

**NGATARAWA AHU WHENUA TRUST - (1A3A, 1A3B, 1A3C, 2A3B1B2 Blocks)
and OHITI WAITIO 1E3A AHU WHENUA TRUST**

ELECTION INFORMATION PACK 2023

Background

An election of the Trustees of the Ngatarawa 1A3A, 1A3B, 1A3C and 2A3B1B2 Lands Trust and the Ohiti Waitio 1E3A Trust, is taking place as part of Trusts AGM's being held on Saturday 2 December 2023.

Within this information pack are the following;

- A link to the Māori Land Court Trustees Role and Duties on the MLC website
- A link to the Trusts 'Trust Orders' on our website
- A link to past reports and minutes of AGM's on our website

Attached is the following:

- The Nomination form
- The Proxy form
- The Multiple Representation form

Q&A's

1. **How many Trustees does the Trust have and who are they?** At the moment there are four Trustees, they are: Kathleen Kireka, Olivia Thompson, Ruth Wong and Timoti Gemmell. The current Trust Order is on the bases of there being five Trustees as a minimum. The current trustees recommend 4 trustees is sufficient, however this can be discussed by the owners at the AGM. The current rotation policy requires one half of the Trustees to retire in the third year after the Trust Order was put in place with the remaining half three years after that. The new proposed variation is the same (half and half), the first half in December 2026 and the remaining half in December 2029.
2. **Who can become a Trustee?** To become a trustee of a Māori land trust you must demonstrate that you have the skills and ability to effectively manage the land. There is a desire that the Trustees be a landowner.

You must demonstrate that as a current or potential trustee you are not one of the following:

- a) Insolvent (a bankrupt or a director on a company that is subject to liquidation)
- b) Subject to a No Asset Procedure administration by the official assignee
- c) Convicted of a crime involving dishonesty or fraud
- d) A minor - under 20 years of age
- e) Someone who has been removed from a trust or incorporation by the Māori Land Court or any other court for misconduct in the administration of a trust or incorporation
- f) By reason of your age or mental or physical disablement are unable to manage your own affairs.
- g) A trustee cannot be indebted to the Trust.

3. **Who can nominate and second a candidate?** Land owners present at the meeting or present by proxy.
4. **Where is the nomination form?** The nomination form is attached to this document and is also downloadable from the website or you can contact the secretary Ruth Wong Phone: 027213547 Email: ngatarawa.ohiti@gmail.com.
5. **Do Trustees get paid?** Yes, Trustees are paid \$125.00 per meeting for up to 12 meetings per year as per the Trust Deed.
6. **Who can vote?**
 - a) Every beneficial owner present in person or by proxy shall be entitled to vote.
 - b) A person acting as proxy for any other beneficial owner shall be entitled to vote separately for each person for whom he/she acts.
 - c) Whanau Trusts are entitled to one vote, however the majority of the trust must be present in person or by proxy.
 - d) Whanau Trust Voting - Where the Beneficial Owner is a Whanau Trust, that Trust shall be entitled to one vote regardless of the number of Trustees. A majority of Trustees **must** be present at the meeting (in person, by proxy or by completing the Multiple Representative Form) for that Trust.
 - i If there are **two** Trustees of a Whanau Trust, **both** must attend either in person (or by a properly completed Proxy or Multiple Representative Form).
 - ii If there are **three** Trustees, **two** must attend either in person (or by a properly completed Proxy Form or Multiple Representative Form).
 - iii If there are **four** Trustees then **three** must attend either in person (or by a properly completed Proxy or Multiple Representative Form).
 - iv If there are **five** Trustees then **three** must attend either in person (or by a properly completed Proxy or Multiple Representative Form).
7. **What does Proxy Vote mean?**
 - a) If an owner can't be present at a hui, they can appoint a 'proxy' to attend on their behalf. This means that even if someone can't be at a hui in person, they can still take part in making decisions.
 - b) The Proxy must be at least 20 years of age.
 - c) The proxy must be appointed by notice in writing using the Proxy form attached to this document – received by the Election Officer before the AGM Election meeting starts.
 - d) The form must be signed by the owner. The signature of the owner must be witnessed, and the witness must also sign the form.
 - e) If the owner and proxy have fulfilled all requirements noted here, then the proxy may attend and be heard in the meeting and vote as if the proxy were the owner.
 - f) For whanau Trusts, they have one vote only, however the majority of all the Trustees in the Trust must be present at the meeting in person or by proxy who support the vote for the vote to be accepted.
8. **What is the Multi Representative Form/Explanation Form?**

The purpose of the Multi Representative Form is to make it easier for people who are acting as representatives. A Representative is an Executor, Attorney, Trustee or some other person

that is not the owner themselves personally. Trustees can use this form instead of a proxy form. See attached the **Explanation Form**. If you have any questions, please ask the Election Officer.

9. **When will we know the outcome of the Election?** The Election outcome will be announced on the day of the AGM Election.
10. **What are the responsibilities of a Trustee?** Your key role is to maximise the assets and minimise its liabilities of the trust to the best of your ability and within law. Trustees powers rights and obligations are set out in the Trust Order. An elected trustee formerly becomes a responsible trustee when the Court has granted an order of appointment. More information can be read on the attached Māori Land Court Trustees Role and Duties document.
11. **What should I expect if I am appointed?** Being a Trustee is a big responsibility. If you want to know more, you can download and read the Māori Land Court Trustees Role and Duties document. Basically, you need to:
 - a) Have time to devote to the role and attend meetings
 - b) Play an active role in meetings - read documentation, contribute to meetings, ask questions, request more information, and challenge the korero.
 - c) Be able to read information and make sound decisions based on information.
 - d) Maintain a high standard of conduct and show respect for others opinions.
 - e) Have good communication skills and smartly respond to emails, texts and phone calls.
 - f) Always have the interest of the beneficiaries in mind
12. **What is the Election Process?**
 - a) Nominations are now open. If you are interested in being a candidate to be a Trustee, you must start the process of getting the nomination form filled in. You need a nominator and a seconder/witness who are both land owners who will be present at the AGM meeting either in person or by proxy.
 - b) As part of the nomination process, you will have the opportunity to introduce yourself at the meeting and inform those present at the meeting of your intentions to become a trustee. If you so choose, a brief description of this information can be given to the election officer to read out.
 - c) Nominations can be handed to the secretary Ruth Wong – prior to or on the day of the AGM Election which is Saturday 2 December 2023. In future, nominations will close prior to the AGM Election so information can be sent to owners prior to the meeting for postal voting option.
 - d) On arrival to the AGM on Saturday 2 December 2023, all attendees will sign the attendance register. Only those eligible to vote will be given a voting form that will coincide with a register for eligible landowner voters. The voting paper will show a unique number with voting for the candidate of your choice. The voting paper will coincide with the registers unique number.
 - e) At the AGM Election, the Election Officer will explain the process and declare the election open and invite all submissions of the nominations to be handed in. There will be a short time allocated for this to happen, so it is important that if you are interested in being nominated, that you do the paperwork prior to the meeting.

- f) When all nominations are received, the Election Officer will declare the nominations closed and peruse the nominations received and announce the eligible candidates or nominees names. If the right amount of nominations are received for the vacancies, they will automatically be appointed without a vote, however if more nominations are received, a voting process will occur and only those land owners with the voting papers will be able to vote.
- g) The vote will be by secret ballot. Landowners will vote for one candidate. This will be explained by the Election Officer.
- h) Candidates may have an opportunity to share their aspirations before the voting takes place or if they choose, the Election Officer can read out their candidate profiles.
- i) When everyone understands, the voting part of the election, voting is declared open and the secret ballot takes place. When all eligible landowners have voted, the voting is declared closed.
- j) The Election Officer takes the ballot box to a private area to count the votes in accordance with the attendance register of eligible voters. Candidates can send a scrutineer in with the Election Officer if they wish, to witness this process.
- k) The Election Officer announces the highest polling candidates as successful and congratulates the landowners.
- l) The 2023 Triennial Election is declared closed.

13. Who is the Election Officer? The Election Officer is Ruth Wong, the Trusts Secretary. Ruth Wong has declared that she and her 'Huia Tunua Whanau Trust' will not be participating in this Election as nominators or voters, to allow her to administer this Election Process with no conflict of interest.

Attached Forms and links

- **Proxy Form**
- **Nomination Form**
- **Multi Representative Form**

**NGATARAWA AHU WHENUA TRUST - (1A3A, 1A3B, 1A3C, 2A3B1B2
Blocks) and OHITI WAITIO 1E3A AHU WHENUA TRUST
Annual General Meetings
Saturday 2 December 2023
Held at Korongata Marae, Maraekakaho Road, Bridge Pa**

PROXY FORM

In the matter of the Ahu Whenua Trusts AGM and election of trustees of the above-mentioned blocks of land to be held at Korongata Marae in Hastings on Saturday 2 December 2023 -

I, _____ being an individual owner or trustee of a Trust in the above - mentioned block or blocks of land, do hereby appoint: _____ as my proxy. I direct my proxy to vote on my behalf in such manner as he or she thinks fit.

Date: _____

Signature of owner *or* trustee: _____

Signed in the presence of: _____ (witness)

Full name of witness: _____ (20yrs & over)

Occupation: _____

Address: _____

This completed proxy form must be lodged with the secretary by Saturday 2 December 2023 – prior to the AGM-Election. Election Officer: Ruth Wong, Mobile 027 2139547 – ngatarawa.ohiti@gmail.com

Form Approved. Signed by Ruth

**NGATARAWA AHU WHENUA TRUST - (1A3A, 1A3B, 1A3C, 2A3B1B2
Blocks) and OHITI WAITIO 1E3A AHU WHENUA TRUST**
Saturday 2 December 2023
Held at Korongata Marae, Maraekakaho Road, Bridge Pa

NOMINATION FORM

In the matter of the Ahu Whenua Trusts election of trustees of the above-mentioned blocks of land to be held at Korongata Marae, Maraekakaho Road, Bridge Pa, Hastings on Saturday 2 December 2023 as part of the AGM Agenda.

NOMINATOR

I _____ BEING AN OWNER/TRUSTEE IN THE ABOVE
MENTIONED BLOCKS DO HEREBY NOMINATE: _____ AS A
TRUSTEE CANDIDATE ON THE BOARD.

NOMINATORS SIGNATURE: _____ DATE: _____

NOMINEE

I _____ HAVE READ AND UNDERSTAND THE ROLES,
RESPONSIBILITIES AND REQUIREMENTS OF A TRUSTEE AND I ACCEPT THIS NOMINATION.

NOMINEES SIGNATURE: _____ DATE: _____

WITNESS

THIS NOMINATION FORM WAS SIGNED IN THE PRESENCE OF:

WITNESSES NAME: _____ (20yrs & over)

WITNESSES ADDRESS: _____

WITNESSES OCCUPATION: _____

WITNESSES SIGNATURE: _____ DATE: _____

For office use

This nomination form was received on time –

Signed by Election Officer: _____

Multiple Representative Form to be used at a meeting of Beneficial Owners

NGATARAWA AND OHITI WAITIO 1E3A LANDS TRUST

In the matter of a meeting of Beneficial Owners of the Trust to be held aton,
and any adjournment thereof.

I/We am/are:

- a Trustee/Trustees of the Whanau Trust;
- a duly appointed attorney/attorneys of
- an executor/executors in the estate of
- a trustee/trustees of

(cross out options that do not apply)

I/We appoint to vote on my/our behalf at the upcoming meeting.

Date:

.....
Signature/s of trustee/duly appointed attorney/executor:

Signed in the presence of: *[signature of witness]*

Full name of witness (*block letters*):

Occupation:

Address:

Phone number:

Notes:

1. This form must be signed in the presence of an independent witness. The witness must be aged over 18 years of age and must not be another attorney, trustee or executor.
2. The witness must sign his or her signature, write his or her full name, occupation, address and contact phone number.
3. This form is to be used where the required number of representatives (trustees/attorneys/executors) cannot attend a General Meeting in person and are appointing one or more of the other representatives to attend on their behalf.
4. If this form (or a proxy form) is not used a trust or estate will require all trustees or executors to attend the General Meeting or that trust (or estate) will not be able to vote.

Multiple Representative Explanation Form

These requirements **must** be followed for representatives to participate in a General Meeting. If not followed a trust or estate will **not** be able to vote.

Estates

Executors appointed under a Will of a deceased Beneficial Owner may attend at a General Meeting and vote on behalf of that deceased Beneficial Owner.

The Executors must bring to the meeting the Death Certificate and a copy of the Will certified by a Solicitor, Court Registrar or Justice of the Peace.

Where there is more than one Executor, they must all attend. If they cannot all attend then those not attending must complete a proxy or Multiple Representative Form in favour of the Executors that can attend.

If the deceased Beneficial Owner did not leave a Will then no person is able to attend the meeting on their behalf, speak or vote.

If Letters of Administration has been granted in the estate of a deceased Beneficial Owner, the Administrator under the Letters of Administration can attend at a meeting, speak and vote. The Administrator **must** produce to the meeting a certified copy of the Letters of Administration.

Attorney under Powers of Attorney

An attorney appointed under a Power of Attorney document may attend at a General Meeting, speak, and vote on behalf of that Beneficial Owner. The attorney **must** provide a certified copy of the Power of Attorney.

If there is more than one attorney appointed and the Power of Attorney document requires the attorneys to act jointly, then all appointed attorneys must either attend in person, by proxy or by the completion of the Multiple Representative Form.

If the Power of Attorney document allows an attorney to act alone then one attorney can attend, speak and vote.

Whanau Trusts

Where the Beneficial Owner is a Whanau Trust, that Trust shall be entitled to one vote regardless of the number of Trustees.

A majority of Trustees **must** be present at the meeting (in person, by proxy or by completing the Multiple Representative Form) for that Trust.

The Multiple Representative Form must appoint one of the other Trustees (or the other Trustees that are attending) to act on behalf.

If there are **two** Trustees of a Whanau Trust, **both** must attend either in person (or by a properly completed Proxy or Multiple Representative Form).

If there are **three** Trustees, **two** must attend either in person (or by a properly completed Proxy Form or Multiple Representative Form).

If there are **four** Trustees then **three** must attend either in person (or by a properly completed Proxy or Multiple Representative Form).

If there are **five** Trustees then **three** must attend either in person (or by a properly completed Proxy or Multiple Representative Form).

Other Trusts

If the Trust Deed/Order allows for Trustees to act by majority then the process for Whanau Trusts must be followed.

If the Trust Deed or Order requires the Trustees to act unanimously then the process for estates must be followed.

TRUSTEES' ROLE AND DUTIES

Te Kooti Whenua Māori – Māori Land Court

For more information, go to maorilandcourt.govt.nz

Te Kooti Whenua Māori – Māori Land Court (MLC) is the New Zealand Court that hears matters relating to Māori land. The unique relationship between Māori and whenua is recognised by the MLC, and the records held by the Court form an invaluable part of the whakapapa of all Māori people. The MLC operates under the provisions of Te Ture Whenua Māori Act 1993 ('the Act').

Trustees¹ are bound by Te Ture Whenua Māori Act and the Trusts Act 2019. Both Acts set out duties and responsibilities of trustees.² A trustee's key role is to maximise the assets and minimise the liabilities of the trust to the best of their ability and within the law. Trustee powers, rights and obligations are set out in the trust order³. An elected trustee formally becomes a responsible trustee when the Court has granted an order of appointment.

General functions of a trustee

Te Ture Whenua Māori Act requires that every person who is appointed as a responsible trustee must carry out the:

- terms of the trust
- proper administration and management of the business of the trust
- preservation of the assets of the trust
- collection and distribution of the income of the trust.

Subject to what the Court sets out in the trust order, trustees should have all such powers and authorities necessary for the effective management of the trust and the achievement of its purposes.

Duties of a trustee

The Trusts Act is the first significant overhaul of trust legislation in Aotearoa New Zealand in 70 years. The Trusts Act specifies a range of duties that trustees must carry out – these are divided into mandatory and default duties.

MANDATORY DUTIES OF A TRUSTEE

These duties are not optional.⁴ They must be performed by a trustee and cannot be modified or excluded by the terms of the trust. A trustee has a duty to:

- Know the terms of the trust
- Act in accordance with the terms of trust

1. Persons bound to deal with property on behalf of the owners or beneficiaries. The trustee becomes the legal owner when the order appointing them as trustee for the land is registered against the title. The beneficiaries are called the beneficial owners.

2. For information on trustees' duties and responsibilities see Part 3 of the Trusts Act 2019 and Part 12 of Te Ture Whenua Māori Act 1993.

3. Common term for a trust order is a trust deed, which is the term used in the Trusts Act 2019.

4. Sections 23 to 27 of the Trusts Act 2019.

- Act honestly and in good faith
- Act for the benefit of beneficiaries⁵ or to further the purpose of the trust
- Exercise powers for a proper purpose

DEFAULT DUTIES OF A TRUSTEE

Default duties⁶ apply to all trustees, unless they are modified or excluded by permitted variations to the trust order. In other words, they apply 'by default' unless they have been explicitly amended or varied in the trust order. The default duties are:

• **General duty of care**

When administering a trust, a trustee must exercise care and skill that is reasonable in the circumstances, taking into consideration any special knowledge or experience that they have, and any special knowledge or experience that it is reasonable to expect of a person acting in the course of their profession or business.

• **Invest prudently**

When exercising any power to invest trust property, a trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard to any special knowledge or experience that they have, and any special knowledge or experience that it is reasonable to expect of a person acting in the course of their profession or business.

• **Not to exercise power for own benefit**

A trustee must not exercise a power for their own direct or indirect benefit.

• **Consider exercise of power**

A trustee must actively and regularly consider whether they should be exercising one or more of their powers.

• **Not to bind or commit trustees to future exercise of discretion**

A trustee must not act in a way that commits trustees in future to exercising or not exercising a discretion.

• **Avoid conflict of interest**

A trustee must avoid a conflict with the interests of the beneficiaries.

• **Impartiality**

A trustee must act impartially in relation to the beneficiaries. They must not be unfairly partial to one beneficiary or group of beneficiaries to the detriment of the others. This does not mean a trustee must treat all beneficiaries equally, but all beneficiaries must be treated in accordance with the terms of the trust.

5. Owner(s) of shares of land held within a trust. Beneficiaries are also called the beneficial owners.

6. Sections 28 to 39 of the Trusts Act 2019.

- **Not to profit**

A trustee must not make a profit from the trusteeship of a trust.

- **Act for no reward**

A trustee must not take any reward for acting as a trustee, but has the right to be reimbursed for legitimate expenses and disbursements in acting as a trustee.⁷

- **Act unanimously**

If there is more than one trustee, the trustees must act unanimously.

Trustees' meetings

FIRST TRUSTEE MEETING

A chairperson, a secretary and a treasurer should be elected at the first trustee meeting. The selections are made by the trustees with the consent of the nominees.

CHAIRPERSON

The chairperson's main duties are to:

- organise meetings with the assistance of the secretary
- ensure that the meeting process is followed and all matters are attended to
- ensure that everyone is given a fair hearing
- perform their duties calmly under pressure
- endorse the meeting minutes
- perform their duties as a responsible trustee in addition to their role as chairperson
- ensure that they do not use their position to influence trustee voting.

SECRETARY

The secretary does not have to be a trustee. The secretary's main duties are to:

- keep a record of the minutes of all meetings (trustees' and beneficiaries' meetings)
- endorse the meeting minutes
- distribute the meeting minutes
- ensure that the MLC has the current trustees' addresses
- keep a current list of trustees' contact details
- receive all correspondence on behalf of the trust
- present correspondence for discussion at trust meetings
- send all correspondence on behalf of the trust
- ensure that all information is kept in order and is made available to trustees and beneficiaries when required.

If the secretary is a trustee, then they must also perform their duty as a responsible trustee. If the secretary is not a trustee, they must not take part in trust discussions and decisions.

TREASURER

The treasurer's main duty is to keep meticulous records of all financial transactions for the trust. The treasurer should ensure that:

- the signatories to the trust account have the authority to sign and that their authorities are lodged with the bank
- financial information is available for the annual financial report
- the trustees are aware of any limits to their financial authority and that any authorised payments do not exceed those limits
- a record is kept of all financial transactions and of related documentation, such as invoices and receipts
- all funds are accounted for
- all financial reports are presented at every trust meeting
- all information is kept in order and is made available to trustees and beneficiaries when required.

If the treasurer is a trustee, they should still perform their duties as a responsible trustee.

Setting trust goals

The trustees set the trust's goals in accordance with the terms of the trust order. Those goals should determine the trust's work timetable and meeting schedule.

Professional advice

A trust may seek professional advice from a solicitor and/or an accountant if it considers this appropriate.

Ongoing trustees' meetings

FREQUENCY

The frequency of trustees' meetings should be determined by the trust's business needs, unless there is a specific direction in the trust order. When setting up the trust or managing any developments, the trustees may require regular meetings. If there is little or no business to attend to, meeting unnecessarily may be a drain on the trust's resources.

GIVING NOTICE

When the need arises, any trustee can call a meeting. For practical reasons, it is advisable to provide trustees two to three weeks' notice of meetings to allow them to make business and travel arrangements. The purpose of the meeting and the agenda items should be included in the notice.

QUORUM

Trustees may act by majority (section 227 of Te Ture Whenua Māori Act). The minimum quorum⁸ for any trust meeting must be more than half of the appointed responsible trustees and any decision must be agreed by more than half of all trustees (not just those present at a meeting).

⁸ The minimum number of members that must be present at a meeting to make proceedings valid.

⁷ See section 81(2) of the Trusts Act 2019.

It is rare for a higher quorum to be imposed by the trust order, but trustees should always check the order to make sure. It is also important to note the convention that when exercising a casting vote, the chairperson support the status quo.

VOTING

Only the responsible trustees can vote at a trustee meeting.

If the trust is a Māori reservation, and a vote on an issue is evenly split, the chairperson has the deciding vote in accordance with Regulation 17(h) of the Māori Reservations Regulations 1994. This principle will only apply to other trusts if stated in the trust order.

ATTENDANCE

The trustees are obligated to attend all trust meetings. If a trustee is absent from three consecutive meetings without reason or apology, the MLC can remove the trustee. In general, a trustee meeting should be for the trustees only, but in some cases, it may be beneficial for the beneficiaries to attend.

The trustees are free to invite other people to the meetings, where applicable. This may happen when the trust is seeking professional advice.

Beneficiaries' meetings

FREQUENCY

Usually the trust order stipulates how often beneficiaries' meetings should be held. If the order makes no stipulation, the trustees must use their discretion. The trustees should be available to attend all beneficiaries' meetings.

The trustees must keep the beneficiaries informed about the trust's business, and obtain their support for any decisions that the trust makes.

Beneficiaries' meetings can be called in relation to the following and other matters:

- the election of trustees
- the presentation of accounts
- investments
- the purchase of additional land
- a major purchase, such as a woolshed
- mortgages
- variations to the terms of trust
- termination of the trust.

A beneficiaries' meeting must also be called if a requisition has been signed by the number of beneficiaries stated in the trust order.

GIVING NOTICE

Adequate notice must be given. For practical reasons, it is advisable that at least two to three weeks' notice of a beneficiaries' meeting be given to all beneficiaries and trustees. Where possible, the trust should send a letter of notification about the meeting to each beneficiary and trustee. The trust should also place a notice about the meeting, with a meeting agenda, in a local newspaper.

QUORUM

Some trust orders specify the quorum for beneficiaries' meetings. Where there is no quorum stated in the trust order, the Court needs to be satisfied that any orders it makes as a result of that meeting meet the following requirements:

- the owners have had sufficient notice
- the owners have had adequate opportunity to discuss and consider the matters
- there is a significant degree of support by the owners
- there are no objections that the Court deems to have merit.

VOTING AND PROXIES

Only beneficiaries can vote on proposed resolutions at beneficiaries' meetings. In most instances, the trust order sets out how voting shall take place. If the trust order doesn't state this, the meeting attendees should decide what they prefer.

Unless permitted in the trust order, proxy⁹ voting is *not* provided for and should not occur. However, a beneficiary may formally appoint a power of attorney to exercise their rights as an owner.

Where the trust order specifically allows for voting by proxy, a beneficiary who cannot attend a meeting may authorise, in writing, another person to vote on their behalf. This person must be at least 20 years old. The proxy form can be obtained from the trustees. Shares voted by proxy count towards the quorum requirements.

Unless it is otherwise stated in the trust order, the beneficiaries' voting does not bind the trustees. However, the voting gives the trustees a clear indication of the beneficiaries' wishes. The decisions of any meeting don't bind the Court either – the minutes and resolutions are merely evidence of the proceedings and the resolutions reached.

Administering the trust

TRUSTEES' AUTHORITY

The terms of a trust, and the powers and limitations of the trustees, are set out in the trust order. This makes the trust order one of the most important documents for the trust, and each trustee should have a copy and be familiar with it. Some judges call it the trustees' 'job description'.

Other powers and limitations conferred on trustees by legislation include:

- Te Ture Whenua Māori Act 1993
- Trusts Act 2019
- Income Tax Act 2007
- Resource Management Act 1991
- Charitable Trusts Act 1957
- Charities Act 2005.

9. The authority given by an owner of an interest in land to another person to vote on their behalf.

VARYING THE TERMS OF A TRUST

If the trustees want to review their powers, rights and obligations, as set out in the trust order, they need the support of the beneficiaries, and so they need to hold a meeting with them. Any changes agreed to at the meeting can be formalised by filing an application with the MLC to vary the trust order.

The Court must be satisfied that the beneficiaries have had sufficient notice of the application to vary the trust order, and sufficient opportunity to discuss and consider it. The Court must also be satisfied that there is a sufficient degree of support among the beneficiaries for the variation.

LIST OF CURRENT BENEFICIARIES

The MLC maintains up-to-date lists of beneficiaries. The trustees should request a copy of the list of beneficiaries before a meeting with them. However, the trustees must maintain the beneficiaries' contact details.

ANNUAL REPORT

Unless the trust order provides otherwise, the trustees must prepare annual reports. The trust order may require that a copy of the annual report be:

- filed in any MLC office along with the annual financial report
- presented to the beneficiaries at the next scheduled beneficiaries' meeting.

If trust meetings are not held annually, all the annual reports for the years leading up to that meeting must be presented.

FINANCIAL ACCOUNTS

The trust must keep a record of all financial transactions and prepare an annual financial report. The trustees or beneficiaries may access the accounts on request.

AUDIT OF ACCOUNTS

The trust order may require an audit of the accounts each year. Some trust orders require this only where the annual income¹⁰ for the trust is over \$10,000.

The trust order may require the trust to:

- file a copy of the audit report with any office of the MLC
- present the audit report to the beneficiaries at the next scheduled beneficiaries' meeting.

ACCOUNTS PAYABLE

The trustees must ensure that all the accounts and expenses for which the trust is responsible are paid in full.

PAYMENTS TO TRUSTEES

The trustees may be entitled to the reimbursement of actual expenses for performing their duties as trustees, such as travel and administration expenses for trust meetings, provided this is allowed for in the trust order or authorised by the MLC.

The trustees can be employed by the trust or have an interest in any contract¹¹ with the trust, but they must not vote or

participate in discussions on any matter concerning their remuneration, terms of employment or any contract in which they may be interested.

INCOME

After payment of all trust accounts and expenses, the trustees may use the surplus income as set out in the trust order. This may include:

- paying the running expenses of the trust
- distributing the money to the beneficiaries
- making investments
- developing the trust assets
- purchasing land and buildings
- paying goods and services tax (GST).

Trusts are separate legal entities and must each have their own IRD number and, in some cases, may also be required to register for GST. For help with this, you can go to Te Tari Taake – Inland Revenue's website at ird.govt.nz/maori/land-trusts

The Kaitakawaenga Māori business service is free and has been established to help meet the needs of Māori individuals, organisations and businesses.

TRUSTEE LIABILITY

The trustees are liable, both collectively and individually, for the trust property and the assets of the trust.

The beneficiaries can sue trustees for any loss caused by improper or negligent acts, by applying to the MLC or to the High Court. However, in terms of section 227(6) of the Act, any trustee whose vote is recorded as against a decision before it is implemented will not be personally liable.

The MLC regards any breaches of trust as a very serious matter, and trustees who are found to be at fault can expect to be made to pay for any losses that they have caused.

SIGNING DOCUMENTS

The trustees may be required to sign leases, mortgages, or other documents relating to the trust. Where there are three or more trustees, they may act by majority unless the trust order provides for all the trustees to act unanimously (see section 227 of the Act).

If an individual trustee does not agree with the proposal passed by a majority, they do not have to sign it. To avoid liability, the individual should immediately advise the other trustees and the MLC in writing.

Toitū Te Whenua – Land Information New Zealand requires that for a document to be eligible for registration, all the trustees must sign it.

If a document requires the signatures of all trustees and a majority have resolved that it should be signed, then all must sign. If a trustee disagrees, they can have their opposing vote recorded. If a trustee feels strongly that the document should not be signed, then an application should be made to the MLC for directions. A trustee who refuses to sign it without making such an application could be in a very awkward situation if the trust suffers losses as a result.

¹⁰ Money that is derived from assets held and earnings (such as rent and interest) but not 'purchase money' (land converted into money).

¹¹ 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.

ENFORCEMENT OF OBLIGATIONS

The MLC has the power to enforce the trustees' obligations in regard to the trust. The Court can require a trustee to make a written report on the trust's administration or the trustees' performances of their duties. A trustee may also be required to appear before the MLC for questioning about the report.

INVESTMENTS

In order to fulfil their key duty of maximising the assets and minimising the liabilities of the trust to the best of their ability and within the law, trustees may invest trust funds in various ways. Investments must be made in accordance with the terms of the trust order and the Trusts Act 2019.

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

More information

To find out more about trusts and trustees' duties, **go online to** maorilandcourt.govt.nz/your-maori-land/trusts-and-incorporations

Or you can visit your local MLC office or attend an offsite clinic. We have nine offices across New Zealand, which are open between 10am and 4pm on normal weekdays. You don't need to make an appointment. Contact details follow or **go online to** maorilandcourt.govt.nz/contact-us

TRUSTEE TRAINING

The MLC provides trustee training. Contact one of our local offices for more information.

Contact the Māori Land Court

The DX number is the postal address.

Taitokerau District	Level 3, Manaia House Rathbone Street, Whangārei 0110 DX Box AX10086, Whangārei Phone 09 983 9940 Email mlctaitokerau@justice.govt.nz
Auckland Information Office	Ground floor, Building B 65B Main Highway, Ellerslie Auckland 1051 DX Box EX10912, Auckland Phone 09 279 5850 Email mlctamakimakaurau@justice.govt.nz
Waikato-Maniapoto District	Level 2, BNZ Centre 354 Victoria Street, Hamilton 3204 DX Box GX10101, Hamilton Phone 07 957 7880 Email mlcwaikato@justice.govt.nz
Wairiki District	Hauora House 1143 Haupapa Street, Rotorua 3204 DX Box JX10529, Rotorua Phone 07 921 7402 Email mlcwaairiki@justice.govt.nz
Aotea District	Ingestre House 74 Ingestre Street, Whanganui 4500 DX Box PX10207, Whanganui Phone 06 349 0770 Email mlcaotea@justice.govt.nz
Tākitimu District	Hastings District Court, 106 Eastbourne Street West, Hastings 4122 DX Box MX10024, Hastings Phone 06 974 7630 Email mlctakitimu@justice.govt.nz
Tairāwhiti District	Ngā Wai e Rua Building Cnr Reads Quay and Lowe Street Gisborne 4010 DX Box PX10106, Gisborne Phone 06 869 0370 Email mlctairawhiti@justice.govt.nz
Te Waipounamu District	Level 1, CJESP 20 Lichfield Street, Christchurch 8011 DX Box WX11124, Christchurch Phone 03 962 4900 Email mlctewaipounamu@justice.govt.nz
Office of the Chief Registrar/ Specialist Applications Team	Level 7, Fujitsu Tower 141 The Terrace, Wellington 6011 DX Box SX11203, Wellington Phone 04 914 3102 Email mlc.chief-registrars.office@justice.govt.nz