



MĀORI LAND TRUSTS

TETURE WHENUA MĀORI ACT 1993

Te Kooti Whenua Māori



Māori Land Court

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The Māori Land Court (Te Kooti Whenua Māori) is the New Zealand court that hears matters relating to Māori land. The special bond between Māori people and the land is recognised by the Māori Land Court, and the records held by this Court form an invaluable part of the whakapapa of all Māori. The Māori Land Court operates under the provisions of the Te Ture Whenua Māori Act 1993 (referred to as 'the Act' throughout this booklet).

Māori Land Trusts is one of a series of Māori Land Court booklets designed to help Māori – and anyone else with an interest – to gain a fuller understanding of current Māori land matters. It is a comprehensive guide to the different types of trusts available under the Act and the purposes for which each is designed, and is aimed at Māori landowners who want to set up a trust.

Introduction

The kaupapa of the Act is to promote the retention of Māori land in the hands of its owners and their whānau and hapū and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners and their whānau and hapū.

The Māori Land Court deals with applications for new trusts, replacement trustees, variations to trusts, reviews of trusts and formal complaints. The Māori Land Court also receives trust reports and financial accounts. It does not administer trusts.

Trustees and trusts

A trustee¹ is someone who has been given the legal responsibility of looking after someone else's assets and liabilities for that other person's benefit. A trust² is the obligation that the trustee has.

Legal definition

The legal definition of a trust is an equitable obligation³ binding a person (the trustee), to deal with property over which he or she has control (the trust property) for the benefit of certain persons (the beneficiaries), any one of whom may enforce the obligation. The trustee may also be a beneficiary⁴.

Types of trusts

Under Part 12 of Te Ture Whenua Māori Act 1993, there are five types of trusts. For more detailed information about each type of trust, please refer to the page numbers shown.

Ahu whenua trust

This is the most common Māori land trust. It is designed to promote the use and administration of the land in the interest of

the owners. These trusts are often used for commercial purposes (see page 8).

Whenua tōpū trust

This is an iwi⁵- or hapū⁶-based trust. It is designed to facilitate the use and administration of the land in the interest of the iwi or hapū. This type of trust is also used for receiving Crown⁷ land as part of any settlement (see page 9).

Ahu whenua and whenua tōpū trusts are land management trusts and generally involve whole blocks of land.

Kaitiaki trust

A kaitiaki⁸ trust relates solely to an individual who is a minor⁹ or has a disability¹⁰ and is unable to manage his or her affairs. This trust can include all of an individual's assets (see page 11).

Whānau trust

This is a whānau¹¹-oriented trust. It allows the whānau to bring together their Māori land interests for the benefit of the whānau and their descendants (see page 12).

Pūtea trust

A pūtea¹² trust allows the owners of small and uneconomical interests to pool their interests together (see page 13).

Whānau and pūtea trusts are share-management trusts and relate primarily to specified shares in land rather than a whole block of land. Interests in several Māori Land Court districts can be included in one trust.

Setting up a trust

Landowners can set up a trust by holding a meeting, nominating trustees to manage

their property interests, and then applying to the Māori Land Court (application forms can be obtained from Māori Land Court offices).

Except for kaitiaki trusts, the process is the same to set up each type of trust. Please see page 11 for information about kaitiaki trusts.

Holding a meeting

The owners first need to have a meeting at which they:

- agree to set up the trust
- agree which blocks of land or shares should be included in the trust
- agree to the terms of the draft trust order¹³, which sets out the trustees' powers, rights, and obligations
- nominate trustees (see page 4)
- take accurate minutes.

All landowners should be given sufficient notice about the meeting and sufficient opportunity to consider and discuss the proposal.

The Act does not establish a quorum¹⁴ for meetings of landowners in a trust, although the landowners may determine a quorum for future meetings and specify this number in the trust order.

Māori Land Court staff

Māori Land Court staff can attend the meeting if the owners wish. Note, though, that Court staff are not legal advisers. Their function is to advise on the correct processes and procedures of the Court.

Applying to the Māori Land Court

After the meeting, the owners need to apply to the Māori Land Court to set up the trust. They must provide the Court with:

- a copy of the minutes of any meeting of owners relied upon as support for the application, and a list of those in attendance
- details as to how notice was given in respect of any meetings at which the proposal was considered

Footnotes

- 1 A person bound to deal with property on behalf of the owners or beneficiaries. The trustee becomes the legal owner when the order appointing him/her as trustee for the land is registered against the title. The beneficiaries are called the beneficial owners.
- 2 An obligation binding the trustee(s) to deal with property over which they have control (the trust property) for the benefit of the beneficiaries.
- 3 A duty enforceable at law to act according to good conscience.
- 4 Person(s) who benefit from a trust.
- 5 The traditional Māori tribal hierarchy and social order made up of hapū (kin groups) and whānau (family groups), having a founding ancestor and territorial (tribal) boundaries.

- 6 A subtribe or kin group that is linked by a common ancestor.
- 7 The Crown refers to the Queen, who is the head of state of New Zealand. Crown-owned land is, in effect, state-owned land.
- 8 A trustee/guardian.
- 9 A person who has not yet reached the age of 20 and has not legally married.
- 10 In its legal use, this means physical or mental disablement that, in the opinion of the court, results in a person lacking, wholly or partly, the competence to manage his/her affairs in relation to his/her property.
- 11 Family. Whānau is a wider concept than just an immediate family made up of parents and siblings - it links people of one family to a common tipuna or ancestor.

- 12 Literally, a 'basket'. In the context of a trust, it is the concept of several people, collectively, filling a basket by contributing communally with money and other assets.
- 13 An order of the Māori Land Court that sets out: the objectives of a trust; the powers, obligations, and rights of trustees; and the rights of the beneficiaries.
- 14 The minimum number of members that must be present at a meeting to make proceedings valid.
- 15 A change of ownership of land gives the recipient of that interest the ownership and its associated rights (land may be vested in a trustee, or shares may be vested in another person).

- a schedule of the interests (in Māori land, in general land owned by Māori, or in a Māori incorporation) that the owners seek to have vested¹⁵ in the trust. In the case of a kaitiaki trust, any general land or personal property sought to be vested in the trust must also be included
- a copy of the draft trust order, which has been approved by the owners
- the names of the proposed trustees and details as to the way in which they have been selected
- the written consents of the proposed trustees
- the grounds on which the application is made
- a current search of the land transfer title of any general land included in the application
- a list of those persons who voted against the proposal or dissented or objected to it during the course of consultation over the formation of the trust
- the fully completed application form and the application fee (which is shown on the application form).

The applicant for any pūtea, ahu whenua or whenua tōpū trust must also give notice, as to the time, date and place of the hearing of the application, to anyone who dissented or objected during the consultation process.

Setting up a kaitiaki trust

Setting up a kaitiaki trust is different from setting up other trusts. The following documents need to be filed with the Māori Land Court:

- the minutes of any whānau meetings
- evidence of the person's disability (e.g. a doctor's certificate) or evidence proving that

they are a minor (such as a birth certificate)

- the consent of the person with the disability (if he or she is capable of giving it)
- the name of the nominated trustee(s) and details as to the way in which they have been selected
- the written consent of the nominated trustee(s)
- details of any specific powers the trustee(s) may require
- details of the property to be included in the trust
- confirmation that there is no current property order¹⁶ under the Protection of Personal and Property Rights Act 1988
- the fully completed application form and the application fee (which is shown on the application form).

Trustees

Nominating a trustee

Landowners can nominate anyone to be a trustee (a trustee does not have to be a landowner). Each nominated trustee's written consent is required.

It is the Court order¹⁷, not the nomination, that appoints the trustee. The Court needs to be satisfied that the trustee is a "worthy appointee". It is unlikely to appoint someone who is:

- bankrupt
- imprisoned
- convicted of a crime involving dishonesty
- under mental disability
- a minor
- known to the Court to have been guilty of

misconduct in the administration of a trust

- involved with a corporation that is in liquidation or no longer in business.

Landowners may nominate, for example, an individual professional person such as a solicitor, an accountant, or a farm consultant; a Māori Trust Board; a body corporate¹⁸; a Māori incorporation; the Māori Trustee; the Public Trust; or a trustee company to be a trustee.

Landowners should nominate people who have the right skills to be a trustee. They should be mindful about nominating any trustee who may have a conflict of interest (see Trustees' duties on page 6).

Number of trustees

The number of trustees should be limited to a number that can effectively work together. If too many are nominated, the Court may decline to appoint some of them.

Types of trustee

The Act recognises three types of trustee.

Responsible trustees

Responsible trustees are responsible for:

- carrying out the terms of the trust order
- administering and managing the business of the trust
- preserving the assets of the trust
- collecting and distributing the trust's income¹⁹.

Custodian trustees

Custodian trustees are responsible for:

- gathering together and holding the assets of the trust
- investing funds
- disposing of assets
- signing documents as directed by the responsible trustees.

Custodian trustees are not responsible for administering the trust – the responsible trustees are.

The assets of the trust are vested in the custodian trustee where one is appointed.

Advisory trustees

Advisory trustees are responsible for giving advice to the responsible trustees. They are not responsible for administering the trust.

All trusts have a responsible trustee, but they do not have to have custodian or advisory trustee(s). If there is a custodian trustee, the assets of the trust are vested in them. If there is no custodian trustee, the assets of the trust are vested in the responsible trustee(s). Trust assets are not vested in advisory trustees.

To find out more about the roles of:

- responsible trustees, refer to section 223 of the Act
- custodian trustees, refer to section 225 of the Act

16 Property orders are granted under the Protection of Personal and Property Rights Act 1988. They are designed to protect persons who are under disability, especially mental disability. Orders are granted by the High Court.

17 A formal document, signed by a judge or senior court official and stamped with the court's official seal, to give effect to a decision of a judge of the court.

18 A legal entity such as a company, incorporation, or Māori trust board.

19 Money that is derived from assets held and earnings (such as rent and interest) but not 'purchase money' (land converted into money).

- advisory trustees, refer to section 224 of the Act.

Trustees' duties

Trustees are bound by the Act and the Trustee Act 1956. Their key duties are 'to maximise the assets and minimise the liabilities of the trust' to the best of their ability and within the law. Their powers, rights, and obligations are set out in the trust order.

Trustees must not spend money unnecessarily or without proper authority, as this is a breach of the trust order. If they do, the beneficiaries have the right to hold them personally liable for any financial loss brought about by their mismanagement. The beneficiaries can take a case to the Māori Land Court or the High Court. The Courts regard any breach of trust as a very serious matter, and if trustees are found to be at fault, they can expect to pay for any losses that they have caused.

The duties of trustees are summarised as follows:

Acquaintance with the property

Trustees must be acquainted with the trust property and the terms of the trust. They should keep informed of all issues affecting the trust.

Adherence to the trust order terms

Trustees must adhere to the terms of the trust as set out in the trust order.

Impartiality

Each trustee must treat all beneficiaries with the same degree of fairness. Trustees must not be partial to, or influenced by, any one beneficiary.

Investments

Investments must be made in terms of the trust order and in accordance with the Trustee Act 1956 and its amendment of 1988.

The government does not guarantee investments. Trustees who invest trust funds must be prudent when investing and seek expert financial advice.

Diligence and prudence

Trustees are required to act with the care, diligence, prudence, and good judgment that prudent business people would exercise in managing other people's affairs.

Delegation of responsibilities

Trustees must not delegate their responsibilities unless the trust order clearly allows this, or unless delegation is permitted by law. Trustees may, however, employ professionals to assist the trust.

Act jointly

Trustees must work together. They must share responsibility for any wrongdoing or mistakes made. All trustees are accountable to the beneficiaries.

Act without personal profit

Trustees must not benefit personally from being a trustee. If the trust order permits, they may be entitled to reasonable reimbursement for expenses they incur in carrying out their role as trustee.

Pay the right people

Trustees must pay trust money only to the people named on the trust order. They will not be excused for paying the wrong person, even if they mistake the intention of the trust order or take professional advice to do so.

Trust account information

Trustees must keep full and proper accounts. Beneficiaries, or their authorised agents, may access the accounts on request. Other information about the trust must also be made available to the beneficiaries upon request.

Declare conflicts of interest

Trustees should avoid, if possible, any situation where a conflict of interest might arise. Where it cannot be avoided, the trustee's interest must be declared, and that trustee should not take part in negotiations or decision making.

Regular disclosure

Trustees must keep their beneficiaries regularly informed and provide full details of the financial position and performance of the trust. They must undertake appropriate consultation with beneficiaries on major policy issues and obtain the beneficiaries' consent to any changes to the terms of the trust order.

More information on the duties of trustees can be found in "Trustees' duties: A guide", available from Māori Land Court offices.

Administering the trust

Trustees are responsible for the day-to-day running of the trust (the Māori Land Court does not administer trusts). Trustees are appointed to ensure that the landowners' interests are met, and so they should communicate regularly with the landowners. They should also keep the Court up to date because landowners often make enquiries of the Court.

Landowners have appointed trustees to act on their behalf and to administer their property, and so they should allow the trustees the opportunity to operate.

Tax on trust income

Different types of taxes may apply to trusts. The trustees should discuss the trust's tax liability with the Inland Revenue Department and with their accountant.

The trust is a separate legal entity and is required to have its own Inland Revenue Department taxpayer number.

Resolving problems

Should problems arise, the owners and trustees should try and sort out the problems themselves to avoid legal action. If the problems cannot be resolved, the landowners can apply to the Māori Land Court to:

- review the terms, operation, or other aspect of the trust
- add, replace, or remove trustees
- investigate the trust
- enforce the terms of the trust
- vary the terms of the trust
- terminate the trust.

An application to the Māori Land Court needs to be filed on the relevant application form and accompanied by the application fee, which is shown on the form. Evidence supporting any allegations must also be filed.

Spending trust funds for Māori community purposes

Some trust funds can be spent for Māori community purposes – purposes for the promotion of health, social, cultural and economic welfare, and educational and vocational training within Māori communities. These purposes are fully outlined in section 218 of the Act.

Whenua tōpū and pūtea trusts (see pages 9 and 13) allow spending only for Māori community purposes. Whānau and ahu whenua trusts (see pages 12 and 8) may also use funds for Māori community purposes if their trust order allows or if the Court directs them to. The trust order will define who will benefit from Māori community purpose funds.

Amending a trust

The trust order may need to be varied or changed if the needs of the landowners and the land are not being met.

To make changes to the trust order, the owners should meet to decide the new trust terms and then make an application to the Māori Land Court. The minutes of the meeting should be attached to the application.

Landowners must assure the Court that a reasonable number of them support the proposed changes (the trust order will often indicate the proportion of owners that make up the trust's quorum). Landowners must also assure the Court that the beneficial owners²⁰ have had sufficient notice of the proposed changes and have been given sufficient opportunity to discuss and consider them.

New trustees

New trustees may need to be appointed when a trustee is not re-elected, resigns, or dies. To appoint a new trustee, the owners need to meet to agree on new trustees and then apply to the Māori Land Court to add, remove, or replace a trustee. The following documentation must be included with the application to the Court:

- a copy of the notice advertising the meeting
- the minutes of the meeting at which the owners consented to the replacement or additional trustees

- the written consent of the nominated trustee(s)
- the resignation of a trustee or the confirmation of their death (or other evidence for removing a trustee)
- the fully completed application form and the application fee, which is shown on the form.

Terminating a trust

Trusts can be terminated, but different criteria apply to the different types of trusts. Refer to pages 8-14 for information about terminating each type of trust.

Ahu whenua trusts

Summary

The ahu whenua trust is the most flexible type of trust. It is a land management trust designed to manage whole blocks of land and is often used for commercial purposes. It aims to facilitate and promote the use and administration of the land in the interests of the owners. It allows the trustees to conduct their business in a professional and businesslike manner and at the same time provide for the cultural needs of the owners.

Whānau, pūtea, and kaitiaki trusts can operate under the umbrella of an ahu whenua trust. Almost anything that is legally in order can be achieved under an ahu whenua trust. However, the sale of land can only be achieved under very stringent rules that ensure that the Act's kaupapa is met – namely, to promote the retention of that land in the hands of its owners and their whānau and hapū, and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners and their whānau and hapū. Many owners ensure that their trust order prohibits the sale of land altogether.

The Māori Affairs Act 1953 and Te Ture Whenua Māori Act 1993

The ahu whenua trust replaces the section 438 trust created under the Māori Affairs Act 1953. Section 438 trusts that already existed when Te Ture Whenua Māori Act 1993 came into force were renamed ahu whenua trusts. Ahu whenua trusts are established under section 215 of the Act.

Assets required to establish a trust

Māori land or general land owned by Māori²¹ can be used to establish an ahu whenua trust. The trust may involve one or more blocks of land, and is made in respect of all the shares in the block or blocks of land.

Succession

Succession²² to individual shares in the block will continue. For more information about succession, please refer to 'Succession', available from Māori Land Court offices.

Representing individual shares at owners' meetings

Owners represent themselves at meetings or give a power of attorney²³. Proxies may only be appointed if the trust order expressly permits.

Trust money

Trust money may be spent in any way permitted by the trust order, and this may include using the money for Māori community purposes.

Reviewing the trust

The trustees or beneficiaries of an ahu whenua trust may apply to the Māori Land Court to review the terms, operation, or other aspects of the trust. However there can be no more than one review of the trust within a two-year period.

Terminating the trust

The trust may be terminated on application to the Māori Land Court. The application can be made by anyone, though it is normally made by the trustees and should follow a meeting of the beneficial owners at which the termination was considered. When the Court terminates the trust, the ownership of the land reverts back to the current beneficial owners of that land or whoever the Court determines to be entitled to the land.

Whenua tōpū trusts

Summary

The whenua tōpū trust is an iwi or hapū land management trust. It aims to facilitate the use and administration of the land in the interests of the iwi or hapū. It has many of the features of an ahu whenua trust. It allows the trustees to conduct their business in a professional and businesslike manner and at the same time, provide for the cultural needs of the beneficiaries.

Whānau, pūtea, and kaitiaki trusts can operate under the umbrella of a whenua tōpū trust. Almost anything that is legally

20 The owner of a beneficial interest in land. Where land is vested in trustees, the trustees own the land as legal owners on behalf of the beneficiaries. The beneficiaries hold their individual shares in the land as beneficial owners.

21 General land (i.e. land that is not Māori land and is not Crown land) that is owned by a Māori or by a group of persons of whom a majority are Māori.

22 The process of transferring the assets of a deceased person to the persons entitled to receive those assets.

23 A legal document that appoints another person to act on one's behalf in business or legal matters. Powers of attorney continue to be in force until they are cancelled by the person granting the power or that person dies.

in order can be achieved under a whenua tōpū trust. However, the sale of land can be achieved only under very stringent rules that ensure that the Act's kaupapa is met – namely, promoting the retention of Māori land in Māori ownership. Many owners ensure that their trust order prohibits the sale of land altogether.

The Māori Affairs Act 1953 and Te Ture Whenua Māori Act 1993

Whenua tōpū trusts were established under section 216 of Te Ture Whenua Māori Act 1993. There was no equivalent of a whenua tōpū trust under the Māori Affairs Act 1953.

Assets required to establish a trust and intention of the trust

Māori land or general land owned by Māori can be included to establish a whenua tōpū trust. The trust must promote and facilitate the use and administration of the land in the interests of the iwi or hapū.

Though the trust may involve one or several blocks of land, this trust is popular for receiving Crown or local body land under section 134 of the Act, where the land becomes Māori land upon handback. All shares in any block are included.

Succession

There will be no succession so long as the trust exists (although there is provision for succession to owners of large shares); the land will remain vested in the trustees. The Court can, however, determine who the successors²⁴ would be when a beneficiary dies because this can help the trustees to maintain the whakapapa²⁵.

For more information about succession, please refer to 'Succession', available from Māori Land Court offices.

Beneficiaries at landowners' meetings

Members of the hapū or iwi named in the order are beneficiaries and are entitled to have a say at landowners' meetings. Beneficiaries represent themselves or give a power of attorney. Proxies may only be appointed if the trust order expressly permits.

Trust money

The Act requires that the trust money be spent for Māori community purposes, as set out in section 218 of the Act, or as approved by the Court for the general benefit of members of the iwi or hapū.

Reviewing the trust

The trustees or beneficiaries of a whenua tōpū trust may apply to the Māori Land Court to review the terms, operation or other aspect of the trust. However there can be no more than one review of the trust within a two-year period.

Terminating the trust

Because the trust is iwi or hapū-based, it is usually intended to be permanent. However, if the beneficiaries decide to terminate the trust, an application to do so can be made to the Māori Land Court. The application can be made by anyone, though it is normally made by the trustees.

Unless the beneficial ownership of the land has already been established, the Court needs to determine the owners of the land and vest the land in those owners, or otherwise determine who would be entitled to receive the land.

Kaitiaki trusts

Summary

The kaitiaki trust is the only trust that relates solely to individuals. It is designed specifically for minors or individuals with a disability, either physical or mental. It is not advisable for minors to enter into contracts²⁴ – they need to have a trustee so that their shares can be represented.

If an individual's disability limits their ability to carry out their own business, either partially or completely, the kaitiaki trust allows the trustee to conduct the individual's business in a professional and businesslike manner and to provide for the needs of that individual.

The trustee is appointed by the Māori Land Court to properly represent the individual and take care of his or her assets. Kaitiaki trusts can work under the umbrella of whānau, pūtea, ahu whenua and whenua tōpū trusts, or Māori incorporations.

The Māori Affairs Act 1953 and Te Ture Whenua Māori Act 1993

The kaitiaki trust replaces the part X trust created under section 93 of the Māori Affairs Act 1953. Part X trusts that existed when Te Ture Whenua Māori Act 1993 came into force were renamed kaitiaki trusts under section 217 of the Act.

Assets required to establish a trust

Any assets, including cars or money, can be used to establish a kaitiaki trust for any Māori person. A non-Māori person who has shares in Māori land or has Māori

incorporation shares can also have a kaitiaki trust established. A non-Māori person cannot have a kaitiaki trust established over general land.

A kaitiaki trust cannot be created where there is a property order in force under the Protection of Personal and Property Rights Act 1988.

Succession

Succession will continue. For more information about succession, please refer to 'Succession', available from Māori Land Court offices.

Representing shares at owners' meetings

The trustee represents the individual at meetings.

Spending trust money

Trust money can be spent in any legal way that will benefit the individual.

Reviewing a trust

The trustee must apply to the Māori Land Court for a review within five years of the trust being established and thereafter every five years unless the Court determines otherwise.

The trustee is also required to file a trust report with the Court within 15 months after the establishment of the trust and thereafter annually. If the trustee is the Māori Trustee, reports are needed only every three years after the initial report.

24 A person who receives, as of right, a share of a deceased person's estate.

25 A person's genealogy, or family tree, linking that person to a particular family and/or ancestor.

26 An agreement between two parties that is intended to be enforceable at law. Contracts are usually written, but a spoken agreement can also be a contract.

Terminating a trust

If a disabled person recovers from their disability or if a minor marries, then an application to terminate the trust can be made to the Māori Land Court. The trustee is simply removed from the Court record by vesting the shares in the beneficiary, leaving the owner to act in his or her own right.

When a minor reaches 20 years of age, the powers of the trustee automatically cease. However the shares need to be re-vested in the beneficiary to remove the trustee's ownership of the shares. If the assets remain in the name of the trustee after the minor has turned 20 the trustee is said to be 'functus officio' – he or she has no legal power to deal with the assets. If there is some other disability brought to the attention of the Court, the Court can extend the term of the trustee's appointment and vary the trust to reflect that other disability. If the owner has died, an application for succession should be dealt with at the same time.

Whānau trusts

Summary

The whānau trust is a share management trust designed to manage specified shares in Māori land. It is the most family-oriented trust. It allows whānau to bring together all their interests for the benefit of that whānau and their descendants. This provides the whānau with an alternative to fragmenting²⁷ their shares. The whānau may name a tipuna²⁸ in the Court order. Unless stated otherwise, all the descendants of that tipuna may benefit from the trust.

These trusts will often operate under the umbrella of an ahu whenua trust or Māori incorporation. A whānau trust is often established on succession.

The Māori Affairs Act 1953 and Te Ture Whenua Māori Act 1993

Whānau trusts were established under section 214 of Te Ture Whenua Māori Act 1993. There was no equivalent of whānau trusts under the Māori Affairs Act 1953.

Assets required to establish a trust

Shares in Māori land, Māori incorporations, or general land owned by Māori can be included in a whānau trust provided the owners of those shares agree. If the trust includes the shares of an owner who has died, that owner's successors must all agree before the shares can be included. If everyone doesn't agree, then the succession will occur and then those successors who want the trust can vest their shares in the trust.

Succession

So long as the trust exists, there will be no succession. The land interests will remain vested in the trustees. However, the Court can determine who the successors would be when a beneficiary dies as this can help the trustees to maintain the whakapapa. For more information about succession, please refer to 'Succession', available from Māori Land Court offices.

Representing whānau trust beneficiaries at landowners' meetings

The trustees represent the beneficiaries at landowners' meetings, but they can only act by majority. If a majority of trustees cannot attend a meeting and vote together, the trustees do have some options. The vote cannot be split amongst the trustees because the whānau trust holds an individual interest in the land.

If a landowners' meeting is called under part 9 of the Act, there is specific provision for

proxies to be completed. The trustee who does attend must have enough proxies from his/her co-trustees to represent a majority of the trustees.

If the meeting is for an ahu whenua trust, there may be provision in that trust order for voting by proxy.

The whānau trust order may contain a provision for using proxies.

The trustees must check the relevant trust orders carefully.

Trust money

The Act requires that the trust money be spent for the benefit of the beneficiaries, although the Court may also allow for Māori community purposes. Funds do not need to be distributed to all beneficiaries. Payments can be made to particular beneficiaries who have specific needs, but the trustees must be even-handed and must not continue to make payments to one person (or family) to the exclusion of others.

Reviewing a trust

The trustees or beneficiaries of a whānau trust may apply to the Māori Land Court to review the terms, operation or other aspect of the trust. However there can be no more than one review of the trust within a two-year period.

Terminating a trust

Beneficiaries may agree to terminate a trust or withdraw the shares that an individual has contributed to the trust. An application can be made to the Māori Land Court to

terminate the trust. The Court will vest the shares in the original contributors or their successors. Notice to all the other trust beneficiaries will be required.

Pūtea trusts

Summary

A pūtea trust is a share management trust and deals with small interests that would otherwise be uneconomic to the owners. Pūtea trusts allow the trustees to conduct trust business so that the needs of the owners are taken care of collectively.

The name 'pūtea' was chosen because of the concept of people collectively filling a basket. These trusts are not designed to deal with whole blocks of land – they deal with smaller interests within a block or within various blocks.

Pūtea trusts may be used by Māori incorporations to manage uneconomic interests. Pūtea trusts often operate under the umbrella of an ahu whenua trust or Māori incorporation.

The Māori Affairs Act 1953 and Te Ture Whenua Māori Act 1993

Pūtea trusts were established under sections 212 and 213 of Te Ture Whenua Māori Act 1993. There was no equivalent of pūtea trusts under the Māori Affairs Act 1953.

The assets required to establish a trust

The trust's assets will be the collective interests of the participating owners of interests in Māori land, Māori incorporations,

27 Fragmentation occurs when a person's shares in land are divided amongst other people, usually successors.

28 Ancestor (but in this context could be the shareholder if the trust is established for the benefit of the shareholder's descendants).

or general land owned by Māori. Such interests can be combined to cover the small interests in several blocks. Alternatively, a pūtea trust can be for small interests in an individual block or an incorporation.

The owners, whose interests are to be included in the trust, give their consent to the creation of the trust (the Māori Land Court can rule that consent is not needed, for example, if the shares are uneconomic).

Succession

There will be no succession so long as the trust exists. The shares will remain vested in the names of the persons entitled to them although, in practice, the name of the trust will appear in the Māori Land Court's ownership list. The Court can, however, determine who the successors would be when a beneficiary dies as this can help the trustees to maintain the whakapapa. For more information about succession, please refer to 'Succession', available from Māori Land Court offices.

Representing pūtea trust beneficiaries at owners' meetings

At meetings for Māori land shares, the trustees represent the owners, but they can only act by majority. The vote cannot be split among the trustees.

If the meeting is called under part 9 of the Act, there is specific provision for proxies to be completed. The trustee who does attend must have enough proxies from his/her co-trustees to represent a majority of the trustees.

The pūtea trust order may contain a provision for using proxies.

The trustees must check the relevant trust orders carefully.

At meetings for incorporation shares, the trustees get notice of the meeting, but the owners who contributed the shares have the voting rights.

Trust money

The Act requires that trust money be spent for Māori community purposes.

Reviewing a trust

The trustees or beneficiaries of a pūtea trust may apply to the Māori Land Court to review the terms, operation or other aspect of the trust. However there can be no more than one review of the trust within a two-year period.

Terminating a trust

Beneficiaries may agree to terminate the trust or withdraw the shares that an individual has contributed to it. An application can be made to the Māori Land Court to terminate the trust.

The Court will vest the shares in the original contributors, their successors, or anyone directed by the beneficial owners.

More information

For more information about Māori Land Trusts please write to, phone, fax, email, or visit a Māori Land Court office. Staff will be pleased to assist you and discuss any matters with you.

www.maorilandcourt.govt.nz

Māori Land Court offices

Taitokerau District

Registry Office
L2, Manaia House, Rathbone Street
WHANGĀREI 0110
DX Box AX10086, WHANGĀREI
T (09) 983 9940
F (09) 983 9941
E mlctaitokerau@justice.govt.nz

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65B Main Highway, Ellerslie
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T (09) 279 5850
F (09) 279 5852
E mlctamakimakaurau@justice.govt.nz

Waikato-Maniapoto District

Registry Office
L2, BNZ Centre, 354 Victoria Street
HAMILTON 3204
DX Box GX10101, HAMILTON
T (07) 957 7880
F (07) 957 7881
E mlcwaikato@justice.govt.nz

Waiariki District

Registry Office
Hauora House, 1143 Haupapa Street
ROTORUA 3204
DX Box JX10529, ROTORUA
T (07) 921 7402
F (07) 921 7412
E mlcwaiariki@justice.govt.nz

Aotea District

Registry Office
Ingestre Chambers, 74 Ingestre Street
WHANGANUI 4500
DX Box PX10207, WHANGANUI
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F (06) 349 0771
E mlcaotea@justice.govt.nz

Tākitimu District

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Tairāwhiti District

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Te Waipounamu

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30 Sheffield Crescent, Burnside
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National Office, Office of the Chief Registrar, Māori Appellate Court

L7, Fujitsu Tower, 141 The Terrace
WELLINGTON 6011
DX Box SX11203, WELLINGTON
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Use the X number as you would a PO Box number.