

NOTE:

1. The enclosed terms of trust are an **example** of a **COMPREHENSIVE** trust order which you may use for your whānau trust. The actual content of the trust order may differ depending on your circumstances and you may customise this **example** to best fit any terms of trust you have set for your trust.
2. You should read through each clause carefully and alter, amend or delete where appropriate to suit your circumstances.
3. Please note that this **example** is intended to provide you with general information only. The Ministry of Justice makes no warranty, express or implied, nor assumes any legal liability or responsibility for the accuracy, correctness, completeness or use of any information contained herein.
4. Any final terms of trust are subject to confirmation by the Māori Land Court in accordance with sections 214 or 244 of Te Ture Whenua Māori Act 1993.
5. A checklist of different clauses which require consideration by the beneficiaries is set out on the next page.
6. If you require assistance, please contact your local Māori Land Court office.

CHECKLIST

The purpose of this checklist is to provide a reference to the terms within this draft trust order which require further consideration by the owners.

Page no.	Term	Description
1	1.1	Trust Name
	1.2	Tipuna Name
	1.3	The Beneficiaries of the Trust
2	3.1	The minimum and maximum number of Trustees
3	3.7 and Schedule 1	Default Trustee duties
4	4.1(b)	The frequency of general meetings
6	7.1	The frequency of reviews of trust

MĀORI LAND COURT

STANDARD WHĀNAU TRUST ORDER

INTRODUCTION

- A. The Māori Land Court ("**Court**") has constituted a whānau trust for the purposes set out in this Trust Order ("**Order**").
- B. The Trustees have consented to become the Trustees of this Trust subject to the powers, duties and obligations set out in this Order.
- C. The Trustees have acknowledged that familiarity with this Order is critical to their role as trustee.
- D. The Court gives the Trustees control of the Trust Property so that the Trustees can deal with the Trust Property, for the benefit of the Beneficiaries. How the Trustees may hold and deal with the Trust Property is subject to the terms of this Trust.
- E. Any further property that may from time to time be acquired by the Trustees for the purposes of the Trust is also Trust Property.
- F. The Trustees recognise that they must make all decisions on behalf of the Trust and are not bound by resolutions of the Beneficiaries.

TERMS OF TRUST ORDER

1. TRUST NAME, TIPUNA AND BENEFICIARIES

Trust Name

- 1.1 The trust created by this Court order shall be known as **[INSERT TRUST NAME]** ("the Trust").

Tipuna

- 1.2 The tipuna of this Trust is **[INSERT NAME(S)]** ("the Tipuna").

Beneficiaries

- 1.3 The beneficiaries of this Trust are **[the Tipuna and]** all of the descendants of the Tipuna ("the Beneficiaries").

Register of Beneficiaries

- 1.4 The Trustees must maintain a register of the names and contact details of the Beneficiaries. The Beneficiaries are responsible for providing to the Trustees their names and up to date contact details.

Comment Box

1. If the Beneficiaries are all of the descendants of one or more tipuna (for example, mum and dad), then name those tipuna in clause 1.2. If only certain members of the whānau (for example, not all of the siblings of mum and dad) are vesting their interests into the whānau trust, then name each of the persons vesting their interest in clause 1.2.
2. If any of the Tipuna are living when the whānau trust is established, include the reference to “the Tipuna and” in clause 1.3.

2. PURPOSES OF THE TRUST (OBJECTS)

2.1 The objects of the Trust shall be to:

- (a) manage the Trust Property to the best advantage of the Beneficiaries;
- (b) preserve the interests of the Beneficiaries; and
- (c) provide a pool of income arising from the Trust Property to be applied for the purposes of promoting the health, social, cultural and economic welfare, education and vocational training and general advancement in life of the Beneficiaries.

3. TRUSTEES

Number of Trustees

3.1 The Trust must at all times have no less than **[1]** Trustees and no more than **[1]** Trustees.

Appointment and replacement of Trustees

3.2 Only the Court can appoint or replace Trustees.

3.3 If a new Trustee is to be appointed (including as a replacement for an existing Trustee), the Trustees must:

- (a) call a meeting of the Beneficiaries to discuss the appointment of a new Trustee;
- (b) conduct a vote at that meeting to determine whether the new Trustee should be appointed; and
- (c) in order to complete an appointment, apply to the Court as soon as reasonably practicable after that meeting seeking orders to appoint the new Trustee.

Removal of Trustees

3.4 Only the Court can remove a Trustee.

3.5 Without limiting the jurisdiction of the Court, the Court may remove a Trustee where:

- (a) The Trustee resigns or dies;
- (b) The Trustee is an undischarged bankrupt;
- (c) The Trustee is or will become incapable of carrying out his or her duties satisfactorily because of physical or mental illness or incapacity or prolonged absence or where he or she is subject to a property order under the Protection of Personal Property Rights Act 1988;
- (d) The Trustee has been absent for three (3) consecutive trustee meetings without reasonable excuse;
- (e) The Trustee is convicted of any offence whereby he or she is sentenced to prison and is still serving such sentence or is convicted of a criminal offence involving dishonesty.

Mandatory Trustee duties

3.6 Each Trustee must perform the following mandatory duties:

- (a) Each Trustee must know the terms of the Trust.
- (b) Each Trustee must act in accordance with the terms of the Trust.
- (c) Each Trustee must act honestly and in good faith.
- (d) Each trustee must act for the benefit of beneficiaries and to further the purpose of the Trust (in accordance with the terms of the Trust).
- (e) Each Trustee must exercise the Trustee's powers for proper purpose.

Other Trustee duties

3.7 Each Trustee must perform the duties set out in Schedule 1.

Comment Box 2

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| <p>1. The Trusts Act 2019 (the Trusts Act) has introduced 'mandatory' duties that must be</p> |
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performed by trustees. These duties are listed at paragraph 3.6 (a) to (e).

2. The Trusts Act also includes 'default' duties that must be performed by each Trustee, unless they are expressly excluded by the Trust order. These duties are set out in Schedule 1. These duties may be amended or excluded at the discretion of the Beneficiaries.
3. Where the default duties listed in Schedule 1 conflict with provisions made in Te Ture Whenua Maori Act 1993, the duty has been amended or expressly excluded.

Trustee powers

- 3.8 The Trustees have the powers set out in Schedule 2.

Trustee reports to the Court

- 3.9 If required by the Court, a Trustee must file in the Court a written report and be available to the Court for questioning on any matter relating to the administration of the Trust or to Trustee performance.

4. MEETINGS

General meetings

- 4.1 The Trustees must call a general meeting of the Beneficiaries:
- (a) Within 12 months of the date of establishment of the Trust; and
 - (b) After that, at least once every **[INSERT NUMBER]** years.
- 4.2 The Trustees must take all reasonable steps to notify the Beneficiaries of any general meeting of the Beneficiaries.
- 4.3 The Trustees must keep an attendance record and minutes of all general meetings of the Beneficiaries.

Trustee meetings

- 4.4 The Trustees must meet as regularly as necessary to conduct the business of the Trust.
- 4.5 A majority of Trustees shall constitute a quorum for a valid Trustee meeting.
- 4.6 Trustees may attend meetings by electronic or digital means, provided they can and do remain in contact with the other Trustees at all times throughout the meeting.

- 4.7 The Trustees must keep minutes of all of their meetings.

Meeting procedure

- 4.8 Except as set out in this Chapter 4, the Trustees may regulate meeting procedure as they think fit.

5. FINANCIAL MATTERS

Control of funds

- 5.1 All monies received by or on behalf of the Trust must be paid to the credit of the Trust's bank account. All payments from the Trust's bank account must be approved by a majority of the Trustees. All withdrawals on the Trust's bank account must be signed or authorised by two (2) Trustees.

Reports and accounts

- 5.2 The Trustees must:
- (a) keep proper annual accounts;
 - (b) if the gross annual income of the Trust is greater than \$10,000, arrange for the annual accounts to be prepared by a chartered accountant;
 - (c) at each general meeting of the Beneficiaries, produce reports and accounts for each year in respect of which they have not earlier presented reports and accounts.

Māori community purposes

- 5.3 If approved by an order of the Court, the Trustees may apply the whole or any part of any specified portion of the income derived from the Trust Property for Māori community purposes in accordance with section 218 of the Act.

Distributions

- 5.4 The Trustees have the discretion to make distributions or provide benefits to any Beneficiary. However, the Trustees must ensure that distributions or benefits:
- (a) are provided on a fair and equitable basis having regard to the Beneficiaries as a whole and the objects of the Trust; and

- (b) do not unfairly favour one or more Beneficiaries to the detriment of other Beneficiaries.

6. ADDRESSING GRIEVANCES

- 6.1 If any Trustee or Beneficiary is aggrieved by a decision, action or omission of the Trustees ("**Applicant**"), that person may first give written notice of the grievance to the Trustees.
- 6.2 If the Applicant's grievance is not satisfactorily addressed within a reasonable period of time, the Applicant may in writing, notify the Trustees of his or her intention to have his or her grievance referred to a general meeting of the Beneficiaries.
- 6.3 If the Trustees fail to convene a general meeting of the Beneficiaries within 2 months of receiving the written notice specified above at clause 6.2, the Applicant may file in Court an application pursuant to section 238 of the Act or section 68 of the Trustee Act 1956 requesting that the Court:
 - (a) review any decision, action or failure to act of the Trustees; and/or
 - (b) give directions in relation to any action or failure to act or contemplated action or failure to act of the Trustees; and/or
 - (c) grant an injunction preventing the Trustees from taking any further steps in relation to the decision, action, or failure to act.

7. MISCELLANEOUS

Review of trust

- 7.1 The Trustees must apply to the Court for a review of the Trust once every **[5]** years.

Variation

- 7.2 Only the Court can vary this Order. The Trustees may at any time apply to the Court to vary this Order, PROVIDED THAT:
 - (a) the Beneficiaries have had sufficient notice of the variation and sufficient opportunity to discuss and consider it; and
 - (b) there is a sufficient degree of support for the variation among the Beneficiaries.

Additional interests

- 7.3 If, after the constitution of this Trust, any additional Māori land interests are vested in the name of any person who has vested Māori land interests into this Trust, those additional interests shall be included as Trust Property of this Trust by application to the Court by the Registrar without notice to the Beneficiaries.

Records

- 7.4 The Trustees must keep competent records and retain the following core Trust documents, so far as is reasonable:
- (a) This Trust Order and any other document that contains the terms of the Trust;
 - (b) Any variations made to the Trust Order or terms of the Trust;
 - (c) Records of the Trust Property that identify the assets, liabilities, income and expenses of the Trust and that are appropriate to the value and complexity of the Trust Property;
 - (d) Any records of Trustee decisions made during the Trustee's trusteeship;
 - (e) Any written contracts entered into during the Trustee's trusteeship;
 - (f) Any accounting records and financial statements prepared during that Trustee's trusteeship;
 - (g) Documents of appointment, removal, and discharge of Trustees (including any Court orders appointing or removing Trustees);
 - (h) Any other documents necessary for the administration of the Trust; and
 - (i) Any documents referred to prior that were kept by a former Trustee during the person's trusteeship and passed on to the current Trustees.

- 7.5 These core documents may be held by one Trustee on behalf of the group of Trustees. All Trustees must retain a copy of this Trust Order and any variations.

Definitions

- 7.6 In this Order, unless the context otherwise requires:

Act means Te Ture Whenua Māori Act 1993.

Court means the Māori Land Court or Māori Appellate Court.

Trust Property means property listed as Trust Property at the time the Trust was created and any further property which may in the future be acquired by the Trustees from any source for the purposes of the Trust. Such property may include the moneys and investments held by the Trustees on behalf of the Trust from time to time.

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SCHEDULE 1

Default Trustee duties

1. DEFAULT TRUSTEE DUTIES

- 1.1 When administering the Trust (other than when exercising a discretion to distribute Trust Property), each Trustee must exercise the care and skill that is reasonable in the circumstances, having regard, in particular:
- (a) to any special knowledge or experience that the Trustee has or that the Trustee holds out as having; and
 - (b) if the person acts as a Trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- 1.2 When exercising any power to invest Trust Property, each Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard, in particular:
- (a) to any special knowledge or experience that the Trustee has or that the Trustee holds out as having; and
 - (b) if the person acts as a Trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- 1.3 Each Trustee must not exercise a power of a Trustee directly or indirectly for the Trustee's own benefit. This duty does not extend to any benefit the Trustee may receive as a Beneficiary, directly or indirectly, from the exercise of their own power.
- 1.4 Each Trustee must consider actively and regularly whether the Trustee should be exercising 1 or more of the Trustee's powers.
- 1.5 Each Trustee must not bind or commit Trustees to a future exercise or non-exercise of a discretion.
- 1.6 A Trustee must avoid a conflict between the interests of the Trustee and the interests of the Beneficiaries.
- 1.7 Duty of impartiality:

- (a) Each Trustee must act impartially in relation to the Beneficiaries, and must not be unfairly partial to one Beneficiary or group of Beneficiaries to the detriment of others.
 - (b) This does not require a Trustee to treat all Beneficiaries equally (but all Beneficiaries must be treated in accordance with the terms of the Trust).
- 1.8 Each Trustee must not make a profit from the trusteeship of the Trust. This does not include any distribution the Trustee may receive as a Beneficiary of the Trust.
- 1.9 Each Trustee must not take any reward for acting as a Trustee, but this does not affect the right of a Trustee to be reimbursed for the Trustee's legitimate expenses and disbursements in acting as a Trustee.
- 1.10 The duty for Trustees to act unanimously is expressly excluded. Trustees may act by majority pursuant to section 227 of the Act.
- 1.11 Each Trustee must use reasonable endeavours to:
 - (a) provide each ahu whenua trust or Māori incorporation in which the Trust holds interests with current contact details for the Trust; and
 - (b) procure that any dividends or other benefits to which the Trust is entitled from each ahu whenua trust or Māori incorporation in which the Trust holds interests are paid to the Trust.

SCHEDULE 2

Trustee powers

Trustees' powers to be used for purposes of the Trust

- 1.1 The Trustees' powers may only be used by the Trustees to give effect to any one or more of the objects of the Trust. Where a Trustee power is exercised for any other reason or purpose it is not a valid use of the power and the Trustee(s) responsible is/are accountable for any loss or damage caused by the invalid exercise of power.

Role of Beneficial Owners' views

- 1.2 When exercising their powers, the Trustees are not bound by, or required to comply with, the resolutions made by Beneficiaries at a general meeting of Beneficiaries. The Trustees are, however, required to consider those views.

General powers of Trustees

- 1.3 The Trustees have the following general powers:
- (a) all the powers necessary to manage the Trust Property including, in relation to the Trust Property, all the powers of an absolute owner of the property; and
 - (b) all the powers necessary to carry out the terms of the Trust, including powers incidental to those in paragraph (a).

Status of provisions on specific powers of Trustees

- 1.4 Paragraph 1.5 below sets out specific powers of the Trustees and the way in which those powers may be exercised, but they are not an exhaustive source or description of the specific powers of a trustee.
- 1.5 The Trustees have the powers to:
- (a) **To distribute;** to allocate or distribute all or any of the funds arising from the Trust in accordance with the objects of the Trust.
 - (b) **To set aside cash reserves;** to set aside such cash reserves as the Trustees think prudent from the net proceeds for contingencies (even if doing so will result in a distribution not being made to the Beneficiaries) or for capital expenditure or for expansion, provided that in doing so the Trustees:

- (i) comply with their trustee duties; and
 - (ii) consider that their decision to do any of the above will advance the Purposes of this Trust.
- (c) **To lend or invest;** to lend or invest all or any money coming into the Trustees hands in such a manner and upon any securities in which trust funds may be invested by trustees in accordance with the Trustee Act 1956 or in accordance with any other statutory authority.
- (d) **To pay own costs;** from the revenues derived from the operation of the Trust to pay all costs expenses and disbursements incurred by them including the costs of any person or persons employed by the Trustees in the administration of the Trust or in furtherance of the objects of the Trust, including the reasonable costs and travel expenses of the Trustees in attending Trust meetings or attending to Trust business at the rates from time to time fixed under the Fees and Travelling Allowances Act 1951.
- (e) **To buy, lease or exchange;** to purchase, take on lease, take in exchange, hire or otherwise acquire any real or personal property and rights and privileges which the Trustees may think necessary or convenient in furtherance of the objects of the Trust.
- (f) **To employ;** to employ persons to carry out the objects of the Trust.
- (g) **To represent the Beneficiaries and the Trust;** to initiate and respond to and to represent the Beneficiaries and the Trust in respect of any proceedings or process whatsoever before any court, tribunal, inquiry, arbitration, council hearing, select committee hearing or any other forum in relation to matters that affect or are likely to affect the Trust Property or the affairs of the Trust and to represent the Beneficiaries in any matters relating to the Trust Property.