

Residential Utilisation of Multiply-owned Māori Land

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After 18 months of hearings in Rotorua, 15 applications concerning the administration and utilisation of Utuhina No.3H No's 2 & 3 Subdivision F will shortly be completed. The major ownership of the land (which has an area of 1.4011 ha situated in Whittaker Road, Rotorua) has been held since 1968 in a long-term testamentary trust for eight of the testator's children and their descendants. Frustrations have arisen in the utilisation of the land as the estate's trustees have been unable to make distributions to the beneficiaries (of whom seven are now deceased) without giving some a greater benefit than others. A solution has been found, however, in the formation of whānau trusts for each of the eight children with agreed exclusive use areas both for themselves and also for the other owners of the block. The respective whānau trusts are coordinated through an ahu whenua trust for the management of the whole block and in dealings with third parties such as the Rotorua District Council. A Māori Reservation will administer the ngawha and the bathhouse. By this means, there is an equitable integration of utilisation of the block with the respective shareholdings of the estate's beneficiaries and the other owners.

This model for the utilisation of multiply-owned Māori land had its origins in Taitokerau in 1989 where, under s 438 of the Māori Affairs Act 1953, a block was vested in a trust with exclusive use areas identified in a schedule to the trust order for whānau shareholding groups. The trustees were able to grant licences to occupy to owners within their respective areas to enable them to obtain Housing Corporation finance under the papakāinga housing scheme. The prototype trust order was known as the "Panguru D3 model" and was followed by the "Rawhiti model" which incorporated common use areas in a Māori reservation. The one drawback was that, despite their having exclusive use areas, the respective whānau did not have any autonomy as they were not separately identifiable entities.

The concept was not lost, however, on the Ministry of Māori Development who, following a workshop hui at Rawhiti on 02 March 1992, included whānau trusts in the Māori Affairs Bill which passed into law on 09 March 1993 as Te Ture Whenua Māori Act 1993, with effect from 01 July 1993.

There have, of course, been numerous ahu whenua trust orders with composite whānau trust-administered areas created since Te Ture Whenua Māori Act 1993 gave statutory recognition to shareholdings within blocks according to discrete whakapapa groups. These trust orders have provided opportunities for whānau to do their own thing with coordination through the ahu whenua trust in their dealings with each other and with third parties. They are now recognised as representative of Māori owners utilising land for residential purposes in dealings with local authorities and have achieved fairer provision in district plans for the residential development of

Māori land. Many councils have also changed their rating policies to encourage those developments.

What then, is so special about Utuhina?

First, they have had tensions over many years, which have been the consequence of a long-term trust over multiply-owned Māori land, which have had to be heard in the High Court. Admittedly, there may not have been many alternatives for their tupuna in 1968. They have now agreed to put those tensions behind them as it relates to the land (rather than personalities!) and have adopted this ahu whenua/whānau trust structure. Secondly, their refinements to this structure, after many meetings, has created a model which better represents the grassroots “ownership” of the block.

1. The standard structure is the same:

(a) The ahu whenua trustees are the legal “owners” of the block in dealings with third parties and must ensure compliance with the district plan, payment of local body rates etc and are responsible for the block’s services, access etc.

(b) The whānau trustees are not “owners” of their exclusive use areas but, subject to their obligations under the ahu whenua trust, have responsibility for the use and occupation of their whānau areas. They are responsible for their area’s contribution to the rates etc payable to the ahu whenua trust.

(c) The Māori reservation trustees administer places of importance to all the beneficiaries.

2. Where Utuhina differs is in the way they elect their ahu whenua trustees:

(a) The beneficiaries of the respective whānau trusts choose not only their whānau trust trustees but also who of those trustees will be their representative on the ahu whenua trust.

Typically, as in the election of officers (chairperson etc), the trustees will make that election themselves. In Utuhina, it is the beneficiaries who make that choice.

(b) The whānau trust AGMs follow the ahu whenua trust AGM i.e. they choose their representative away from the ahu whenua trust meeting, after hearing how it is being administered. The exception, of course, is the election of their representative on the ahu whenua trust before its inaugural AGM. Accordingly, whilst all the beneficiaries of the respective whānau trusts are also beneficiaries of the ahu whenua trust, there is no election of trustees at an ahu whenua trust AGM.

(c) The Trustees of the ahu whenua trust choose the trustees for the Māori reservation who are not exclusively from among their own number i.e. they would choose kaumatua and kuia as well as representatives of the ahu whenua trust.

Once chosen, the Māori reservation trustees choose one of their own number who is not already an ahu whenua trustee to represent them on that trust.

The difference is subtle but very important. Trustees on ahu whenua trusts can become entrenched or be perceived to represent cliques. In the Utuhina model, the power is with the whānau trust beneficiaries.

As in all trustee appointments, these are made by the Court. That forum is where any beneficiaries may raise objections to appointments (criminal convictions or whatever).

Thank you Utuhina and the Court in Waiariki for your contribution to the evolution of effective structures to administer and utilise multiply-owned Māori land.