

IN THE MAORI LAND COURT OF NEW ZEALAND

TAIRAWHITI DISTRICT

No.

IN THE MATTER of Maori freehold land known as
WHAKAPAUPAKIHI 2

Applicant

AFFIDAVIT OF JOHN JAMES HATA
IN SUPPORT OF APPLICATION FOR VARIATION TO A TRUST
UNDER SECTION 244 OF THE MAORI LAND ACT 1993

RANGITAUIRA & CO

Barristers and Solicitors

P O Box 1693

DX JP30025

ROTORUA

Ph: 07 348 0034

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Solicitor Acting: Annette Sykes

I **JOHN JAMES HATA** of Opotiki, retired Farmer, make oath and swear:

1. I am a trustee of Whakapaupakihi 2.
2. I have authority from the trustees of Whakapaupakihi 2, namely Leonard Apanui Brown and Henry Russell Hollis, to provide this affidavit in support of the application to the Maori Land Court to seek a variation to the existing trust order made on 1st December 2006 to allow for meeting fees and reasonable expenses of trustees to be paid.
3. **WHAKAPAUPAKIHI 2** was formerly managed by the Maori Trustee.
4. **AS** a result of a meeting held in 2006 it was moved that the Maori Trustee be formally replaced by nominated representatives on behalf of the beneficial owners.
5. **MYSELF**, Leonard Apanui Brown and Henry Russell Hollis were formally approved as being the management trustees appointed and our appointment was then made as a result of a hearing held in Gisborne on 1st December 2006 before Judge Caren Leslie Fox.
6. **ANNEXED** hereto marked "**A**" is a copy of the trust order made on 1st December 2006.
7. **THERE** is no specific provision contained in this particular trust order which allows for meeting fees or reasonable expenses of the trustees to be paid.
8. **AT** a Special General Meeting of the beneficial owners held on 23rd October 2006 a motion was moved by an owner that the expenses of the advisory trustees be reimbursed. The special general meeting agreed to that particular motion noting that Leonard Apanui Brown, Henry Russell Hollis and myself were the advisory trustees at that time. A copy of the minutes of this meeting is annexed hereto marked "**B**".
9. **IN** early 2007 funds held by the Maori Trustee were paid to the trust account of Rangitaurira & Co.



10. **A** formal request was made to seek reimbursement of fees and expenses of the newly appointed trustees based upon the resolution that was passed at the October meeting in 2006.
11. **AN** opinion was provided that meeting fees and reasonable expenses were not permitted to be paid as this was not allowed for under the trust order.
12. **AS** a result this application is now being made to the Maori Land Court pursuant to both Section 244 of the Maori Land Act 1993 and also clause 6 of the Trust Order which states:

The Trustees may apply to the Court from time to time for such variation of the trusts and powers contained in this Order as may then seem appropriate to the Trustees and the Trustees shall so apply not later than the 1st day of June 2026 when if no other variation shall seem appropriate to the Trustees the Trustees shall apply for an Order varying the present Trust Order by making a new Trust Order in substitution therefore with the like trusts and powers as are herein contained but with the substitution for the year set out in this clause of the year 20 years after that year.

13. **ACCORDINGLY** this affidavit is supplied in support of the formal application to the Maori Land Court to seek a variation of the Trust Order based upon a new trust power being included within the existing trust order as per the following words:

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 employed by them in the administration of the Trust or in the furtherance of any of the objects of the Trust and if approved by the Court, including also the reasonable fees, cost and travelling expenses of the Trustees in attending the meetings of the Trust or in respect of any Trust business and it is hereby agreed that the meeting fees shall



be fixed at \$100.00 gross per Trustee per meeting plus travelling expenses as found from time to time for the public service rates.

SWORN at *Opaki* by the said)
JOHN JAMES HATA this *21st* day of) *Hata*
May 2007 before me:)

.....
(*Lan Roger Peterson*)
A Solicitor of the High Court of New Zealand

" A "

169 GIS 158-164

TRUST ORDER

Te Ture Whenua Maori Act 1993, Sections 219 & 244

In the Maori Land Court
of New Zealand
Tairāwhiti District

IN THE MATTER of the Māori freehold land
known as V 'hakapaupakihi
2

AT a sitting of the Court held at Gisborne on the 1st day of December 2006 before
Caren Leslie Fox, Judge.

WHEREAS application was filed by the Māori Trustee for replacement trustees

AND WHEREAS on the 8th day of February 1996 the Court did review and vary the
terms of the said Trust pursuant to Sections 351 and 244 of Te Ture Whenua Māori
Act 1993

UPON HEARING the application of the Māori Trustee under Sections 244 & 239 of
Te Ture Whenua Māori Act 1993 (hereinafter referred to as "the act") for a variation
of the terms of the said Trust and appointment of replacement trustee :

IT IS HEREBY ORDERED pursuant to Sections 244 & 239 of the Act that the terms
of the said Trust be and the same are hereby varied by the making of a new Trust
Order in substitution for the existing Trust Order hereinbefore referred to and
pursuant to Section 219 of the Act

NOW THEREFORE under Section 219 of the Act the Court DOETH HEREBY
ORDER AND DECLARE that the new Trustees namely:-

Name	Address
1. Len Brown	Bells Road, Waimana
2. John Hata	P O Box 110, Opotiki
3. Henry Russell Hollis	1532 State Highway 2, RD 7, Te Puke

Jointly (hereinafter referred to as "the Trustees") shall hold the said land upon and
subject to the following trusts:-

1. The trust shall be known as the "Whakapaupakihi 2 Trust".

2. The Trustees shall have power to use, occupy and manage the land for the
benefit of the equitable owners with power to do all or any of the things which
the Trustees would be entitled to do if they were the beneficial owner of the
land PROVIDED HOWEVER: THIS is the exhibit marked with the letter " A " referred
to in the annexed Affidavit/Declaration of: JOHN JAMES HATA

Sworn/made at Opoiti this 21st day
of May 2007 before me:

A20060027032

[Signature]
A solicitor of the High Court of New Zealand

THE

169 GIS .58-164

- (j) To negotiate for the settlement of compensation for land taken by the Crown or a local authority for a public work and to enter into any agreement thereon.
 - (k) To commence proceedings for the determination of compensation for land taken for a public work or to commence proceedings for the recovery of money for any matter in relation to the land
 - (l) To defend or resist or take part in proceedings of any other nature relating to the land.
 - (m) To institute or take part in such proceedings under the Resource Management Act 1991 in respect of the land or any other land in the vicinity as the Trustees may consider necessary or desirable in the interests of the equitable owners of the land vested in the Trustees.
 - (n) To grant licences to occupy to such individual equitable owners who wish to build dwellings on the land of such part or parts of the land for such purpose at such rent and subject to such covenants and conditions as the Trustees may determine.
 - (o) To consent to the erection of dwellings on the land by those individual equitable owners who have been granted a licence to occupy without partition of his, her or their interest and if any such equitable owners shall apply to any State Lending Institution (hereinafter called the lender) for a loan to build on the land, the Trustees shall have power to enter into and execute such deed or deeds other than mortgages as may be required by the lender for the repayment of loans granted by the lender to any one or more of the equitable owners for the erection of dwellings on the land.
 - (p) To lease any part of the land for successive terms each not exceeding 10 years inclusive of any right of renewal by such means and to such person as the Trustees shall determine and on the expiry or sooner determination of any such lease and as often as the same may occur the Trustees may again lease the land in such manner.
 - (q) To execute variations of and accept a surrender of any existing lease.
4. The Trustees shall apply the revenues arising from the operations of the trust in paying the costs of administration of the affairs of the trust and in furtherance of the objects of the trust including:-
- (a) Payment of the costs and disbursements of and incidental to the making and prosecuting of the application to this Court for this order or in making a refund to any person who may have paid the same.
 - (b) Payment of title charges, if any.
 - (c) Setting aside reserves for contingencies or capital expenditure or for retaining in an accumulated profit account any portion of such money which the Trustees shall think it prudent not to pay under the next succeeding subclause.

AND

 ALAT

169 GIS 58-164

- (a) That the Trustees shall have no power to sell the land or any part thereof.
- (b) That the Trustees shall not lease the land or any part or parts thereof other than in accordance with the provisions of Clause 3 hereof.
3. The Trustees shall have such powers and authorities as are necessary for the effective performance of the trusts herein contained including power:-
- (a) To use occupy and manage the land or any part thereof for agricultural pastoral forestry or horticultural purposes, including the use of the land or any part thereof for the growing of permanent horticultural crops by the Trustees themselves or in conjunction with any other person or persons upon such terms for the growing utilisation or sale of the crop as the Trustees may consider appropriate.
- (b) To investigate whether the land could be more conveniently worked or dealt with in conjunction with any other land in the vicinity and to make and prosecute such applications to this Court for Orders of Aggregation of Ownership or Amalgamation of Title or otherwise as may seem appropriate to the Trustees in order to enable such land to be worked or dealt with together.
- (c) To grant or obtain easements, licences or profits of any kind whatsoever over out of or in favour of the land vested in the Trustees.
- (d) To enter into contracts or arrangements with the Crown or any local authority or any person, firm or corporation.
- (e) To employ and dismiss contractors, advisers, servants, agents and workmen.
- (f) At the discretion of the Trustees to purchase all or some of the shares of any equitable owner wishing to sell the same to the intent that any shares so purchased will be held in trust for all the remaining equitable owners.
- (g) To safeguard to the best of the Trustees ability any graves of Maori people or other places on the land of special significance to them.
- (h) To protest, appeal or make representations in relation to any entry or proposed entry on the land or the actual or proposed carrying out of any works on the land, or any proposed acquisition of the land or any part thereof by the Crown or a local authority or any other person or body for any purpose whatsoever.
- (i) To negotiate with the Crown or a local authority the terms of entry upon the land, or of the carrying out of works on the land or the proposed acquisition of the land or any part thereof for a "public work" within the meaning of those words as defined in Section 2 of the Public Works Act 1981.



169 GIS 58-164

(d) Payment of so much of the residue from time to time as the Trustees may in its absolute discretion determine to the equitable owners in accordance with their several shares PROVIDED HOWEVER:-

(i) That the Trustees shall be at liberty to pay such money to the Trustees for distribution to the equitable owner: if the Trustees are willing to do so, and

(ii) If the Trustees shall make any such distribution then the Trustees shall not make payment to any equitable owner whose shares will be less than \$5.00 but shall accumulate the amounts payable to that equitable owner until the amount so accumulated exceeds \$50.00 and then pay the same to that equitable owner.

5. If the income of the Trust in any one year exceeds \$10,000 the Trustees shall:-

(a) Cause to be kept proper books of account in which shall be kept full and complete accounts of the affairs and transactions of the trust.

(b) At a date not later than the 30th day of November of such year file in the Court a Profit and Loss Account made up to a date not earlier than the date of filing by more than 6 months together with a Balance sheet as at the date to which such Profit and Loss Account is made up. Such documents shall be open to public inspection during office hours without payment of any fee.

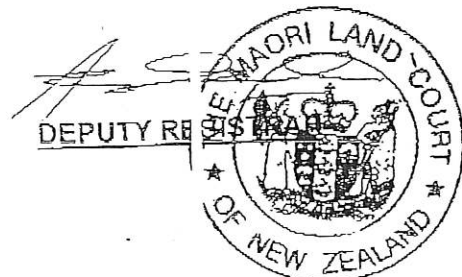
(c) If such accounts are not prepared by a Chartered Accountant the Trustees shall cause each set of accounts to be audited by a person or firm qualified to audit the accounts of a Māori Incorporation.

6. The Trustees may apply to the Court from time to time for such variation of the trusts and powers contained in this Order as may then seem appropriate to the Trustees and the Trustees shall so apply not later than the 1st day of June 2026 when if no other variation shall seem appropriate to the Trustees the Trustees shall apply for an Order varying the present Trust Order by making a new Trust Order in substitution therefore with the like trusts and powers as are herein contained but with the substitution for the year set out in this clause of the year 20 years after that year.

CURT

AND IT IS FURTHER ORDERED that this Order shall issue forth with in terms of Rule 66(3) of the Māori Land Court Rules 1994.

AS WITNESS the hand of a Deputy Registrar and the Seal of the Court.



B "

MEETING OF OWNERS – Whakapaupakihi 2 Waiaua Marae Opotiki

Saturday 23 October, 2006, at 10.00am.

Present:

Maori Trust Office Staff: Maui Tangohau, Rose Wharehinga, and Niki Brown

Advisory Trustees: John Hata, Russell Hollis, and Len Brown

Owners:

Meeting opened in karakia from Terry Amoamo at 10.15am with mihi from John Hata and Maui Tangohau.

Housekeeping received from Maui Tangohau.

Apologies received

Moved Eddie Matchitt 2nd Mary Delamere.

Apologies received and accepted.

Maui Tangohau then presented to the owners in way of aids the extent of what we are going to talk about in terms of an update and Report by the Maori Trustee. The Financial Report was handed out for discussion later. In using the aid of technology Maui Tangohau presented the following:

- Report by Maori Trustee
- Opinion of Queens Counsel
- Directions from Judge Fox
- Expiry of current Lease
- Financial Report
- Future administration
- Future utilisation
- General business

There followed a lengthy presentation, with questions received and answers given.(details will be included in the Maori Trust Office minutes later.)

Motion put by Julie Lux and seconded by Christine Rangipea

That the Maori Trustee be removed as Responsible Trustees, and the 3 Advisory Trustees be appointed as Responsible Trustees. That Alan Bright be an Advisor and the minute taker. AGREED unanimously.

A question was raised – are the mover and seconder on the register of owners? Yes. The application for the above motion must be presented in the Maori Land Court as soon as possible to enable those named in the motion to begin the tasks of compensation. They have no mandate or responsibility to act and proceed until the Maori Land Court approves and the present Maori Trustee is removed.

THIS is the exhibit marked with the letter " B " referred to in the annexed Affidavit/Declaration of: JOHN JAMES HATA
Sworn/made at Opoiti this 21st day of May 2007 before me:

.....
A solicitor of the High Court of New Zealand
(Deputy) Registrar

LUNCH

1:50 Meeting resumed

- John Hata We need now to go through the final stages of our report –
Are there any questions regarding the quarry?
We have opened a can of worms, and now we, with our solicitors will be able to move ahead. The legality of the Maori Trustee with the signing-off with Fulton Hogan, and relationship of our replacement solicitors with the QC, The Maori Land Court, and all other legal procedures.
- Jason What happens now? The Maori Trustee is not only Trustee, but the Maori Trustee is the legal owner. We now have to figure out how we are going to Get compensation from the Maori Trustee.
The Maori Trustee went off and got arbitration Fulton Hogan looked at it, and agreed. Experts were appointed, and he wasn't given any information
- Russell I have documents saying "we did not receive any information....." Why was Crucial evidence withheld? We were told that Peter Madden was not Employed, so it was agreed that all information was to be withheld. I went Home and checked my papers and found a document from the M.T. which Told us that Peter Madden was employed by the M.T. a month before. Experts said that there was nothing unreasonable. "There's no trespass", Legal officers of M.T. claimed. Since that time the M.T. have issued a Licence for that area (of "Trespass") for F.H. at \$1,000 plus GST p.a.
- E.Matchitt Some resolutions have to be passed to make it easier for the Advisory Trustees and our Legal Officers to do their jobs.
- Jason On the left Transit have \$37,500, on the right F.H. agreed to pay nothing. The M.T. paid \$180,000 to get a payment of \$20,000. There is a case to Claim negligence. We need to find out exactly how much the M.T. have Lost us. F.H. have agreed to pay \$8,000 Royalties and one only scholar-Ship,(should be split amongst 10 students).We must be careful of any High Court action, it could cost many thousands and reap considerably less. The M.T. is still the Legal owner, until the Maori Land Court confirms and Signs that the Maori Trustee is removed. We will then need to establish that There has been impropriety. The Court will ask who has been nominated?

There followed a considerable amount of discussion on the question of Transit NZ and their offer to pay \$37,500, and the fact that Transit removed 125,000 c.m. of rock. Also, what happened to the \$45,000 F.H. sent? Maui Tangohau replied "The cheque has been held meantime to establish what the additional \$25,000 covered".

- E.Matchitt It is important that the new Responsible Trustees, when their appointment is Confirmed, seek out those areas where money is owing.
The question was asked : Are we we employing Annette and Jason? Answer – Yes .

Jason There is supposed to be a Claim lodged with the Waitangi Tribunal. We Were hoping to submit it with the East Coast Claim, but we missed .

The question was raised – How are you being paid?

Jason We are hoping to get paid through Legal Aid.

Russel then explained the background and how we finished up employing Annette and Jason.

Jason We need to list the 4 steps to be taken

1. Lodge Application to Maori Land Court to remove the M.T.
2. Lodge application to Transit NZ for payment of \$37,500.
3. Make further contact with QC for direction and comments.
4. Complete feasibility study on costs and expected payments.

An additional question to be studied – what are we going to do in 2009?

Julie Lux A further question – Is it possible to keep an eye on F.H.on their amounts?

Russell We need to check that F.H don't / aren't breaching their lease. The Original Lease was given under the PW Act which had a maximum of 7600 cm per year. F.H. are considerably beyond that amount – we know because we have all the figures from 1937 to 2005. We have further questions that have not been answered - we believe that F.H. are not in possession of any legal lease, and further, we question that the MT could take their case to Arbitration without F.H. producing a legal Lease.

Jason That is why we are going to take all these questions to the QC to check Out all the details to confirm who has got what ?

Mr Goldsmith then gave us some personal family details, and concluded that we at this Meeting have a large cross-section of people –“Jason walking barefoot, there are people From Nga Puhī, Whakatohea, and Tuhoe and you've got a representative from Capt Cook Lets not put too much on your proposed newly appointed Responsible Trustees.

E Matchitt That the proposed newly appointed Responsible Trustees take note of the Expiry of F.H.'s present Lease , and address all matters themselves. The motion was seconded by Raumai Hickey. AGREED.

Jason suggested there was one other issue to be confirmed concerning the payment of expenses – the MT have taken their fees, we need to support the Advisory Trustees.

E Matchitt That the Advisory Trustees be reimbursed. Seconded Julie Lux. AGREED
The meeting closed at 2.50 pm.