



**Submissions to  
Te Ture Whenua Maori Bill**

**In the matter of the  
Review of Te Ture Whenua Maori Act 1993**

**July 2015**



## **INTRODUCTION**

*Ko whea, ko whea era mounga e tu mai ra? Ko Taranaki Ko Taranaki!*

*Ko whea, ko whea te mounga e tu iho nei? Ko Tararua! Ko Tararua!*

*Nuku nuku mai, nekeneke mai ki taku tauaro e kikini ai!*

*Nei ra nga uri o Taranaki Whanui ki Te Upoko o Te Ika ma ii nga puaha o Remutaka o uta, ki nga pua o Te Moana-i-Raukawakawa ki tai na Tahurangi i maru hauroa-tia tona ahi ma ii te whare toka ki te uru, e muramura tonu ra, e kore rawa nei e wetohia.*

1. The Palmerston North Māori Reserve ("Trust") is an Ahu Whenua Trust established under section 215 of Te Ture Whenua Māori Act 1993 it is a former section 438 Trust under the predecessor act the Māori Affairs Act 1953.
2. Pursuant to section 244 of Te Ture Whenua Māori Act 1993 Managing Trustees have a statutory duty to represent and preserve the interests of beneficial owners. The Trust represents the interests of approximately 912 owners and was established in 1866 originating through an act of the Crown
3. Governor Grey exchanged Te Ati Awa land interests in Wainuiomata, Lower Hutt with a block of land which is now part of central Palmerston North. He purchased Lowry Bay section 1 in May 1863 and section 4 a year later. The sale proceeds – 450 pounds – was paid into the Native Trust account.
4. In 1866-67, during Grey's tenure as governor, the Palmerston North Reserve lands (18 sections) were bought to replace the Hutt Valley land using funds from the Native Trust account. All this was undertaken without consultation with mana whenua. The Palmerston North Māori Reserve was established to administer this land on behalf of the 22 affected whanau. Today there are 912 beneficial owners registered at the Māori Land Court and on the Trust's register of owners descending from those original whanau, all owning a total interest of 190,831.866 shares.



5. The original reserve was around 70 acres today it is approximately 36 acres. The land was administered on behalf of the beneficial owners by the Māori Trustee. This was an uneasy relationship and a decision was taken by beneficial owners to appoint the New Zealand Guardian Trust Company Limited as the Custodian Trustee. This appointment of a Custodian together with the direction of the Advisory Trustees allowed the Trust to run as effectively as possible under the governing legislation (Māori Affairs Act 1953, Māori Reserved Land Act 1955), together with amending legislation. It must be understood that the revenues from the Trust's portfolio were suppressed by the provisions of the Māori Reserved Land Act 1955 which prescribed onerous rent review provisions.
6. The value of the Trust has steadily increased over the years of development to the position now where the total assets owned by the Trust amount to \$82,466,629.00. With stable management this is expected to climb further. This cannot be impacted by a revolution in Māori Land as it will lead to costly administration in meeting the complicated requirements of the Bill.
7. Latterly in 1987 the Advisory Trustees became Managing Trustees and 20 years later in 2007, Trustees assumed full management removing the Custodial Trustee.
8. This decision taken by the beneficial owners required Trustees to transfer the Trusts land holdings be they Māori Freehold or General Land into the name of the Trust. This was undertaken pursuant to Section 220A of Te Ture Whenua Māori Act. The removal of the Custodian Trustee gave the Trust autonomy and self management. The Trust had positioned itself and structured its administrative frame work to allow for this self management under the prevailing legislation. The Trust was now in control of its development for its beneficial owners.
9. The issues the Trust has faced and have consistently sought to alleviate are essentially related to the legislative environment to which the Trust is bound.
10. The Trust has therefore gone a great distance in finding solutions to:



- A. Beneficial owner participation;
  - B. Reclassification of its Land;
  - C. Holding land in its name;
  - D. Fragmentation of share holdings;
  - E. Gone no addresses;
  - F. Unclaimed dividends.
11. The solutions were achieved by Trustees researching and analysing the root causes of the problems and aspiring to create solutions and putting these solutions in place.
12. The new Bill will not assist the Trust with its development and will potentially retard the Trust's development complicating its operation to the degree of creating inertia. The voter participation scheme is complicated and in the Trust's view will mean it will not be able to reach the thresh holds under the Bill.
- Trustees have reviewed the consultation documentation and the proposed draft Bill they have also attended the consultation hui and set out below are the areas of concern the Trustees hold in respect of the Bill.
13. Māori Land fundamentally is taonga tuku iho of special significance to the Trust and of course the kaupapa of the Te Ture Whenua Māori Act 1993 ("Act") is *to promote the retention of that land in the hands of its owners, their whanau, and their hapu and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau and their hapu*. This has always been at the heart of the Trust and Trustees have strived to continue this philosophy.

### **SUMMARY OF ISSUES**

1. The impact upon the Trust's structure and constitution.
2. The impact upon the Trust in its ability to satisfy the voting thresholds as well as the "simple" voting for some matters.



3. The issues associated with the Ahu Whenua to Private Trust transition.
4. The registration of the Trust's land portfolio in the name of the Trust to the new Governance Entity.
5. The issues related to the incorporation of the new constitutional requirements into the Trust's constitution.
6. The proposed provisions to alienate fragmentation will have little impact upon the Trust.
7. The removal of the advances made over the many years by the Trust.
8. The removal of the Māori Land Court from its oversight role where it was extremely valuable to have the guidance.
9. The transition to a Private Trust and the complicated Governance process proposed.
10. The impact of the Chief Executive and State Department upon the operation of the Trust.
11. No indication of how the regulations will be shaped.
12. No detail of the proposed State Department and Chief Executive.
13. No provision for the operation of Trusts under current legislation to continue under that legislation. A total repeal where Ahu Whenua Trusts are functioning very well under the current legislation.
14. The future of the Trust's Land Management Plan which has stood for 20 years as an efficient effective method of dealing with the Trust's Māori Land holdings.

### **REGISTRATION OF THE NAME OF THE TRUST**



The Trust undertook a process of registering the Trust's land holdings in the name of the Trust pursuant to Section 220A of the current Act. This process was an involved and drawn out process requiring the Registrar of the Māori Land Court to direct the land transfer office to undertake this direction. As is known this is a departure from S 128 of the Land Transfer Act which requires that no entry shall be in the register of any notice of Trusts. Therefore as a Private Trust pursuant to this Section of the Land Transfer Act Trustees would be required to be registered on all titles. This would be administratively burdensome.

Clause 265 of the Bill 'registration of Land in name of tupuna'. A tupuna may become registered as proprietor of certain land being Māori Freehold Land and Whenua Tāpui is made of other land whereas the Act under Section 220A refers to 'the whole or part of the property of the Trust'.

Clause 22 of Schedule 1 of the Bill provides only for lands registered in the name of a tupuna. Is this an oversight, is this required to be amended to include lands registered under the name of a Trust, or is there a provision providing for registration under a Trust as a corporate ie Palmerston North Māori Reserve Trust. Further detail is necessary.

### **VOTING PROVISIONS**

As with all large Ahu Whenua Trusts beneficial owner participation in the administration of the Trust has always been an issue. The problem faced by the Trust was a common problem faced by many large Trusts in gaining sufficient participation by owners to meet the requirements under the current Act.

The Trust as alluded to above has had to put in place a Māori Land Court sanctioned frame work in order that Trustees could deal effectively and efficiently with the Trust land assets both Māori Freehold and General Land for the benefit of its beneficial owners.

In 1996 the Trust applied to the Māori Land Court for approval to its Land Management Plan. This plan provided a process the Trust must work through in order to deal with its Māori Land and General Land portfolio. The beneficial owners approved the process set out in the Trust's Land Management Plan and the Māori Land Court upon application also approved the Land Management Plan.



In summary decisions taken by Trustees are put to owners in general meeting for approval. It is noted that every resolution put to the beneficial owners in general meeting were carried unanimously. The application is submitted to the Māori Land Court and the Māori Land Court after considering the application would either approve the decision or require further information or decline the application.

This is a rigorous process and has worked very well for the Trust over many years.

The Trust still holds a significant number of Māori Freehold Land properties. For example where this will present difficulties is in the event of a reclassification of Māori Freehold Land to General Land. Under the Bill this requires the consent of 75% of all owners which is patently impossible for the Trust to achieve. It is noted that there is provision in the bill for application to the Māori Land Court when dealing with land being disposed of or exchanged. The Trust on occasion has reclassified land and held the land a situation the Bill does not appear to contemplate.

It is of concern to the Trust that the panel did not consider the Trust's solution rather than totally overhaul the Act.

### **Ahu Whenua vs Private Trust**

Section 215 of Te Ture Whenua Act provides for the constitution of Ahu Whenua Trusts all land, money and other assets of an Ahu Whenua Trust are held in trust for the persons beneficially entitled to the land in proportion to their general interests in the land.

The appointed Trustees manage the assets for the benefit of the beneficial owners in accordance with the Trust's constitution and the Act.

For example under the Act the Court has the power of appointment of Trustees to the Trust. Whilst the owners vote for candidates until the Court has appointed him or her as a Trustee the process is not complete. A further example is that any variation of the Trust constitution is reviewed by the Māori Land Court and subject to the Māori Land Court approval.

The Court overview of these processes have been key in the Trust's success in both appointing the right people for the position of Trustee the Court having regard for the ability, experience and knowledge of the individual. In respect of the constitution the Trust would arguably not be in the position



it is without the Māori Land Court's guidance for it is this rigorous review that ensures compliance with legislation and the constitution and whilst there is a substantial disputes resolution process within the Bill the strength of the Trust has been in part the ability to rely upon the oversight of the Māori Land Court.

As a Private Trust this oversight by the Court will be limited. It will be a less regulated process and this is of concern. Whilst the proposition of self-management of these processes is creditable the requirement to present applications to the Māori Land Court ensured a rigorous approach to the issue at hand at the time.

The Trustees are concerned that the Trust will be compelled to review its Deed under the Bill to ensure compliance with the Bill when it has only just completed a two year process of reviewing its Deed culminating in unanimous approval from beneficial owners and the Māori Land Court.

Given the structure and assets owned by the Trust on behalf of its beneficial owners a three year transition period is too short a period to complete the work required by the Trust to meet the provisions proposed by the Bill. There is significant work required and a period of ten years would be more appropriate in the event that the Trust is required to comply or if there is a dispensation for the Trust

The Trust already has settled upon its asset base and Trustees have been administering and developing this base for many years.

Why do the Trustees now by virtue of the Bill need to restate the asset base and for what purpose.

The Chief Executive of the Department of State has significant power vested within him or her. There is far too little detail in regard to this new position given that the majority of the activities allocated to this position were judicial functions under the Act.

Rather than rewrite the entire Act would it not have been prudent to critically evaluate the operation of the Act and establish the deficiencies working towards a solution rather than just saying the legislation does not work and replacing it with what is thought may be the best solution but may in fact be a retrograde step.



In respect of the operation of the Trust this would result in a certain amount of upheaval and administrative burden the voting thresholds alone are complicated.

The removal of the Trust's settled Land Management Plan will cause unnecessary difficulty to the Trust as will the removal of the Māori Land Court from many of the areas the Trust has been involved in and the establishment of a new department to take up many of these duties.

The requirement to advise the Chief Executive of the dividends unclaimed in each year is not acceptable and it is queried why this is now necessary when the Trust has managed its unclaimed dividends efficiently and effectively in the past many decades.

It is again asserted that the Bill is a major shift in the management of Māori Freehold Land and General Land together with a substantial change in the way Ahu Whenua Trusts are administered. The Bill is complicated and will result in people generally being unable to follow what is required of them.

As the Bill is in essence a revolution of the Māori Land and by extension the Trusts as a Governance Entity there appears to be just too much detail lacking in the Bill to give any clear concept of how the Trust will operate post the Bill's introduction.

There are patent issues with Māori Land but a wholesale re-writing of the Act cannot be supported by the Trust when it is not certain that the issues the Bill is intended to remedy will be remedied.

The Trust's preferred position is the current suite of Acts remains. This view is upon the basis that the legislation was not broken and the Trust has proven through its operations and administration that it met the requirements of the current legislation through its adaptation.

## **RECOMMENDATIONS**



1. In the event that the Bill is enacted then the Trust would wish to opt out. There would necessarily be changes required to the Bill to provide for the Ahu Whenua Trust structure may remain with the same or similar recourses to the Māori Land Court as currently available to the Trust. The Trust is more than capable to continue to prosper and develop by itself under the supervision of the Māori Land Court. Trusts opting out of the Bill could be based upon a certain value of assets for example assets valued at more than \$50m may opt out.
2. The Trust together with other Ahu Whenua Trusts and Incorporations being governed by their own governing legislation whilst considered possibly a long shot it is worth investigating. The Trust and the Trust's sister trust the Wellington Tenths Trust have combined assets in excess of \$100 million and have the critical mass necessary to support their own legislation.
3. The Federation of Māori Authority, FOMA, provided a comprehensive review of the Bill. The Trust supports FOMA's submissions. The Trust recommends the following amendments be made to the Bill:
  - a) More detail is provided in regard to the office of the Chief Executive and the Māori Land Service as the introduction of a new Māori Land Service and Chief Executive gives rise to uncertainty. For example how will the Chief Executive be appointed, what Department will he/she sit within, what is the scope of the role. These queries, among many others, require clarification and realistically the Trust cannot be expected to support the Bill where this detail is unknown.
  - b) Allowance for or amendment to the Bill to recognise the Trust's Land Management Plan and the retention of the mechanisms within the current legislation to ensure that this remains a key document and is not lost through the strike of a legislative pen. This is a key to the Trusts development and growth over the decades since its introduction and cannot be sacrificed. The key of course is the link to the Māori Land Court and with the Māori Land Court appearing to be side lined for the new Māori Land Service and Chief Executive Office this may result in the Trust losing



momentum in its growth whilst endeavouring to negotiate fairly complex new rules and regulations as yet unknown.

- c) The retention of the Trust's retaining the ability to register in the name of the Trust.
- d) The early provision of a standard form Governance Agreement so that this can be reviewed as to its suitability given the aspirations of the Trust and the needs of the beneficial owners.
- e) Whilst Trustees are cognisant of their obligations under a plethora of legislation such as inter alia Te Ture Whenua, Trustee Act, an extensive training scheme be put in place to ensure Trustees are informed of the serious obligations and fiduciary duties they each personally hold in their role as Trustee.
- f) Further detail of the Māori Land Service is provided as this is a shift from the current position where the Māori Land Court governs the administration of the Trust. The very real concern is that with such a great devolution of administrative functions from the Māori Land Court to this new entity not enough detail has been made available about the Māori Land Service's establishment, its resourcing and its operation.
- g) That the Trust does not need to be compelled to provide the Chief Executive with its unclaimed dividends detail.

It is also recommended that before the Bill is enacted an extensive education regime is put in place to ensure land owners are fully informed of the proposed changes and understand the application of the changes to their particular entity.

It is recommended that a specialist team partner with large Trusts such as the Palmerston North Māori Reserves to work through the application of any new Act and the issues that will arise and face the Trust in regard to:

- The Trust's ownership of its Māori Land portfolio and the implications to the Investment Land portfolio;



- The perceived Government's agreement and its relationship to the current constitution documentation;
- The registration of its lands in its own name however this continues or if not what the options are;
- The voting thresholds provided for under the Bill and how the Trust will achieve these thresholds;
- The role of kaitiaki and what this means to the incumbent trustees;
- The new dispute resolution mechanisms contained within the Bill;
- The removal of the Māori Land Court from most of the crucial parts of the Trust's operations including appointment of Trustees and reclassification of land;
- Reviewing the Trust's Land Management Plan to ensure it meets the criteria required under the Bill and the Trust can still function and grow under the new requirements.

4 August 2015

Te Ture Whenua Māori Bill

c/- Te Puni Kokiri

P O Box 3943

**WELLINGTON**

Tēnā koe



## **TE TURE WHENUA MĀORI BILL - PALMERSTON NORTH MĀORI RESERVES**

We **enclose** a copy of the Trust's submission in relation to Te Ture Whenua Māori Reform and the Bill. The trustees will be attending upon the select committee at the appropriate time and would also seek a meeting with the Minister as soon as possible to discuss trustees' concerns.

Nāku noa nā

**MRS RE MELLISH  
CHAIRPERSON  
PALMERSTON NORTH MĀORI RESERVES**