

<b>Māori Land Court Standard Ahu Whenua Trust Checklist</b>
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**Those considering a new trust order should go through this checklist to ensure that they have addressed key areas for beneficial owners to decide on.**

<b>Page no.</b>	<b>Clause</b>	<b>Description</b>
2	1.1	Trust Name
	1.4	Registry of the court and address for service of the trust
	2.2(d)	If the owners wish to support specific Māori community purposes, may wish to list those purposes
8	7.2(d)	Registry of the Māori Land Court at which the accounts are to be filed
9	9.1	The frequency of general meetings
	9.2	Threshold of number/percentage of beneficial owners required to requisition a general meeting
10	10.3	Number of months required for convening a special general meeting (dispute resolution)
11	12.7	Twenty-one (21) days prior notice is required for general or special meeting.
	13.1	Quorum requirement of beneficial owners for general meetings
12	14.3	The method of voting is by show of hands. Decide on voting threshold for a poll vote (for voting by shareholding)
	14.4	This is the standard treatment of whānau trusts that put their shares into ahu whenua trusts. However, if you take the view that you would rather allow whānau trusts more votes, you may decide to make provision for that in the trust order.
14	16.1	Set trustee numbers (minimum and maximum). Sometimes people think it would be better to have uneven numbers of trustees so that a vote may be carried by a majority of one. Having even numbers ensures that votes are not carried by a narrow majority, and for the same reason chairs are not given a deciding vote. Also, having even numbers makes the annual rotation easier – two each year.
	16.3	Set the length of the term of appointment of trustees and whether rotation process
15	18.3	Notice requirement for number of days' notice of any trustee meeting unless the meeting is convened in an emergency
18	20.5(g)(iii)(a a) and (bb)	Determine the length of any licence or lease or occupation order
	20.5(g)(v)(b b)	Determine the period in which a dwelling must be built on the occupation site where a licence or occupation order has been granted
21	23.1	Trustee honorarium options
22	26.1	Determine year for initial trust review

**NOTE:**

1. The enclosed terms of trust are an **example** of a trust order that you may use for your ahu whenua trust. You can however customise the trust order to take account of your circumstances.
2. You should read through each clause carefully and alter, amend or delete where appropriate to suit your circumstances. There are three areas highlighted in the draft:
  - Places where you must exercise a choice are highlighted in yellow. Go through all these to make the choice that suits you.
  - Places dealing with proxy voting are highlighted in green. You can choose to omit the clauses about proxy voting if you don't want to allow proxy voting at meetings. This is a decision for you to make.
  - Clause 14.3, which deals with voting by shareholding (rather than by a show of hands) is highlighted in pink. If you want to allow voting by shareholding you will need to include this clause; if you don't want to, you can omit it. You can amend the numbers required to call for a "poll" or vote by shareholding.
3. The Ministry of Justice makes no warranty, express or implied, nor assumes any legal liability or responsibility for the accuracy, correctness, completeness or use of any information contained herein.
4. The Māori Land Court must confirm any trust order you decide upon (sections 219 or 244 of Te Ture Whenua Māori Act 1993).
5. If you require assistance, please contact your local Māori Land Court office.

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**STANDARD AHU WHENUA**

**TRUST ORDER**

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## INTRODUCTION

- A. The Māori Land Court (court) has constituted an ahu whenua trust for the purposes set out in this trust order.
- B. The trustees consent to become the trustees of this trust subject to the powers, duties and obligations set out in this trust order.
- C. The trustees acknowledge that familiarity with this trust order is critical to their role as trustee.
- D. The court gives the trustees control of the property that is vested in the trust so that they can deal with it for the benefit of the beneficial owners. This trust order sets out the rules for how the trustees do that.
- E. In this order, the term trust land refers to the land owned by the trust, and the term trust property refers to any other assets of the trust.
- F. If the trustees acquire further land or other assets for the purposes of the trust, that land becomes trust land, and the other assets become trust property.
- G. The trustees make all decisions on behalf of the trust and are not bound by resolutions of the beneficial owners.

## PART A – NAME AND PURPOSES

### 1. TRUST NAME, LEGAL STATUS AND COMMUNICATIONS

- 1.1 The trust created by this order shall be known as [name of trust].
- 1.2 If the trustees, on behalf of the trust, enter into a legally-binding arrangement of any kind with a third party (eg a contract with a building company), it is a contract between the trustees as individuals in their own name and the third party. The contract is not a contract between the [name of trust] and the third party. The trust is not a separate legal entity. Because the contract is between the trustees and the third party, it is the trustees themselves who are liable under that contract (subject to their right to be indemnified by the trust out of its assets and money – clause 21).
- 1.3 If the trustees acquire assets or enter into contracts on behalf of the trust, these must be used and held for the benefit of the trust and not for the personal benefit of trustees.
- 1.4 Communications to the trust should be directed to the attention of the secretary at the address/email address below or such other address/email address as notified from time to time:

Address and email address of trust:

### 2. PURPOSES OF THE TRUST (OBJECTS)

- 2.1 The trustees hold all trust property, including any income derived from trust property, in trust for the beneficial owners in proportion to the beneficial owners' interests in the land that the trust owns.
- 2.2 The trustees hold the trustee property in trust to use and dispose of as they see fit, provided that the use or disposition is made exclusively for these purposes:
- (a) retaining all the land vested in the trust [when it was constituted];
  - (b) promoting and facilitating the effective management, use, and development of all trust property to advance the interests of the beneficial owners, including their ability to live on the land;
  - (c) representing the beneficial owners on all matters related to trust land;
  - (d) using trust income to advance Māori community purposes set out in section 218 of the Act [or, if the owners wish to support specific Māori community purposes only, list the specific purposes]

**Comment Box**

1. You can list purposes other than those set out in clause 2.2. There may be purposes specific to your whānau or your whenua, and you can include these. Also, depending on the circumstances of your beneficiaries and your whenua, you might want to include purposes like these:
  - (a) upholding the principles of whanaungatanga, kaitiakitanga and manaakitanga, and consciously protecting the interests of future generations as well as those alive today;
  - (b) exercising kaitiakitanga over the bush and waterways by protecting, managing and improving these taonga as possible;
  - (c) working with the beneficial owners and their whānau to promote te reo Māori me ōna tikanga, including encouraging wānanga about the mātauranga connected with the whenua, its whakapapa and history, and the tikanga Māori relevant to its use and management;
  - (d) developing a concept plan for the block that identifies the key aspirations of the beneficial owners and a programme for implementation.
2. You may also want to omit purposes. For example, it may not suit everyone to promote the ability of beneficiaries to live on the land, or to use trust income to support Māori community purposes.
3. This trust order is drafted to allow the trustees to purchase land, but not to sell it. That is because most Māori trusts focus on retaining land. However, there are other options. You probably don't want to allow the trustees to sell the land vested in the trust when the trust was constituted, and clause 2.2(a) (highlighted in yellow) assumes that this is the case. However, you could allow the trustees to sell land that the trust has bought after the trust was constituted. This would allow the trust to invest in land, for example, and to sell it to make money for the trust. It is up to you to decide on this when you constitute your trust. If you do want to allow trustees to sell land that the trust has bought, you would need to amend clause 19.3 as well as clause 2.2(a).

## PART B - TRUSTEE DUTIES

### 3. TRUSTEE DUTIES

- 3.1 A trustee must always comply with the trustee duties. The trustee duties are a set of general and specific obligations that both the law and the terms of this order impose on the trustees.
- 3.2 If a trustee fails to comply with and perform his or her trustee duties satisfactorily he or she may be removed from his or her position as a trustee.
- 3.3 A breach of trust occurs where a Trustee acts contrary to or does not act consistently with a trustee duty. Where a trustee breaches one or more of his or her trustee duties he or she can be liable for any damage, loss or other costs that the breach causes to the trust, the trust property, and trust interests.

### 4. GENERAL TRUSTEE DUTIES

- 4.1 The general trustee duties that the Trustees must comply with include:
- (a) ***the duty to be thoroughly familiar with the terms of this trust***, including this trust order and all documents, deeds, contracts and papers that relate to or affect the land and assets in the trust;
  - (b) ***the duty to comply with the terms of this order***, regardless of any requests by beneficial owners or other trustees to do otherwise;
  - (c) ***the duty to act honestly and in good faith***;
  - (d) ***the duty to act always in the best interests of the beneficial owners***;
  - (e) ***the duty to act fairly and impartially***, a duty that requires trustees not to favour their own interests, nor those of their whānau and friends;
  - (f) ***the duty not to profit from a position as a trustee of this trust, nor to accept reward*** apart from any payment received as reimbursement for legitimate expenses and disbursements in acting as a trustee;
  - (g) ***the duty to be active*** in attending to performance of trustee duties. All trustees must participate actively in decision-making (unless conflicted). All trustees must think about and decide on all actions and decisions of trustees and not simply rely on other trustees;
  - (h) ***the duty to comply with orders and directions of the court***;
  - (i) ***the duty to notify the court of any change to the contact address for the trust***.



## 5. DUTY TO AVOID CONFLICTS OF INTEREST AND WHAT TO DO ABOUT CONFLICTS

5.1 Trustees have a duty to recognise and manage conflicts of interest and conflicts of duties (conflicts).

5.2 Where a trustee has a conflict he or she must:

- (a) disclose the nature and extent of the conflict to:
  - (i) the other trustees; and
  - (ii) the beneficial owners where the conflict touches on a matter discussed at a general meeting or special meeting;
- (b) cease to participate in any discussions and decisions that relate to the conflict; and
- (c) leave and remain absent from any meeting of the trustees where discussions and decisions relate to the conflict.

5.3 Where the conflict concerns a matter that directly or indirectly affects:

- (a) a trustee's remuneration or the terms of the trustee's employment as a servant or officer of the trust; or
- (b) any contract in which a trustee may be interested or concerned other than as a trustee of another trust; or
- (c) a trustee's right to live on the land or otherwise use the land for his or her benefit or for the benefit of his or her whānau.

that trustee must not vote or participate in the discussion of that matter.

5.4 Where a trustee is aware that, or reasonably believes that, another trustee has or may have a conflict, he or she must require the other trustee to comply with clause 5.2 or clause 5.3 to demonstrate that the trustee has no conflict.

*What constitutes a conflict?*

5.5 A trustee has a conflict where the trustee:

- (a) in a capacity other than as a trustee of this trust, is involved, interested or concerned (directly or indirectly) in any property, undertaking, business or commercial activity; and

- (b) that property, undertaking, business or commercial activity is one in which the trust is or may be involved (as trust property or otherwise), interested, or concerned.

For the purposes of clause 5.5(a), a conflict can arise indirectly where the person involved, interested or concerned in the property, undertaking, business or commercial activity is the trustee's spouse, partner, child, parent or sibling.

5.6 No person shall be disqualified from being appointed trustee or from holding office as a trustee or representative of the trust because they:

- (a) are employed as a servant or officer of the trust; or
- (b) are interested or concerned in any contract made by the trustees; or
- (c) are a beneficial owner of the trust.

5.7 The trust may engage or enter into an agreement of arrangement with any trustee to provide goods and services to the trust. However, the trustees may make the decision to enter into such an arrangement only where:

- (a) doing so is commercially prudent, and in the best interests of the beneficial owners of this trust; and
- (b) a trustee when providing the trust goods or services is paid only a reasonable fee for doing so.

5.8 The trustees must keep an interests register that records any interest of the trustees in trust property or any transaction or proposed transaction with the trust.

## **6. GENERAL DUTY TO ACT PRUDENTLY**

6.1 When doing any act on behalf of the trust, the trustees must exercise the same diligence, care and prudence that would be expected of an ordinary and careful business person when looking after the affairs of others, and in doing so must:

- (a) actively ensure that they always understand and are aware of all trust property and any liabilities that are associated with the trust property;
- (b) actively seek out, identify and assess the risk associated with each decision (including a decision not to do anything), that the trustees make;
- (c) take care to identify any situation where the trustees do not have the necessary knowledge or expertise to properly assess the risk and consequences of any decision;

- (d) obtain the necessary advice (such as from a lawyer, accountant, or financial adviser), when the trustees lack the necessary expertise; and
- (e) take steps to actively identify, consider and take into account all relevant things (including any cultural and commercial considerations) that the trustees must and should consider, and ignore all irrelevant things when making any decisions or doing any act on behalf of the trust.

### *Sustainability of the trust*

- 6.2 The Trustees must actively promote and ensure the long-term sustainability and financial wellbeing of the trust to ensure that it can continue to operate and benefit both the current and future beneficial owners. This includes ensuring that the trust property – its land in particular – is not subjected to any unreasonable level of risk.

### *Trustees to consider the views of beneficial owners*

- 6.3 The trustees must consider the support or opposition to a given matter concerning the trust as expressed by the resolutions of the beneficial owners at a general or special meeting of the beneficial owners. The trustees are not bound by the beneficial owners' resolutions at such meetings but must consider the beneficial owners' views.

#### **Comment Box**

While the land and any other property vested in the trust is held and used for the benefit of the beneficial owners, the beneficial owners are not the legal owners. The trustees are. The beneficial owners have no right to instruct the trustees how to manage and deal with the trust land or property. The only way for beneficial owners to influence the trustees' decisions is by expressing their views at general meetings. The trustees must give those views consideration.

### *Duties when distributing trust assets*

- 6.4 The Trustees must pay all expenses, charges, rates and taxes that have been incurred on behalf of the trust, which if properly incurred are to be met from income of the trust.
- 6.5 These expenses, charges, rates and taxes must first be paid before any payments, distributions, reserves or other provision can be made from trust funds.

## **7. DUTIES OF FINANCIAL MANAGEMENT**

- 7.1 The trustees must keep proper accounts, and prepare annual financial statements for each financial year for presentation to the beneficial owners at the annual general meeting.
- 7.2 The annual financial statements:
- (a) must state the number of trustee meetings held in that financial year;
  - (b) must detail each individual payment made by the trust trustees in that financial year, including any travel expenses, fees or any other payments;
  - (c) are to be made available to the beneficial owners at least 14 days before an annual general meeting and must be produced at each annual general meeting for discussion; and
  - (d) are to be filed with the relevant registry of the Court no later than one (1) month after the annual general meeting has taken place.
- 7.3 For each financial year the trust's gross annual income or gross annual expenditure exceeds \$100,000, the trust's accounts are to be audited.

### *Managing trust funds*

- 7.4 The trustees must ensure that all money received by or on behalf of the trust is paid without delay into the trust's bank account.
- 7.5 The trustees must keep a detailed record of all receipts and payments of trust funds.
- 7.6 No trustee may incur a debt on behalf of the trust other than by prior approval of the trustees, or at the trustee meeting that immediately follows the debt being incurred;
- 7.7 Payments from the trust's bank account must be approved in advance by a meeting of the trustees. The authority of at least two trustees is required where a withdrawal or a transfer of funds from the trust account is to be made.
- 7.8 Trustees must keep a record of such authorisation.

## **8. DUTY OF DISCLOSURE**

- 8.1 Upon request by any beneficial owner, the trustees must make available to that beneficial owner:
- (a) a copy of this order and any amendment to it;

- (b) the annual accounts of the trust for any preceding financial years;
- (c) the minutes of any general meeting or special meeting; and
- (d) the minutes of any trustee meeting (except those parts of the minutes that are confidential).

8.2 In clause 8.1 above accounts are confidential only if, and to the extent that, the accounts contain commercially confidential material. A beneficial owner who is dissatisfied with a decision to decline a request for accounts on the grounds of confidentiality can apply to the court for disclosure. If the Trustees are of the view that accounts are confidential, they must notify the requesting beneficial owner of his or her right to apply to the court for a disclosure order.

## **9. DUTY TO CALL MEETINGS**

### *Calling general meetings and special meetings*

- 9.1 The trustees must call a general meeting of the beneficial owners at least once a year.
- 9.2 The trustees must also call a special meeting of the beneficial owners within 3 months of receiving a written request for a special meeting signed by **at least [five] beneficial owners**, and which states the purpose of the special meeting.
- 9.3 The trustees must take all reasonable steps at general and special meetings to determine the beneficial owners' support for or opposition to any matters that are at issue in these meetings. A failure to do so can amount to a breach of trust.

### *Calling trustee meetings*

- 9.4 It is the chairperson who calls meetings of trustees.
- 9.5 All trustees must attend trustee meetings unless they have a reasonable excuse for their absence. The trustees must prepare for trustee meetings so that they are familiar with the material and documents necessary for the meeting.
- 9.6 Trustees must comply with the requirements for running general and special meetings of beneficial owners set out in clause 13 and those for running trustee meetings in clause 17.

## **10. ADDRESSING GRIEVANCES**

- 10.1 If any trustee or beneficial owner is aggrieved by a decision, action or omission of the trustees, that person should first give written notice of the grievance to the trustees.

- 10.2 If the grievance is not satisfactorily addressed within a reasonable period, the aggrieved person may notify the trustees that he or she wants the grievance referred to a special meeting of the beneficial owners.
- 10.3 If the trustees do not convene a special meeting for this purpose within 2 months of receiving the written notice, the aggrieved person may file in court an application under section 238 of the Act asking the court to:
- (a) review the trustees' response or failure to respond to the aggrieved person's notice;
  - (b) give directions to the trustees; and/or
  - (c) put in place an injunction to prevent the trustees from taking any further steps in relation to the subject of the grievance.

## **PART C - MEETINGS**

### **11. PROCESS FOR GENERAL AND SPECIAL MEETINGS**

- 11.1 When convening and holding general or special meetings of beneficial owners, the trustees must recognise that:
- (a) a resolution passed at these meetings is the official expression of the beneficial owners' view on that matter;
  - (b) resolutions passed at these meetings are the only means by which the trustees may determine the views of the beneficial owners; and
  - (c) beneficial owners' views expressed via resolutions are only valid and relevant if fair and proper processes are followed.
- 11.2 For the avoidance of doubt, resolutions passed at general and special meetings do not bind the trustees but must be given due consideration in accordance with clause 6.3 above.

### **12. NOTIFYING BENEFICIAL OWNERS OF A GENERAL OR SPECIAL MEETING**

- 12.1 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). Notice may be given by:
- (a) contacting beneficial owners directly in writing by post or email;
  - (b) broadcasting over the local iwi radio station; and

- (c) publishing notice by any electronic means associated with the trust and the beneficial owners, such as via social media or a website.

*What must be in the notice*

- 12.2 The agenda for the meeting must provide sufficient detail to inform the beneficial owners of all matters that are to be discussed and voted on at the meeting.
- 12.3 Where the agenda includes the nomination, replacement and/or removal of Trustees, the notice must state
  - (a) the names of the trustees to be replaced or removed and the reason for their proposed replacement or removal; and
  - (b) the number of trustee vacancies to be filled and the process for nominating replacement trustees.
- 12.4 Where the agenda includes changes to this trust order, the notice shall include a summary of the proposed changes and shall state that a full copy of the proposed changes can be obtained from the secretary, and provide contact details for the secretary.
- 12.5 The notice must specify how voting is to be conducted, including, where proxy votes are to be allowed, the formal requirements that must be met when voting by these means (see clauses 14.5-14.8 for the specific requirements of these forms of voting).
- 12.6 The notice must invite the beneficial owners to submit a matter to be added to the agenda.
- 12.7 In all cases the trustees must give [21 days'] prior notice of the time and place of the general or special meeting.

### **13. CONDUCTING A GENERAL OR SPECIAL MEETING**

- 13.1 The quorum (number of beneficial owners required to be present to conduct the business of the meeting) for a general or special meeting is [ ]. Beneficial owners must be present for the duration of the meeting.
- 13.2 Beneficial owners may attend the meeting by electronic means if the necessary technology is available.
- 13.3 At the general meeting the trustees must present the reports and financial statements for the preceding financial year.

13.4 The trustees must keep minutes of the general or special meeting that accurately describe the events of the meeting, starting with a list of attendees, a statement of the topics talked about, and a reasonable summary of exchanges on each topic including views for and against. For clarity, these minutes should allow someone who did not attend the meeting to understand broadly what occurred.

13.5 The person who chairs the meeting must call for the beneficial owners to vote on matters that are to be decided at the general or special meeting by majority vote (resolutions). When a resolution is passed it is the official expression of the beneficial owners' views on each matter to which a resolution relates.

#### **14. VOTING ON RESOLUTIONS AT GENERAL OR SPECIAL MEETINGS**

14.1 Before a general or special meeting commences, the trustees must formally register each individual present (whether in person or virtually) who is entitled to vote.

14.2 When an attendee holds a proxy, the trustees must check that the proxy voting right is valid and that the proxy has all the necessary documents to prove this.

14.3 Voting will be by a show of hands unless a minimum of [50] per cent of the beneficial owners present call for a poll, in which case the vote shall be conducted according to shareholding in the land vested in the trust.

14.4 Where the trustees of another trust are collectively a beneficial owner of the trust (eg a whānau trust) then only one of them may vote on behalf of the trust. They must inform the trustees who that person is. If they cannot agree, none of the trustees of that trust is entitled to vote on the trust's behalf.

#### **15. PROXY VOTES AT A GENERAL OR SPECIAL MEETING**

15.1 Where proxy votes are allowed, a person is entitled to be a proxy for a beneficial owner at a special or general meeting only if:

- (a) the person is 20 years or older and of capacity;
- (b) the person is appointed as proxy by a notice in writing in accordance with the proxy form attached to this order;
- (c) the secretary receives, at least one hour before the meeting begins, a copy of the signed and witnessed proxy form stating the meeting for which the proxy is appointed;  
and



(d) the chairperson has decided that the notice is valid.

15.2 If the chairperson decides that the notice is not valid, the reasons for that determination must be recorded on the proxy form and a copy kept for the trust records.

15.3 On request, the chairperson may allow any person entitled to vote to inspect any proxy form.

15.4 The proxy form will lapse if the beneficial owner who authorises it dies, gives a written notice that it is cancelled prior to the meeting for which the proxy was issued, or is present at the meeting for which the proxy was issued.

#### **Comment Box**

##### *Voting by shareholding*

1. The clause highlighted in pink allows the beneficial owners to call for a poll, which allows votes to be cast according to shareholding in the trust rather than by a simple majority of those present at the meeting. You do not have to provide for this. If you do not want to allow votes by shareholding, omit the paragraph highlighted in pink.

##### *Voting by proxy*

2. The clauses highlighted in green deal with proxy voting. It is not necessary to provide for voting by proxy in a trust order. Given the ability now for beneficial owners to attend general and special meetings virtually, it may be considered that proxy voting is not needed. Complying with the rules for valid proxy voting is often challenging, and doing without them is simpler and easier. If you do not want proxy voting, you can omit the paragraphs highlighted in green and you will not need to attach a proxy form to the trust order.

## PART D - TRUSTEES

### 16. NUMBER AND TERMS OF TRUSTEES

- 16.1 The trust must at all times have no more than [6] and no fewer than [4] trustees.
- 16.2 A trustee who wishes to retire continues to hold office until replaced or removed by order of the court.
- 16.3 Each trustee is appointed for a term of [3] years.
- 16.4 At each general meeting, two trustees shall retire (the retiring trustees) and an election shall be held to nominate replacement trustees.
- 16.5 The retiring trustees shall be selected in the following order:
- (a) any trustee who wishes to retire and does not offer to stand for re-election;
  - (b) the trustee who has been longest in office since his or her election, but as between persons who were elected trustees on the same day the trustee to retire is to be determined by lot.
  - (c) Every retiring trustee is eligible for re-election.

### 17. REMOVAL OF TRUSTEES

- 17.1 Without limiting the jurisdiction of the court, the court may remove a trustee where:
- (a) the trustee is an undischarged bankrupt;
  - (b) the trustee is or will become incapable of carrying out his or her duties satisfactorily because of physical or mental illness or incapacity or prolonged absence;
  - (c) the trustee has been absent for three consecutive trustee meetings without reasonable excuse;
  - (d) the trustee is convicted of any offence for which he or she is sentenced to prison and is still serving such sentence, or is convicted of a criminal offence involving dishonesty.

## **18. TRUSTEE MEETINGS**

- 18.1 The number of trustees required to attend a trustee meeting to conduct the business of that meeting (quorum) is a majority in number of the trustees appointed by the court. A trustee who cannot attend in person may do so by teleconference or other digital or electronic means, provided that they can and do remain in contact with the other trustees throughout the meeting.
- 18.2 The trustees must, at their first meeting after being appointed by the court, appoint a trustee to be chairperson and another trustee to be secretary.
- 18.3 Unless a trustee meeting is convened in an emergency, at least [5] working days' notice of any meeting shall be given to all trustees.
- 18.4 Trustee meetings will ordinarily proceed according to an agenda prepared by the chairperson. Other trustees may also submit items for inclusion in the agenda, and should do this as early as possible.
- 18.5 The trustees must keep minutes of all trustee meetings in accordance with the requirements of clause 13.4. Copies should be distributed to all trustees and any other persons that the trustees consider should receive them. The chairperson is responsible for ensuring that a record is made of all resolutions, including the votes for and against.
- 18.6 When they are conducting trust business, the trustees will make all decisions that they are empowered to make on behalf of this trust by a majority vote. The chairperson does not have a casting vote. In the case of a tie, the resolution is not passed. When a resolution is passed, the acts and proceedings that follow will be valid and of good effect as if all trustees agreed.

## **19. GENERAL TRUSTEE POWERS**

### *Trustees' powers to be used for purposes of the Trust*

- 19.1 The trustees may use their powers only to give effect to one or more of the purposes of the trust set out above at clause 2.2. Where a trustee power is exercised for any other reason or purpose it is not a valid use of the power and the trustee(s) responsible is/are accountable for any loss or damage caused by the invalid exercise of power.

### *General power of trustees*

- 19.2 To achieve the purposes of the trust, the trustees have, in the administration, management and investment of the trust land and property, the power to do all or any of the things they

would be entitled to do if they were the absolute owners of the trust land and property except that they must comply with clause 19.3.

#### *Exceptions to general power of trustees*

19.3 The trustees must not:

- (a) sell or gift any of the trust land except by a court-approved exchange of land or by a settlement under the Public Works Act 1981 or similar legal authority;
- (b) use any of their powers for a purpose not set out clause 2.2.

#### *Beneficial owners' views*

19.4 When exercising their powers, the trustees are not bound by, or required to comply with, resolutions that beneficial owners make at general or special meetings. They must however give them consideration as provided in clause 6.3.

## **20. SPECIFIC TRUSTEE POWERS**

#### *Limits on trustees' specific powers*

20.1 The trustees' specific powers are listed below in clause 20.4, but it is possible for actions and decisions of trustees to fall within the general power of the trustees even if not specifically listed.

#### *Power to delegate*

20.2 The trustees may delegate any power of the trustees to any one of, or a committee of, the trustees.

20.3 Any trustee or committee of trustees acting under a power delegated to them must comply with the terms of this trust order and, unless there is proof to the contrary, shall also be presumed to be acting within the terms of the delegation.

20.4 The trustees may revoke completely or in part any delegation of the powers of the trustees at any time.

#### *List of specific powers*

20.5 The trustees have the powers to:

- (a) **Carry on a business** on the trust land, or in relation to trust property, and are allowed to do all things necessary (subject to the duties contained in this trust order), in the process of carrying on that business or businesses.
- (b) **Promote title improvement** by:
  - (i) granting or acquiring any type of right or interest in land;
  - (ii) subdividing any land;
  - (iii) bringing any application to the Māori Land Court that might facilitate the operation of this trust and the improvement of title to land; and
  - (iv) forwarding to the registrar of the Māori Land Court in relation to the above any instruments, titles, plans or other relevant documents for the purpose of maintaining the records of title and ownership of such land.
- (c) **To buy** any land or interest in land, shares or assets whatsoever whether by way of lease, purchase, exchange or otherwise and to acquire, sell, hire or otherwise deal in vehicles, shares, plant, chattels or equipment.
- (d) **To subdivide** or partition the trust land in any manner permitted by law into such subdivisions or parts as the trustees think fit.
- (e) **To improve** and develop the trust land and to erect on it such buildings, fences, yards and other constructions or erections as the trustees think fit.
- (f) **To insure** all or any of the trust property against any risks that the trustees think fit with such companies and on such terms as the trustees think fit in the name of the trust.
- (g) **Grant the right to occupy** any part or parts of the trust land by granting a licence to occupy or lease, or by consenting to the court granting an occupation order to one or more of the beneficial owners, their descendants or (where the beneficial owner is deceased) their successors, provided that
  - (i) the trustees must consult with the beneficial owners before setting the policy concerning the terms of occupation of the land, especially when the terms are more favourable than on the open market (such as a reduced rent);
  - (ii) before deciding on rights to occupy, the trustees must first assess the interests of other beneficial owners and the availability on the trust land of other possible occupation sites;

- (iii) the term of:
  - (aa) any licence or lease is no more than [ ] years or the lifetime of the licence or lease holder (whichever comes sooner);
  - (bb) any occupation order is no more than [ ] years and this may be succeeded to;
- (iv) where the proposed occupier is a whānau trust or a beneficiary of a whānau trust, the consent of the trustees of the whānau trust is obtained;
- (v) the occupier must:
  - (aa) obtain any necessary resource consent and/or building consent prior to building; and
  - (bb) must build a dwelling on the occupation site within [ ] year(s) of the licence or lease or occupation order being granted failing which the licence or lease or occupation order may be cancelled.
- (h) **Allow those granted a right to occupy to erect a dwelling** on the site designated for occupation.
- (i) **To lease** in accordance with the limitations and restrictions imposed by the Act the whole or any part of trust land on whatever terms, covenants and conditions that the trustees think fit and to renew, vary, transfer, assign and accept the surrender of any leases provided that no lease shall provide for payment of compensation for improvements to a lessee or grant to the lessee a right to purchase the land and further provided that no lease shall be for a period greater than [ ] years, unless a longer period is approved by the beneficial owners at a general or special meeting (approval can be specific to the lease or can be general in nature).
- (j) **To grant forestry rights;** to grant, renew, vary, transfer, assign or accept the surrender of any forestry right or joint venture deforestation agreement in respect of the trust land and to sell or mortgage any forestry right or forest products, but only if:
  - (i) the Trustees have first made provision for the beneficial owners to occupy the land under (g) above;
  - (ii) the term is no longer than 52 years;
  - (iii) the forestry right or agreement shall not provide for payment of compensation for improvements;

- (iv) no mortgage may be granted over the land; and
- (v) professional foresters shall be engaged to supervise all aspects of the forests on the land.
  
- (k) **To enter into conservation covenants**, and to vary or surrender those covenants, with regional and territorial authorities, government departments, government schemes or trusts provided that no covenants shall be for a term longer than 25 years.
  
- (l) **To engage and employ** employees, contractors, agents, professional advisors and any other supplier of products or services, and to dismiss them or terminate their contracts, provided that the services are for the purposes of the trust and involve no conflicts of interest.
  
- (m) **To operate with others** by entering into agreements or contracts in the name of this trust or jointly (including joint venture agreements) or in partnership with any other person or entity.
  
- (n) **To form companies** and to subscribe for and acquire shares in companies and to adopt and change their constitutions to further the interests of the trust.
  
- (o) **To represent the beneficial owners and the trust** as required to initiate and respond to and to represent the beneficial owners and the trust in respect of any proceedings or process whatsoever before any court, tribunal, inquiry, arbitration, council hearing, select committee hearing or any other forum in relation to matters that affect or are likely to affect the land or the use and enjoyment of the land or any activities on the land or the affairs of the trust and to represent the beneficial owners in 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.
  
- (p) **To borrow** and to repay money with or without security over all or any real or personal property of the Trust provided that the Trustees shall not grant security by way of mortgage or otherwise over the trust land.
  
- (q) **To set aside cash reserves** from the net proceeds as the trustees think responsible to provide for unforeseen events (even if doing so will result in a distribution not being made to the beneficial owners) or for capital expenditure (buying, upgrading or maintaining assets) or for expansion, provided that in doing so the trustees comply with the trustee duties and act to advance the purposes of this trust.

- (r) **To lend or invest** all or any money coming into the trustees' hands in such a manner and upon any securities in which trust funds may be invested by trustees in accordance with the current law applying to trusts.
- (s) **To distribute and apply net proceeds** subject to the trustees first being satisfied that proper provision has been made for reserves in accordance with clause (q) above:
  - (i) to distribute to the beneficial owners in accordance with their shares the whole or any part of the net proceeds by way of a dividend;
  - (ii) to apply the whole or any part of the net proceeds for Māori community purposes in terms of section 218 of the Act following consultation with the beneficial owners.

## **21. INDEMNITY OF TRUSTEES**

21.1 Each trustee or former trustee is entitled to a full and complete indemnity (being a payment to cover costs that a trustee would otherwise have to pay) from the trust assets for any liability that he or she may reasonably and properly incur or as has reasonably and properly incurred in any way, out of or in connection with that trustee acting on behalf of the trust.

21.2 For the avoidance of doubt, a trustee or former trustee is not entitled to such indemnity where his or her liability is attributable to his or her own dishonesty, or to the wilful commission or omission by that persons of an act that he or she knew was a breach of trust or where he or she acted in reckless disregard of whether it was a breach of trust.

21.3 The indemnity in 21.1 may not be met out of the landholdings of the trust.

## **22. INSURANCE**

22.1 The trustees may purchase and maintain indemnity insurance to cover themselves or any individual trustee in respect of:

- (a) any actual or alleged liability incurred by a trustee because of any negligence, default, breach of duty or breach of trust (other than dishonesty, wilful misconduct, or gross negligence);
- (b) all costs, charges and expenses that the trustees may incur in connection with any actual or alleged liability;
- (c) all costs of a successful defence to proceedings (civil or criminal) against a trustee.



## 23. TRUSTEES' EXPENSES, HONORARIA AND DIRECTORS' FEES

23.1 The trustees are entitled to be reimbursed for trustees' legitimate expenses and disbursements in acting as a trustee, which includes their reasonable travel expenses in attending trustee meetings, general and special meetings, and in attending other meetings to undertake the business of the trust.

***These options are available for remuneration of trustees:***

Each trustee is entitled to an honorarium by way of a trustee fee of \$[ ] before tax per trustee meeting up to a maximum of [ ] meetings per annum.

OR

The trustees as a whole are entitled to an honorarium of \$[ ] before tax per annum. The trustees shall agree on how the honorarium is to be allocated amongst the trustees, failing which the trustees shall seek directions from the court.

OR

Each trustee is entitled to an honorarium by way of trustee fee per meeting or per year as fixed at a general or special meeting. In fixing the honorarium, the beneficial owners shall have regard to the nature of the trust's activities and in particular their commercial nature, the profitability of the trust, the number of trustees and the likely cost of such fees as a reasonable and viable part of the trust's operation.

OR

Trustees will not receive honoraria, but where trustees incur expenses other than those described in clause 23.1, these too may be reimbursed at the trustees' discretion.

23.2 A trustee who is a director of a company in which the trust has a shareholding must hold any directors' fees or remuneration that he or she receives as trust property, unless and to the extent the beneficial owners resolve otherwise by resolution at a general or special meeting.

23.3 All amounts paid to trustees must be set out in the financial statements for the financial year in which payment is made.

## PART E – MISCELLANEOUS

### 24. ADVISORY TRUSTEES:

24.1 An advisory trustee may be appointed and removed in the same manner as a trustee.

### 25. UNCLAIMED DIVIDENDS

25.1 Where the Trustees have declared a dividend in accordance with clause 20.5(r) and a dividend remains unclaimed after 12 months:

- (a) the Trustees shall pay all unclaimed dividends into a separate interest-bearing account (the pūtea account);
- (b) any interest earned on the unclaimed dividends in the pūtea account shall belong to the trust and may be used for the purposes of the trust;
- (c) the trustees shall pay any unclaimed dividend (without interest) to a beneficial owner or his or her legal representative upon the unclaimed dividend being lawfully claimed.

### 26. TRUST REVIEW

26.1 Within **one year** of the establishment of this trust, the trustees shall apply to the court for a review of the trust.

26.2 When the court reviews the trust, it may:

- (a) make directions to the trustees;
- (b) confirm the trust order without variation;
- (c) vary the trust order; or
- (d) make an order terminating the trust.

26.3 After the court has conducted the review, it shall fix the date by which the trustees shall next apply for a review. If the court fails to fix such a date, the date shall be [5] years after the date of the court's review.

**Proxy Form**

I, **[NAME]**, being a beneficial owner of the **[TRUST NAME]** Trust, hereby appoint **[PROXY'S NAME]** to vote as my proxy at the general or special meeting of beneficial owners to take place on **[STATE DATE AS ACCURATELY AS POSSIBLE]**.

I direct my Proxy Voter to:

1. **vote as he or she decides;**
2. **vote for/against the resolution(s) (specify) proposed for determination at the meeting.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

Signed by:

\_\_\_\_\_

Full name of Beneficial Owner Signature

In the presence of:

\_\_\_\_\_

Full name of Witness Signature

\_\_\_\_\_

Occupation

\_\_\_\_\_

Address

***The completed notice is to be received by the Trustee nominated as Chairperson or Secretary at least one hour before the meeting begins.***