

## **Trust Order Review – June 17, 2017**

### **Background**

Legal frameworks formalised the collective of owners' relationship with the land when the owners created a 438 trust over Oromahoe lands and imbedded a trust order. The trust order is the foundational document that outlines the guidelines, formal protocols, the structure, trustee powers, obligations and basic functions of the Oromahoe 18R2B2B2 Trust. Simply put, the primary purpose of the trust order is to guide behaviour of Oromahoe land decision-makers, i.e. the trustees, for the effective administration of Oromahoe land on behalf of all beneficial-owners/shareholder. The following is an analysis of key powers and obligations of Oromahoe trustees as defined in their trust order. In the first instance, the trust order sets out the trustees' mandate to operate as if "they were absolute owners of the land," provided that they shall not alienate the land by gift or sale.

### **Strengths:**

- The current Trust Order has served the Trust for the greater part of 37 years without major incident
- Allows a continuation of Trust operations and governances
- Possesses some relevant clauses that may be carried over into the next Trust Order

### **Weaknesses:**

- Outdated: the Trust Order has remained largely unchanged since the Trust first began
- Limits possibility of diversifying business model/portfolio
- Lacks acknowledgement to the foundations of Oromahoe land tenure (tupuna, first 'owners' outline in 1902 Papatupu Block Committee, 1960s amalgamation)
- Does not outline current Trust responsibilities (efforts) to wider land and waterscapes
- Does not delineate status of land (whenua tupuna/corpus land and capital investment land)

### **Opportunities:**

- To review history and future direction of the ancestral landscape of Oromahoe
- Re-establish efforts to connect current-day descendants with deceased owners (see Freda Rankin's research)
- Stock-take of assets, concerns and aspirations of current generation of land-owners
- To formally recognise wider connections with genealogically connected Trusts such as Waitangi – and pathways to establish strategic partnerships
- Contemplate restructuring of Trust
- Establish Trustee portfolios
- Set timeframes on Trust Order review
- Develop the objectives of the Trust in line with current and future aspirations
- Update the means Trustee meetings to accommodate Trustees who may not live locally
- Renamed "Crown" shares on the schedule of owners:

- The final part of Freda’s research was interested in identifying the shares which were willingly sold to the Crown under Section 435 and Section 151. These totalled 46,506 shares. These shares have similarly been returned, it was decided should not be offered back to the sellers. The shares instead were vested in the trustees, although they still appear as The Crown on the shareholders list (Rankin-Kawharu, 2002, p. 43). It was suggested that any distributions (grants) should be for benefit of beneficiaries, perhaps to fund transport for people to hospitals, doctors or other general benefits (Rankin-Kawharu, 2002, p. 43; Oromahoe 18R2B2B2, 1999).

**Threats:**

- Limited in its business scope: farming/forestry
- Not market conscious

**Trust Order Review of clause template**

Title	Notes
This trust shall be known as the Oromahoe 18R2B2B2 Trust and apply to the lands set out in the schedule.	
Objects	
Subject to any express restrictions set out in this order, the objects of the trust shall be to provide for the use and management of the land to the best advantage of the beneficial owners or the better habitation or use by beneficial owners, to ensure the retention of the land for the present Maori beneficial owners and their successors, to make provision for any special needs of the owners as a family group or groups, and to represent the beneficial owners on all matters relating to the land and to the use and enjoyment of the facilities associated therewith.	
Powers	
<p><b>General</b></p> <p>I. In furtherance of the objects of the trust and except as hereinafter may be limited to do all or any of the things which they would be entitled to do if they were absolute owners of the land PROVIDED HOWEVER that the trustees shall not alienate the whole or any part of the fee simple by gift or sale other</p>	

<p>than by way of exchange on the basis of land for land value and then effected by the Court Order or in settlement of the proposed acquisition pursuant to the Public Works Act or similar statutory authority.</p>	
<p><b><u>Specific</u></b> I. The following specific powers shall not be interpreted to limit the foregoing general powers. The Trustees are expressly authorised:</p>	
<p><b><u>1. To permit occupation and enjoyment by owners</u></b> At the Trustees' discretion in any arrangement made for the use of the land to reserve or otherwise provide for any one or more of the beneficial owners to personally occupy use or otherwise enjoy such defined part or parts of the land as the Trustees shall determine having regard to the comparative shareholdings and if any such right is reserved licensed or otherwise provided for but to one or some only of the beneficial owners then the Trustees will determine the extent to which participation in rentals and profits are to abate for the purposes of receiving the benefit of such reservation licenses or provisions or otherwise be adjusted.</p>	

**2. To consent to the erection of dwellings**

To consent to the erection of dwellings on the said land by those beneficial owners who have been granted a right to occupy by the Trustees without partition of their interest and to enter into and execute such Deed or Deeds as required by the Housing Corporation and the Board of Maori Affairs for the repayment of loans granted by such body to any one or more of the beneficial owners for the erection of dwellings on the said land. Subject to the rights of the Housing Corporation of the Board of Maori Affairs as the lender, to remove dwellings erected on the said land to do all such things and exercise all such powers for the purpose set out above as if the Trustees owned the said land absolutely.

**3. To make other special provisions for owners**

At their discretion to alienate by the way of lease or license to any beneficial owner or to any blood relatives of a (pg.3) beneficial owner at a reduced rent or otherwise upon terms more favourable to the lessee than those obtainable on the open market PROVIDED THAT such proposal has first been approved by the resolution of meeting of beneficial owners called by the Trustees.

**4. To Lease or licence**

After making such provision for the beneficial owners' personal occupation of the land as the Trustees think fit to lease or grant a licence over the whole or any part of parts of the said land for such terms as may be suitable upon such covenants and conditions as the Trustees shall think reasonable. The Trustees shall have the power to accept the surrender of any lease or licence, and to vary the same.

**5. To exercise power under existing leases and duties of former Trustees**

To exercise the rights duties powers and obligations of the lessors under any lease existing at the date of this order over any of the lands (if those rights duties powers and obligations lawfully pass to the Trustees). If the Trustees lawfully hold and are entitled to hold an estate or interest in any lease existing at the date of this order they may accept a surrender of such lease or enter into a variation of the provision thereof which affect their estate or interest

**6. To enter joint ventures**

At the Trustees' discretion to enter into joint afforestation venture agreements or grants of a forestry right in the nature of a profit-a-prendre with any person or body considered appropriate be the Trustees for a term of no longer than 40 years upon such terms and conditions as the Trustees think fit subject however to the following restrictions:

- 1). That no compensation for improvements shall be payable by the Trustees or the beneficial owners to any partner manager or any other person
- 2). The lands subject to this trust shall not be mortgaged or charged in any way for the purpose of the joint venture by the parties to the agreement other than the Trustees
- 3). That the silviculture of the lands shall be supervised at all times by professional foresters (4) without in any way limiting the generality of the foregoing (subject however to the restrictions abovementioned), or fettering the discretion of the Trustees to enter into any agreement or grant that the Trustees shall see fit, such joint venture agreements promotion of tourism, the establishment of retail outlets, shops, licenced perhaps premises and/or of processing and manufacturing plants of any nature or kind whatever.

<p><b><u>7. To farm and afforest</u></b></p> <p>1). To develop the land for farming agriculture, horticulture, silviculture or other such development proposed such as mining as the trustees shall think fit.</p> <p><b><u>2). Establishment and Development of Landscape Park and Tourist Facility</u></b></p> <p>Notwithstanding anything elsewhere herein contained at the Trustees discretion to promote the development of a Landscape Park and/or Tourist Facility on the land and for such purpose to enter into any arrangement or agreement with any persons of body that the Trustees shall think appropriate and, in particular, to grant a right in the nature of a lease of profit-a-prendre with such person of body considered appropriate for such term or terms and upon such conditions as the Trustees shall think fit notwithstanding that the same may be considered an “alienation” within the meaning of Section 2(1) of the Maori Affairs 1953.</p>	
<p><b><u>8. To sell forest produce</u></b></p> <p>To sell any forest products, or any interest in tress or any relative forestry right in the nature of a profit-a-prendre upon such terms as the Trustees shall consider fit.</p>	
<p><b><u>9. To buy</u></b></p> <p>To acquire any land or interest in land whether by way of lease purchase exchange or otherwise AND to acquire and sell, hire, or otherwise deal in any vehicle, plant, chattels or equipment.</p>	
<p><b><u>10. To subdivide</u></b></p> <p>To subdivide the land in any manner permitted by law into such subdivision or parts as may seem expedient to the Trustees.</p>	
<p><b><u>11. To improve</u></b></p> <p>To develop and improve the trust lands and to erect thereon such buildings fences yards and other constructions or erections of whatsoever nature as may seem necessary or desirable.</p>	

<p><b><u>12. To employ</u></b>  To engage employ and dismiss managers, secretaries, servants, agents, workmen, solicitors, accountants, consultants, surveyors, engineers, valuers and other professional advisers required to carry out the powers of the Trustees and to fix their remuneration</p> <p>The Trustees may employ or engage any one of their number for such purpose provided that the remuneration so paid so paid shall not exceed the market rate therefor and the amount of the payment and the name of the payee shall be separately identified in the annual accounts for the Trust.</p>	
<p><b><u>13. To borrow</u></b>  To borrow money for the purpose of the furtherance of any of the trusts or powers herein contained whether or not with security over any real or personal property of the Trust.</p>	
<p><b><u>14. To set aside cash reserves</u></b>  To accumulate income and to set aside such reserves as the Trustees in their discretion shall think fit for contingencies or for capital expenditure or to meet the cost of any investigation and so to retain in an accumulated profit account any portion not to distribute to the beneficial owners, with power to use such funds to purchase Maori Trustee Conversion shares on behalf of all the owners.</p>	
<p><b><u>15. To lend</u></b>  To lend or invest all or any of the money coming into their hands upon any securities in which trust funds may be invested by the Trustees in accordance with the Trustee Act 1956 or in accordance with any other statutory authority</p>	
<p><b><u>16. To acquire shares</u></b>  To subscribe for or otherwise acquire shares in any company incorporated in New Zealand which carries on or proposes to carry on business of a kind related to the Trust's authorised operation PROVIDED</p>	

<p>HOWEVER that the trustees shall not purchase or acquire shares in any company incorporated in New Zealand without the consent of the Court first having been obtained</p>	
<p><b><u>17. To pay own costs</u></b>  From the revenue derived from the operation of the Trust to pay all costs expenses and disbursements incurred by them including the costs of any person or body employed by them in the administration of the Trust of in the furtherance of any of the objects of the Trust.</p> <p>Each Trustee shall be entitled to receive reasonable travelling allowance, or a refund of the expenses actually and reasonably incurred in attending or returning from meetings of the Trustees or for any other purpose associated with the conduct of Trustee business. Any solicitor and accountant appointed as a trustee shall be entitled to make all usual and proper charges for both his professional and other service in connection with the administration of the trusts that he would have been entitled to make if not a trustee and so employed</p>	
<p><b><u>18. To promote title improvement projects</u></b>  At their discretion to bring and prosecute in the Maori Land Court on behalf of the beneficial owners any application for amalgamation of titles, aggregation of owners, the inclusion of any further lands in this trust order, the exclusion of any lands from this trust order, the variation of this trust order to increase reduce or otherwise vary the powers hereby given to the Trustees or to bring any other application for orders within the jurisdiction of the Court that might facilitate the operation of the Trust.</p>	

<p><b><u>19. To represent owners</u></b>  To prosecute from time to time in the appropriate tribunal such objection to zoning or proposed zoning such application for rezoning of the said land, such application for specified departure from such zoning and such application for conditional use in any current zoning or otherwise howsoever as the Trustees in their absolute discretion may determine, AND to represent the beneficial owners on any negotiations or questions of compensation for lands taken under the Public Works Act or other statutory authority with the Government or any local authority.</p>	
<p><b><u>20. To make General Community payments</u></b>  Subject to the Trustees being satisfied that proper provision has been made for reserves as referred to in clause 14 hereof and by direction of a majority of beneficial owners present at a general meeting of the beneficial owners and in such manner as they shall determine (7) to apply funds for the maintenance support and development of communal facilities upon or near the land (including Pa and Marae) or communal schemes (including marae enterprises and cottage industries) or for general welfare (including assistance with expense of education of individuals and tangi and tribunal hui) where in their opinion such facilities schemes or matters have some direct or indirect connection or association with the beneficial owners or any group thereof.</p>	
<p style="text-align: center;"><b>Obligations</b></p>	
<p><u>I.</u>  Notwithstanding anything to the contrary hereinbefore or hereinafter contained or implied:</p>	
<p><b><u>1. To clear charges</u></b>  The Trustees shall use their best endeavours to clear any outstanding title charges upon the said lands to pay any outstanding and legally recoverable rates, taxes and other assessments.</p>	

<p><b><u>2. To protect whaitapu</u></b></p> <p>The Trustees shall safeguard to the best of their ability any graves of Maori people and all historic or sacred places in or upon the lands for the time being vested in them.</p>	
<p><b><u>3. To refrain from dealings with the Trust</u></b></p> <p>The Trustees and each of them shall refrain from entering into any dealings whatsoever with the Trust (except as permitted in the employment clause of this order), provided however that the Trustees may apply to a Judge of the Maori Land Court for directions in respect of any transaction proposed to be entered into between the Trust and any of the Trustees.</p>	
<p><b><u>4. General meetings</u></b></p> <p>1). The Trustees shall call general meetings of the beneficial owners from time to time and at least once every year and a general meeting shall be called by the Trustees upon service of a notice of a requisition in writing signed by not less than [sic] 50 beneficial owners or by shareholders holding between them not less than 20% of the shares in the trust, stating the purpose for which the meeting is required.</p>	
<p>2). The Trustees may be guided but no bound by any views expressed at such a meeting whether embodied in a formal resolution or not PROVIDED HOWEVER that where they decline to act upon a resolution passed by beneficial owners representing not less than 50% of the total shareholding, whether in person or by proxy, then the Trustees shall apply to the Court for directions</p>	
<p>3). Two notices inserted in newspapers, at least 14 days prior to the meeting, one in the NZ Herald and the other in the Northern Advocate or other newspaper circulating in the vicinity of the lands shall be sufficient notice for a general meeting.</p>	
<p>4). At each such annual general meeting the Trustees shall produce reports and accounts for each year in respect of which they have earlier presented reports and accounts to a general meeting.</p>	

<p><b><u>1. Reports and accounts</u></b></p> <p>The Trustees shall keep proper and separate accounts for each of the titles and subject of the Trust for which they are required by law to keep such separate accounts (or for such substituted titles) and shall present the accounts to the owners at any general meeting, and forthwith after the meeting file a copy thereof in the Taitokerau Registry of the Maori Land Court.</p>	
<p><b><u>I. Conduct of business by trustees</u></b></p>	
<p><b><u>Majority decision</u></b></p> <p>1). Any of the powers and authorities hereby given to or vested in the Trustees may at any time be exercised by a majority of the Trustees (being not less than two-thirds of the number of the Trustees from time to time appointed) and all acts and proceedings of such majority of the Trustees shall, in such case, be as valid and effectual as if they had all concurred therein.</p>	
<p>2). Any trustee who, by reason of illness, infirmity or temporary absence overseas, may be unable to take an active part in a decision making way, to facilitate business, by power of attorney or otherwise empower any of the other trustees to use his or her name for execution or signature of documents or for any of the purposes hereof.</p>	
<p>3). Any trustee who shall dissent from any exercise of such power or authorities shall have him/her dissention recorded but shall nevertheless execute or sign any documents or do any act necessary for giving effect to the exercise of any such powers or authorities by the majority of the trustees without being responsible for loss or for any breach of duty towards any beneficiary hereunder.</p>	
<p>4). For the purposes of this clause the term “two-thirds of the number of the Trustees” shall mean, where the number of trustees is not three or a multiple of three, two-thirds of the next highest number that is a multiple of three.</p>	

<p><b><u>1. Qualifications, disqualification, and removal of members</u></b></p>	
<p>1). The office of a Trustee hereunder shall become vacant if the Trustee resigns with the consent of the Court, or dies, or becomes bankrupt, or becomes a person of unsound mind within the meaning of the Mental Health Act 1969 or after appointment is convicted of an offence for which the maximum penalty is imprisonment for a term of six months or longer unless he has served his sentence or otherwise suffered the penalty imposed on him or if he is removed by the Court.</p>	
<p>2). In any such case pending the appointment of a new Trustee shall be entitled to exercise all the powers of the Trustees.</p>	
<p><b><u>Retirement of Trustees and election of nominees for appointment as Trustees</u></b></p>	
<p>1). One-third of the Trustees in whom the said lands were vested by a vesting order made on 19 (referred to as the original trustees) shall retire at the general meeting of beneficial owners held in 1992. Thereafter one-third of the original trustees shall retire at the general meeting held in each of the following two years.</p> <p>In subsequent years one-third of the Trustees, being those having longest held office (the term of office shall for this purpose be calculated from the date such person was elected for appointment to position) shall retire annually.</p>	
<p>2). Where the number of trustees is not three or a multiple of three, one-third of the trustees shall be deemed to be one-third of the next highest number that is a multiple of three.</p>	
<p>3). If the Trustees acting within the framework set out in this clause are unable to determine who of their number should retire then same way be determined by ballot conducted by the Trustees or alternatively the matter may be referred to the Court for determination.</p>	

<p>4). Retiring trustees may offer themselves for reappointment.</p>	
<p>5). For such of the Trustees positions as may require to be filled (and as often as a vacancy in their number arises an election shall forthwith be held at the Annual General Meeting.</p>	
<p>6). The election shall be held in a manner as the person acting as chairman [sic] of the meeting shall direct, provided however, that:</p> <p>a). The quorum for such a meeting shall be at least 30 beneficial owners present personally or by proxy at the meeting;</p> <p>b). Votes of absent beneficial owners who have completed a proxy (which shall be in writing and signed by the beneficial owner, but shall not otherwise be required to be in any particular form) may be recorded; and</p> <p>c). The vote shall be conducted by show of hands unless a poll is called for by ten owners in which event the matter shall be determined by owners' voting in accordance with their shares.</p>	
<p>7). The person acting as chairman of the meeting shall transmit to the Registrar of the Maori Land Court the results of such election and shall request the Court to appoint trustees according to the tenor of the election.</p>	
<p>8). The Trustees shall meet together as they think fit and except as otherwise stipulated herein shall regulate their own procedure. The Trustees shall appoint one of their number to be Chairman and may likewise appoint a Secretary who need not be a Trustee for the timebeing and attached to the Trustees minute book shall be as valid and effectual as a resolution duly passed at a meeting of the Trustees.</p>	
<p>9). The Court may direct the Trustees to convene a meeting of beneficial owners to consider any matter and upon such terms and conditions as it thinks fit.</p>	

<p>10). Except where expressly restricted by the aforementioned trusts (and not being contrary to law) the Trustees shall have the power to do all such things as are necessary to facilitate the use management or alienation of the trust property or any part or parts thereof.</p>	
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