon the death and resignation or removal by the Court of a Trustee the surviving Trustees shall:
  - i) Where the number of Trustees is less than **SEVEN** ensure that the next General Meeting of Beneficial Owner's considers a possible replacement;

7.

**AND** then make application to the Court for an order replacing any such Trustee

- ii) Where the number of Trustees is not less than **SEVEN** and the Court has not otherwise directed, forthwith make application to the Court for an order reducing the number of Trustees.

5 **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 4 (b) or 9 (a) or 9(b) or 9(c) hereinbefore;
  - ii) A Trustee has failed to carry out the duties of his office satisfactorily;
  - iii) A Trustee has absented himself from three consecutive, properly convened meetings of the Trust without reasonable excuse;
  - iv) A Trustee 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.

6 **Retirement of Trustees**

- (a) At the completion of **TWO** years from the bringing into force of this section, **THREE** Trustees shall retire.
- (b) At the completion of **FOUR** years from the bringing into force of this section a further **TWO** Trustees not elected subject to clause (a) of this section shall retire.
- (c) At the completion of **SIX** years from the bringing into force of this Section the remaining Trustees not elected subject to clause (a) and (b) of this section shall retire.

8.

- (d) All Trustees elected or re-elected subject to clauses (a) and (b) of this section shall retire at the completion of **SIX** years service on the Trust from the date of the motion of the meeting of owner's electing that Trustee.
- (e) In relation to clauses (a), (b), (c) and (d) of this section the retirement of that Trustee shall take effect on the day of the meeting of Beneficial Owners scheduled closest to the date stated in those clauses.
- (f) That a meeting of Beneficial Owner's shall elect replacement Trustees for those retiring Trustees.
- (g) A retiring Trustee shall be eligible for re-election.
- (h) In relation to clause (a) of this section those Trustees to retire shall be those with the longest tenure since they were last elected.
- (i) If the Trustees are unable to determine which of their number shall retire this section then the matter shall be referred to the Court for determination.

7 **Protection of Minorities**

In any case where any Trustee or Beneficial Owner feels aggrieved by any direction determination or resolution of a trust meeting or of any action of the Trustees he may **EITHER**:

- (a) Give to the Trustees notice of his/her intention to have the matter complained of referred to the Beneficial Owners and then **PROVIDED THAT** within 14 days thereafter he/she 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 of Beneficial Owners accordingly in manner hereinafter provided.

**OR**

- (b) Give to the Trustees notice of intention to have the matter complained of referred to the Maori Land Court **PROVIDED THAT** he/she shall within 14 days thereafter file an application pursuant to Section 238 of the Ture Whenua Act 1993 for the variation of this trust order to make particular provision for the matter in dispute and serve a copy thereof upon the trustees **AND** upon the 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 implement or otherwise give effect to or enable the continuance of the matter complained of.



9.

8 **General Meetings**

- (a) A general meeting of the Beneficial Owners may be convened at any time by the Trustees and in any event there shall be at least one general meeting of Beneficial Owners every **THREE** years.
- (b) A general meetings of the Beneficial Owners may be convened by the trustees upon service upon the trustees of a requisition in writing signed by not less than 30 Beneficial Owners stating the purpose for which the meeting is required.
- (c) A general meeting of Beneficial Owners shall be convened if required by the provisions of clause 7 hereof.
- (d) Notice of general meetings shall be given by the insertion approximately three weeks and again approximately one week before the meetings of advertisements in such regional and local newspapers and other media as the Trustees may decide with individual notices to those Beneficial Owners for whom the persons seeking the meeting provide an address and to such further Beneficial Owners as the Trustees shall determine.
- (e) Matters resolved upon at a general meeting of Beneficial Owners shall prevail over any direction, determination or resolution of a Trust meeting.
- (f) In addition to the grounds upon which Trustees might be removed from or appointed to office by the Maori Land Court, it shall be a ground for removal or appointment that an individual was elected or failed to be re-elected as the case may be, provided however that the Court shall not be bound to appoint or remove upon that ground.
- (g) The reports and accounts hereinafter provided for shall be submitted at the first general meeting convened after such accounts have been duly completed and audited.
- (h) No general meeting shall be deemed to be properly constituted unless at least 15 Beneficial Owners are present in person throughout the meeting.
- (i) Voting by Proxy will not be accepted.

9 **Reports and Accounts**

- (a) **Annual reports**  
The Trustees shall complete an annual report on its activities for each year ending on the 30<sup>th</sup> day of June.
- (b) **Annual Accounts**  
The Trustees shall cause to be prepared and audited proper accounts of the assets and liabilities and of income and expenditure for each year ending on the 30<sup>th</sup> day of June.
- (c) A copy of all reports and accounts in this clause provided shall be deposited with the Registrar of the Maori Land Court within six months of the end of the period which the reports relates.

10.

- (d) Nothing herein shall be construed to restrict the right of the Trustees to seek alternative provisions for accounting by an application to the Court for a variation of this Trust Order.

10 **Pūtea Accounts**

- (a) Upon all or any distribution to Beneficial Owners the Trustees upon first being authorised by a resolution of the Beneficial Owners passed at a special or general meeting of Beneficial Owners may:

- i) Set a minimum distribution figure (being not more than the sum of \$10.00) and pay to an account to be known as a Pūtea account the share of any person to receive less than the minimum distribution figure; and in that event the Trustees shall further deduct from the share of all persons entitled to more than the minimum distribution figure an amount equal to the minimum distribution figure or the amount to which they are entitled, whichever is the lesser, and pay the same to the said Pūtea account;

**AND**

- ii) Pay to the said Pūtea account the shares of those persons for whom the Trustees are not holding a current address or who are deceased or in respect of whom distributions are returned unclaimed.

- (b) Moneys in the Pūtea account may be invested in any manner in which the Trustees may effect investments by this Trust Order and the whole or any part of the funds in the Pūtea account may at any time be applied:

- i) In the furtherance of any of the objects of this Trust or in advancing any of the powers invested in the Trustees;
- ii) To the educational advancement of any beneficial owner or a descendant of any beneficial owner that adds knowledge to the cultural base of Ngāti Tamakōpiri, Ngāti Whitikaupeka and or Ngāti Tama Whiti.

- (c) The Trustees may recover from the Pūtea account if and when sufficient moneys have accrued to it the share that any person would have received had that persons address been known at the time of the distribution or had a succession then been completed, and may make payment (without interest) to the person or persons then entitled upon that persons address being supplied or upon an appropriate succession having been completed.

10 THE