

In the High Court of New Zealand
Masterton Registry

CIV-2024-435-6

I te Kōti Matua o Aotearoa
Whakaoriori Rohe

Under the Part 3 of the Charitable Trusts Act 1957 and Part 19 of the High Court Rules 2016

In the matter of a Scheme under Part 3 of the Charitable Trusts Act 1957 in respect of the Estate of **ARTHUR POWYS WHATMAN** late of Masterton, Retired Sheepfarmer, deceased

Between **MASTERTON DISTRICT COUNCIL** a territorial authority under the Local Government Act 2002

Applicant

**ORIGINATING APPLICATION FOR ORDERS APPROVING A PROPOSED SCHEME
REPLACING AN EXISTING SCHEME UNDER PART 3 OF THE CHARITABLE TRUSTS
ACT 1957**

Dated: 16th April 2024

\$540.00
Case Manager
Raphael
Next Event: / / P.
23 APR 2024
THE HIGH COURT
WELLINGTON
Fee Receipt Suptok.



Donna Hurley / Duncan Laing
T: +64-4-499 4599
donna.hurley@simpsongrierson.com
duncan.laing@simpsongrierson.com
PO Box 2402 Wellington

TO: The Registrar of the High Court at Masterton

AND TO: The Attorney-General

Monday 15 July 2024
at Wellington High
Court

This document notifies you that:

1. The Applicant, Masterton District Council, will on _____ day of _____ 2024, at _____ a.m./p.m., or as soon thereafter as counsel may be heard, seek orders:

1.1 Approving a proposed scheme replacing an existing scheme under Part 3 of the Charitable Trusts Act 1957 (**the Act**), the Proposed Scheme being attached as Annexure A (**Proposed Scheme**);

1.2 That the Applicant may take all steps contemplated by the Proposed Scheme to give effect to it;

1.3 That there be no orders as to costs in respect of the application, apart from the costs of the Attorney-General at \$750.

2. The Applicant seeks the orders on the following grounds:

2.1 The Applicant is a territorial authority under the Local Government Act 2002;

2.2 The Applicant holds a property known as Panama Village, at Ngaumutawa Road, Masterton, upon trusts under a charitable scheme approved by the (then) Supreme Court in 1966 (**1966 Scheme**);

2.3 The Applicant seeks the approval of the High Court for the Proposed Scheme under Part 3 of the Act replacing the 1966 Scheme;¹

1 The Applicant also relies on the inherent jurisdiction of the High Court to the extent that it may be necessary.

2.4 In terms of sections 32 and 33 of the Act, the reasons for the Proposed Scheme are that firstly it is impractical or inexpedient (if not impossible) for the Applicant, the Masterton District Council (**Council**) to carry out the existing trust purposes in respect of the vacant land at Panama Village (including a separate house site), and that Council is not in a position to provide adequate funding for that purpose. Secondly the administration of the trusts in the 1966 Scheme could be facilitated and promoted by extending and varying the existing trust powers and removing provisions of no continuing relevance.

2.5 More particularly:

- (a) There is a shortage of public housing in the Council's District. There is vacant land and a surplus residential property at Panama Village (together the **Vacant Land**) that could be used for this purpose once upgraded infrastructure to support such development is put in place;
- (b) The Council in its own right and as trustee is not in the financial position to develop the Vacant Land at Panama Village for public housing;
- (c) The Council (or a related entity) is not able to access the Income-Related Rent Subsidy in terms of delivery of public housing, as it is not registered as (and is not eligible to become) a community housing provider under the Public and Community Housing Management Act 1992;
- (d) It is expedient that the Vacant Land be sold or leased to Kāinga Ora, a registered community housing provider, an organisation that is or is eligible to be a community

housing provider, a charitable entity, or a Wairarapa iwi entity, prepared to construct and administer public housing on the Vacant Land with an appropriate encumbrance or covenant being placed on the record(s) of title to the Vacant Land;

- (e) The Council will apply the net proceeds of sale or lease of the Vacant Land to assist in funding the necessary upgrading of infrastructure for the construction of public housing on the Vacant Land, with any surplus being made available to be applied for the purposes of the Council's existing public housing stock (including and as a priority the existing housing at Panama Village);
- (f) Some provisions of the 1966 Scheme are of no further relevance and/or are no longer appropriate to the current circumstances of Panama Village;
- (g) The 1966 Scheme further requires some modernisation of, and changes to, its wording to make it appropriate for current and future charitable trust administration and to better facilitate the achievement of its public housing purposes;
- (h) The Council has consulted with the public on the key elements of the Proposed Scheme through a Long-Term Plan Amendment process under the Local Government Act 2002;
- (i) The Proposed Scheme is such that it can be approved under section 56 of the Act.

- 2.6 The Attorney-General has reported on the Proposed Scheme, as required by section 35 of the Act, and does not require any amendments to the Proposed Scheme;
- 2.7 As appearing in the affidavit of Kym Albert Fell affirmed on 12 April 2024 and filed in these proceedings.
- 2.8 As appearing in the Memorandum of Counsel for the Applicant filed in these proceedings.
3. The application is made in reliance on Part 3 of the Act (and in particular sections 32 and 33) and sections 53 and 56 of the Act, the case authorities decided in relation to those provisions, and Part 19 of the High Court Rules 2016.

Dated this 16th day of April 2024



D J S Laing
Counsel for the Applicant

This document is filed by **Donna Marie Hurley** solicitor for the Applicant of the firm Simpson Grierson.

The address for service of the Applicant is at the offices of Simpson Grierson, Level 5, 40 Bowen Street, Wellington 6140.

Documents for service on the Applicant may be left at that address for service or may be emailed to the Applicant's solicitors at donna.hurley@simpsongrierson.com and duncan.laing@simpsongrierson.com.

Annexure A
(The Proposed Scheme)

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A SCHEME UNDER PART 3 OF THE CHARITABLE TRUSTS ACT 1957

**SIMPSON
GRIERSON**

Donna Hurley / Duncan Laing
T: +64-4-499 4599
donna.hurley@simpsongrierson.com
duncan.laing@simpsongrierson.com
PO Box 2402 Wellington

BACKGROUND

- A. The Masterton District Council as successor to the Masterton Borough Council pursuant to the Local Government (Wellington Region) Reorganisation Order 1989 (**Council**) previously held the property (**Trust Property**) referred to in Schedule 1 to this Scheme upon the trusts set out in a scheme under Part 3 of the Charitable Trusts Act 1957 (**the Act**) dated 28 October 1965 and approved in 1966 (**1966 Scheme**).
- B. The 1966 Scheme was put in place because it became impossible, impracticable or inexpedient to continue to carry out trusts directed by the will of Arthur Powys Whatman who died in 1938.
- C. After the 1966 Scheme was established, the Trust Property was transferred to the Council, and the Council then held and administered the Trust Property for the benefit of the aged and needy in Masterton in accordance with the requirements of the 1966 Scheme. In particular, in accordance with clauses 5 and 6 of the 1966 Scheme, the Council constructed a number of housing units that are used for the accommodation of the aged or needy.
- D. Under the 1966 Scheme, the Trust Property could not be sold without the consent of the (now) High Court.
- E. At the date of approval of this Scheme by the High Court, the Council was operating 44 housing units for the aged or needy on part of the Trust Property occupying approximately one-third of the available land area as more particularly described in Schedule 2 (**the Existing Village**), leaving approximately four hectares of land (including a house site on a separate title), being more particularly described in Schedule 3, as available for more public housing (**Vacant Land**).
- F. The Council and the Masterton community generally wanted to ensure more public housing was available for members of the community who were struggling to access appropriate accommodation, but the Council was not in a position to fund the cost of providing new public housing itself. As a result, the Council decided as

part of its Long-Term Plan 2021 – 2031 process that (subject to approval of the High Court to replace the 1966 Scheme) that it wished to:

- a. make the Vacant Land available by sale or lease for someone else to build more public housing; and
 - b. work with the Government (via Kāinga Ora), community housing providers, or iwi, to determine the most appropriate arrangement for a third party entity to fund and build more public housing on the Vacant Land.
- G.** The basis for this proposal was that it would enable the Council to support public housing in the Masterton District, while enabling entities that have specialist expertise in public housing to undertake the work. It would also enable provision of public housing for younger people and families.
- H.** The Council subsequently consulted with the community and formally adopted amendments to its Long-Term Plan on 15 June 2022 to enable it to sell or lease the Vacant Land provided it was used for public housing (subject to High Court approval of a new scheme).
- I.** The Council's preference was to retain ownership of the Existing Village for use for public housing and to sell the Vacant Land. However, if sale of the Vacant Land was not a feasible option, it would consider entering into a long-term lease of the Vacant Land with a suitable public housing provider.
- J.** The Council's intention was also to use any proceeds from the sale of the Vacant Land to construct the necessary infrastructure to support the development of the Vacant Land for public housing. Any balance would be used for future investment in the Council's existing public housing stock across its entire housing portfolio.
- K.** In order for the Council to give effect to the Long-Term Plan Amendment it was necessary to seek the High Court's approval to replace the 1966 Scheme in order to:

- a. enable the Vacant Land to be sold or leased for public housing;
- b. modernise restrictive or redundant aspects of the 1966 Scheme including wording relating to the provision of housing to the aged or needy; and
- c. approve the proposed use of funds generated from the sale or lease of the Vacant Land.

OPERATIVE PROVISIONS

With effect from the date of approval of this Scheme by the High Court, the 1966 Scheme is repealed and a new Scheme is put in place as follows:

1. This Scheme is for:
 - (a) the management and ownership of the Trust Property defined in Schedule 1, including the retention and use of the Existing Village for public housing and the sale or lease of the Vacant Land for public housing; and
 - (b) the management and use of the income and any other receipts derived from the Trust Property.
2. Subject to the terms of this Scheme, the Council will have in respect of the Trust Property all the powers conferred upon a trustee by the provisions of the Trusts Act 2019 or the Charitable Trusts Act 1957 or any statutory provision which amends or replaces those Acts, and any regulation, order, statutory instrument, determination or subordinate legislation made under those Acts.
3. The Council will hold and administer the Existing Village upon trust for the purpose of providing and facilitating public housing at such rentals, and subject to such terms and conditions, as the Council from time to time determines.

4. Subject to clause 9, the Council may apply all or any of the income or other receipts referred to in clause 1(b) derived from the trusts set out in clause 3 of this Scheme in the maintenance, repair or development of the Existing Village or any part of it as the Council thinks fit and for the purposes set out in clause 7 of this Scheme.
5. Any sale, or exchange of the Existing Village or any part of it, requires the prior consent of the High Court of New Zealand. (To avoid doubt, the leasing of the Trust Property did not require the prior consent of the High Court under the 1966 Scheme and that position continues unchanged under this Scheme.)
6. Also, to avoid doubt, from the date of this Scheme, the residents at the Existing Village will continue to have the right to occupy their housing units in accordance with any existing tenancy agreements.
7. The original dwellinghouse located in the Existing Village (or a suitable replacement facility that the Council may elect to construct out of the trust funds) must continue to be used as a community space for the recreation, enjoyment and amenity use of the residents of the Existing Village.
8. The Council:
 - 8.1 subject to clauses 8.2 to 8.4 below, may sell or lease the Vacant Land, or any part of it, to any person or entity for the purpose of providing and facilitating public housing.
 - 8.2 before accepting any sale or leasing proposal of the kind described in clause 8.1, must firstly publicly notify its intention to sell or lease the Vacant Land or any part of it and call for both sale and leasing proposals.

8.3 shall ensure that any sale or lease shall be subject to an encumbrance or covenant requiring that the Vacant Land or the relevant part of it that is being sold or leased must be used for public housing purposes (and no other purposes) on an on-going basis.

8.4 shall not be required to accept any sale or leasing offer received by it and it may withdraw the land from sale or lease at any time before entering into a contract complying with this clause.

9. Any proceeds from any sale or lease of any part of the Vacant Land (after the payment of the costs involved with such sale or lease) will be applied by the Council as follows:

(a) firstly, in payment of the costs to enable the infrastructure that is necessary for the development of the Vacant Land for public housing;

(b) secondly, once the costs in (a) above have been paid, in or towards such maintenance, upkeep, repair, improvement or development of the Existing Village as the Council determines is reasonably necessary; and

(c) thirdly, once the costs in (b) above have been paid, in or towards the maintenance, upkeep, repair, improvement or development of any other property held and administered by the Council for the purposes of public housing.

10. For the purposes of this Scheme, the term *public housing* has the following meaning:

Public housing means housing for people who by reason of age, infirmity, disability, and/or personal or financial circumstances are unable to meet their own accommodation needs in a safe and

healthy manner, provided or subsidised by central or local government, a community housing provider, a charitable entity or a Wairarapa iwi entity.

DATED this day of 2024

SCHEDULE 1

TRUST PROPERTY

1. 6.2033 hectares more or less being Lot 3 Deposited Plan 11565 and being all the land comprised and described in Record of Title WN481/145;
2. 1012 square metres more or less being Lot 2 Deposited Plan 11565 and being all the land comprised and described in Record of Title WN482/63;
and
3. All buildings, improvements, chattels, monies and other property held in trust under the 1966 Scheme at the date of this Scheme.

SCHEDULE 2

THE EXISTING VILLAGE

That part of the Trust Property approximately outlined in yellow on the aerial plan in Schedule 4.

SCHEDULE 3

VACANT LAND

That part of the Trust Property approximately outlined in green on the aerial plan in Schedule 4.

SCHEDULE 4

AERIAL PLAN



Panama_Village
 Vacant_Land



Panama Village & Vacant Land

DISCLAIMER: The Masterton District Council accepts no responsibility for actions or projects undertaken or loss or damages incurred, by any person or agency, using all or any of the information provided on this map.
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