

**Tena raa tatou koutou kaatoa
Ko koenei toku mihi kia koutou te kaupapa mo te kai tiaki
mai aia koutou taonga ki runga te whenua o Ruapuha raua
ko Uekaha.**

**Subject: Tane-letter to Beneficiaries in the Waitomo Caves
(Hauturu East 8 Block) Ahu Whenua Trust**

Many thanks for all the outstanding support you gave us back in 2007. Because of your support, we have now finally reached the point where all beneficiaries, including those over the age of 18 years, may now vote and have it recorded so that it will decide the future for us all.

Essentially, it is a choice between our Ahu Whenua Vision Document that recognises your individual Tupuna shares and will allow us to distribute accordingly.

The current RUHT situation has always operated under Whenua Toopu policy, and only distributes to their chosen charities.

All we ask is that you carefully consider this information, and measure it against the other proposals. I understand that the RUHT website will show the three trust variation proposals.

The RUHT hui is scheduled to be held early in 2013 at either Tokanganui a Noho, Te Kuiti or as a back up at Te Kotahitanga Marae Otorohanga, whereby the three trust variation proposals will be presented.

However, it is important to note that voting will be by **postal vote once all hui. and consultation** processes are complete.

Please find enclosed: the Tane Background Statement and Vision Document.

For more information, please feel free to contact:

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Tane – Background to a new RUHT Deed for the Waitomo Caves
(Hauturu East 8 Block) Ahu Whenua Trust

History

Tanetiorau Opataia (Tane) and his friend Fred Mace were the first to explore the Waitomo Caves on 28 December 1887. Tane created a tourism business based on the caves that drew international visitors. The caves business was so successful that the Crown became very interested and managed to buy shares from 5 owners. Over a number of years (1905/6 and 1911), the Crown finally gained direct control from the remaining 22 original owners through the Public Works Act (PWA). Despite resistance from owners, the Crown acquired other blocks in Waitomo through the PWA. With Hapu support, the Maori Land Court (MLC) vested blocks in Tane, including the caves entrance. Tane secured sole title to the caves entrance (3B1). Tane was a shareholder in the Caves block (HE6) and secured the majority shareholding by exchanging, trading and buying interests in the caves (HE6) from other Hapu members. In 1990, the two blocks (3B1 and HE6) merged into Hauturu East 8 block (HE8).

The Crown ran the caves and hotel business through the Tourism Department that later became the Tourist Hotel Corporation. In the 1980s, when the Crown was looking at privatising assets, Josephine Anderson lodged a claim on behalf of the Hapu with the Waitangi Tribunal for return of the caves, hotel and other lands. The claim is called WAI 51. The claim was not lodged on behalf of the original owners.

In 1990, the Crown agreed to return the caves (HE8) with a buy-back loan/debt to the Crown of \$1million. The Crown implemented the settlement through MLC. MLC returned title to the original 22 owners, but it had to meet the Crown's condition that a trust be created that conformed to the WAI 51 claim. MLC did create an Ahu Whenua trust deed, known as the Ruapuha Uekaha Hapu Trust (RUHT), to administer the caves on behalf of the descendants (beneficiaries) of the original owners (as per the WAI 51 claim). That deed does specify that the beneficiaries of HE8 are the descendants of the original owners. That 1990 deed said the trust had a "one year" purpose in which the trustees should consult beneficiaries towards formulating a final deed. That never happened.

The RUHT manages the caves assets through leasing to commercial tourism operators. RUHT receives over a \$1 million each year in royalties, and distributed about \$700,000 each year amongst four (non-owner) whanau trusts. Distributions have been as follows but never accorded with Tupuna shareholdings.

	<u>Received</u>	<u>ENTITLED TO</u>	<u>Difference</u>
Te Riutoto	12.5%	7.9376%	+4.5624%
Te Whatakaraka	12.5	7.9374	+4.5626
Haami Haereiti	24.0	15.8748	+8.1252
Tanetiorau	51.0	68.2502	(17.2502)

The 9 children of Tanetiorau who had issue were also original owners in HE8. The following 6 successions were done for the Tanetiorau interests:

1.	Tanetiorau Opataia	17.8594
2.	Whariki Huti (wife of Tane)	6.9031
3.	Ani Hokopu (mother of Tane)	6.9031

4.	Hare Purangi (brother of Ani Hokopu)	12.3391	
5.	Rangipataka (son of Tane) no issue	0.9982	
6.	Totorewa (son of Tane) no issue	2.3008	47.3037%

The 47.3037% was divided equally amongst the 9 children of Tanetiorau who had issue. As a result, they now have the following share percentages:

1.	Te Aue Tanetiorau	15.6093%	
2.	Okewhare	6.2542	
3.	Waiwhakaehu	6.2541	
4.	Kino	6.2546	
5.	Te Kiripango	6.2546	
6.	Kingi Taniora	6.2546	
7.	Mereana	6.2545	
8.	Purangi	7.5572	
9.	Parakau	<u>7.5571</u>	68.2502%

The other 7 owners, as listed below, hold the remaining 31.7498% shares:

1.	Charles Davis	1.9844	
2.	Edward Davis	1.9844	
3.	Joseph Davis	1.9844	
4.	Thomas Davis	<u>1.9844</u>	7.9376
5.	Te Whatakaraka	<u>7.9374</u>	7.9374
6.	Haami Haereiti	7.9374	
7.	Rangiwhakarewa Parone	<u>7.9374</u>	15.8748
	Total		31.7498%

The Tane trust proposal is the only one that recognises the shares held by the Tupuna and seeks distribution according to those shareholdings.

Challenges to RUHT

In 2006, two applications were made (Norman Tane and Adrian Martin) that challenged the actions of RUHT. One of the questions raised was the difference between “successors” and “descendants”. Descendants are those who are of direct bloodline to the original owners, and successors are those who succeed by will or intestacy.

Court Decisions

All issues ended up at the Maori Appellate Court (MAC). It confirmed that the beneficiaries of the RUHT are the “descendants” because the Crown formally stipulated that in the 1990 WAI 51 settlement. However, the RUHT is an MLC Ahu Whenua trust, and the interests of the original owners can still be succeeded to by application to MLC. Today those succession interests are “reversionary” and have no real effect whilst a trust is in place. But those entitled can still apply to MLC and obtain formal succession to their Tupuna.

MAC and MLC recognised and ruled that RUHT should not distribute to the 4 whanau trusts, because they are not beneficiaries of RUHT and never recognised nor distributed directly to the beneficiaries of RUHT. MAC required that the RUHT should establish a reliable list of beneficiaries. Thankfully MLC assisted and produced lists. The MLC's prepared list 1 accords with MLC records, and all those on it are confirmed as entitled voters/beneficiaries. RUHT has presented a second list (18 pages at present) which has names of people whose entitlement and descent is at present unconfirmed by MLC records. It is hoped that RUHT will post both the MLC's confirmed list and its own unconfirmed list on the RUHT website, or you can ask the Court. You should advise the Court if the list has any gaps or errors.

If you are not on the confirmed list approved by the court, you should provide evidence of your whakapapa to one of the original owners to the RUHT and Court. Unless the Court accepts your descent from one of the original 22 owners, you will not be a beneficiary of RUHT, and will not be able to vote or receive distributions from the Trust.

MLC is now reviewing the RUHT trust. Early in 2013, there is an opportunity for those on the Court's confirmed list, to **finally decide by postal vote**, as to how you view the future direction of the Trust, and whom you think should receive income from the Waitomo Caves block (HE8).

The Tane Trust Deed Proposal.

- The Tane Vision statement outlines a future direction for the Waitomo Caves (Hauturu East 8 block) Ahu Whenua trust.
- It seeks a dividend/distribution of at least 80% directly to individual beneficiaries.
- Distribution is based on the shareholdings held by the original Tupuna owners.

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TANE - SUGGESTED ELEMENTS OF A NEW RUHT TRUST DEED

1. The name of the Trust shall be "The Waitomo Caves Ahu Whenua Trust".

Objects of the Trust

2. The Trust is to be a management trust for the management of the HE8 land and derived assets and the distribution of at least 80% of the net income derived from those assets to beneficiaries over the age of 18 years. The bulk of the income must be distributed as a 'dividend' to individual beneficiaries.
3. A proportion of the net income (up to 20%) may be either
 - (a) Distributed as, or accumulated into special funds for, educational grants to pay tertiary education fees for beneficiaries over 18 years of age as set out in the Deed, or
 - (b) accumulated or invested for development of the Trust's asset base, for the benefit of current and future beneficiaries over the age of 18 years. There will be controls on such investment to focus on the HE8 asset, and prevent potential for conflicts of interest, and use of Trust property in 'adventures'. Approval to investments by beneficiaries over 18 years through the AGM or an EGM, will be required.

Trustees

4. The current trustees will remain until replaced by election according to the rotation below. The maximum number of trustees will be 6, with a minimum (and quorum) of 4. If any trustee retires, dies or is removed during the course of their tenure, the remaining trustees may not co-opt a replacement trustee. If, and only if, it is necessary to maintain the minimum number of trustees overall, the remaining trustees will call for nominations by beneficiaries over 18 years for election of a replacement trustee. Such a replacement trustee shall remain in place but retire at the time the person whom they are replacing would have retired in the rotation set out below. Any replacement trustee elected under this provision cannot act until approved by the Maori Land Court.
5. If the minimum number of trustees will remain notwithstanding the death, retirement or removal of one trustee, there is no requirement for the remaining trustees to hold an election for a replacement until that person would have retired in rotation in any event.

Trustee elections

6. The trustees shall be elected by the beneficiaries on a rotating basis, for a 4 year term. Accordingly, every second year one half of the trustees (i.e. three) will retire. They may be available for re-election for a maximum of 3 terms (i.e. 12 years in total). This gives a balance between accountability, turnover for fresh blood and ideas, and continuity.
7. Candidates for a trustee election can only be nominated by a beneficiary over the age of 18 years. The nomination must be accepted by the proposed candidate and supported by two nominators.
8. Voting for trustees shall be by postal vote of all beneficiaries over the age of 18 years entitled to vote at an AGM. The successful trustees will not take up their role until approved by the Maori Land Court.

Beneficiaries

9. The beneficiaries shall be all living descendants aged over 18 years of the 22 original owners of the land

	<u>Share %</u>	
1. Charles Davis	1.9844	
2. Edward Davis	1.9844	
3. Joseph Davis	1.9844	
4. Thomas Davis	1.9844	7.9376
5. Te Whatakaraka	7.9374	7.9374
6. Haami Haareiti	7.9374	
7. Rangihakarewa Parone	7.9374	15.8748
8. Te Aue Tanetiorau	10.3533	
9. Okewhare	0.9982	
10. Waiwhakaehu	0.9982	
11. Kino	0.9986	
12. Te Kiripango	0.9986	
13. Kingi Taniora	0.9986	
14. Mereana	0.9986	
15. Purangi	2.3012	
16. Parakau	2.3012	
17. Tanetiorau Opataia	17.8594	
18. Whariki Huti	6.9031	
19. Ani Hokopu	6.9031	
20. Hare Purangi	12.3391	
21. Rangipataka	0.9982	
22. Totorewa	2.3008	68.2502
		Total 100%

10. To be recorded as a beneficiary of the trust, each person must establish descent through whakapapa, this to be recorded by the trustees on a database searchable by any other beneficiary. Any dispute as to entitlement will be referred to the Maori Land Court for determination. Beneficiaries will include adopted children of descendants and other parties who have established a right to succession as 'owners' before the Maori Land Court, including owners of life interests but will not include whangai.
11. The list of beneficiaries is to be reviewed annually by the trustees and amended to accommodate any deaths, attainments of the age of 18, and new registrations which have occurred during the previous 12 months. Any changes to the list of beneficiaries, with supporting evidence, must be made in sufficient time prior to each AGM for the revised list to be used for notification of the AGM under clause 19 below.
12. The list of beneficiaries shall be made available to any beneficiary over the age of 18 years upon request in printed form including name, address, d.o.b. and whakapapa links. Any beneficiary over the age of 18 years will have the ability to make submissions to the trustees on the status of any person on the list. Where any dispute is not resolved by the trustees to the beneficiary's satisfaction, the beneficiary may apply to the Maori Land Court for determination of their status as a descendant of one of the original owners of Huaturu East 8.

Trustees distribution powers

13. The trustees must distribute to beneficiaries over the age of 18 a minimum of 80% of the net income each year, after deduction of operational expenses approved by the AGM, and trustees' remuneration approved by the AGM and Maori Land Court.
14. Distribution shall be under two heads:
 - (a) First, (and subject to clause 16 below) up to 20% of the net income each year may be paid out by the Trustees to particular beneficiaries over the age of 18 years for educational purposes set out in the Objects clause, or accumulated in a scholarship or similar fund dedicated to such educational purposes. The names of recipients of all such grants, and the amount and purpose of such grants shall be set out in the annual statement of accounts of the Trust.
 - (b) Second, at least 80% of the net income must be distributed by a cash distribution to all beneficiaries properly registered on the trust's list of beneficiaries for the year concerned. Distribution shall be to individual beneficiaries over the age of 18 years pro rata the interest share held in HE8 by the original owner(s) to whom they whakapapa. If a beneficiary whakapapas to more than one original owner, that beneficiary will receive distributions relating to all the original owners to whom he/she whakapapas.
15. To enable the foregoing to occur, the trustees must:
 - (a) Establish through the Maori Land Court the proper shares held by each of the 22 original owners in HE8;
 - (b) Record in the list of beneficiaries, which beneficiaries whakapapa to each of the 22 original owners and exclude all others; and
 - (c) In each year distribute to those beneficiaries who are over 18 years of age according to those whakapapa links (i.e. per stirpes, based on the interest of the ancestor who was one of the original 22 owners).
16. The trustees may distribute more than 80% of the net income under the preceding clause with the approval of the AGM.
17. In lieu of making educational grants, the trustees may keep up to 20% of the net annual income in a reserve fund and accumulate that or invest it to develop the trust assets for the benefit of current and future beneficiaries, but only in line with the following provisions in clause 18.

Trustees' investment powers

18. Investment under clause 17 must be for the development of the HE8 land asset (as per the TTWM Act) and must be approved by the AGM. Trustees can invest in other assets only if:
 - (a) The specific investment is approved by the AGM;
 - (b) The investment does not involve, directly or indirectly, Trust funds being used in or by any entity in which any trustee or associated person of any trustee has an interest or management role;

- (c) The investment does not involve charging or committing any asset or future income of the trust:
- (d) The trust retains a right of withdrawal from that investment at not more than 3 yearly intervals. If the trust decides not to withdraw from such an investment after each three year period, that decision must be subject to further AGM consent.

AGM

19. The trustees shall hold an AGM of beneficiaries every year, within 6 months after the end of the Trust's financial year. Notice of the AGM, including its time, date, place and business shall be posted or emailed to all beneficiaries over the age of 18 years on the Trust's list for the year not less than 21 days prior to the meeting. The business of the AGM shall include the presentation to, and approval by, beneficiaries of:
- (a) The minutes of the last AGM and/or EGM.
 - (b) The audited financial accounts of the trust for the year including the audit report;
 - (c) The trustees' proposed 5 year business plan;
 - (d) The trustees' proposed budget for the coming year;
 - (e) The trustees' investment proposals for the forthcoming year;
 - (f) The trustees' distribution from the net income of the past year;
 - (g) The trustees' remuneration for the forthcoming year;
 - (h) Election of trustees (every second year).
 - (i) Any special resolution of which a beneficiary has given notice in sufficient time to be included in the notice of meeting;
 - (j) Voting papers, proxy forms and a stamped addressed envelope for return of the same.
20. Each beneficiary over the age of 18 years listed on the trustees' list as approved by the Maori Land Court shall be entitled to 1 vote at the AGM. Proxy voting is permitted according to MLC proxy rules.

Trustee meetings

21. The trustees will elect their own chair each year. The quorum of trustees for any meeting of trustees shall be 4.
22. The trustees can meet physically or by telephone or video link. Trustee meetings will be held 3 monthly. Any two trustees can require the chairman to call a special meeting of trustees.
23. The chairman will ensure that proper minutes and records are kept of trustee meetings. The trustees will maintain proper financial accounts of the operation of the trust. The accounts will be audited annually in time for distribution of the audit certificate to beneficiaries with other documents being sent out for the AGM. Copies of all minutes of trustees' meetings and all AGMs and EGMs, and all accounts and

audit reports shall be lodged with the Maori Land Court and be available for inspection by any beneficiary.

EGMs

24. The chairman of Trustees may of his own volition, or must on the request of not fewer than 3 Trustees or 50 beneficiaries over the age of 18 call an EGM of beneficiaries.
25. The notice from Trustees or beneficiaries requiring the calling of an EGM must give a fair indication of the matters to be discussed at the EGM and the wording of any resolutions proposed to be put to the meeting. Provided that the Chairman shall not accept as business for an EGM any topic, the substance of which has been the subject of a vote of beneficiaries in general meeting during the prior 24 months.
26. The Chairman shall call any EGM by not less than one month's notice in writing or by email to beneficiaries over the age of 18, such notice to
 - (a) include the names of those requiring the meeting,
 - (b) the business to be discussed and
 - (c) the wording of resolutions proposed by those requiring the meeting.

The business of the EGM shall be limited to those matters.

27. Beneficiaries over the age of 18 may attend any EGM either in person or via written proxy and speak and vote. Attendances and proxies shall be recorded at the commencement of the meeting. Each beneficiary attending either in person or by proxy shall be entitled to one vote. No other person shall be entitled to speak unless approved by the meeting, or to vote.
28. Proper minutes of the EGM shall be kept, and forwarded immediately after the meeting to the Court, together with a copy of the notice calling the meeting, details of those attending either in person or by proxy, and a record of all resolutions and voting on them.
29. Any matter which requires approval of the beneficiaries at an AGM may be approved by the beneficiaries over the age of 18 in an EGM, provided that where such a resolution requires approval of the Court, it shall not have effect until the Court's approval has been also obtained.

Liability of trustees

30. The trustees will be personally liable for the proper operation of the trust. In the event that the trustees fail to comply with any obligation under this trust deed, or to provide in a timely fashion information required to be supplied to the Court or to beneficiaries, any beneficiary may apply to the Court for an order requiring the trustees to comply within a stipulated time or appear before the Court and explain the reasons for such default.

Review of trust

31. The operation of the trust shall be reviewed automatically every 5 years by the Maori Land Court without the need for application by any person.

Termination of the Trust

32. If the Trust shall terminate the reversionary interest in the HE8 block shall be returned to those who have established succession interests in it through the Maori Land Court, or to original deceased owners where succession has not taken place.