

Ruapuha Uekaha Hapu Trust

Presentation

Special General Meeting

24 October 2015
Tokikapu Marae
Waitomo

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Agenda

- Welcome and apologies
- Introduction from Chairperson
- Summary of Reserved Decision of Judge S Te A Milroy
- RUHT vision statement and strategic plan
- Overview of proposed new trust order
- Conclusion

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Introduction

- This SGM to explain:
 - the MLC's decision;
 - consequential directions;
 - outline principles and structure for new RUHT trust order; and
 - outline process for adopting new trust order.

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Applications before MLC

- Application A20060002649 filed by Norman Tane on 15 January 2006
- Application A20060002691 filed by Adrian Martin on 20 February 2006
- Application A20060026843 filed by the RUHT on 4 October 2006

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Litigation history

- First hearing in MLC on 16 October 2007
- 31 judicial conferences between 2007 and 2014
- Preliminary determination by MLC on jurisdiction to vary beneficial interests
- Appeal to MAC on class of beneficiary
- Postal vote conducted by MLC in October and November 2015
- Final hearing in MLC on 7-8 July 2015

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Reserved Decision

- Reserved Decision of Judge S TeA Milroy at 104 Waikato Maniapoto MB 95-162 dated 24 August 2015
- New trust order should give trustees the necessary powers and discretions to give effect to Wai 51 settlement and provide for ever expanding class of beneficiary
- Standard form ahu whenua trust order can be modified for particular requirements of RUHT

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Reserved Decision

- Tane/Martin proposal would not provide right balance between current and future generations
- There was insufficient support for Tane/Martin proposal amongst beneficiaries
- Tane/Martin proposal not an appropriate basis to vary trust order and should not be put to beneficiaries again

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Reserved Decision

- Judge Milroy concluded:

[120] For the reasons given above I determine that the variation of the trust order will follow the proposal of the RUHT trustees. I confirm that the RUHT is to develop a draft ahūwhenua trust order with comprehensive provisions.

[121] There are directions to the trustees of the RUHT as follows:

- a) The trustees are to consult with the beneficiaries to develop a new trust order consistent with the vision statement and strategic plan set out by the RUHT trustees. There is to be no amendment to the class of beneficiary or beneficial entitlement. Discussions should include election of trustees (including rotation of trustees), and the requirement of consent of beneficiaries to significant business ventures or investments and to mortgaging the corpus lands. Other provisions relating to Māori community purposes should also be included for discussion;
- b) The preparation of a detailed trust order, consultation with beneficiaries, and confirmation of the varied trust order by the beneficiaries at a general meeting is to take place within six months;
- c) The interim order limiting the purposes for which the RUHT may make expenditure or advances is discharged, provided that no further dividends may be declared in favour of the four whānau trusts;
- d) The trustees are to report to the Court within six months as to the resolutions reached in relation to the advances set out at paragraphs [110] to [117] above.

[122] The applications by Messrs Tane and Martin are dismissed.

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RUHT Vision Statement

- Vision statement suggested by MAC and directed by MLC
- RUHT vision statement filed with MLC and presented to beneficiaries at consultation hui
- New trust order to contain background including Crown's compulsory acquisition of HE 3B1 and 1A6, filing and mediation of Wai 51, and Wai 51 settlement

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RUHT Vision Statement

- Fundamental object of RUHT is the preservation and promotion of Wai 51 settlement
- No change to class of beneficiary or beneficial entitlement
- RUHT has discretion to make distributions direct to beneficiaries
- RUHT can make grants for Maori community purposes

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RUHT Strategic Plan

- RUHT strategic plan filed with MLC and presented to beneficiaries at consultation hui
- RUHT established as part of Wai 51 settlement and therefore must provide benefits to all beneficiaries
- RUHT has relationships with four whanau trusts
- RUHT has role of kaitiaki for caves and land on HE 8
- RUHT must adopt long term strategy before lease expires in 2027

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Process for adopting new trust order

- Outline principles and structure for new RUHT trust order at this SGM
- Workshop scheduled for 28 November 2015 to consider and incorporate feedback from beneficiaries
- New trust order to be approved at AGM scheduled for 20 February 2016

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Structure of new trust order

- Background
- Objects
- General power
- Specific powers
- Trustee duties and obligations
- General meetings
- Trustee appointment and removal
- Trustee meetings

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Objects

- Key section in any trust order
- Trustees must exercise powers and discretions to achieve objects
- Some objects will come from existing trust order (eg to conclude any arrangements under Wai 51, to ensure retention of HE 8)
- New objects to give effect to vision statement and strategic plan (eg to preserve and protect Wai 51 settlement, to operate tourism and other businesses at Waitomo)

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General Power

- Trustees have a general power under TTWMA
- General power subject to express restrictions on sale of HE 8
- General power also subject to any procedural limitations contained in the specific powers
- Relationship between general and specific powers confirmed by Court of Appeal in *Naera v Fenwick*

The logo consists of the letters 'KWL' in a white, bold, sans-serif font, centered within a solid black square.

Specific Powers

- Some specific powers will come from existing trust order (eg to employ, to invest and to take over existing obligations)
- Other specific powers will clarify existing requirements under the TTWMA (eg to alienate trust land, to acquire investment land, to promote title reconstruction and improvement)
- New specific powers (eg to make grants to beneficiaries, to promote business development, to deal with trust assets)

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Register of Beneficiaries

- Expanded duty to keep register of beneficiaries
- Inspection subject to reasonable restrictions on access
- Beneficiaries obliged to give notice of change of details
- Disclosure of information as required by law

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Records and accounts

- RUHT required to continue to prepare annual report, financial statements and audited accounts
- New obligation that RUHT keeps minutes whether hard copy or in electronic form

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General meetings

- Obligation to hold AGM
- Business of AGM
- Procedure for calling and holding SGM
- Notice requirements for all general meetings
- Quorum
- Voting procedure

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Trustees

- MLC will continue to remove, replace and appoint trustees by order under Part 12
- Retirement by written notice
- Election at AGM
- Trustee rotation clause
- Extended grounds for applying to MLC to remove trustee
- Advisory trustees

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Conduct and remuneration

- Trustees to develop and be bound by Code of Conduct
- Trustee fees to be paid from remuneration pool to be determined annually and notified to beneficial owners
- Individual fees based on trustee contribution and participation
- Remuneration pool must be reasonable and reflect performance and benchmarking

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Trust meetings

- Standard meeting procedures for trust meetings
- Trust meetings can be held by teleconference or other electronic means subject to certain conditions

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Trustee conflicts

- Important issue following recent Supreme Court decision in *Fenwick v Naera*
- New section will be adapted from template developed by MLC and reflects TTWMA
- Purpose of section is for the early identification and management of conflicts
- A conflict of interest will be defined to assist trustees and beneficiaries
- Where trustee has conflict he or she must not participate in discussion or vote

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Delegation and indemnity

- Trustees will have power to delegate
- There must be terms of delegation to a single trustee, committee or executive staff
- Trustees will retain power to limit or revoke any delegation
- Standard liability and indemnity clauses for trustees
- Trustees entitled to rely on legal or other expert advice

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Conclusion

The logo consists of the letters 'KWL' in a bold, white, sans-serif font, centered within a solid black square. This square is positioned in the bottom-left corner of a larger rectangular frame. The frame has a white background and a black border. At the bottom of the frame, there is a decorative graphic element consisting of a black triangle pointing downwards, which is partially overlaid by a grey, semi-transparent, curved shape that tapers towards the right.