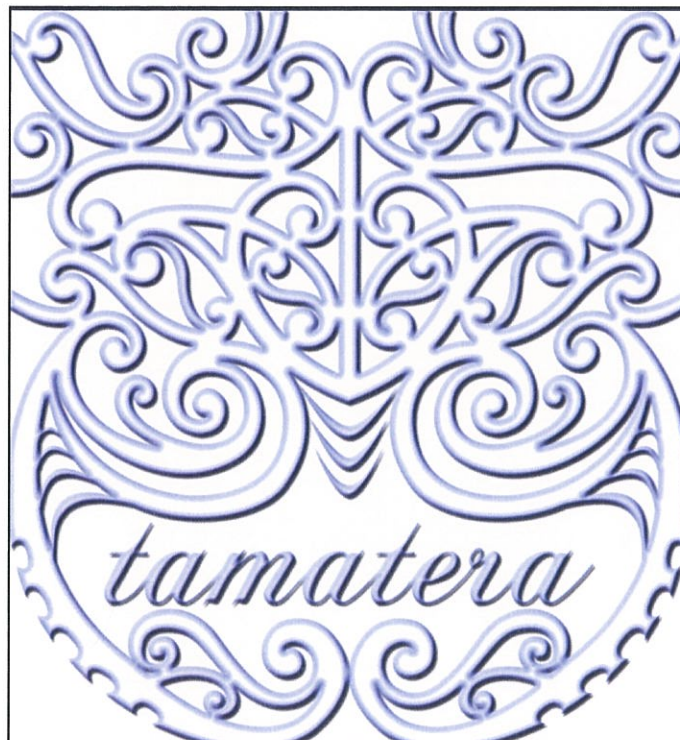


**Trustees**

**TERRENCE JOHN McENTEER, DEBRA LIANE NGAMANE, ANTONY TŪROA  
HUKEHUKE ROYAL, JOHN TUTUKI ROYAL, HEREAROA FRANCIS SKIPPER and  
AIRINI PIRIHIRA TUKERANGI**

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**DEED OF TRUST ESTABLISHING NGĀTI  
TAMATERĀ TREATY SETTLEMENT TRUST**



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## PARTIES

TERRENCE JOHN McENTEER, DEBRA LIANE NGAMANE, ANTONY TŪROA HUKHEHUKE ROYAL, JOHN TUTUKI ROYAL, HEREAROA FRANCIS SKIPPER and AIRINI PIRIHIRA TUKERANGI (together the "Initial Trustees")

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Defined Terms: In this Trust Deed, unless the context otherwise requires:

"**Adult Member of Ngāti Tamaterā**" means a Member of Ngāti Tamaterā who is eighteen (18) years of age or older;

"**Adult Registered Member of Ngāti Tamaterā**" means a Member of Ngāti Tamaterā identified on the Ngāti Tamaterā register as being eighteen (18) years of age or older;

"**Advisory Trustee**" means a trustee appointed in accordance with clause 3.3;

"**Annual Plan**" means the annual plan of the Trust which is prepared in accordance with clause 10.1;

"**Annual Report**" means the annual report of the Ngāti Tamaterā Group which is prepared by the Trust in accordance with clause 10.1;

"**Balance Date**" means 30 June or any other date that the Trustees by resolution adopt as the date up to which the Trust's financial statements are to be made in each year;

"**Beneficiaries**" means the present and future Members of Ngāti Tamaterā and any Subsidiary which has been established for purposes within the purposes set out in this Trust Deed and for the benefit of such present and future Members of Ngāti Tamaterā;

"**Business Day**" means any day on which registered banks are open for business in Auckland;

"**Chairperson**" means the chairperson from time to time of the Trust appointed by the Trustees in accordance with rule 4 of the Third Schedule;

"**Chief Returning Officer**" means as the context requires:

- (a) the person appointed from time to time as chief returning officer for the purpose of Trustee elections in accordance with rule 10 of the Second Schedule; or
- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with rule 5.1 of the Fourth Schedule;

"**Consolidated Financial Statements**" means the consolidated financial statements of the Ngāti Tamaterā Group prepared by the Trust in accordance with clause 10.1;

"**Custodian Trustee**" means the custodian trustee that may be appointed or incorporated in accordance with clause 25;

"**Deed of Settlement**" means the deed or deeds between representatives of Ngāti Tamaterā and the Crown recording the settlement of the Ngāti Tamaterā Claims;

**"Deputy Chairperson"** means the deputy chairperson from time to time of the Trust if one is appointed in accordance with rule 4 of the Third Schedule;

A person is **"descended"** from another person if the first person is descended from the other by:

- (a) birth;
- (b) legal adoption; or
- (c) Māori customary adoption in accordance with Ngāti Tamaterā tikanga (Māori customary values and practices);

**"Dispute Committee"** means a committee formed in accordance with clauses 31.4 and 31.5;

**"Electoral Review Officer"** means the person appointed to act as electoral review officer in accordance with rule 13.2 of the Second Schedule;

**"Five Year Plan"** means the five year strategic plan of the Trust prepared in accordance with clause 9.2;

**"General Manager"** means the General Manager of the Trust appointed in accordance with clause 5.1;

**"Income Year"** means any year or accounting period beginning 1 July of one calendar year and ending 30 June of the following calendar year or any other period that the Trustees by resolution adopt;

**"Initial Trustees"** means the individuals listed at clause 3.1;

**"Iwi Aquaculture Organisation"** has the meaning given to it in the Maori Commercial Aquaculture Claims Settlement Act 2004;

**"Kaumatua Council"** means the Kaumatua Council appointed by the Trustees under clause 4.1;

**"Major Transaction"** in relation to any member of the Ngāti Tamaterā Group means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Property by that member the value of which is more than half the value of the Trust's Assets before the acquisition;
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Property by that member the value of which is more than half the value of the Trust's Assets before disposition; or
- (c) a transaction that has or is likely to have the effect of that member acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the Trust's Assets before the transaction,

but does not include:

- d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust's Assets (whether the Assets are held by the Trust or any other member of the Ngāti Tamaterā Group); or

- (e) any acquisition or disposition of Property by that member from or to any other wholly owned member of the Ngāti Tamaterā Group; or
- (f) any disposition of Property by a member of the Ngāti Tamaterā Group to any other member of the Ngāti Tamaterā Group,

nothing in paragraph (c) of this definition applies by reason only of that member giving, or entering into an agreement to give, a charge secured over assets of the member the value of which is more than one half of the value of the Trust's Assets for the purpose of securing the repayment of money or the performance of an obligation.

For the purposes of paragraphs (a) to (c) of this definition of the value of the Trust's Assets shall be calculated based on the value of the assets of the Ngāti Tamaterā Group.

**"Mandated Iwi Organisation"** has the meaning given to it in the Maori Fisheries Act 2004;

**"Member of Ngāti Tamaterā"** means any individual who is Ngāti Tamaterā but does not include any Whāngai who are not in their own right Ngāti Tamaterā;

**"Membership Validation Committee"** means the committee appointed in accordance with rule 4 of the First Schedule;

**"Ngāti Tamaterā"** means the collective group composed of individuals who:

- (a) descend from the eponymous ancestor Tamaterā; and
- (b) are a member of any of the Ngāti Tamaterā hapu including Ngāti Kiriwera, Ngāti Pare, Ngāti i Pinenga, Ngāti Taharua, Ngāti Taiuru, Ngāti Tangata, Ngāti Tawhaki, Ngāti Rangitaua, Ngāti Te Roro, Te Mango, Te Matewaru, Ngāti Wehenga,

but does not include Ngāti Pukeko hapu at Whakatane;

**"Ngāti Tamaterā Area of Interest"** means the area known as "Mai Matakana ki Matakana" as is more particularly defined in the Deed of Settlement;

**"Ngāti Tamaterā Claims"** means Ngāti Tamaterā historical claims against the Crown in respect of the Crown's breaches of its obligations to Ngāti Tamaterā under the Treaty of Waitangi;

**"Ngāti Tamaterā Group"** means the Trust and any Subsidiaries;

**"Ngāti Tamaterā Tribal Register"** means the register of Members of Ngāti Tamaterā that is to be maintained by the Trust in accordance with the First Schedule to this Trust Deed;

**"Pare Hauraki Fishing Trust"** means the joint mandated iwi organisation (as defined in the Maori Fisheries Act 2004) that was recognised by Te Ohu Kai Moana Trustee Limited as such in March 2009;

**"Property"** means all property (whether real or personal) and includes choses in action, rights, interests and money;

**"Provisional Vote"** means a vote cast pursuant to rule 11.3 of the Second Schedule or rule 6.3 of the Fourth Schedule, as the case may be;

**"Registered Office"** means such office as is determined by the Trustees from time to time and notified to the Adult Registered Members of Ngāti Tamaterā from time to time;

**"Related Person"** has the same meaning as provided in the Income Tax Act 2007;

**"Settlement Act"** means such Act or Acts of Parliament that may be passed so as to give effect to the Deed of Settlement and the premises contained therein;

**"Settlement Date"** means the date defined as the Settlement Date in the Deed of Settlement or Settlement Act;

**"Special Resolution"** means a resolution that:

- (a) where required by the Maori Fisheries Act 2004 of the Maori Commercial Aquaculture Claims Settlement Act 2004 is passed by not less than 75% of the Adult Members of Ngāti Tamaterā voting in accordance with the Fourth Schedule; and
- (b) in all other cases by not less than 75% of the Adult Registered Members of Ngāti Tamaterā who validly cast a vote in accordance with the process set out in the Fourth Schedule;

**"Suspended Trustee"** means a Trustee that has been suspended in accordance with clause 22.7;

**"Subsidiaries"** or **"Subsidiary"** means any entity (including a trust) that is wholly owned by the Trust or in respect of which the Trustees hold the sole power to appoint and remove all of the directors, the trustees, or the members of the controlling body of that entity;

**"Statement of Intent"** means the statement of intent prepared in accordance with clause 11.1;

**"Trustees"** means the trustees appointed from time to time in accordance with the Second Schedule of this Trust Deed to represent Ngāti Tamaterā and to act as the trustees for the time being, of the Trust and **"Trustee"** shall mean any one of those persons;

**"Trust"** means the trust created by this Trust Deed which is to be called the Ngāti Tamaterā Treaty Settlement Trust;

**"Trust Deed"** means this deed of trust and includes the recitals and the schedules to this deed;

**"Trust's Assets"** means the trust fund of the Trust and shall include all assets received or otherwise owned or acquired from time to time by the Trust, including without limitation all assets received pursuant to the Deed of Settlement and Settlement Act, and any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trust;

**"Trust's Purposes"** means the objects and purposes set out in clause 2.4; and

**"Wahi Pooti"** means the place or places nominated by the Trust for the purposes of allowing the Adult Members of Ngāti Tamaterā to cast in person their vote on the election of a Trustee elected in accordance with the Second Schedule.

## 1.2 Interpretation: In this Trust Deed, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include the other genders;
- (c) references to persons include corporations and unincorporated bodies of persons, governments or other public bodies or agencies whether or not having a separate legal personality;
- (d) references to a statute shall be deemed to be references to that statute as amended, re-enacted or substituted from time to time;
- (e) references to a clause, recital or a schedule shall be to a clause, recital or a schedule to this Trust Deed;
- (f) the schedules to this Trust Deed shall form part of this Trust Deed;
- (g) headings appear as a matter of convenience only and shall not affect the interpretation of this Trust Deed;
- (h) references to a company are references to a company incorporated pursuant to the Companies Act 1993; and
- (i) references to a subsidiary or subsidiaries shall be references to a subsidiary or subsidiaries as defined by the Companies Act 1993.

## **2. CONSTITUTION, STATUS AND OBJECTS OF THE TRUST**

- 2.1 **Trust Established:** The Initial Trustees acknowledge and declare that they hold the Trust's Assets upon the trusts and with the powers set out in this Trust Deed. The Trustees further acknowledge that the trust hereby created shall be known as the Ngāti Tamaterā Treaty Settlement Trust.
- 2.2 **Trust Administration:** The Trust shall be governed and administered by and in accordance with this Trust Deed.
- 2.3 **Powers of Trust:** The Trustees shall have all the powers of a natural person and may exercise those powers in furtherance of the Trust's Purposes. Without limiting in any way the generality of the foregoing, the Trustees shall have the powers:
  - (a) to receive or accept, or to make any disposition of, any real property, including any interest of any type in real property (whether corporeal or incorporeal hereditament);
  - (b) to receive or accept, or to make any disposition of, any personal property (whether chattels, choses in action, intellectual property, and otherwise howsoever), including any interest of any type in personal property;
  - (c) to receive or grant any security, including any mortgage, pledge, charge, security interest, or otherwise howsoever, in relation to all, or any part of, the Property;
  - (d) to contract, to grant a release, to grant a power of attorney, to appoint an agent, a receiver, or a stakeholder, to settle property on, or declare, a trust;
  - (e) to issue or take any debt or equity security;
  - (f) to borrow or to lend money; and



- (g) to undertake commercial activities to support the Trust's Purposes.

**2.4 Objects and purposes of the Trust:** The purposes for which the Trust is established is:

- (a) to receive, manage and administer the Trust's Assets on behalf of and for the benefit of the Beneficiaries in accordance with this Trust Deed;
- (b) to make available at such time and in such manner, as the Trustees may in their absolute discretion determine, whether by way of distribution, advance, resettlement or otherwise, the income and/or capital of the Trust to such Beneficiaries;
- (c) to foster, develop and represent the interests of the Members of Ngāti Tamaterā;
- (d) to sustain and recognise the mana and tino rangatiratanga of the Members of Ngāti Tamaterā;
- (e) to promote and advance:
  - (i) the spiritual, cultural, social, economic, employment, education, aspirations and other needs of the Members of Ngāti Tamaterā;
  - (ii) the health and wellbeing including of the aged or those suffering from mental or physical sickness or disability of the Members of Ngāti Tamaterā;
  - (iii) tikanga Maori, te reo Maori and taha wairua among the Members of Ngāti Tamaterā; and
  - (iv) the establishment and maintenance of ancestral lands, water, sites and places of cultural or spiritual significance, wahi tapu, resources and taonga of the Members of Ngāti Tamaterā;
- (f) to support, encourage, promote and conduct any Ngāti Tamaterā initiatives;
- (g) to represent Ngāti Tamaterā in dealings with other parties, and in particular to appoint individuals to represent Ngāti Tamaterā on local, regional and natural committee boards and other such entities;
- (h) to be the Iwi authority representing Ngāti Tamaterā for the purposes of the Resource Management Act 1991, and any related legislation;
- (i) to act as the Mandated Iwi Organisation and Iwi Aquaculture Organisation for Ngāti Tamaterā in the event that Ngāti Tamaterā decides to withdraw from the Pare Hauraki Fishing Trust in accordance with the provisions of the Maori Fisheries Act 2004 and the Maori Commercial Aquaculture Claims Settlement Act 2004 and to otherwise undertake any other commercial activities for the benefit of Ngāti Tamaterā; and
- (j) any other purpose that is considered by the Trustees from time to time to be beneficial to Ngāti Tamaterā.

**2.5 Restrictions on Major Transactions:** Notwithstanding clause 2.3, the Trustees:

- (a) must not enter into a Major Transaction; and

- (b) must ensure that any Subsidiaries are established on terms which provide that such Subsidiaries must not enter into a Major Transaction;

unless that Major Transaction:

- (c) is approved by way of Special Resolution in accordance with the Fourth Schedule; or
- (d) is contingent upon approval by way of Special Resolution.

### **3. APPOINTMENT, POWERS AND MEETINGS OF TRUSTEES**

**3.1 Initial Trustees:** Pending election and appointment of Trustees in accordance with the Second Schedule, the initial six Trustees shall be:

- (a) Terrence John McEnteer;
- (b) Debra Liane Ngamane;
- (c) Antony Tūroa Hukehuke Royal;
- (d) John Tutuki Royal;
- (e) Herearoha Francis Skipper; and
- (f) Airini Pirihira Tukerangi.

**3.2 Appointment in accordance with Second Schedule:** Subject to clause 3.1 the Trustees from time to time of the Trust shall be appointed to office in accordance with the rules set out in the Second Schedule.

**3.3 Appointment and removal of Advisory Trustee:** The Trustees may at any time, by resolution, appoint any person to be an Advisory Trustee of the Trust, on any terms the Trustees decided, provided such terms are not inconsistent with the provisions of this Trust Deed or with the provisions of section 49 of the Trustee Act 1956. The Trustees may at any time revoke any such appointment.

**3.4 Trustees to control Trust affairs:** Subject to any requirements imposed by this Trust Deed, the Deed of Settlement, the Settlement Act and in accordance with law the Trustees shall control and supervise the business and affairs of the Trust in such a manner as they, in their sole discretion, see fit.

**3.5 Proceedings of Trustee Meetings:** Except as otherwise provided in the Trust Deed the proceedings and other affairs of the Trustees shall be conducted in accordance with the rules set out in the Third Schedule.

**3.6 Trustees Remuneration:** Trustees' remuneration must:

- (a) be authorised by a resolution of Adult Registered Members of Ngāti Tamaterā in accordance with clause 14.2. In recommending trustee remuneration levels the Trustees must first seek professional advice in that regard; but
- (b) in respect of the Initial Trustees in clause 3.1, who will be appointed before the first annual general meeting, be set by them for the period they hold office as Initial Trustees, on the basis of professional advice they must seek.

3.7 **Trustee Expenses:** Trustees will be entitled to be reimbursed reasonable expenses incurred in relation to their acting as Trustees.

3.8 **Professional Services:** Notwithstanding clause 3.6, any Trustee may be paid all usual professional, business or trade charges for other services rendered, time expended and all acts done by the Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust in a professional capacity as distinct from the services performed by them in their role as Trustee without obtaining authorisation in accordance with clause 3.6.

#### 4. KAUMATUA COUNCIL

4.1 **Appointment of Kaumatua Council:** The Trustees may from time to time establish, appoint Members of Ngāti Tamaterā to, and remove Members of Ngāti Tamaterā from a Kaumatua Council on such terms of appointment, and subject to such rules and regulations, meeting procedures and processes, as may be prescribed by the Trustees from time to time. The Trust shall, when making appointments, take into consideration the desirability of the Kaumatua Council being broadly representative of Ngāti Tamaterā.

4.2 **Role of Kaumatua Council:** On request from the Trustees, the Kaumatua Council will be responsible for advising the Trustees on matters relating to the tikanga, reo, kawa, korero and whakapapa of Ngāti Tamaterā provided that nothing in this Trust Deed shall be deemed or construed so as to make the seeking or following of advice obtained from the Kaumatua Council as binding upon the Trust.

4.3 **Trustees not to be members:** A Trustee may not be appointed to or remain part of the Kaumatua Council while contemporaneously holding office as a Trustee.

#### 5. GENERAL MANAGER AND OTHER EMPLOYEES

5.1 **Trustees to appoint General Manager:** The Trustees may (on such terms as the Trustees may determine) appoint a General Manager to manage the day to day administration of the Trust, including without limitation the implementation of the Trust's planning, reporting and monitoring obligations under this Trust Deed.

5.2 **Delegations to General Manager:** The General Manager shall be responsible for the employment of all other employees of the Trust and shall exercise such other powers and discretions as are delegated to him or her by the Trustees from time to time.

5.3 **Trustee Role:** A Trustee may not hold the position of General Manager nor be an employee of, or a contractor to, any entity or trust in the Ngāti Tamaterā Group.

#### 6. TRUST MAY ESTABLISH SUBSIDIARIES

6.1 **Establishment of Company and Trust:** In receiving, controlling, and supervising the use of the Trust's Assets on behalf of Ngāti Tamaterā, whether pursuant to the Deed of Settlement, the Settlement Act or otherwise, the Trustees may establish and oversee the operations of any Subsidiaries.

6.2 **Ownership and Control of Subsidiaries:** The Trustees shall ensure that any Subsidiary is established on terms which require the Subsidiary to manage any assets it owns or holds solely for the benefit of the Ngāti Tamaterā Group. The Trustees shall ensure that they have and retain the power to appoint and remove the trustees and directors or any responsible bodies of any Subsidiary wholly owned or directly controlled by the Trust.

- 6.3 **Trustees to monitor:** The Trustees shall also exercise their shareholding or power of appointment in respect of the Subsidiaries in such a way which is consistent with the Trust's Purposes.
- 6.4 **Trustee to fund Subsidiaries:** The Trustees may fund Subsidiaries (if any) by distributing capital or income or by making advances to the Subsidiary or by such other means as is consistent with the Trust's Purposes.
- 6.5 **Directors responsible for governance:** For the avoidance of doubt, and except as expressly provided by this Deed, all entities or trusts within the Ngāti Tamaterā Group shall be governed by their respective boards or other responsible bodies and the role of the Trustees in respect of those shall be limited to the exercise of the rights conferred on the Trustees as shareholders, or (as applicable) appointor, or beneficiary of the relevant entity.
- 6.6 **Remuneration of directors and other trustees:** The Trustees shall determine the remuneration payable to any director, trustee or controlling body of any Subsidiary.
- 6.7 **No influence in determining remuneration:** No Trustee receiving any remuneration referred to in clause 6.6 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall the Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

## 7. APPOINTMENT OF DIRECTORS

- 7.1 **Appointment and removal of directors:** The directors, trustees or any controlling body of any Subsidiary shall be appointed and removed by the Trustees.
- 7.2 **Trustees as directors and trustees of Subsidiaries:** No more than 40% of the Trustees then in office may be appointed as directors or trustees of any individual Subsidiary.
- 7.3 **Appointments with regard to skills and expertise:** A director, a trustee or a controlling body of any Subsidiary shall only be appointed by the Trustees if that person has the particular skills and expertise that are necessary for the appointment having regard to the activities that the Subsidiary undertakes or is likely to undertake in the future and the mix of skills and expertise that is necessary on the relevant Subsidiary.
- 7.4 **Independent:** The Trust may appoint directors and trustees to any Subsidiary who are not Members of Ngāti Tamaterā.

## 8. APPLICATION OF INCOME

- 8.1 **Trustees may apply income and capital:** During the Trust Period, and subject to any other requirements in this Trust Deed, the Trustees may:
- (a) provide for the payment, application or appropriation, or decide to pay, apply or appropriate as much of the available income in any Income Year to or for the benefit of any of the Beneficiaries;
  - (b) use or apply any capital of the Trust's Assets to or for the benefit of any of the Beneficiaries for the Trust's Purpose without first using or applying the whole or any portion of the income of the Trust's Assets for that year; or

- (c) set aside reserves or accumulations for future use or application by the Trustees,

as the Trustees in their sole discretion think fit for or towards the Trust's Purpose.

**8.2 Payments out of income:** The Trustees may in making any decisions about the application of income in any Income Year, decide to have set aside, deducted from, or paid out of income such amounts as the Trust in its discretion thinks fit, including:

- (a) as a reserve against losses and contingencies, and the Trust may write off losses from time to time or resort to any reserve fund in mitigation of losses or for any other purpose; or
- (b) as a reserve to meet fluctuations of income in future years and other contingencies.

**8.3 Matters to consider in applying income:** In making any decision as to the application of the income in any Income Year, the Trustees shall, in exercising their discretion:

- (a) determine how much of the income should cease to be income and be added to and form part of the capital of the Trust's Assets, provided that the Trust may not in the Income Year convert the entire income of the Trust into capital; and
- (b) endeavour to act fairly in considering the needs and interests of present and future Beneficiaries.

**8.4 Accumulation in six months where income not applied:** Any income from any Income Year that is not paid or applied in accordance with this clause 8:

- (a) during an Income Year;
- (b) or within the six (6) months from the end of that Income Year; or
- (c) the earlier of the date on which the Trustees (for that Income Year):
  - (i) file a tax return; or
  - (ii) must file a tax return,

shall be accumulated and any income so accumulated shall be added to and form part of the capital of the Trust's Assets and shall be subject to the trusts and powers herein declared in respect of the capital of the Trust's Assets.

## **9. PLANS**

**9.1 Trustees to prepare Annual Plan:** In addition to the requirement in clause 9.3, the Trust shall prepare no later than one month before the commencement of each Income Year an Annual Plan which specifies in respect of that Income Year information including:

- (a) the annual objectives of the Trust consistent with the longer term vision of the Ngāti Tamaterā Group as identified in the Five Year Plan;
- (b) the nature and scope of the activities proposed by the Trustees for the Ngāti Tamaterā Group in the performance of the Trust's Purposes;
- (c) the ratio of capital to total assets;

- (d) the performance targets and measurements by which performance of the Trust may be judged;
- (e) the manner in which it is proposed that projected income will be dealt with; and
- (f) any proposals for the ongoing management of the Trust's Assets having regard to the interests of all Members of Ngāti Tamaterā; and
- (g) any other information as the Trustees in their discretion consider necessary or appropriate.

**9.2 Trustees to prepare Five Year Plan:** In addition to the requirements in clause 9.1, the Trust shall also produce within eighteen (18) months following the execution of this Trust Deed, and update not less than every two (2) years, a Five Year Plan. Such a plan shall set out the medium and longer term vision of the Trust in respect of the matters referred to in clause 9.1(a) to (g) and shall include a statement by the Trustees of the commercial, management and distribution policies that the Trustees intend to follow in respect of the Trust Assets.

**9.3 Initial Annual Plan and Five Year Plan:** In addition to the requirements in clauses 9.1 and 9.2 the Trust shall, within one (1) month of establishment of the Trust prepare and produce an Annual Plan and Five Year Plan that comply with the matters in clauses 9.1 and 9.2. Those plans shall have effect until such time as they are replaced by new plans as required in clauses 9.1 and 9.2.

## **10. ANNUAL REPORTS, ACCOUNTS AND AUDITOR**

**10.1 Preparation of Annual Report:** The Trustees must, within five (5) months after the end of each Income Year, cause to be prepared an Annual Report on the affairs of the Ngāti Tamaterā Group covering the accounting period ending at the end of that Income Year which includes a comparison of performance against the Annual Plan, and Consolidated Financial Statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of the Ngāti Tamaterā Group for that Income Year. The financial statements shall include as a separate item details of any remuneration to any Trustee or any Trustee's firm (including without limitation any such payment to any Trustee as a director or trustee of a Subsidiary) and details of any premiums paid in respect of Trustees' indemnity insurance (or any indemnity payments made by an insurer).

**10.2 Audit of financial statements:** The Trustees must also ensure that the Consolidated Financial Statements for each Income Year are audited by a chartered accountant in public practice prior to the date for giving notice of the annual general meeting of the Trust for the Income Year immediately following the Income Year to which the financial statements relate.

**10.3 Appointment of auditor:** The accounts of the Trust shall be audited at least once each year by a chartered accountant and (not being a Trustee or an employee of the Trust) appointed in that capacity by the Trustees. No Trustee or employee of the Trust (including any firm of which such a person is a member or employee) may be appointed as the auditor. For the avoidance of doubt, the same chartered accountant may be appointed to audit the accounts of the Trust for consecutive years.

## **11. SUBSIDIARIES TO PREPARE PLANS AND REPORTS**

**11.1 Subsidiaries to prepare Annual Plans and Statements of Intent:** The Trustees shall procure that any Subsidiaries will:

- (a) within three months of the establishment of the Subsidiary, prepare a Statement of Intent setting out the Subsidiary's medium and long term objectives that is consistent with the Trust's Five Year Plan;
  - (b) as required by the Trustees, update the Subsidiary's Statement of Intent to take into account changes in circumstances that may arise from time to time, including without limitation changes to the nature of its business and the business of any of its Subsidiaries;
  - (c) no later than one (1) month following the completion of the Statement of Intent, and thereafter no later than two (2) months before the commencement of each Income Year, prepare an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its and fulfil the objectives and principles of the Statement of Intent; and
  - (d) in addition to any normal reporting requirements, within two (2) calendar months after the completion of the first, second and third quarter of each Income Year send to the Trustees reports on its operations and financial position together with an unaudited summary of financial results as at the end of that period (such reports to be in such form as the Trust may require from time to time). In the event that the Trustees are also the sole trustees of any Subsidiary an independent auditor will need to approve the financial information provided by the Subsidiary under this clause 11.1(d).
- 11.2 **Trust approval required:** Prior to being implemented all Statements of Intent, and annual plans must be approved by the Trustees. Such approval shall be given in light of the Trust's overall, plans and policies in respect of the Trust's Assets.
- 11.3 **Reports by any Subsidiary to comply with Companies Act 1993:** The Trustees shall procure that all annual reports prepared by any Subsidiary that is a company comply in all respects with the requirements of the Companies Act 1993, including without limitation:
- (a) the description required by section 211(1)(a) of the Companies Act 1993 of the nature of the business of any Subsidiary or any of its subsidiaries, or the classes of business in which the Subsidiary has an interest, whether as a shareholder of another company or otherwise;
  - (b) the financial statements (or as appropriate group financial statements) for that Income Year completed and signed in accordance with the Financial Reporting Act 1993; and
  - (c) the auditor's report of the financial statements (or group financial statements) of the Subsidiary for that Income Year.
- 11.4 **Subsidiaries to meet Companies Act standard:** All reports of any Subsidiaries that are not companies must:
- (a) comply with the reporting requirements under the Companies Act 1993 as if that Subsidiary were a company but only to the extent that it is appropriate and relevant to do so and provided that if the reporting requirements under the Companies Act 1993 are not complied with the auditor appointed for the Trust in accordance with clause 8.3 approves of the use of different reporting standards for that Subsidiary; and
  - (b) otherwise comply with the generally accepted reporting standards of that entity.

- 11.5 **Report to include comparison against plans:** In addition to the matters set out in clauses 11.3 and 11.4, the Trustees shall procure that all reports by any Subsidiary include a comparison of their performance against both their respective Annual Plans for that Income Year and their Statements of Intent.
- 11.6 **Protection of sensitive information:** For the avoidance of doubt, nothing in this clause 11 limits or affects the rights of the Trustees, as shareholders in any Subsidiary, to agree pursuant to section 211(3) of the Companies Act 1993 not to include information in the annual report of any Subsidiary where the Trustees consider on reasonable grounds that the information is commercially or otherwise sensitive.

## 12. DISCLOSURE OF PLANS, REPORTS AND MINUTES

- 12.1 **Documents to be available for inspection:** The Trustees shall hold at the Registered Office and make available for inspection upon written request by any Member of Ngāti Tamaterā during normal business hours on any Business Day which is no more than four Business Days from the receipt of that written request by the Trust:
- (a) the Annual Report for each of the preceding two (2) Income Years;
  - (b) the Consolidated Financial Statements for the preceding two (2) Income Years;
  - (c) the Annual Plan;
  - (d) the Five Year Plan;
  - (e) the minute book kept in accordance with clause 14.14 of all decisions taken and business transacted at every annual general meeting and special general meeting;
  - (f) their own personal details on the Ngāti Tamaterā Tribal Register;
  - (g) the current Trust Deed; and
  - (h) the current constitution and trust deed of any Subsidiary.
- 12.2 **Available through other means:** The Trustees shall also make the information listed in clause 12.1 available to Members of Ngāti Tamaterā on the Trust's website but only to the extent that such information can be so available without breaching privacy laws or adversely affecting the commercial activities of the Trust.
- 12.3 **Costs of copying:** Any Member of Ngāti Tamaterā shall be entitled to obtain copies of the information in clause 12.1. However the Trustees shall also be entitled to recover at their discretion all reasonable copying or postage costs (if any).

## 13. NO DISCLOSURE OF SENSITIVE INFORMATION

- 13.1 For the avoidance of doubt, but subject to the Trustees reporting obligations in clauses 10.1, 12.1(a), 12.1(b), 12.1(f), 14.1(a) and 14.1(b), the Trustees may at their sole discretion limit disclosure of any information about the activities or proposed activities of the Trust and the Ngāti Tamaterā Group which the Trustees consider on reasonable grounds to be commercially or otherwise sensitive or subject to obligations of confidentiality.



## 14. GENERAL MEETINGS

14.1 **Trust to hold annual general meeting:** The Trustees shall, no later than six (6) calendar months after the end of each Income Year, and in any event no more than fifteen (15) months after the date of the last annual general meeting of the Trust, hold a general meeting for the Members of Ngāti Tamaterā, to be called its annual general meeting, and shall at that meeting:

- (a) report on the operations of the Ngāti Tamaterā Group during the preceding Income Year;
- (b) present the Annual Report (which must have been made available to the Members of Ngāti Tamaterā no less than 20 Business Days prior to the annual general meeting) and duly audited Consolidated Financial Statements;
- (c) present the proposed Annual Plan;
- (d) announce the names of all newly appointed Trustees;
- (e) approve the appointment of the auditor;
- (f) approve the Trustees' remuneration;
- (g) undertake all other notified business; and
- (h) at the discretion of the Chairperson, undertake any other general business raised at that meeting.

### 14.2 **Approval of Trustees' remuneration and appointment of auditor:**

- (a) No remuneration will be paid to a Trustee in his or her capacity as a Trustee unless that remuneration has been authorised by a resolution of the Adult Registered Members of Ngāti Tamaterā present at the annual general meeting. Each such resolution will express the remuneration to be paid to the Trustees as a monetary sum per annum payable either to all Trustees taken together or to any person who from time to time holds office as a Trustee. This clause does not apply to any remuneration paid to any Trustee in his or her capacity as a director or trustee of a Subsidiary, or a director or trustee of any member of the Ngāti Tamaterā Group or as a provider of services in accordance with clause 3.8 or 5.3, and that remuneration shall be determined by the Trustees pursuant to clause 6.6.
- (b) The appointment of the auditor for the Trust must be authorised by a resolution of the Adult Registered Members of Ngāti Tamaterā present at the annual general meeting.

14.3 **Notice of annual general meeting:** The Trustees shall give not less than twenty-eight (28) days notice of the holding of the annual general meeting, such notice to be posted (including, by electronic form where available) to all Adult Registered Members of Ngāti Tamaterā at their last electronic address shown on the Ngāti Tamaterā Tribal Register and to all other Members of Ngāti Tamaterā 18 years of age and over who have requested private notice of any meeting. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must subsequently be sent to the last known physical address. Notice of the meeting shall also be inserted prominently in appropriate major metropolitan newspapers circulating in New Zealand or in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngāti Tamaterā reside. All such notices shall contain:

- (a) the date, time and place of the meeting;
- (b) an agenda of matters to be discussed at the meeting; and
- (c) details of where copies of any information to be laid before the meeting may be inspected.

**14.4 Notice of special meetings:** In addition to the annual general meeting of the Trust, the Trustees shall convene a special general meeting of the Trust for the Members of Ngāti Tamaterā on the requisition of:

- (a) the Chairperson and Deputy Chairperson for the time being of the Trust;
- (b) the majority of the Trustees then in office; or
- (c) 5% of Adult Registered Members of Ngāti Tamaterā.

Notice of such a meeting shall be given in the same manner as for a notice of the annual general meeting and those requisitioning the meeting shall be required to provide a statement to the Trust setting out the purposes for which the meeting has been requisitioned and the specific agenda items proposed for such a meeting. The Trust shall not be required to give notice calling the meeting until such a statement with agenda items has been received.

**14.5 Annual general meeting not limited to notified business:** At the discretion of the Chairperson, any general business raised at the designated time for general business at any annual general meeting may be transacted in addition to the business expressly referred to in the notice calling that meeting.

**14.6 Special meeting limited to notified business:** No business shall be transacted at any special general meeting other than the business expressly referred to in the notice calling that meeting.

**14.7 Invalidation:** The accidental omission to give notice to, or a failure to receive notice of an annual or special general meeting by, a Member of Ngāti Tamaterā does not invalidate the proceedings at that meeting.

**14.8 Deficiency of notice:** Subject to clause 14.6, a deficiency or irregularity in a notice of any special or general meeting will not invalidate anything done at the meeting if:

- (a) the deficiency or irregularity is not material; and
- (b) the Adult Registered Members of Ngāti Tamaterā who attend the meeting agree to waive the deficiency or irregularity.

**14.9 Quorum:** The quorum required for any annual or special general meeting of the Trust shall be twenty (20) Adult Registered Members of Ngāti Tamaterā present in person, and one or more Trustees present in person. For the avoidance of doubt, if a Trustee is an Adult Registered Member of Ngāti Tamaterā they are entitled to vote at an annual or special general meeting.

**14.10 Chairing of meetings:** The Chairperson for the time being of the Trust will be the chairperson of any annual or special general meeting and will preside over and have control over the meeting. If the Chairperson is not present at the time appointed for holding a meeting, then the Deputy Chairperson shall be the chair. If the Deputy Chairperson is also not present, then the Trustees present shall elect one of their number to substitute as the chairperson for that meeting.

- 14.11 **Voting:** To the extent that a vote is sought or required at any annual or special general meeting, every Adult Registered Member of Ngāti Tamaterā present shall have one vote. All resolutions except Special Resolutions require the approval of not less than a majority of the Adult Registered Members of Ngāti Tamaterā who validly cast a vote. Voting may be by voice or on a show of hands. The chairperson of the meeting may also demand a poll on a resolution either before or after any vote, which among other things, requires the Adult Registered Members to verify their eligibility by a process directed by the chairperson of the meeting. However, except as provided in clauses 2.5, 14.1(e), 14.1(f), 14.2, 26.1, 27 and 28 and where Special Resolutions have been passed in accordance with the Fourth Schedule the Trustees shall not be bound by a resolution passed at any annual or special general meeting, but will only be required to give consideration to any such resolution in administering the Trust's Assets and carrying out the Trust's Purposes.
- 14.12 **Adjourned meetings:** If after one hour of the time appointed for an annual or special general meeting, a quorum is not present, the meeting will stand adjourned to be reconvened seven (7) days after the date of the meeting. On that later day, the meeting will be held again at the same time and in the same place as the adjourned meeting. If a quorum is not present after one (1) hour from the time appointed for that adjourned meeting, the Adult Registered Members of Ngāti Tamaterā present will constitute a quorum.
- 14.13 **Unruly Meetings:** If any general meeting becomes so unruly or disorderly that in the opinion of the chairperson of the meeting the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the chairperson becomes unduly protracted, the chairperson may, and without giving any reason, adjourn the meeting and may direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote by a poll, without further discussion and the meeting will be considered closed.
- 14.14 **Minutes:** The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every annual general meeting and special general meeting.
- 14.15 **Minutes to be evidence of proceedings:** Any minute of the proceedings at an annual general meeting or a special general meeting which is purported to be signed by the chairperson at that meeting shall be evidence of those proceedings.
- 14.16 **Minutes to be evidence of proper conduct:** Where minutes of an annual general meeting or a special general meeting have been made in accordance with this clause then, until the contrary is proven, the meeting shall be deemed to have been properly convened and its proceedings to have been conducted properly.

## 15. DISCLOSURE OF INTERESTS

- 15.1 **Definition of interested Trustee:** A Trustee will be interested in a matter if the Trustee:
- (a) is a party to, or will derive a material financial benefit from that matter;
  - (b) has a material financial interest in another party to the matter;
  - (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from, the matter, not being a party that is wholly owned, or in the case of a trust controlled, by the Trust or any other member of the Ngāti Tamaterā Group;

- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from, the matter; or
- (e) is otherwise directly or indirectly interested in the matter.

15.2 **Interest in common with Members of Ngāti Tamaterā:** Notwithstanding clause 15.1, no Trustee will be interested in a matter where his or her interest is not different in kind from the interests of other Members of Ngāti Tamaterā.

15.3 **Disclosure and Recording of interest to other Trustees:** A Trustee must forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, disclose to his or her co-Trustees at the next meeting of the Trust. A disclosure of interest by a Trustee shall be recorded in the minute book.

## 16. **DEALINGS WITH "INTERESTED" TRUSTEES**

16.1 An interested Trustee shall not take part in any deliberation or vote in respect of any matter in which that Trustee is interested, nor shall the Trustee be counted for the purposes of forming a quorum in any meeting to consider such a matter.

## 17. **PROHIBITION OF BENEFIT OR ADVANTAGE**

17.1 In the carrying on of any business by any member of the Ngāti Tamaterā Group under this Trust Deed, and in the exercise of any power authorising the remuneration of the Trustees, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related Person, in his or her capacity as a Related Person, is able by virtue of that capacity in any way (whether directly or indirectly) to determine, or to materially influence the determination of the nature or amount of that benefit, advantage or income, or the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

## 18. **DISCLOSURE OF TRUSTEE REMUNERATION ETC**

18.1 The Trustees shall, in accordance with clause 10.1, show the amount of any remuneration paid to any Trustee or any Trustee's firm and the amount of any premiums paid out of the Trust's Assets for any Trustee indemnity or insurance separately in the financial statements including any payments made pursuant to clause 21.

## 19. **ADVICE TO TRUSTEES**

19.1 **Trust may rely on advice:** The Trustees may, when exercising their powers or performing their duties, rely on reports, statements and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) an employee of the Trust whom the Trustees believe on reasonable grounds to be reliable and competent in relation to the matters concerned; and
- (b) a professional adviser or expert in relation to matters which the Trustees believe on reasonable grounds to be within the person's professional or expert competence.

- 19.2 **Trust may obtain barrister's opinion:** If the Trustees are in doubt of any matter relating to the management and administration of the Trust's Assets, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a Barrister of the High Court of New Zealand of at least seven (7) years standing. This right to obtain and act upon a Barrister's opinion, however, will not restrict any right on the part of the Trustees to apply to the High Court of New Zealand for directions.

## 20. **LIABILITY OF TRUSTEES**

- 20.1 A Trustee shall only be liable for losses attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows or should have known to be a breach of this Trust Deed. In particular, no Trustee shall be bound to take, or be liable for failing to take, any proceedings against a co-Trustee for any such breach or alleged breach.

## 21. **INDEMNITY AND INSURANCE**

- 21.1 **Indemnity and insurance for Trustees:** Any Trustee, officer or employee of the Trust or of any other member of the Ngāti Tamaterā Group may be indemnified or have their insurance costs met out of the Trust's Assets against any liability which he or she incurs in defending any civil or criminal proceedings issued because of his or her actions in relation to the Trust or the Ngāti Tamaterā Group, where those proceedings do not arise out of any failure by the Trustee, officer or employee and he or she was acting in good faith in a manner that he or she believed to be in the best interests of the Trust or any member of the Ngāti Tamaterā Group with the object of fulfilling the Trust's Purposes.
- 21.2 **Indemnity and insurance costs to be just and equitable:** All indemnities and insurance costs may only be provided to the extent that the Trustees in their discretion think just and equitable.
- 21.3 **Indemnity and insurance re specific trusts:** If any assets are held by the Trust on any separate specific trust, then any Trustee, officer or employee of the Trust may in respect of proceedings brought in relation to that separate specific trust only be indemnified or have their insurance costs met out of those assets.
- 21.4 **Record of decisions:** All decisions made under this clause to give or approve indemnities or meet or approve any insurance costs shall be recorded in the minutes of the meeting at which such a decision was made together with the reasons why, such indemnities or insurance costs were thought by them to be just and equitable.

## 22. **NGĀTI TAMATERĀ NOT TO BE BROUGHT INTO DISREPUTE**

- 22.1 **Trustees not to bring into disrepute:** No Trustee shall act in a manner which brings or is likely to bring the Trust or any member of the Ngāti Tamaterā Group into disrepute.
- 22.2 **Directors not to bring into disrepute:** The Trustees shall also require that any directors or trustees appointed by or at the direction, of the Trustees to any Subsidiary in which the Trust has an interest do not act in a manner which brings or is likely to bring the Trust or any member of the Ngāti Tamaterā Group into disrepute.
- 22.3 **Trustee may be censured or removed:** Any Trustee that acts in a manner that brings or is likely to bring into disrepute the Trust or any member of the Ngāti Tamaterā Group may, by a resolution passed by a majority of not less than 75% of the other Trustees, be formally censured or removed from office.

- 22.4 **Censure or removal to be notified:** The censure or removal of a Trustee in accordance with this clause shall, together with reasons, be reported to the Members of Ngāti Tamatera at the next annual general meeting of the Trust following such censure or removal.
- 22.5 **Effect of Removal:** A Trustee removed from office in accordance with clause 22.3 shall cease to hold office as a Trustee forthwith and shall not be entitled to be re-elected as a Trustee for a period of not less than three (3) years following his or her removal.
- 22.6 **Replacement of Trustee:** The removal of a Trustee in accordance with clause 22.3 shall give rise to a casual vacancy which shall be filled in accordance with rule 4.6 of the Second Schedule.
- 22.7 **Power to suspend:** Any Trustee that acts in a manner that brings or is likely to bring into disrepute the Trust or any member of the Ngāti Tamatera Group may by a resolution passed by not less than 75% of the Trustees then in office (excluding the Trustee that is the subject of the resolution), suspend a Trustee for such time as the Trustees in their sole discretion decide or until that Trustee is reinstated by an ordinary resolution passed at an annual or special general meeting called in accordance with the requirements as to notice and meeting procedure set out in this Trust Deed.
- 22.8 **Effect of Suspension:** Any Suspended Trustee shall not be entitled to take part in any deliberation or vote at any meeting of the Trustees.
- 22.9 **Deemed quorum:** If a Trustee is suspended in accordance with clause 22.7 the quorum required for a meeting of the Trustees shall be reduced by one.

## 23. GIFTS OR DONATIONS

- 23.1 **Trust may accept specific trusts:** Notwithstanding any other provision in this Trust Deed, the Trustees may accept or otherwise deal with any property upon trust for the purposes of the Trust or for any specific purpose that comes within the Trust's Objects and Purposes. Such a trust may include any trust for the benefit of the Members of Ngāti Tamatera or any of them. Any property held by the Trust pursuant to this clause shall be dealt with in accordance with the terms of the trust and shall not constitute part of the Trust Assets.
- 23.2 **Specific trusts to be separate:** If the Trustees accept a trust for any specific purposes as outlined in clause 23.1 above it must keep the property subject to such trust and any income derived from it separate from the Trust's Assets, and administer that property and income as a separate specific trust in terms of the trust under which it was accepted.
- 23.3 **Use of specific trust assets:** The Trustees shall not use the assets of any separate specific trust to make good any deficit, loss, damage or breach of trust relating to any other assets that the Trust may hold, and the Trustees shall also not use the Trust's Assets to make good any deficit, loss, damage or breach of trust relating to any specific trust.
- 23.4 **Expenses of specific trusts:** Each separate specific trust shall bear its own administration expenses plus a fair proportion (determined by the Trustees) of the administration expenses applicable to the Trust.

## **24. RECEIPTS FOR PAYMENTS**

- 24.1 The receipt of payments by the Trustees signed by any person or persons authorised to give receipts on behalf of the Trustees, shall be a complete discharge from the Trustees for that payment.

## **25. CUSTODIAN TRUSTEE**

- 25.1 The Trustees may appoint or incorporate a Custodian Trustee and on any such appointment or incorporation the following provisions shall have effect:

- (a) the Trust's Assets may be vested in the Custodian Trustee as if the Custodian Trustee were the sole Trustee;
- (b) the management of the Trust's Assets and the exercise of all powers and discretions exercisable by the Trustees under this Trust Deed shall remain vested in the Trust as fully and effectively as if there were no Custodian Trustee;
- (c) the sole function of the Custodian Trustee shall be to hold the Trust Assets to invest the funds and dispose of the assets in accordance with any direction in writing by the Trustees for which purpose the Custodian Trustee shall execute all such documents and perform all such acts as the Trustees in writing direct;
- (d) the Custodian Trustee shall not be liable for acting on any such direction provided that if the Custodian Trustee is of the opinion that any such direction conflicts with the trusts or the law or exposes the Custodian Trustee to any liability or is otherwise objectionable the Custodian Trustee may apply to the Court for directions and any order giving any such directions shall bind both the Custodian Trustee and the Trust;
- (e) the Custodian Trustee shall not be liable for any act or default on the part of any of the Trustees;
- (f) all actions and proceedings touching or concerning the Trust's Assets may be brought or defended in the name of the Custodian Trustee at the written direction of the Trustees and the Custodian Trustee shall not be liable for the costs; and
- (g) no person dealing with the Custodian Trustee shall be concerned to enquire as to the concurrence or otherwise of the Trust or be affected by notice of the fact that the Trust has not concurred.

## **26. AMENDMENTS TO TRUST DEED**

- 26.1 **Amendments:** Subject to clauses 26.2 and 26.3 all amendments to the Trust Deed after the Settlement Date shall only be made with the approval of a Special Resolution passed in accordance with the Fourth Schedule.

- 26.2 **Limitations on Amendment:** No amendment shall be made to the Trust Deed which changes:

- (a) the Trust's Purposes and objects so that the Trust is no longer required to act for the collective benefit of the present and future Members of Ngāti Tamaterā;
- (b) this clause 26.2;

- (c) the requirement for a special resolution in clause 26.1;
- (d) the requirement for a special resolution in clause 27;
- (e) the requirement for a special resolution in clause 28; and
- (f) changes the finally agreed definition of Ngāti Tamaterā or Members of Ngāti Tamaterā.

**26.3 Amendment to make definitions consistent with Deed of Settlement and Settlement Legislation:** Notwithstanding any other provision in this Trust Deed to the contrary, this Trust Deed must be amended by the Trustees to make the definition of Member of Ngāti Tamaterā, Ngāti Tamaterā or Ngāti Tamaterā Claims the same as that set out in the final Deed of Settlement and the Settlement Legislation. If the Trust Deed is amended due to operation of this sub-clause a Special Resolution passed in accordance with the Fourth Schedule is not required.

**26.4 Consideration of proposals:** Every Adult Registered Member of Ngāti Tamaterā may put forward for consideration by the Trustees proposals for amendments to the Trust Deed. Any proposal put forward under this clause 26.5 must be in writing and addressed to the Chairperson at the Registered Office. Any proposal put forward under this clause 26.4 must be considered by the Trustees at their next available meeting. If the Trustees do not discard the proposal in accordance with clause 26.5 they may, in their discretion, discuss this at the next annual general meeting.

**26.5 Proposals to be discarded:** Where a proposal for amendments to the Trust Deed does not comply with clause 26.2, the Trustees may in their discretion discard the proposal and the Trustees will not be required to call a special general meeting in accordance with the Fourth Schedule.

## **27. RESETTLEMENT**

**27.1** The Trustees have the power to settle or resettle any or all of the Trust's Assets upon trust in any manner in which, in the opinion of the Trustees is for the advancement or benefit of the Members of Ngāti Tamaterā provided that the purposes of that resettled trust is within the purposes, including incidental purposes, in this Trust Deed and further provided that the resettlement is in accordance with the other provisions of this Trust Deed.

## **28. TERMINATION**

**28.1** Subject to clause 26.2:

- (a) the Trust established by this Deed shall only be terminated or dissolved if the Adult Registered Members of Ngāti Tamaterā have, by Special Resolution, resolved that it has become impossible, impracticable or inexpedient to carry out the Trust's Purposes; and
- (b) on the termination or dissolution of this Trust, the Trust's Assets after the payment of costs, debts and liabilities shall be paid to another trust or entity that has been established for the benefit of the present and future Members of Ngāti Tamaterā.



## **29. PERPETUITIES AND VESTING DAY**

- 29.1 The Vesting Day for the Trust is the day that is eighty years less one (1) day after the date of this Deed, that date being within the perpetuities period permitted by section 6 of the Perpetuities Act 1964 and the perpetuities period applicable to the Trust is hereby specified accordingly. On the Vesting Day, the Trustees shall hold the remaining capital and income of the Trust's Assets on trust for the Members of Ngāti Tamaterā then living as tenants in common in equal shares.
- 29.2 If the Settlement Act provides that the rule against perpetuities, and the other rules of law regulated by the Perpetuities Act 1964, are not to apply to the Trust, clause 29.1 shall be void.

## **30. ARCHIVING OF RECORDS**

- 30.1 **Records to be held for seven years:** All minutes and other records of any proceedings of the Trustees and any Subsidiaries in the Ngāti Tamaterā Group shall be held by the Trust and those companies and other entities for a period of seven years.
- 30.2 **Records to be archived:** At the expiry of seven years the Trustees shall archive the records of the Trust and the Subsidiaries in the Ngāti Tamaterā Group for such period as the Trustees considers necessary.
- 30.3 **Records may be retained for longer:** Notwithstanding clauses 30.1 and 30.2 the Trustees and any of the Subsidiaries within the Ngāti Tamaterā Group may hold on to any records for a period exceeding seven (7) years if in their discretion such records contain information that is commercially or otherwise sensitive or is still required by the Trust or Subsidiary to which the information relates.

## **31. DISPUTE RESOLUTION**

- 31.1 **Disputes:** In the event that a dispute arises between:
- (a) any Members of Ngāti Tamaterā;
  - (b) the Trust and any Members of Ngāti Tamaterā;
  - (c) the Trust and any individual who has applied to be a Member of Ngāti Tamaterā; or
  - (d) between the Trustees,
- regarding membership or otherwise in connection with the tikanga, reo, kawa, whakapapa and korero of Ngāti Tamaterā then that dispute shall be referred in first instance to the Trustees provided that he or she has taken all reasonable efforts in good faith to resolve the dispute before referring the dispute to the Trustees.
- 31.2 **Notice of Dispute:** All disputes referred to the Trustees in accordance with clause 31.1 shall be submitted to the Trustees by notice in writing and the Trustees shall acknowledge receipt in writing within ten (10) Business Days of the date of receipt of the notice.
- 31.3 **Reference of Dispute:** If a dispute is not settled within thirty (30) days of the receipt by the Trust of written notice of the dispute in accordance with clause 31.2 then it shall be referred to a Disputes Committee constituted in accordance with clauses 31.4 and 31.5.

- 31.4 **Dispute Committee to be appointed as required:** There shall not be a permanent Disputes Committee. A Disputes Committee shall be appointed by the Trustees on a case by case basis, having regard to the precise subject matter of the dispute, in question, and only after the expiry of the 30 day period referred to in clause 31.3.
- 31.5 **Appointment and composition of Disputes Committee:** A Disputes Committee shall comprise of three (3) members who shall be appointed by the Trustees. The Trustees shall ensure the appointees to the committee are persons who would be regarded amongst Ngāti Tamaterā and Maori generally as being of good reputation and standing in the community and who hold some or all of the following skills and attributes:
- (a) proven experience in mediation and alternative dispute resolution; and
  - (b) expertise in te reo me nga tikanga Maori,
- provided that the Trustees shall ensure that:
- (c) no appointee has any conflict of interest in the particular question or dispute to be referred to the Dispute Committee; and
  - (d) at least one member of the Dispute Committee has proven experience in mediation and alternative dispute resolution.
- 31.6 **Role of Disputes Committee:** The role of a Disputes Committee shall be to facilitate and make findings and decisions on the disputes referred to it.
- 31.7 **Deliberations of Disputes Committee:** In dealing with any dispute a Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the manner in which a dispute before it should be dealt with. The findings and decisions of a Disputes Committee shall be determined by a majority of its members. The findings and decisions of a Disputes Committee as they relate to disputes relating to membership or in connection with the tikanga, reo, kawa, whakapapa and korero of Ngāti Tamaterā shall be final and binding on the parties.
- 31.8 **Disputes Committee may convene hui:** In facilitating the resolution of any dispute a Disputes Committee may convene a general meeting of Ngāti Tamaterā in order to discuss the matters that are in dispute.
- 31.9 **Hui to meet notice requirements:** Any general meeting called by a Disputes Committee in order to try to settle any disputes shall be called in accordance with the requirements as to notice and meeting procedure that apply in respect of general meetings of Ngāti Tamaterā as set out in this Trust Deed.
- 31.10 **Notification of Outcome:** A Disputes Committee shall give its findings and decision, together with the reasons therefore, in writing to the Trustees and any other party to the dispute.
- 31.11 **Trustees to make final determination:** The Trustees will then, having regard to the findings of the Disputes Committee, make a final determination which shall be binding on all of the parties to the dispute.

## 32. FISHERIES SETTLEMENT ASSETS

- 32.1 For the purposes of this clause 32:

**"Annual Catch Entitlement"** has the meaning given to it in section (1) of the Fisheries Act 1996;

**"Aquaculture Activity"** has the meaning given to it in section 2(1) of the Resource Management Act 1991;

**"Aquaculture Settlement Assets"** means "Settlement Assets" under the Maori Commercial Aquaculture Claims Settlement Act 2004;

**"Asset Holding Company"** means:

- (a) a Subsidiary;
- (b) a company, which for the time being meets the requirements for an Asset Holding Company under the Maori Fisheries Act 2004 including but without limitation, the requirement that the Asset Holding Company pay all dividends solely to the Trust;
- (c) a company that holds the Fisheries Settlement Assets on behalf of the Trust; and
- (d) includes any subsidiary of the Asset Holding Company;

**"Commercial Aquaculture Activities"** means any Aquaculture Activity undertaken for the purpose of sale;

**"Fishing Enterprise"** means:

- (a) a Subsidiary established for the purpose of utilising the Annual Catch Entitlement from the Settlement Quota; and
- (b) includes any subsidiary of the Fishing Enterprise;

**"Fisheries Settlement Assets"** means Income Shares, Settlement Quota and Aquaculture Settlement Assets received by the Trust from either Te Ohu Kai Moana Trustee Limited or as otherwise acquired under the Legislation;

**"Hauraki Iwi"** has the same meaning given to it in the Pare Hauraki Fishing Trust Deed.

**"Income Shares"** means income shares within the meaning of the Maori Fisheries Act 2004 that is held by the Asset Holding Company on behalf of Ngāti Tamaterā;

**"Legislation"** means the Maori Fisheries Act 2004 and the Maori Commercial Aquaculture Claims Settlement Act 2004;

**"Pare Hauraki Fishing Trust Deed"** means the deed of trust establishing the Pare Hauraki Fishing Trust circa 2006; and

**"Settlement Quota"** has the meaning given to it by the Maori Fisheries Act 2004.

- 32.2 **Maori Fisheries Act 2004:** Pursuant to the Legislation, Fisheries Settlement Assets of Ngāti Tamaterā are beneficially held and managed by the Pare Hauraki Fishing Trust. These assets are held by the Pare Hauraki Fishing Trust as part of the collective fisheries assets of the Hauraki Iwi. The Legislation contemplates and the Pare Hauraki Fishing Trust Deed provides, for Ngāti Tamaterā to withdraw its Fisheries Settlement Assets and transfer these assets to its own Mandated Iwi Organisation. Ngāti Tamaterā has not decided to withdraw from the Pare Hauraki Fishing Trust but in the event that

Ngāti Tamaterā chooses to withdraw it is intended that this Trust will become the Mandated Iwi Organisation for Ngāti Tamaterā.

- 32.3 **Withdrawal from Pare Hauraki Fishing Trust:** If Ngāti Tamaterā chooses to withdraw from Pare Hauraki Fishing Trust in accordance with the provisions of the Maori Fisheries Act 2004 upon completion of the withdrawing process (and if necessary once this process has commenced) the provisions of this clause 32 shall apply.
- 32.4 **Mandated Iwi Organisation:** The Trust shall act as the Mandated Iwi Organisation and Iwi Aquaculture Organisation for Ngāti Tamaterā for the purposes of the Legislation.
- 32.5 **Asset Holding Company:** The Trust shall have an Asset Holding Company, which shall hold on behalf of the Trust, the Fisheries Settlement Assets. The Asset Holding Company will be a Subsidiary and will in addition to this clause 32 comply with the provisions of this Deed as they relate to Subsidiaries.
- 32.6 **Strategic Governance:** The Trust must exercise strategic governance over any Asset Holding Company.
- 32.7 **Subsidiaries of Asset Holding Company:** The Asset Holding Company may establish one or more subsidiaries to be a subsidiary asset holding company and transfer to that subsidiary some or all of the Fisheries Settlement Assets the Asset Holding Company receives. Any such subsidiary must be wholly owned and controlled by the Asset Holding Company and provide any dividends solely to the Asset Holding Company.
- 32.8 **Fishing Enterprise:** If the Trust wishes to have its own fishing operation, utilising Annual Catch Entitlement from its Settlement Quota to harvest, process, or market fish, or to be involved in a joint venture for these purposes, the Trust must establish a fishing enterprise separate from, but responsible to the Trust to undertake these operations. The Fishing Enterprise must be a separate entity from any Asset Holding Company.
- 32.9 **Directors and Trustees of Fishing Enterprise and Asset Holding Company:** No more than 40% of the directors or trustees of any Fishing Enterprise or Asset Holding Company can be the Trustees then in office.
- 32.10 **Disposal or Transfer of Fisheries Settlement Assets:** Any proposal in relation to the disposal of Income Shares pursuant to section 70 of the Maori Fisheries Act 2004 or in relation to the disposal of Settlement Quota pursuant to sections 159, 162, or 172 of the Maori Fisheries Act 2004 or in relation to the transfer of authorisations or coastal permits pursuant to section 50 of the Maori Commercial Aquaculture Claims Settlement Act 2004, may only proceed if a Special Resolution has been passed in accordance with the Fourth Schedule of this Trust Deed.
- 32.11 **Undertaking Commercial Aquaculture Activities:** The Trust must not undertake Commercial Aquaculture Activities except through a separate enterprise that is responsible to the Trust.
- 32.12 **Annual General Meeting:** At the annual general meeting the trustees will present any proposed amendments to the constitution of any Asset Holding Company.
- 32.13 **Annual Report of Trust:** Any annual report prepared by the Trust must include:
- (a) a report giving information of the sales and exchanges of Settlement Quota in the previous year including:
    - (i) the quantity of Settlement Quota held by the Asset Holding Company;
    - (ii) the value of the Settlement Quota sold or exchanged;

- (iii) the identity of the purchaser or other party to the exchange;
  - (iv) any transaction with Settlement Quota that has resulted in a registered interest by way of a caveat or mortgage placed over the Settlement Quota;
  - (v) the Settlement Quota interests that have been registered against the Settlement Quota shares; and
  - (vi) the value of any Income Shares sold, exchanged or otherwise acquired;
- (b) a report on the interactions of the Trust in fisheries matters with:
- (i) other entities within the Ngāti Tamaterā Group;
  - (ii) other mandated iwi organisations; and
  - (iii) Te Ohu Kai Moana Trustee Limited; and
- (c) a report on any changes to the Trust Deed or the constitution of any Asset Holding Company.

**32.14 Annual Plan of Trust:** Any annual plan prepared by the Trust must include:

- (a) the Trust's policy in respect of sales and exchanges of Settlement Quota; and
- (b) any proposed changes to the constitutional documents of any Asset Holding Company.

**32.15 Annual Report of Asset Holding Company:** Any annual report of any Asset Holding Company must include:

- (a) the investment of money of that Asset Holding Company or any of its subsidiaries;
- (b) the key strategies for the use and development of the Settlement Quota and Income Shares;
- (c) the expected financial return on the Settlement Quota and Income Shares; and
- (d) any programme to:
  - (i) manage the sale of Annual Catch Entitlements; and
  - (ii) reorganise the Settlement Quota as by buying and selling settlement quota in accordance with the Maori Fisheries Act 2004.

**32.16 Dispute Resolution:** If a dispute arises as defined in section 180(1)(m) of the Maori Fisheries Act 2004 or as defined in section 52(7) of the Maori Commercial Aquaculture Claims Settlement Act 2004 the dispute will be determined in accordance with the Legislation. For the purposes of the Legislation, the disputes procedure contained in clause 31 shall be deemed to constitute the process for resolving the dispute that is required pursuant to section 181(1) of the Maori Fisheries Act 2004 and that is required pursuant to section 53 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

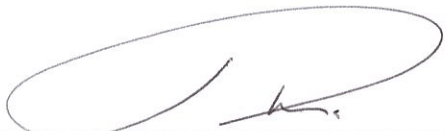
- 32.17 **Amendments to provisions required by the Maori Fisheries Act 2004:** Any amendment to this Trust Deed must not be inconsistent with the Maori Fisheries Act 2004 and no amendment may be made to this Trust Deed until two years has passed since the Trust was recognised by Te Ohu Kai Moana Trustee Limited.

### 33. REVIEW OF TRUST DEED

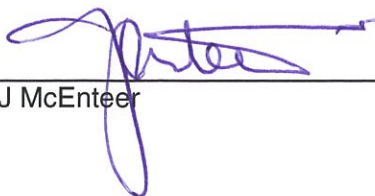
- 33.1 After five (5) years from the date of the first election of Trustees, the Trustees shall initiate a review of the terms and operation of this Trust Deed and. In particular, shall the arrangements relating to the election of Trustees and all other aspects of representation of Ngāti Tamaterā by the Trust.
- 33.2 **Deed review process:** In conducting this review the Trustees shall engage and consult with Ngāti Tamaterā in order to seek the views of Ngāti Tamaterā on the terms and operation of this Deed and, in particular, the arrangements relating to the election of Trustees and all other aspects of the representation of Ngāti Tamaterā by the Trust and shall have regard to the tikanga of Ngāti Tamaterā.
- 33.3 **Review to be independently facilitated:** The process of engagement and consultation required by clause 33.3 shall be undertaken by an independent facilitator appointed by the Trustees. The role of independent facilitator shall be to:
- (a) liaise with the Trustees in the preparation of any discussion materials to be distributed to Ngāti Tamaterā;
  - (b) facilitate any hui;
  - (c) receive, compile and review any written submissions received from Ngāti Tamaterā; and
  - (d) make recommendations to the Trustees as to the amendments that should be made to the Deed as a consequence of the information received from the process of engagement and consultation.
- 33.4 **Outcome of review:** Following the completion of the review and consideration by the Trustees of the report made by the independent facilitator in accordance with clause 33.3, the Trustees shall recommend amendments (if any) to this Deed and seek the approval of those amendments by Special Resolution in accordance with the Fourth Schedule.

**SIGNED AS A DEED**

**SIGNED** by **TERRENCE JOHN McENTEER** as an Initial Trustee in the presence of:



Signature of witness



T J McEnteer

JEFFREY ROBERT MORRISON  
Name of witness

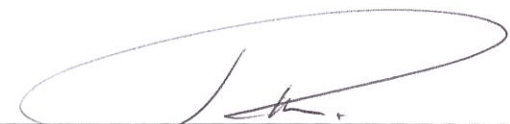
Solicitor

Occupation

Auckland

City/town of residence

**SIGNED** by **DEBRA LIANE NGAMANE** as an Initial Trustee in the presence of:



Signature of witness



D L Ngamane

JEFFREY ROBERT MORRISON  
Name of witness

Solicitor

Occupation

Auckland

City/town of residence

**SIGNED** by **ANTONY TŪROA HUKHUKU ROYAL** as an Initial Trustee in the presence of:



Signature of witness



A T H Royal

JEFFREY ROBERT MORRISON  
Name of witness

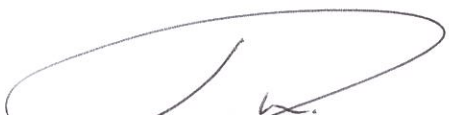
Solicitor

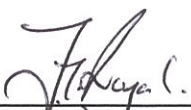
Occupation

Auckland

City/town of residence

**SIGNED** by **JOHN TUTUKI ROYAL** as an Initial Trustee in the presence of:

  
Signature of witness

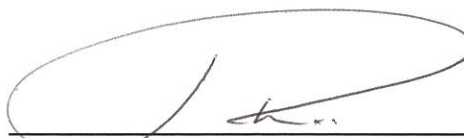
  
J T Royal

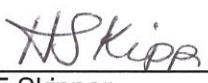
JEFFREY ROBERT MORRISON  
Name of witness

Solicitor  
Occupation

Auckland  
City/town of residence

**SIGNED** by **HEREAROHA FRANCIS SKIPPER** as an Initial Trustee in the presence of:

  
Signature of witness

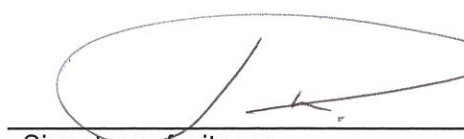
  
H F Skipper

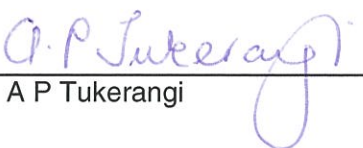
JEFFREY ROBERT MORRISON  
Name of witness

Solicitor  
Occupation

Auckland  
City/town of residence

**SIGNED** by **AIRINI PIRIHIRA TUKERANGI** as an Initial Trustee in the presence of:

  
Signature of witness

  
A P Tukerangi

JEFFREY ROBERT MORRISON  
Name of witness

Solicitor  
Occupation

Auckland  
City/town of residence



## FIRST SCHEDULE

### Ngāti Tamaterā Tribal Membership Register

#### 1. TRUST TO KEEP REGISTER

- 1.1 **Trust to maintain register:** The Trust shall administer and maintain the Ngāti Tamaterā Tribal Register which is a register of the Members of Ngāti Tamaterā.
- 1.2 **Register to comply with this Schedule:** The Ngāti Tamaterā Tribal Register shall be maintained in accordance with the rules and procedures set out in this Schedule.

#### 2. CONTENTS OF REGISTER

- 2.1 **Register to contain Members' details:** The Ngāti Tamaterā Tribal Register shall record in it the full names, dates of birth and postal addresses of the Members of Ngāti Tamaterā.
- 2.2 **Beneficiary Registration Number:** The Trust will allocate a beneficiary identification number to each Adult Registered Member of Ngāti Tamaterā on the Ngāti Tamaterā Tribal Register. The Trust will immediately after allocation, notify the relevant Adult Registered Member of Ngāti Tamaterā of his or her beneficiary identification number.

#### 3. APPLICATIONS FOR REGISTRATION

- 3.1 **Form of applications:** All applications for registration as a Member of Ngāti Tamaterā must be made in writing to the Trust in the application form approved from time to time by the Trust. The application must contain:
- (a) the full name, date of birth and postal address of the applicant;
  - (b) the whakapapa (genealogical connections) through which the applicant claims affiliation to Ngāti Tamaterā;
  - (c) such evidence as the Trust may from time to time require as to that applicant's status as a Member of Ngāti Tamaterā; and
  - (d) an option for the applicant to state whether they want to receive private notices about meetings, trustee elections and special resolutions.
- 3.2 **Application to be made by:** An application for registration as a Member of Ngāti Tamaterā may be made by:
- (a) Members of Ngāti Tamaterā who are 18 years of age or older, on their own behalf or by their legal guardian; and
  - (b) other Members of Ngāti Tamaterā who are under the age of 18 years, by their parent or legal guardian on their behalf.

#### 4. DECISIONS AS TO MEMBERSHIP

- 4.1 **Decisions to be made on applications:** Upon receipt of an application for membership the Trustees shall consider the application and shall make a decision as to whether or not the applicant should be accepted as a Member of Ngāti Tamaterā.

- 4.2 **Membership Validation Committee:** The Trustees in making their decision about an application for membership may seek guidance from a Membership Validation Committee to make decisions on all applications made pursuant to rule 4.1 of this Schedule by any person for the recording in the Ngāti Tamaterā Tribal Register of that person's membership of Ngāti Tamaterā.
- 4.3 **Composition of Membership Validation Committee:** The Membership Validation Committee shall comprise not less than three (3) and not more than five (5) Adult Registered Members of Ngāti Tamaterā, appointed by the Trustees from time to time, with the expertise in and knowledge of Ngāti Tamaterā whakapapa necessary to make determinations regarding membership applications. Trustees with the required expertise and knowledge of Ngāti Tamaterā whakapapa may be appointed to the Membership Validation Committee.
- 4.4 **Trustees to have final decision:** Even if a Membership Validation Committee is established in accordance with rule 4.2 of this Schedule all the final decisions on applications for membership will be decided by the Trustees in their sole discretion.
- 4.5 **Decisions to be made on applications:** Upon receipt of an application for membership in accordance with rule 3.1 of this Schedule the Membership Validation Committee shall consider the application and shall make a decision as to whether or not the applicant should be registered as a Member of Ngāti Tamaterā.
- 4.6 **Successful applications to be notified and registered:** In the event that the Trustees decide that the application should be accepted then the Trust shall notify the applicant and enter the applicant's name and other relevant details (including beneficiary identification number in accordance with rule 2.2 of this Schedule) in the appropriate part of the Ngāti Tamaterā Tribal Register.
- 4.7 **Notification of unsuccessful applicants:** In the event that the Membership Validation Committee decides to decline the application then such decision shall be conveyed in writing to the Trustees together with the reasons for the decision. The Trustees shall then notify the applicant in writing of the decision together with the reasons given for the decision.
- 4.8 **Unsuccessful applicant may reapply:** Any applicant whose application has been declined may:
- (a) dispute the Trustee's determination in accordance with clause 31 of the main body of the Trust Deed; and
  - (b) at any time seek to have his or her application reconsidered by the Trustees provided that such application for reconsideration may only be made on the basis of new information (being information that was not submitted or considered as part of the initial or, if more than one, any previous application) as to the applicant's status as a Member of Ngāti Tamaterā.

## 5. MAINTENANCE OF REGISTER

- 5.1 **Trustees to establish policies:** The Trustees shall take such steps and institute such policies as are necessary to ensure that the Ngāti Tamaterā Tribal Register is maintained in a condition that is as up to date, accurate and complete as possible in recording the Members of Ngāti Tamaterā.
- 5.2 **Assistance in identifying membership:** In maintaining the Ngāti Tamaterā Tribal Register the Trust shall include in the policies that it develops, policies for assisting in the identification and registration of those Members of Ngāti Tamaterā that are not for the time being on the Ngāti Tamaterā Tribal Register. Such policies shall include

policies as to the nature of the assistance that the Trust will provide to those persons that believe that they are Members of Ngāti Tamaterā but for whatever reason are not able to establish such membership.

- 5.3 **Responsibility of Members of Ngāti Tamaterā:** Notwithstanding rule 1.1 of this Schedule it shall be the responsibility of each person who is a Member of Ngāti Tamaterā (or in the case of those persons under eighteen (18) years of age, the parent or guardian of that person) to ensure that his or her name is included in the Ngāti Tamaterā Register and that his or her full postal address for the time being is provided and updated.
- 5.4 **Consequences of registration:** Registration of any person on the Ngāti Tamaterā Tribal Register shall be conclusive evidence of that person's status as a Member of Ngāti Tamaterā.

## SECOND SCHEDULE

### Elections of Trustees

#### 1. PROCEDURE

- 1.1 **This Schedule to apply:** The Trustees shall be appointed in accordance with the rules and procedures set out in this Schedule.

#### 2. ELIGIBILITY FOR APPOINTMENT

- 2.1 **Nominee to be registered:** To be elected a Trustee a nominee must, as at the closing date for nominations, be recorded in the Ngāti Tamaterā Register as an Adult Registered Member of Ngāti Tamaterā, and be eligible in accordance with rule 6.7 of this Schedule. This rule 2.1 does not prevent an individual who is not registered on the Ngāti Tamaterā Tribal Register from being appointed as an Advisory Trustee in accordance with clause 3.3.
- 2.2 **Trustees Roles:** A Trustee may not hold the position of General Manager nor be an employee of, nor a contractor to any entity or trust in the Ngāti Tamaterā Group.
- 2.3 **Trustees may be directors or trustees:** No more than 40% of the director or trustees of any Subsidiary can be the trustees then in office.
- 2.4 **Number of Trustees to be limited:** There shall be no less than five (5) Trustees and no more than seven (7) Trustees.

#### 3. ELECTION OF TRUSTEE

- 3.1. **Election of Trustees:** The Adult Members of Ngāti Tamaterā listed in the Ngāti Tamaterā Tribal Register, shall be entitled to elect the Trustees in accordance with the rules for elections as set out in this Schedule.
- 3.2 **Highest number of valid votes:** The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees. Trustees must represent the interests of all Members of Ngāti Tamaterā irrespective of whanau affiliations. If there is an equal number of votes for the last available position, then the successful candidate will be decided by the drawing of lots.

#### 4. TERM OF OFFICE

- 4.1 **Term of Office:** Subject to rule 4.2 of this Schedule the Trustees from time to time shall hold office for a term of three (3) years.
- 4.2 **Retirement and rotation of Initial Trustees:** The Initial Trustees shall retire from office with elections having been held for their respective positions as Trustee as follows:
- (a) as at the date of the annual general meeting of the Trust in the first Income Year following the Settlement Date, 50% of the initial Trustees then in office shall retire (if there is an odd number of initial Trustees the number of initial Trustees retiring shall be rounded down from 50% to the nearest whole number of Trustees; for example if there are five (5) initial trustees then in office, 50% of those trustees will be 2.5, so two trustees will retire) and an election shall be held for the vacant trustee positions. The Trustees elected at this election will hold office for a term of two (2) years; and

- (b) as at the date of the annual general meeting of the Trust in the third Income Year following the Settlement Date, the remaining initial Trustees shall retire and an election shall be held for all Trustee positions (resulting in there being between up to seven Trustees).

4.3 **Order of retirement of Initial Trustees:** The order of retirement of the Initial Trustees under rule 4.2 of this Schedule shall be determined by agreement failing which the determination shall be made by lot.

4.4 **Term following retirement of Initial Trustees:** Following the retirement of the Initial Trustees in accordance with rule 4.2 of this Schedule, each Trustee shall hold office until the conclusion of the annual general meeting of the Trust in the third Income Year following his or her appointment. However, if because of a review of the election of a Trustee's replacement under rule 13 of this Schedule the appointment of that Trustee's replacement has not been completed as at the expiry of the Trustee's term, then that Trustee shall continue to hold office by virtue of his or her previous appointment until the review process is completed. For the purposes of calculating the term of the replacement Trustee, that replacement Trustee shall, once he or she takes office, be deemed to have taken office on the date upon which the term of office of the previous Trustee expired, being the date of the relevant annual general meeting.

4.5 **Eligibility of retiring Trustees:** Retiring Trustees shall be eligible for re-election.

4.6 **Casual vacancies:** Should:

- (a) there be no person elected to replace a Trustee following that Trustee's retirement; or
- (b) any casual vacancy arise prior to the expiry of any Trustee's term of office; and
- (c) the term to run for that vacant position in either 4.6(a) and 4.6(b) exceeds six (6) months;

then that vacancy shall be filled by the holding of a further election in accordance with this Schedule.

4.7 **Term of casual appointments:** In the case of an appointment made pursuant to rule 4.6 of this Schedule the Trustee thereby appointed shall, as the case may be, hold office:

- (a) in the case of a Trustee appointed pursuant to rule 4.6(a) of this Schedule, for the same term as that Trustee would have been appointed had he or she been appointed, immediately following the retirement of the previous Trustee, under rule 4.4 of this Schedule; or
- (b) in the case of a Trustee appointed pursuant to rule 4.6(b) of this Schedule, for the balance of the term of office of the Trustee that he or she has replaced.

## 5. TIMING OF ELECTIONS

5.1 The elections for Trustees in any given Income Year must, except in the case of elections to fill casual vacancies under of this Schedule rule 4.6 or to the extent that any review under rule 13 of this Schedule has been sought in respect of an election, be concluded by the time of the annual general meeting of the Trust in that Income Year.

## 6. MAKING OF NOMINATIONS

- 6.1 **Calling for nominations:** The Trust shall give notice calling for nominations for those Trustee positions for which elections are required at least three (3) months before the annual general meeting of the Trust for that Income Year, and in any event in sufficient time for the election to be concluded in accordance with rule 5 of this Schedule. Such notice shall specify the method of making nominations and the latest date by which nominations must be made and lodged with the Trust or such other person as the notice directs.
- 6.2 **Timing for nominations:** All nominations must be lodged with the Trust no later than twenty-one (21) days following the date upon which the notice calling for nominations is first given.
- 6.3 **Form of notice:** All notices given under this rule shall be given in the following manner:
- (a) By post (or by electronic form where available) to each Member of Ngāti Tamaterā shown on the Ngāti Tamaterā Tribal Register and to any other Member of Ngāti Tamaterā eighteen (18) years of age or older who has made a written request for a notice. If notice sent to an electronic address fails, and the Trust is aware of the failure, then the notice must subsequently be sent to the last known physical address;
  - (b) by newspaper advertisement published on at least two (2) separate days and inserted in any major metropolitan newspaper and/or any provincial newspaper circulating in regions where the Trust considers that a significant number of Members of Ngāti Tamaterā reside; and
  - (c) by such other means as the Trust may determine.
- 6.4 **Inclusion of invitation to register:** Any such notice shall also invite applications from qualified persons for inclusion of their names in the Ngāti Tamaterā Tribal Register, and shall set out the date (being 3 days after the closing date for the election, but only if the envelope containing the application for registration is date stamped on or before the closing date for the election) that an application for registration must be received for the applicant, if successful, to be eligible to vote in the notified election. For the avoidance of doubt, an individual must submit an application for registration as a Member of Ngāti Tamaterā prior to casting their vote in the notified election.
- 6.5 **Nomination to be in writing:** The nomination of a candidate for election as a Trustee shall be in writing signed by not less than three (3) Adult Registered Members of Ngāti Tamaterā shown on the Ngāti Tamaterā Tribal Register as being entitled to vote in respect of the election in accordance with the First Schedule.
- 6.6 **Consent of nominee:** The consent of each candidate to his or her nomination shall be endorsed on the nomination paper, provided that a candidate may at any time, by notice to the Trust, withdraw his or her nomination.
- 6.7 **Eligibility for nomination:** Notwithstanding the forgoing rules of this Schedule, an Adult Registered Member of Ngāti Tamaterā shall not be eligible for nomination as a candidate for election as a Trustee if he or she:
- (a) is or has ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);
  - (b) is bankrupt or has made any composition or arrangement with his or her creditors;

- (c) has been convicted of an indictable offence;
- (d) is subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992, or becomes subject to a care and protection order under the Protection of Personal and Property Rights Act 1988;
- (e) does not reside permanently in New Zealand; or
- (e) has within the last three (3) years been removed from the office of Trustee in accordance with clause 22.3.

## 7. HOLDING OF ELECTIONS

7.1 **Mode of Voting at Elections:** Subject to rule 7.3 of this Schedule voting at all elections shall be by way of secret ballot. Voting forms may be completed by a Member of Ngāti Tamaterā either by:

- (a) delivering their voting forms to the Chief Returning Officer by post or by electronic form where available or at a Wahi Pooti; or
- (b) e-voting (if available).

The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees. Where there is an equal number of votes for the last Trustee position the decision as to the successful candidate shall be made by the drawing of lots.

7.2 **Wahi Pooti to be held:** Subject to rule 7.4 of this Schedule, a Wahi Pooti shall be advertised in the newspapers circulating in the area where the Wahi Pooti is to be held. Such an advertisement must be run at least twenty (20) Business Days prior to the date of the Wahi Pooti. The Wahi Pooti shall be held on the closing date for the election.

7.3 **No elections where nominees equal vacancies:** In the event that the total number of nominations of Trustees is equal to the total number of vacancies, no election shall be necessary and the person or persons nominated shall be deemed to have been duly appointed.

7.4 **Adult Members to vote in elections:** Each Adult Member of Ngāti Tamaterā is eligible to vote in an election, provided that:

- (a) each such Adult Member of Ngāti Tamaterā will only be eligible to cast one (1) vote in an election; and
- (b) each such Adult Member of Ngāti Tamaterā is, at the date voting closes, either recorded in the Ngāti Tamaterā Tribal Register as an Adult Registered Member of Ngāti Tamaterā or has completed and sent with their voting form an application form for registration which complies with rule 3.1 of the First Schedule.

## 8. NOTICE OF ELECTIONS

8.1 **Notice to be given:** Immediately after the closing date for nominations, the Trust shall, where an election is required:

- (a) fix a closing date for the election (being the last day upon which a vote may be validly cast in the election); and

- (b) subject to rules 7.2 and 8.2 of this Schedule, set a date and venue for the Wahi Pooti.
- 8.2 **Period of notice:** The Trust shall give not less than twenty-eight (28) days notice of the closing date for the elections and the method by which votes may be cast as set out in rule 7.1 of this Schedule.
- 8.3 **Method of giving notice:** Notice under rule 8.2 of this Schedule shall be given by:
  - (a) posting notice (including, by electronic form where available) to each Member of Ngāti Tamaterā shown on the Ngāti Tamaterā Tribal Register as entitled to vote at the election (being an Adult Registered Member of Ngāti Tamaterā who is recorded in the Ngāti Tamaterā Tribal Register as a Member of Ngāti Tamaterā) and any other Member of Ngāti Tamaterā who has requested to receive such notice. If notice sent to an electronic address fails, and the Trust is aware of the failure, then the notice must subsequently be sent to the last known physical address;
  - (b) inserting an advertisement on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trust considers that a significant number of Members of Ngāti Tamaterā reside; and
  - (c) posting on the Trust's website, if it has one; and
  - (d) such other means as the Trustees may determine.
- 8.4 **General content of notices:** Every notice given in accordance with rule 8.3(a) and (b) of this Schedule shall contain:
  - (a) a list of the candidates for election as Trustees;
  - (b) the date, time and place of the Wahi Pooti; and
  - (b) the mode by which votes may be cast as set out in rule 7.1 of this Schedule.
- 8.5 **Additional content of notice:** Each notice given in accordance with rule 8.3(a) of this Schedule shall also contain:
  - (a) a voting form that complies with rule 9.1 of this Schedule; and
  - (b) details of the procedure to be followed in making a vote by post or by electronic form, including the date by which the voting form must be received by the Chief Returning Officer; and
  - (c) a statement that voting forms may be either posted or delivered to the Chief Returning Officer at a Wahi Pooti.
- 8.6 **Additional information in other notices:** Each notice given in accordance with rule 8.3(b) and (c) of this Schedule shall also give details about how voting forms may be obtained.
- 9. **POSTAL VOTING**
  - 9.1 **Other details to accompany vote:** Each voting form must contain information that is sufficient to identify the voter and the voting documents issued to that elector.



- 9.2 **Timing of postal votes:** Votes must be made no later than the closing date for the election of the Trustees to which the postal vote relates. Votes otherwise validly cast are valid and able to be counted if they are received by the Chief Returning Officer no later than three (3) days after the closing date for the election, but only if the envelope containing the voting form is date stamped on or before the closing date for the election.

## 10. APPOINTMENT OF CHIEF RETURNING OFFICER

- 10.1 **Appointment of Chief Returning Officer:** For the purposes of elections the Trust shall appoint as required a Chief Returning Officer who shall not be a Trustee or employee of the Trust. The Chief Returning Officer shall be responsible for co-ordinating Trustee elections.
- 10.2 **Chief Returning Officer to receive voting forms:** All voting forms must be addressed to the Chief Returning Officer. The Trustees shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the provisions of this Deed setting out the powers and duties of the Chief Returning Officer. The Chief Returning Officer shall be responsible for co-ordinating Trustee elections.
- 10.3 **Chief Returning Officer to be present at Wahi Pooti:** The Chief Returning Officer or his or her nominee must be present at all times at the Wahi Pooti. The Chief Returning Officer or his or her nominee will be available to collect any completed voting forms at the Wahi Pooti. The Chief Returning Officer or his or her nominee shall also ensure that additional voting forms are available at Wahi Pooti.
- 10.4 **Only one vote to be cast:** The Chief Returning Officer shall ensure that appropriate measures are in place to ensure that only one vote is cast by each Adult Member of Ngāti Tamaterā.
- 10.5 **Validity of Provisional votes:** Where an adult Member of Ngāti Tamaterā is not also an Adult Registered Member of Ngāti Tamaterā and has voted in accordance with rule 7.3(b) of this Schedule:
- (a) such vote is provisional until such time as the application form for registration as an Adult Registered Member of Ngāti Tamaterā is approved by the Membership Validation Committee as set out in the First Schedule; and
  - (b) where the application form for registration as an Adult Registered Member of Ngāti Tamaterā is declined in accordance with the First Schedule, the said vote will be invalidated.
- 10.6 **Recording of votes:** A record shall be kept by the Chief Returning Officer of all votes received.

## 11. COUNTING OF VOTES

- 11.1 **All votes to be counted:** Upon the expiry of the date for the receipt of postal votes, the Chief Returning Officer shall record and count all votes validly cast.
- 11.2 **Certification and notifying election result:** Once all votes have been counted and the result of the election determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the election and communicate the result of the election to the Trust. The Trust shall thereafter advise the candidates of the result and give notice of the same at the annual general meeting of the Trust in accordance with clause 14.1(d) of the main body of the Trust Deed. The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected Trustees.

11.3 **Provisional Votes:** Where, in respect of any election, one or more Provisional Votes has been cast:

- (a) if the validity or otherwise of the Provisional Votes may affect the outcome of the election, the Chief Returning Officer may not certify the result of the election until the validity of the Provisional Votes has been confirmed pursuant to rule 10.5 of this Schedule and any valid Provisional Vote has been counted; or
- (b) if the validity or otherwise of the Provisional Votes will not affect the result of the election, the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional Votes has not been confirmed pursuant to rule 10.5 of this Schedule and the Provisional Votes have not been counted.

## 12. RETENTION OF ELECTION RECORDS

12.1 **Compiling and sealing voting records:** The Chief Returning Officer shall, as soon as practicable after he or she has certified the result of the election, place all voting forms and other voting records into a sealed packet. The Chief Returning Officer shall endorse upon the sealed packet a description of the contents of that packet together with the final date for voting in that election. The Chief Returning Officer shall then sign the endorsement and forward the sealed packet to the Trust.

12.2 **Retention and disposal of packets:** Subject to rule 14.1(b) of this Schedule the sealed packets received from the Chief Returning Officer shall be safely kept unopened by the Trust for a period of one (1) year from the closing date for making votes in the election to which the packet relates. At the expiry of that one (1) year period the packets shall be destroyed unopened.

## 13. REVIEW OF ELECTION RESULTS

13.1 **Candidates may seek review:** Any candidate may, within fourteen (14) days after the certification of the election result and the giving of notice by the Trust in respect of that election, seek a review of that election.

13.2 **Appointment of Electoral Review Officer:** For the purposes of carrying out reviews in respect of any election the Trust shall ensure that an Electoral Review Officer is appointed. The Electoral Review Officer shall be the person nominated from time to time by the President of the Auckland District Law Society or his or her nominee.

13.3 **Electoral Review Officer to conduct reviews:** All reviews shall be carried out by the Electoral Review Officer from time to time.

13.4 **Form of request for review:** All applications for a review shall be submitted to the Trust and:

- (a) shall be in writing;
- (b) shall set out the grounds for the review, which grounds shall be set out with sufficient particularity to enable the Electoral Review Officer to ascertain precisely the basis upon which the review is being sought; and
- (c) shall be accompanied by any evidence that the applicant for review has to substantiate the grounds given in the application.

13.5 **Service of application on other candidates:** The application for review and any accompanying evidence shall also be served by the candidate in rule 13.1 of this Schedule upon all other candidates in the election to which the review relates, either at

the same time, or as close thereto as is possible, as the review application is lodged with the Trust.

- 13.6 **Costs:** Upon making an application for review the applicant shall also lodge with the Trust such sum that the Electoral Review Officer (acting reasonably) may from time to time determine to cover the costs of undertaking the review. That sum shall be held by the Trust pending the outcome of the review application. If the application is successful then the sum shall be refunded to the applicant, otherwise it shall be used to off-set the costs of the review.

#### 14. CONDUCT OF REVIEW

- 14.1 **Notification of Electoral Review Officer:** Upon the receipt of an application for review the Trust shall notify the Electoral Review Officer and provide to him or her:

- (a) a copy of the application and any accompanying evidence; and
- (b) the sealed packet of voting forms and other voting documents received from the Chief Returning Officer for that election.

- 14.2 **Electoral Review Officer to exercise wide powers:** Subject to compliance by the Electoral Review Officer with the rules of natural justice the Electoral Review Officer shall have the power to inquire into and decide upon any matter relating to a review in such manner as he or she thinks fit and may in particular seek such further evidence or reports as he or she deems necessary including any reports or evidence from the Chief Returning Officer for the relevant election.

- 14.3 **Electoral Review Officer to be guided by substantial merits:** In reaching his or her conclusion on any review the Electoral Review Officer shall be guided by the substantial merits of the application without regard to legal forms or technicalities, including any technical defect in complying with the requirements of this Trust Deed, the intention being that no election shall be declared invalid by reason of such technical defect if the Electoral Review Officer is satisfied that the election was so conducted as to be substantially in compliance with the requirements of this Trust Deed and that such defect did not materially affect the result of the election.

- 14.4 **Certification of result of review:** At the conclusion of the Electoral Review Officer's consideration of the review he or she shall determine whether the successful candidate, or any other candidate, was duly elected, or whether the election was void and should be conducted again, and shall forthwith certify his or her decision with reasons to the Trust. The Trust shall then give notice of the result of the review and advise the candidates of the outcome.

- 14.5 **Decision to be final:** All decisions of the Electoral Review Officer shall be final (noting that the right to seek judicial review in the High Court is always available).

#### 15. TERMINATION OF OFFICE OF TRUSTEES

- 15.1 **Termination of office of Trustees:** Notwithstanding the foregoing rules of this Schedule, a Trustee shall cease to hold office if he or she:

- (a) retires from office by giving written notice to the Trust or dies;
- (b) completes his or her term of office and is not reappointed;
- (c) refuses to act;

- (d) is absent-without leave from three consecutive ordinary meetings of the Trustees without good reason or without the permission of the Chairperson;
- (e) is convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);
- (f) is bankrupt or makes any composition or arrangement with his or her creditors;
- (g) is convicted of an indictable offence;
- (h) becomes subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 or becomes subject to a care and protection order under the Protection of Personal and Property Rights Act 1988; or
- (i) is removed from the office of Trustee in accordance with clause 22.3.

**16. RECORD OF CHANGES OF TRUSTEES**

- 16.1 Record of changes of Trustees:** Upon the notification of every appointment, retirement, re-appointment or termination of office of any Trustee, the Trust will ensure that an entry is made in the minute book of the Trust to that effect.

### THIRD SCHEDULE

#### Proceedings of Trustee Meetings

#### 1. TRUSTEES TO REGULATE MEETINGS

- 1.1 The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Any three (3) Trustees may at any time by notice in writing to the Trust summon a meeting of the Trustees and the Trust shall take such steps as are necessary to convene such meeting.

#### 2. NOTICE OF MEETING

- 2.1 **Notice to Trustees:** Written notice of every meeting shall be either hand-delivered, posted, sent by facsimile or by electronic form to each Trustee at least seven (7) days before the date of the meeting. However, it shall not be necessary to give notice of a meeting of Trustees to any Trustees for the time being absent from New Zealand unless that Trustee has provided details of where he or she may be contacted while overseas. No notice shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned.
- 2.2 **Content of notice:** Every notice of a meeting shall state the place, day and time of the meeting, and the agenda of the meeting.
- 2.3 **Waiver of notice:** The requirement for notice of a meeting may be waived if all the Trustees who are at the time entitled to receive notice of the meeting give their written consent to such a waiver prior to or at the meeting.
- 2.4 **Meeting limited to notified business:** No business shall be transacted at any meeting of Trustees other than the business expressly referred to in the notice calling the meeting.
- 2.5 **Deficiency of notice:** Subject to rule 2.4 of this Schedule, no deficiency in the giving of notice for any meeting of Trustees shall otherwise invalidate such meeting or the proceedings at such meeting.

#### 3. QUORUM

- 3.1 If there are five (5) trustees then in office then three (3) trustees shall constitute a quorum at meetings of the Trustees. If there are more than five (5) trustees then in office then four (4) trustees shall constitute a quorum at meetings of the Trustees.

#### 4. CHAIRPERSON AND DEPUTY CHAIRPERSON

- 4.1 **Trustees to appoint:** At the first meeting of the Trustees following an election the Trustees shall appoint one (1) of their number to be Chairperson, and (at their discretion) one to be Deputy Chairperson. Except in the case of the Initial Trustees, the Chairperson and Deputy Chairperson must have served at least one term.
- 4.2 **Voting on appointment:** Where there is more than one (1) candidate for Chairperson (or as the case may be Deputy Chairperson) then a vote will be taken and the person receiving the most votes in favour of his or her appointment will become Chairperson (or Deputy Chairperson).
- 4.3 **Termination of office:** The Chairperson (or Deputy Chairperson) will cease to hold office after an election of Trustees, in the event that he or she resigns from that office,

ceases to be a Trustee or is removed from office by the Trustees passing a resolution of no confidence in him or her. In the event that the Chairperson (or Deputy Chairperson) ceases to hold that office then a further appointment in accordance with rule 4.1 of this Schedule shall be held for the position.

## **5. PROCEEDINGS AT MEETINGS**

- 5.1 **Decisions by majority vote:** Unless stated otherwise in this Trust Deed, questions arising at any meeting of Trustees shall be decided by a majority of votes of Trustees present at a validly called meeting. In the case of an equality of votes, the Chairperson shall have a second or casting vote.
- 5.2 **Chairperson:** The Chairperson shall take the chair at all meetings of the Trustees. If the Chairperson is not present then the Deputy Chairperson, if there is one, shall take the Chair. If there is no Deputy Chairperson or the Deputy Chairperson is also not present then the Trustees present shall elect one of their number to be Chairperson of the meeting.
- 5.3 **Vacancies:** The Trustees may act notwithstanding any vacancy or vacancies in their body, but if and so long as their number is reduced below the quorum fixed by these rules, the continuing Trustees may act only for the purpose of advising of the vacancy or vacancies and taking the steps necessary to procure the election of new Trustees to fill any vacancy or vacancies, and for no other purpose.
- 5.4 **Defects of appointment:** All acts done by any meeting of the Trustees or of any committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such Trustee or person co-opted to any committee, or that they were disqualified, be valid as if every such person had been duly appointed and was qualified to act.
- 5.5 **Unruly meetings:** If any meeting of Trustees becomes so unruly or disorderly that in the opinion of the Chairperson of the meeting, the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the Chairperson becomes unduly protracted, the Chairperson may, and without giving any reason, adjourn the meeting and may direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote without discussion.

## **6. DELEGATION TO COMMITTEES BY TRUSTEES**

- 6.1 **Trustees may appoint committees:** The Trustees may from time to time as they think expedient appoint one (1) or more Trustees to be a committee for making any inquiry on such terms as the Trustees may by resolution direct and any committee so appointed may co-opt, for the purposes of consultation and advice, persons who are not Trustees, provided that a Trustee shall chair any such committee.
- 6.2 **Committees to report to Trustees:** All committees appointed under rule 6.1 of this Schedule shall report to the Trustees in respect of their activities and such reports shall, unless a direction is made to the contrary by the Trustees:
- (a) be provided on a monthly basis; and
  - (b) contain details of the activities of the committee since the last such report.
- 6.3 **Regulation of procedure by committees:** Subject to these rules and the provisions of this Trust Deed, any committee established by the Trustees may regulate its procedure as it sees fit provided that the committee must notify the Trustees of all persons co-opted to the committee.

## 7. WRITTEN RESOLUTIONS

- 7.1 A written resolution signed by all the Trustees shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees. Such a resolution may comprise several duplicated documents, each signed by one (1) or more of the Trustees.

## 8. MINUTES

- 8.1 **Minutes to be kept:** The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.
- 8.2 **Minutes to be evidence of proceedings:** Any minute of the proceedings at a meeting which is purported to be signed by the Chairperson of that meeting shall be evidence of those proceedings.
- 8.3 **Minutes to be evidence of proper conduct:** Where minutes of the proceedings at a meeting of the Trustees have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

## 9. TELECONFERENCE MEETINGS

- 9.1 For the purposes of these rules a Teleconference Meeting between a number of Trustees or committee members who constitute a quorum shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to Teleconference Meetings so long as the following conditions are met:
- (a) all of the Trustees or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a Teleconference Meeting and to be linked for the purposes of such a meeting. Notice of a Teleconference Meeting may be given on the telephone;
  - (b) throughout the Teleconference Meeting each participant must be able to hear each of the other participants taking part;
  - (c) at the beginning of the Teleconference Meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
  - (d) a participant may not leave the Teleconference Meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's express consent. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the Teleconference Meeting unless he or she leaves the meeting with the chairperson's express consent; and
  - (e) a minute of the proceedings at the Teleconference Meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting.

## 10. FORMS OF CONTRACTS

- 10.1 **Contracts by deed:** Any contract which, if made between private persons, must be by deed, shall, if made by the Trust, be in writing signed under the name of the Trust by any three Trustees, on behalf of or by direction of the Trust.

- 10.2 **Contracts in writing:** Any contract which, if made between private persons, must be in writing signed by the parties to be bound by the contract shall, if made by the Trust, be in writing signed under the name of the Trust by a person acting with the express or implied authority of the Trustees on behalf of or by direction of the Trust.
- 10.3 **Oral contracts:** Any contract which, if made between private persons, may be made orally may be made in the same manner by or on behalf of the Trust by any Trustee or the General Manager, in either case acting by direction of the Trust.
- 10.4 **Contracts pursuant to resolution:** Notwithstanding anything to the contrary in this rule, no contract made by or on behalf of the Trust shall be invalid by reason only that it was not made in the manner provided by this rule if it was made pursuant to a resolution of the Trustees.



## FOURTH SCHEDULE

### Procedure for Passing Special Resolution

#### 1. THIS SCHEDULE TO APPLY

##### 1.1 A Special Resolution to:

- (a) approve a Major Transaction in accordance with clause 2.5;
- (b) approve any amendment to the Trust Deed in accordance with clause 26.2;
- (c) approve the resettlement of the Trust in accordance with clause 27;
- (d) approve the termination of the Trust in accordance with clause 28; and
- (e) approve the disposal of Fisheries Settlement Assets (this term has the meaning given to it in clause 32.1) in accordance with clause 32,

shall only be passed as set out in this Schedule.

#### 2 VOTING

- 2.1 In order for a Special Resolution to be passed it must receive the approval of not less than 75% of those Adult Registered Members of Ngāti Tamaterā who validly cast a vote in favour of the proposed Special Resolution in accordance with this Schedule.

#### 3. NOTICE

- 3.1 **Notice when Special Resolution to be considered:** Subject to rule 4.3 of this Fourth Schedule, where a Special Resolution is to be considered at an annual or special general meeting, notice of that meeting must be given by not less than twenty one days prior to the holding of the relevant meeting and such notice shall otherwise be given in accordance with clauses 14.3 and 14.4 (as applicable) of the main body of the Trust Deed and shall contain:

- (a) the date, time and place of the annual or special general meeting where the Special Resolution is to be considered;
- (b) details of the proposed Special Resolution;
- (c) details of the reasons for the proposed Special Resolution and the effect that the Special Resolution will have;
- (d) details of the procedure to be followed in making a postal vote or a vote by electronic means where available, including the date voting closes;
- (e) a statement that postal votes may either be delivered to the Chief Returning Officer at the annual or special general meeting, or posted or by electronic means (and if e-voting is being used for the Special Resolution that Members can vote by way of e-voting); and
- (f) a voting form (or if voting can be done by way of e-voting sufficient details setting out how Members can vote using e-voting). The voting form can be sent via postal voting and electronic means. If the voting form is sent via electronic means

the voting form must also contain sufficient information to verify the voter and the voting documents issued to that voter pursuant to rule 6.1 of this Schedule.

- 3.2 **Content of advertisement:** All advertisements published in accordance with rule 4.2 of this Schedule shall contain the matters referred in rule 4.3(c) and (e) of this Schedule together with details of how and where any further information can be obtained.

#### 4. **VOTING**

- 4.1 **Other details to accompany vote:** Each voting form must contain sufficient information to identify the voter and the voting documents issued to that voter.

- 4.2 **Timing of Votes:** Votes must be cast no later than the closing date for voting. Votes otherwise validly cast and sent by post are valid and able to be counted if they are received by the Chief Returning Officer no later than three (3) days after the closing date, but only if the envelope containing the voting form is date stamped on or before the date for voting closes.

- 4.3 **Votes may be received at the annual or special general meeting:** Voting forms may be delivered to the Chief Returning Officer at the annual or special general meeting, rather than being posted or sent by electronic means.

#### 5. **APPOINTMENT OF CHIEF RETURNING OFFICER**

- 5.1 **Appointment of Chief Returning Officer:** For the purposes of the Special Resolution, the Trustees shall appoint a Chief Returning Officer who shall not be a Trustee or employee of the Trust. The Trustees shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the powers and duties of the Chief Returning Officer as set out in this Deed, including, to avoid doubt, rules 6.2 to 6.3 of this Schedule.

- 5.2 **Chief Returning Officer to receive voting forms:** Voting forms must be addressed to the Chief Returning Officer.

- 5.3 **Chief Returning Officer to be present at annual or special general meeting:** The Chief Returning Officer must be present at the annual or special general meeting. The Chief Returning Officer will be available to collect any completed voting forms at the annual or special general meeting. The Chief Returning Officer shall also ensure that additional voting forms are available at the annual or special general meeting.

- 5.4 **Eligibility to Vote:** Those eligible to vote on a special resolution are:

- (a) those Adult Members of Ngāti Tamaterā recorded in the Ngāti Tamaterā Tribal Register as an Adult Registered Member of Ngāti Tamaterā on the closing day for voting; and
- (b) subject to rule 6.5(b) of this Schedule, any other Adult Member of Ngāti Tamaterā who has on or before the closing date for voting provided to the Chief Returning Officer an application form for registration which complies with rule 3.1 of the First Schedule.

- 5.5 **Only one vote to be cast:** The Chief Returning Officer must:

- (a) ensure that appropriate measures are in place to ensure that only one vote is cast by each Adult Registered Member of Ngāti Tamaterā; and

- (b) where any Provisional Vote is cast pursuant to rule 6.4(b) of this Schedule, before counting that Provisional Vote, consult with the Trustees to ensure that the person casting the vote is eligible to be registered on the Ngāti Tamaterā Tribal Register as an Adult Registered Member.

5.6 **Recording votes:** A record shall be kept by the Chief Returning Officer of all votes received.

## 6. COUNTING OF VOTES

6.1 **All votes to be counted:** Upon the expiry of the date for the receipt of votes, the Chief Returning Officer shall record and count all votes validly cast.

6.2 **Certification and notifying result:** Once all votes have been counted and the result of the Special Resolution determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the Special Resolution and communicate the result to the Trust.

6.3 **Provisional Votes:** Where, in respect of any Special Resolution, one or more Provisional Votes has been cast:

- (a) if the validity or otherwise of the Provisional Votes may affect the outcome of the Special Resolution, the Chief Returning Officer may not certify the result of the Special Resolution until the validity of the Provisional Votes has been confirmed pursuant to rule 6.5(b) of this Schedule and any valid Provisional Vote has been counted; or
- (d) if the validity or otherwise of the Provisional Votes will not affect the result of the Special Resolution, the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional votes has not been confirmed pursuant to rule 6.5(b) of this Schedule and the Provisional Votes have not been counted.

## 7. PROCEEDINGS AT ANNUAL OR SPECIAL GENERAL MEETING

7.1 Except as otherwise set out in this Schedule the provision of clause 14 of the main body of the Trust Deed shall apply to the holding of any special general meeting called for the purposes of considering a Special Resolution and the meeting shall be conducted accordingly.