

## TE RUNANGA O NGATI MARU (TARANAKI) TRUST

### WHENUA TOPU TRUST ORDER

#### PREAMBLE

- A. In 1947 the land known as Pukehou was set apart as a Maori Reservation for the benefit of Ngati Maru (Taranaki) as a meeting place and marae. Through the generosity of members of Ngati Maru (Taranaki) further lands were added to the Pukehou reservation over time, namely:
- (i) Kerikeringa 5A2 in 1989;
  - (ii) Lot 1 & Lot 2 DP 16751 Block III Huiroa Survey District in 1991; and
  - (iii) Kerikeringa 5A3 in 2005.
- B. The Pukehou reservation is administered by the Ngati Maru Wharanui (Pukehou) Trust.
- C. In 2004 the Maori Land Court determined that, on an interim basis, the Ngati Maru Wharanui (Pukehou) Trust was the appropriate representative of Ngati Maru, Taranaki (146 AOT 152). This recognition was on a temporary basis, pending the establishment of a more appropriate entity in due course.
- D. With the assistance of the Maori Land Court and Te Ohu Kai Moana, Ngati Maru (Taranaki) have established:

- (i) a whenua topu trust to act as the representative entity for the iwi of Ngati Maru (Taranaki) and to administer the Pukehou reservation; and
  - (ii) a private trust to act as a mandated iwi organisation for the iwi of Ngati Maru (Taranaki) pursuant to the Maori Fisheries Act 2004.
- E. It is intended that the Trusts shall, where possible without breaching their respective constitutional documents and governing legislation, combine administrative operations, including electoral and meeting procedures, to avoid unnecessary duplication of procedures and to promote efficient use of the iwi's resources
- F. By way of a postal vote and hui-a-iwi, the members of Ngati Maru (Taranaki) have expressed their support for the establishment of a whenua topu trust for Ngati Maru (Taranaki) and a private trust for Maori Fisheries Act 2004 purposes.

## **1 TITLE**

- 1.1 This trust shall be known as the **TE RUNANGA O NGATI MARU (TARANAKI) TRUST** ("the Trust") and shall apply to the lands known as Pukehou, Kerikeringa 5A2, Lot 1 & Lot 2 DP 16751 Block III Huiroa Survey District and Kerikeringa 5A3 ("the Land").

## **2 OBJECTS**

- 2.1 The Trust shall hold the Land together with such other Trust Property as it may from time to time acquire or receive upon the trusts set out in this trust order.
- 2.2 Subject to any express restrictions set out in this trust order, the objects of the Trust shall be:

- (a) to promote and facilitate the use and administration of the Land and any other assets acquired by the Trust on behalf of Ngati Maru (Taranaki):
  - (i) in a manner consistent with the well-being of Ngati Maru (Taranaki); and
  - (ii) in the interests of Ngati Maru (Taranaki);
  
- (b) to represent the interests of Ngati Maru (Taranaki) on all matters, including:
  - (i) in relation to all matters relating to the Land and to the use and enjoyment of the facilities therewith; and
  - (ii) in negotiations with the Crown in relation to settlement of the Treaty of Waitangi claims of Ngati Maru (Taranaki).

### 3 INTERPRETATION

#### 3.1 In this trust order:

“**Act**” means Te Ture Whenua Maori Act 1993.

“**Adult Member**” means a Member of Ngati Maru (Taranaki) who is over the age of 18 years.

“**Adult Registered Members**” means Adult Members who are registered on the Ngati Maru (Taranaki) Register.

**“Balance Date”** means [31 March] 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.

**“Business Day”** means any day in which registered banks are open for business in Auckland and Wellington.

**“Chairperson”** means the chairperson from time to time of the Trust elected 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 purposes of Trustee elections in accordance with rule 9 of the Second Schedule; or
- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with rule 7.1 of the Fourth Schedule.

**“Confidential Information”** means any information which the Trustees consider on reasonable grounds is of a commercially sensitive nature and the release of which could be detrimental to the interests of Ngati Maru (Taranaki).

**“Court”** means the Maori Land Court.

**“Crown”** has the meaning given to it in section 2 of the Public Finance Act 1989.

**“Deputy Chairperson”** means the deputy chairperson from time to time of the Trust if one is elected in accordance of rule 4 of the Third Schedule.

**“Disputes Committee”** means a committee formed in accordance with clause 22.3.

**“Electoral Review Officer”** means the person appointed to act as electoral review officer in accordance with rule 12.2 of the Second Schedule.

**“Income Year”** means any year or accounting period ending on the Balance Date.

**“Kaumatua Kaunihera”** means the committee of that name appointed by the Trust from time to time in accordance with this Deed and initially consisting of Kawhena Otto Meri Jill Brand, Ronald Burnard Puata, Noreen Mereaina Kirkwood, and Pat Kingi.

**“Land”** means the land known as Pukehou, Kerikeringa 5A2, Lot 1 & Lot 2 DP 16751 Block III Huiroa Survey District and Kerikeringa 5A3.

**“Major Transaction”** means any single transaction, distribution, expenditure, acquisition, or lease of Trust Property or grant of security over Trust Property that exceeds more than half of the value of the Trust Property, or any sale of Trust Property.

**“Member of Ngati Maru (Taranaki)”** means every individual referred to in paragraph (b) of the definition of Ngati Maru (Taranaki) but excludes Whangai.

**“Ngati Maru (Taranaki)”** means:

- (a) the collective group composed of individuals referred to in paragraph (b) of this definition; and
- (b) every individual who is descended from a tupuna of Ngati Maru (Taranaki) as listed in the Ngati Maru (Taranaki) Tupuna List.

**“Ngati Maru (Taranaki) Register”** means the register of Members of Ngati Maru (Taranaki) that is to be maintained by the Trust in accordance with the *First Schedule* to this trust order.

**“Ngati Maru (Taranaki) Tupuna List”** means the list of Ngati Maru (Taranaki) Tupuna that is maintained by the Trust and which may be used for the purposes of applications for registration on the Ngati Maru (Taranaki) Register.

**“Public Notice”** means a notice:

- (a) published in a newspaper generally circulating in the relevant area or areas; and
- (b) may also be published by panui or electronic media, including radio and television.

**“Registration Form”** means the form used from time to time by the Trustees to enter the details of Members of Ngati Maru (Taranaki) on the Ngati Maru (Taranaki) Register.

**“Special Resolution”** means a resolution that has been passed with the approval of not less than 75% of the Adult Members who validly cast a vote in accordance with the process set out in the Fourth Schedule.

**“Trust”** means the whenua topu trust established and governed by this trust order.

**“Trust Property”** means all the assets and liabilities (including the Land, any other property and any income) that are from time to time held by the Trustees under this trust order howsoever received.

**“Trustees”** means the Initial Trustees and the trustees elected from time to time in accordance with the *Second Schedule* of this trust order to represent Ngati Maru (Taranaki) and to act as the trustees for the time being of the Trust and **Trustee** shall mean any one of those persons.

**“Whakapapa Validation Committee”** means the committee appointed in accordance with *rule 4 of the First Schedule*.

**“Whangai”** means those persons who do not affiliate to Ngati Maru (Taranaki) by descent from a Ngati Maru (Taranaki) tupuna but who are adopted by a Member of Ngati Maru (Taranaki) in accordance with the tikanga of Ngati Maru (Taranaki).

### 3.2 Interpretation

In this trust order, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include the other gender;
- (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 order;
- (f) the schedules to this trust order shall form part of this trust order;
- (g) headings appear as a matter of convenience only and shall not affect the interpretation of this trust order;
- (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.



## **4 POWERS**

### **4.1 General**

Subject always to the objects of the Trust and in accordance with the powers conferred by this trust order, the Trustees are empowered to do all or any of the things that the Trustees would be entitled to do if they were the absolute owners of and beneficially entitled to the Trust Property, **PROVIDED HOWEVER** that the Trustees shall not alienate by way of sale or gift the whole or any part of the Land.

### **4.2 Specific**

Without limiting the general powers in the preceding provision, the Trustees are expressly authorised:

(a) **To set aside cash reserves**

To accumulate income and to set aside such cash reserves as the Trustees in their absolute discretion think fit for contingencies or for capital expenditure or for expansion in accordance with the objects of the Trust or in connection with any business carried on by the Trustees.

(b) **To apply or distribute income**

To apply or distribute all or any income of the Trust towards all or any of the objects of the Trust as the Trustees in their absolute discretion think fit, including Maori community purposes under section 218 of the Act or such other purposes as may be ordered by the Court.

(c) **To lend or invest**

In furtherance of any object of the Trust, to lend or invest all or any income of the Trust whether in New Zealand or elsewhere upon any securities in which trust funds may be invested by trustees in accordance with the Trustee Act 1956 or in accordance with any other statutory authority.

(d) **To borrow**

To borrow money for the purpose of the furtherance of any of the trusts or powers contained in this trust order whether or not with security over all or any Trust Property, **PROVIDED HOWEVER** that the granting of any security over the Land or any other assets that may be acquired by the Trust is deemed to be a Major Transaction to which the requirements of clause 4.3 of this trust order shall apply.

(e) **To buy**

To acquire any land or interest in land whether by way of lease, purchase, exchange or otherwise and to acquire and sell, hire or otherwise deal in any other assets including shares, vehicles, plant, chattels or equipment.

(f) **To lease**

To lease the whole or any part or parts of the Trust Property from year to year and for any term of years at such rent and upon such covenants and conditions as the Trustees consider reasonable and to any person or body corporate and/or Her Majesty the Queen and to accept a surrender of any such lease.

(g) **To improve**

To maintain, develop and improve the Trust Property and to erect on any land forming part of the Trust Property buildings, fences, yards and other constructions or erections of such nature as the Trustees consider necessary or desirable.

(h) **To protect Wahi Tapu**

To safeguard to the best of the Trustees' ability all Maori urupa, wahi tapu and all other places in or upon the Trust Property that are sacred or of historic, spiritual or cultural significance to Ngati Maru (Taranaki).

(i) **To employ**

To employ, engage, or dismiss professional advisers, agents, employees or independent contractors required to carry out the objects of the Trust or to otherwise carry out the work of the Trustees and to fix their reasonable remuneration and to provide such indemnities to them as the Trustees think fit.

(j) **To pay own costs**

From the revenue derived from the operation of the Trust to pay all costs, expenses and disbursements incurred by the Trustees including the costs of any person or body employed by them in the administration of the Trust or in the furtherance of any of the objects of the Trust and to reimburse the Trustees for all their out of pocket expenses incurred in their attendance to the affairs of the Trust.

(k) **To join with others**

To enter into arrangements, agreements, contracts whether in the names of the Trustees or jointly or in partnership with any other person, organisation, body corporate or local authority.

(l) **To insure**

To effect and maintain all such insurances in respect of any undertaking, activity or assets of the Trust, including the Trust Property, as the Trustees consider necessary or desirable.

(m) **To use resources efficiently**

To combine administrative operations with the Ngati Maru (Taranaki) Fisheries Trust, where possible, so to avoid unnecessary duplication of procedures and to promote efficient use of the iwi's resources as the Trustees in their absolute discretion think fit **PROVIDED HOWEVER** that such operations do not breach this trust order or the Act.

**4.3 Restriction on Major Transactions**

Notwithstanding *clause 4.2*, the Trust must not enter into a Major Transaction unless that Major Transaction:

- (a) is approved by way of Special Resolution; or
- (b) is contingent upon approval by way of Special Resolution; and
- (c) notice is given to the Adult Registered Members in accordance with *rule 5.1 of the Fourth Schedule*.

## **5 ELECTION, POWERS AND MEETINGS OF TRUSTEES**

### **5.1 Election in accordance with Second Schedule**

Subject to any variation of this trust order under clause 20 or section 244 of the Act, the Trustees from time to time of the Trust shall be elected to office in accordance with the rules set out in *the Second Schedule*.

### **5.2 Proceedings of Trustees**

Except as otherwise provided in this trust order and the Act the proceedings and other affairs of the Trustees shall be conducted in accordance with the rules set out in *the Third Schedule*.

## **6 CONTROL OF FUNDS**

6.1 All monies received by or on behalf of the Trust shall forthwith be paid to the credit of the Trust's bank account.

6.2 All payments from the Trust's bank account shall first be approved at a meeting of Trustees and all cheques and withdrawal slips drawn on the account shall be signed by the Treasurer and by either the Chairperson or Secretary.

## **7 MINUTES, REPORTS AND ACCOUNTS**

7.1 The Trustees shall keep a proper written record of all resolutions passed and business transacted at every meeting of the Trustees in a minute book. The

minutes of every meeting shall be signed by the chairperson of that meeting and shall be reviewed and, after any necessary amendment, confirmed at the next succeeding meeting of Trustees.

- 7.2 The Trustees shall keep proper books of account in which shall be kept full, true and complete accounts of the affairs and transactions of the Trust.
- 7.3 Within three months following the annual general meeting, the Chairperson shall file in the Aotea Registry of the Court the following:
- (a) a copy of the reports and accounts submitted to the annual general meeting and the minutes of that meeting; and
  - (b) the current notified office and contact details of the Trust.

## **8 DISCLOSURE OF PLANS, REPORTS AND MINUTES**

- 8.1 The Trust shall hold and make available for inspection by any Member of Ngati Maru (Taranaki):
- (a) copies of the reports and accounts submitted to the annual general meeting for each of the preceding three (3) Income Years;
  - (b) the minute book kept in accordance with *clause 7.1* of all decisions taken and business transacted at every annual general meeting and special general meeting.

Any Member of Ngati Maru (Taranaki) shall be entitled to obtain copies of this information. However the Trust shall also be entitled to

recover at its discretion all reasonable copying or postage costs (if any).

## **9 NO DISCLOSURE OF SENSITIVE INFORMATION**

### **9.1 Disclosure limited**

For the avoidance of doubt, but subject to the Trust's reporting obligations in *clauses 7.3(a), 7.3(b), 8.1(a) and 8.1(b)*, the Trust may at its sole discretion limit disclosure of any information about the activities or proposed activities of the Trust which the Trust considers on reasonable grounds to be commercially or otherwise sensitive.

## **10 GENERAL MEETINGS**

### **10.1 Trust to hold annual general meeting**

The Trust 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 Ngati Maru (Taranaki), to be called its annual general meeting, and shall at that meeting:

- (a) report on the operations of the Trust during the preceding Income Year;
- (b) present the accounts;
- (c) announce the names of any newly appointed Trustees;

- (d) undertake all other notified business; and
- (e) at the discretion of the Chairperson, undertake any other general business raised at that meeting.

## **10.2 Notice of general meeting**

Subject to the specific notice requirements described in the Schedules to this trust order, the Trust shall give not less than twenty-eight (28) days notice of the holding of the annual general meeting, such notice to be posted (or sent by electronic means, if requested) to:

- (a) all Adult Registered Members at the last address shown for each such Adult Registered Member on the Ngati Maru (Taranaki) Register; and
- (b) any Adult Member who has made a written request for private notice of any annual general meeting.

Notice of the meeting shall also be inserted prominently in appropriate major metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trust considers that a significant number of Members of Ngati Maru (Taranaki) 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;
- (c) details of where copies of any information to be laid before the meeting may be inspected; and
- (d) any other information specified by or under the Act.



### **10.3 Notice of special meetings**

In addition to the annual general meeting of the Trust, the Trust shall convene a special general meeting of the Trust on the requisition of:

- (a) the Chairperson and Deputy Chairperson for the time being of the Trust; or
- (b) any three (3) Trustees; or
- (c) Twenty (20) Adult Registered Members of Ngati Maru (Taranaki).

Subject to the specific notice requirements described in the *Fourth Schedule*, 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.

### **10.4 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.

### **10.5 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.

#### **10.6 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 Ngati Maru (Taranaki) does not invalidate the proceedings at that meeting.

#### **10.7 Deficiency of notice**

Subject to clause 10.5, 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 who attend the meeting agree by a simple majority to waive the deficiency or irregularity.

#### **10.8 Quorum**

The quorum required for any annual or special general meeting of the Trust shall be 20 Adult Registered Members present in person including among those Adult Registered Members no less than four (4) Trustees.

#### **10.9 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.

#### **10.10 Voting**

Subject to the specific voting procedures described in the Schedules to this trust order, to the extent that a vote is sought or required at any annual or special general meeting, every Adult Registered Member present shall have

one 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. However, except as provided in *clauses 4.3* and in the *Fourth Schedule* in relation to major transactions the Trust 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. Nothing in this *clause 10.10* detracts from the obligation of the Trust to comply with any Special Resolution passed in accordance with *the Fourth Schedule*.

#### **10.11 Adjourned meetings**

If within 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 twenty-one 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 within one hour from the time appointed for that adjourned meeting, the Adult Registered Members present will constitute a quorum.

#### **10.12 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.

#### **10.13 Minutes**

The Trust 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.

**10.14 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.

**10.15 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.

**10.16 Request for information**

Any Member of Ngati Maru (Taranaki) may request in writing the information and documents referred to in *clause 8.1*.

**11 DISCLOSURE OF INTERESTS**

**11.1 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 subsidiary of the Trust;

- (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.

### **11.2 Disclosure of interest to other Trustees**

A Trustee must, 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 a meeting of the Trust:

- (a) if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of that Trustee's interest cannot be quantified, the nature and extent of that interest.

### **11.3 Recording of Interest**

A disclosure of interest by a Trustee shall be recorded in the minute book of the Trust.

## **12 DEALINGS WITH "INTERESTED" TRUSTEES**

- 12.1 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.

### **13 PROHIBITION OF BENEFIT OR ADVANTAGE**

- 13.1 In the carrying on of any business by the Trust, 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 Associated Person where that Associated Person, in his or her capacity as an Associated 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.

### **14 REMUNERATION AND EXPENSES**

#### **14.1 No private pecuniary profit**

No private pecuniary profit may be made by any person from the Trust. However, each Trustee shall be entitled to be reimbursed for fair and reasonable expenditure incurred by him or her on behalf of the Trust subject in every case to approval by the Trust.

### **15 LIABILITY OF TRUSTEES**

#### **15.1 Liability**

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 order. 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.

## **16 INDEMNITY AND INSURANCE**

### **16.1 Indemnity and insurance for Trustees**

Any Trustee, officer or employee of the Trust may be indemnified or have their insurance costs met out of the Trust Property 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, 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 with the object of fulfilling the purposes of the Trust.

### **16.2 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.

### **16.3 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.

### **16.4 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.

## **17 NGATI MARU (TARANAKI) NOT TO BE BROUGHT INTO DISREPUTE**

### **17.1 Trustees not to bring into disrepute**

No Trustee shall act in a manner which brings or is likely to bring the Trust into disrepute.

### **17.2 Trustee may be censured or removed**

Any Trustee that acts in a manner that brings or is likely to bring into disrepute the Trust may, by a resolution passed by a majority of not less than 75% of the other Trustees, be formally censured or be made the subject of an application to the Court for removal from office.

### **17.3 Censure or removal to be notified**

The censure or application for removal of a Trustee in accordance with this clause shall, together with reasons, be reported to the Members of Ngati Maru (Taranaki) at the next annual general meeting of the Trust following such censure or removal.

### **17.4 Effect of Removal**

A Trustee removed from office in accordance with an application under *clause 17.2* shall not be entitled to be re-elected as a Trustee for a period of not less than three years following his or her removal.

### **17.5 Replacement of Trustee**

The removal of a Trustee in accordance with *clause 17.2* shall give rise to a casual vacancy which shall be filled in accordance with *rule 3.2 of the Second Schedule*.



**18 RECEIPTS FOR PAYMENTS**

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

**19 REVIEW OF TRUST**

The Trustees shall, in the fifth year after the constitution of the Trust and at five yearly intervals thereafter, convene a special general meeting in order to consider the performance and operation of the Trust and, if a review of the Trust is requested by the majority of Adult Registered Members voting at that special general meeting, the Trustees shall, within 40 Business Days of such request, make application to the Court for a review of the Trust.

**20 VARIATION OF TRUST**

Nothing in this trust order shall restrict the right of the Trustees to apply to the Court pursuant to the provisions of section 244 of the Act for a variation of this trust order **PROVIDED THAT** Adult Registered Members have had sufficient notice of any such application and there is a sufficient degree of support for the variation among Adult Registered Members.

**21 WINDING UP**

This Trust may be wound up in accordance with section 241 of the Act:

- (a) upon the establishment by Ngati Maru (Taranaki) of a new governance entity to represent Ngati Maru (Taranaki) and to hold and administer property, including the Trust Property, on behalf of Ngati Maru (Taranaki); and

- (a) upon the implementation by legislation, following ratification by Ngati Maru (Taranaki) of a comprehensive Deed of Settlement of the historical Treaty of Waitangi claims of Ngati Maru (Taranaki).

## **22 DISPUTE RESOLUTION**

### **22.1 Notice of Dispute**

All disputes relating to matters under this trust order shall be submitted to the Trust by notice in writing and the Trust shall acknowledge receipt in writing within 10 working days of the date of receipt of the notice.

### **22.2 No derogation of rights**

The provisions of this *clause 22* shall not derogate from the rights or obligations of the Trust or of any Member of Ngati Maru (Taranaki) pursuant to the Act, the Trustee Act 1956 or any other act or provision of law or equity.

### **22.3 Appointment of Disputes Committee**

If a dispute is referred to the Trust under *clause 22.1* then a Disputes Committee shall be appointed by the Trust to consider the dispute. The Disputes Committee shall consist of 3 trustees and 2 members of the Kaumatua Kaunihera, provided however that if the dispute relates to registration such members shall not have been members of the Whakapapa Validation Committee that considered the registration application.

**22.4 Removal of appointees of Disputes Committee**

At their discretion, the Trust may remove appointees to the Disputes Committee and replace those appointees accordingly.

**22.5 Role of Disputes Committee**

The role of the Disputes Committee in dealing with the dispute shall be to facilitate a resolution of, or failing resolution to make findings on, the relevant dispute.

**22.6 Deliberations of Disputes Committee**

In dealing with any dispute the Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the procedures applicable to the facilitation and resolution of the dispute before it.

**22.7 Findings or Decisions**

Nothing in this trust order shall be deemed or construed so as to make findings or decisions of the Disputes Committee binding on the parties including the Trust.

**22.8 Notification of outcome**

The Trust shall notify its decision, together with any reasons therefore, and the findings of the Disputes Committee, in writing to all parties to the dispute.

## **23 ADVICE TO TRUSTEES**

### **23.1 Trust may rely on advice**

The Trust may, when exercising its powers or performing its 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 Trust believes 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 Trust believes on reasonable grounds to be within the person's professional or expert competence.

### **23.2 Trust may obtain barrister's opinion**

If the Trust is in doubt over any matter relating to the management and administration of Trust Property, 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 years' standing. This right to obtain and act upon a Barrister's opinion, however, will not restrict any right on the part of the Trust to apply to the Court for directions.

## **24. TRUSTEE REPORT**

Subject to any direction or order of the Court, any Trustee shall file in the Court a written report and be available to the Court for questioning on any matter relating to the administration of the Trust or the performance of his or her duties as a Trustee.

## **FIRST SCHEDULE**

### **MEMBERSHIP OF NGATI MARU (TARANAKI) AND NGATI MARU (TARANAKI) REGISTER**

#### **1. TRUST TO KEEP REGISTER**

##### **1.1 Trust to maintain Register**

The Trust shall continue and maintain, or cause to be continued and maintained, a register of the Members of Ngati Maru (Taranaki).

##### **1.2 Register to comply with this Schedule**

The Ngati Maru (Taranaki) 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 Ngati Maru (Taranaki) Register shall record in it the full names, dates of birth and contact details of the Members of Ngati Maru (Taranaki).

##### **2.2 Beneficiary Registration Number**

The Trust will allocate a beneficiary identification number to each Adult Registered Member. The Trust will in the next notice or communication following the first allocation of beneficiary identification numbers, notify the relevant Adult Registered Member of his or her beneficiary identification number.

### **3. APPLICATIONS FOR REGISTRATION**

#### **3.1 Form of Applications**

All applications for registration as a Member of Ngati Maru (Taranaki) must be made the Registration Form to the Trust. The application must contain:

- (a) the full name, date of birth and contact details of the applicant;
- (b) such evidence as the Trust may from time to time require as to that applicant's status as a Member of Ngati Maru (Taranaki), including details of the whakapapa (genealogical) connection of the applicant to Ngati Maru (Taranaki).

#### **3.2 Entitlement to make Applications**

An application for registration as a Member of Ngati Maru (Taranaki) may be made by:

- (a) Adult Members, on their own behalf or by their legal guardian;
- (b) Members of Ngati Maru (Taranaki) who are under the age of 18 years, by a person on their behalf who is their parent or legal guardian; or
- (c) Members of Ngati Maru (Taranaki) by a person on their behalf who in the opinion of the Whakapapa Validation Committee stands in the stead of a parent or legal guardian of that person.

#### **3.3 Compliance with trust order**

All Members of Ngati Maru (Taranaki) who apply to register and are registered on the Ngati Maru (Taranaki) Register are, by their application and registration, deemed to agree to the terms of this trust order, including the disputes procedure set out in *clause 22* and the election, voting and meeting

procedures set out in *the Second Schedule, Third Schedule and Fourth Schedule*.

#### **4. DECISIONS AS TO MEMBERSHIP**

##### **4.1 Whakapapa Validation Committee to be established**

The Trust shall establish a Whakapapa Validation Committee to make decisions on all applications made pursuant to *rule 3.1 of this Schedule* by any person for the recording in the Ngati Maru (Taranaki) Register of that person's membership of Ngati Maru (Taranaki).

##### **4.2 Composition of Whakapapa Validation Committee**

The Whakapapa Validation Committee shall comprise not less than three and up to five members of the Kaumatua Kaunihera, appointed by the Trust from time to time. Trustees with the required expertise and knowledge of Ngati Maru (Taranaki) whakapapa may be appointed to the Whakapapa Validation Committee.

##### **4.3 Consideration of applications**

All applications for membership pursuant to *rule 3.1 of this Schedule* together with any supporting evidence shall be forwarded to the Whakapapa Validation Committee.

##### **4.4 Decisions to be made on applications**

Upon receipt of an application for membership in accordance with *rule 3.1 of this Schedule* the Whakapapa Validation Committee shall consider the application and shall make a decision as to whether the application should be accepted as to the applicant's status as a Member of Ngati Maru (Taranaki) .

**4.5 Successful applications to be notified and registered**

In the event that the Whakapapa Validation Committee decides that the application should be accepted then such decision shall be notified in writing to the Trust, which shall in turn notify the applicant and enter the applicant's name and other relevant details in the appropriate part of the Ngati Maru (Taranaki) Register.

**4.6 Notification of unsuccessful applicants**

In the event that the Whakapapa Validation Committee decides to decline the application then such decision shall be conveyed in writing to the Trust together with the reasons for the decision. The Trust shall then notify the applicant in writing of the decision together with the reasons for the decision.

**4.7 Unsuccessful applicant may reapply**

Any applicant whose application has been declined may at any time seek to have his or her application reconsidered by the Whakapapa Validation Committee provided that such application for reconsideration may only be made on the basis of new evidence (being evidence 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 Ngati Maru (Taranaki).

**5. MAINTENANCE OF REGISTER**

**5.1 Trust to establish policies**

The Trust shall take such steps and institute such policies as are necessary to ensure that the Ngati Maru (Taranaki) Register is maintained in a condition that is as up to date, accurate and complete as possible in recording the Members of Ngati Maru (Taranaki).

**5.2 Assistance in identifying membership**

In maintaining the Ngati Maru (Taranaki) Register the Trust shall develop policies for assisting in the identification and registration of those Members of



Ngati Maru (Taranaki) that are not for the time being on the Ngati Maru (Taranaki) Register. Such policies shall include policies as to the nature of the assistance that the Trust will provide to those persons who believe that they are Members of Ngati Maru (Taranaki) but for whatever reason are not able to establish such membership.

### **5.3 Responsibility of Members of Ngati Maru (Taranaki)**

Notwithstanding *rules 6.1 and 6.2 of this Schedule* it shall be the responsibility of each person who is a Member of Ngati Maru (Taranaki) (or in the case of those persons under 18 years, the parent or legal guardian of that person) to ensure that his or her name is included in the Ngati Maru (Taranaki) Register and that his or her full contact details for the time being is provided and updated.

### **5.4 Consequences of registration**

Registration of any person in the Ngati Maru (Taranaki) Register as a Member of Ngati Maru (Taranaki) shall be conclusive evidence of that person's status as a Member of Ngati Maru (Taranaki) under whose name he or she is recorded.

### **5.5 Additions to the Register**

The Trustees may enter in the Register any Member of Ngati Maru (Taranaki) whose details are already held by the Trustees where the particulars were acquired by the Trustees as a result of an application on a form (not being the Registration Form) made by:

- (i) Adult Members on their own behalf or by their legal guardian at the time of the application;
- (ii) other Members of Ngati Maru (Taranaki) who were not Adult Members at the time of the application, by their parent on their behalf, or by their legal guardian at the time; and

- (iii) other Members of Ngati Maru (Taranaki) by an Adult Member on their behalf who, in the opinion of the Membership Committee, stood in the stead of a parent of that person at the time of the application.

## **6. NGATI MARU (TARANAKI) REGISTER**

### **6.1 Information from existing registers**

The Trust shall include on the Ngati Maru (Taranaki) Register the full names, dates of birth, contact details of every Member of Ngati Maru (Taranaki) whose name and other details are, immediately before the date of this trust order:

- (a) on the register of members maintained by the Ngati Maru (Taranaki) Claims Progression Trust; and/or
- (b) on the roll of beneficiaries of the Ngati Maru Wharanui (Pukehou) Trust held by the Taranaki Maori Trust Board in accordance with the Wharanui (Pukehou) marae charter.

### **6.2 Register available for inspection**

Subject to the Privacy Act 1993 and to any policies that may be adopted from time to time by the Trust for the protection of private information, the Trust shall ensure that the Ngati Maru (Taranaki) Register is available to be inspected during business hours by all Adult Registered Members, provided that each Adult Registered Member shall only have access to inspect their own personal details on the Register.

## SECOND SCHEDULE

### ELECTIONS OF TRUSTEES

#### 1. PROCEDURE

##### 1.1 This Schedule to apply

The Trustees shall be elected to office in accordance with the rules and procedures set out in *this Schedule*.

#### 2. ELIGIBILITY FOR APPOINTMENT

##### 2.1 Restrictions on Trustees

A person shall not be permitted to be a Trustee if he or she:

- (a) is not an Adult Registered Member of Ngati Maru (Taranaki); or
- (b) is an undischarged bankrupt; or
- (c) 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); or
- (d) has ever been disqualified from being a director of a company registered under the Companies Act 1955 or the Companies Act 1993; or
- (e) has ever been removed as a trustee of a trust by order of a Court on the grounds on breach of trust, lack of competence or failure to carry out the duties of a trustee satisfactorily; or

- (f) is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988.

**2.2 Trustees not to be Trust employees**

A Trustee shall not be employed as an employee of the Trust.

**2.3 Number of Trustees to be limited**

There shall be no more than seven (7) and not less than three (3) trustees.

**3. TERM OF OFFICE**

**3.1 Term of office**

Subject to rule 3.4 of this Schedule the Trustees from time to time shall hold office until such time as their position comes up for re-election in accordance with this rule provided that no Trustee shall hold office for longer than three years without facing re-election.

**3.2 Casual vacancies**

Should any casual vacancy arise as a result of a Trustee ceasing to hold office prior to the expiry of that Trustee's term of office then that vacancy shall be filled by the holding of a further election in accordance with *this Schedule* provided that the Trust shall have the discretion not to hold such an election if the casual vacancy occurs less than six months before the original Trustee's term was due to expire.

**3.3 Term of casual appointments**

In the case of a Trustee elected pursuant to *rule 3.2 of this Schedule* the Trustee thereby appointed shall hold office for the balance of the term of office of the Trustee that he or she has replaced.

**3.4 Retirement and rotation of Initial Trustees:**

The initial persons elected as the Trustees of this Trust ("**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 date of this Deed, at least one but not more than two of the Initial Trustees shall retire and an election shall be held for the vacant Trustee position(s);
- (b) As at the date of the annual general meeting of the Trust in the second Income Year following the date of this Deed, at least one but not more than two of the Initial Trustees, excluding any Trustee who has retired and been re-elected in accordance with paragraph (a) above, shall retire and an election shall be held for the vacant Trustee position(s);
- (b) As at the date of the annual general meeting of the Trust in the third Income Year following the date of this Deed, the remaining Initial Trustees, being those that did not retire in accordance with paragraphs (a) and (b) above, shall retire and an election shall be held for the vacant Trustee positions.

**3.5 Order of retirement of Initial Trustees:**

The order of retirement of the Initial Trustees under *rule 3.4* of this Schedule shall be determined by agreement failing which the determination shall be made by lot.

**3.6 Term following retirement of Initial Trustees:**

Following the retirement of the Initial Trustees in accordance with *rule 3.4* 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 12* 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. TIMING OF ELECTIONS**

##### **4.1 Timing**

The elections for Trustees in any given Income Year must, except in the case of elections to fill casual vacancies under *rule 3.2 of this Schedule*, be concluded by the date of the annual general meeting of the Trust in that Income Year.

#### **5. MAKING OF NOMINATIONS**

##### **5.1 Calling for nominations**

The Trust shall give notice calling for nominations for those Trustee positions for which elections are required at least three months before the date of the election, and in any event in sufficient time for the election to be concluded in accordance with *rule 4 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.

##### **5.2 Timing for nominations**

All nominations must be lodged with the Trust no later than two months before the date of the election.

##### **5.3 Form of notice**

All notices given under this rule shall be given in the following manner:

- (a) by post (or electronic means if requested) to each Adult Registered Member;

- (b) by newspaper advertisement published on at least two separate days and inserted prominently in any major metropolitan newspapers and/or any provincial newspaper circulating in regions where the Trust considers that a significant number of Members of Ngati Maru (Taranaki) reside; and
- (c) by such other means as the Trust may determine.

**5.4 Inclusion of invitation to register**

Any such notice under *rule 5.1* of this Schedule shall also invite applications from persons who wish to be nominated or wish to nominate another person but are not Adult Registered Members for inclusion of their names in the Ngati Maru (Taranaki) Register, and shall set out the date upon which the registrations for those wishing to be nominated or wish to nominate another person close, being the same date as that fixed as the latest date for making and lodging nominations in accordance with *this Schedule*.

**5.5 Nomination to be in writing**

The nomination of a candidate for election as a Trustee shall be in writing on the nomination form used from time to time by the Trust and signed by not less than five (5) Adult Registered Members shown on the Ngati Maru (Taranaki) Register as being entitled to vote in respect of the election of that candidate.

**5.6 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. HOLDING OF ELECTIONS**

### **6.1 Mode of voting at elections**

Subject to *rule 7.3 of this Schedule*, voting at all elections shall be by way of secret postal ballot.

### **6.2 No election where one nominee**

In the event that the total number of nominations 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.

### **6.3 Eligibility to vote**

Each Adult Member is eligible to vote in an election, provided that:

- (a) each such Adult Member will only be eligible to cast one vote in an election;
- (b) each such Adult Member is either an Adult Registered Member or has completed and sent with their voting form a Registration Form.

### **6.4 Provisional votes**

Where an Adult Member is not also an Adult Registered Member, and has voted in accordance with *rule 7.3 of this Schedule*:

- (a) such vote is provisional until such time as the Registration Form is approved by the Whakapapa Validation Committee as set out in the *First Schedule*; and
- (b) where the Registration Form is declined in accordance with the *First Schedule*, the said vote will be invalidated.



**6.5 Each Member to vote once**

Each eligible Adult Member may only cast one vote in an election.

**7. NOTICE OF ELECTIONS**

**7.1 Notice to be given**

Immediately after the closing date for nominations the Trust shall, where an election is required, fix a closing date for the election (being the last day upon which a vote may be validly cast in the election).

**7.2 Period of notice**

The Trust shall give not less than 28 days notice of the closing date for the elections and the method by which votes may be cast as set out in *rule 6.1 of this Schedule*.

**7.3 Method of giving notice**

Notice under *rule 7.2 of this Schedule* shall be given by:

- (a) posting notice (or sent by electronic means, if requested) to each Adult Registered Member and to any other Adult Member who has made a written request for a notice;
- (b) inserting a prominent 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 Ngati Maru (Taranaki) reside; and
- (c) advertising on a radio station or radio stations broadcasting in the district or districts where the Trust considers that a significant number of Members of Ngati Maru (Taranaki) reside.

**7.4 General Content of notices**

Every notice given in accordance with *rule 7.3(a) and (b) of this Schedule* shall contain:

- (a) a list of the candidates for election as Trustees; and
- (b) the method by which votes may be cast as set out in *rule 6.1 of this Schedule*.

**7.5 Additional content of postal notice**

Each notice given in accordance with *rule 7.3(a) of this Schedule* shall also contain:

- (a) a voting form that complies with *rule 8.1 of this Schedule*;
- (b) details of the procedure to be followed in making a vote by post, including the date by which the voting form must be received by the Chief Returning Officer; and
- (c) the address to which the voting form shall be posted or delivered to the Chief Returning Officer.

**7.6 Additional information in other notices**

Each notice given in accordance with *rule 7.3(b) and (c) of this Schedule* shall also describe where voting forms may be obtained and where any relevant explanatory documents may be viewed or obtained.

## **8. POSTAL VOTING**

### **8.1 Other details to accompany vote**

Each voting form must contain information that is sufficient to identify the elector and the voting documents issued to that elector.

### **8.2 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 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.

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

### **9.1 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 an employee of the Trust, and who shall be a person of standing within the community. The Chief Returning Officer shall be responsible for co-ordinating Trustee elections and may appoint such other persons as he or she considers necessary to assist with that task provided that such persons shall also not be Trustees or employees of the Trust.

### **9.2 Chief Returning Officer to receive voting forms**

All voting forms must be addressed to the Chief Returning Officer.

**9.3 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 who is eligible to vote and votes in the relevant election.

**9.4 Recording of votes**

A record shall be kept by the Chief Returning Officer of all votes received, including separate records of votes received from Adult Registered Members and votes received from Adult Members.

**10. RESULT OF ELECTION**

**10.1 Counting of votes**

- (a) Upon the expiry of the date for the receipt of postal votes, the Chief Returning Officer shall record and count all votes validly cast.
- (b) The candidate or candidates (not exceeding in number the number of Trustees to be elected) receiving the highest number of valid votes in favour of his or her election will be deemed to be elected as Trustees of the Trust.

**10.2 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 10.1 (c)*.

Following the confirmation of the result of an election the newly elected Trustees, with the assistance of the incumbent Trustees, must apply to the Court under section 222 of Te Ture Whenua Maori Act 1993 for formal

appointment of the newly elected Trustees. The application must contain sufficient information to inform the Maori Land Court:

- (i) of the ability, experience and knowledge of the newly elected Trustees;
- (ii) that the appointments are broadly acceptable to Ngati Maru (Taranaki); and
- (iii) that the newly elected Trustees consent to their appointments.

### **10.3 Provisional votes**

Where, in respect of any election, one or more provisional votes has been cast in accordance with *rule 6.3 of this Schedule*:

- (a) If the validity or otherwise of the provisional votes may affect the outcome of the election the Chief Returning Officer must not certify the result of the election until the validity of the provisional votes has been confirmed pursuant to *rule 6.4(a) 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 6.4(a) of this Schedule* and the provisional votes have not been counted.

## **11. RETENTION OF ELECTION RECORDS**

### **11.1 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 details of the election to which the packet relates and 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.

#### **11.2 Retention and disposal of packets**

Subject to *rule 13.1(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 year from the closing date for voting in the election to which the packet relates. Upon the expiry of that one year period the packets shall be destroyed unopened.

### **12. REVIEW OF ELECTION RESULTS**

#### **12.1 Candidates may seek review**

Any candidate may, within 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.

#### **12.2 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 New Zealand Law Society or his or her nominee.

#### **12.3 Electoral Review Officer to conduct reviews**

All electoral reviews shall be carried out by the Electoral Review Officer from time to time.

#### **12.4 Form of request for review**

All applications for an electoral 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.

#### **12.5 Service of application on other candidates**

The application for review and any accompanying evidence shall also be served 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.

#### **12.6 Costs**

Upon making an application for review the applicant shall also lodge with the Trust the sum of \$500 in lieu of 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 \$500 shall be refunded to the applicant. If the application is unsuccessful then the \$500 shall be used to off-set the costs of the review.

### **13. CONDUCT OF REVIEW**

#### **13.1 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.

**13.2 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.

**13.3 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 order, 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 order and that such defect did not materially affect the result of the election.

**13.4 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.

**13.5 Decision to be final**

All decisions of the Electoral Review Officer shall be final and there shall be no other rights of review or appeal granted by the Trust.



## **14. TERMINATION OF OFFICE OF TRUSTEES**

### **14.1 Termination of office of Trustees**

Notwithstanding the foregoing rules of *this Schedule*, a Trustee shall cease to hold office, and the Trust will make an application to the Court to this effect, if he or she:

- (a) dies;
- (b) retires from office by giving written notice to the Trust;
- (c) completes his or her term of office and is not re-elected;
- (d) refuses to act;
- (e) is absent without leave from three consecutive ordinary meetings of the Trustees without good reason or without the permission of the Chairperson;
- (f) becomes physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Trustee;
- (g) becomes bankrupt or makes any composition or arrangement with his or her creditors;
- (h) is convicted of an indictable offence;
- (i) 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 Slates) Act 2004); or

- (j) is disqualified from being a director of a company registered under the Companies Act 1955 or the Companies Act 1993; or
- (k) is removed as a trustee of a trust by order of a Court on the grounds on breach of trust, lack of competence or failure to carry out the duties of a trustee satisfactorily; or
- (l) becomes subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988.
- (m) is removed as a Trustee of the Ngati Maru (Taranaki) Fisheries Trust.

## **15. RECORD OF CHANGES OF TRUSTEES**

### **15.1 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 TRUSTEES**

#### **1. TRUSTEES TO REGULATE MEETINGS**

##### **1.1 Regulation of meetings**

The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Any two 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 or sent by facsimile or by electronic means to each Trustee at least seven 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 subject-matter 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.

**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 or irregularity in a notice of any meeting of Trustees shall invalidate such meeting or the proceedings at such meeting.

**3. QUORUM**

**3.1 Quorum**

The quorum for a meeting of Trustees shall be a majority of the Trustees who, for the time being, have been elected and appointed as Trustees in accordance with this trust order.

**4. CHAIRPERSON AND DEPUTY CHAIRPERSON**

**4.1 Trustees to elect**

At the first meeting of the Trustees following an election the Trustees shall appoint one of their number to be chairperson ("**Chairperson**") and (at their discretion) one to be deputy chairperson ("**Deputy Chairperson**").

#### **4.2 Voting on election**

Where there is more than one 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 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 election shall be held for the position.

### **5. PROCEEDINGS AT MEETINGS**

#### **5.1 Decisions by majority vote**

Unless stated otherwise in this trust order, questions arising at any meeting of Trustees shall be decided by a majority of votes. 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 the 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 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

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. RESOLUTIONS**

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

## **7. MINUTES**

### **7.1 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.

### **7.2 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.

### **7.3 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.

## **8. TELECONFERENCE MEETINGS**

**8.1** 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;
- (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.

## **9. CUSTODY AND USE OF COMMON SEAL**

### **9.1 Use and custody of seal**

The Trustees shall have custody of the common seal, and from time to time by resolution, they may adopt any seal they think fit. The common seal must not be affixed to any document unless the Trustees by resolution authorise its use on that document. When a document is to be sealed on the authority of the Trustees the seal must be affixed to the document in the presence of two Trustees who must sign the document.



**9.2 Authority for transaction sufficient**

No document entered into under the common seal shall be invalid only by virtue of the Trust not giving its prior authority to affix the seal as long as the affixing of the seal was made pursuant to a resolution of the Trust authorising the transaction or transactions concerned or as long as the affixing of the seal is subsequently ratified by the Trust.

**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 under the seal 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 by two Trustees on behalf of or by direction of the Trust.

**10.3 Oral contracts**

Any contract which, if made by 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 Secretary, in either case acting by direction of the Trust.

**10.4 Contracts pursuant to resolution**

Notwithstanding anything to the contrary in this *rule 11*, 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 Trust.

## FOURTH SCHEDULE

### PROCEDURE FOR PASSING SPECIAL RESOLUTION

#### 1. THIS SCHEDULE TO APPLY

##### 1.1 Special Resolution required

A Special Resolution to:

- (a) approve a Major Transaction in accordance with *clause 4.3*;
- (b) amend this trust order in accordance with *clause 20*;
- (c) wind up the Trust in accordance with *clause 21*; or

shall only be passed as set out in *this Schedule*.

#### 2. POSTAL VOTING AND SPECIAL GENERAL MEETING

##### 2.1 Voting by ballot

Voting on a Special Resolution shall occur either by placing voting forms into a ballot box in person at the special general meeting held for the purposes of considering the Special Resolution, or by post.

#### 3. VOTING

##### 3.1 Approval for a Special Resolution

Subject to *rule 3.2 of this Schedule*, in order for a Special Resolution to be passed it must receive the approval of not less than 75% of those Adult

Registered Members who validly cast a vote in favour of the proposed Special Resolution in accordance with *this Schedule*.

### **3.2 Specific Special Resolutions**

In order for Special Resolutions to be passed which relate to amendments to this trust order in accordance with *clause 20*, they must receive the approval of not less than 75% of those Adult Members who validly cast a vote in favour of the proposed Special Resolution in accordance with this Schedule.

### **3.3 Eligibility to vote on specific Special Resolutions**

Each Adult Member is eligible to vote in accordance with *rule 3.2 of this Schedule*, provided that:

- (a) each such Adult Member will only be eligible to cast one vote;
- (b) each such Adult Member who is not registered on the Ngati Maru (Taranaki) Register must complete a Registration Form, and may also make a written request to receive Private Notice of any special general meetings and/or postal ballot papers relating to *rules 1.1(a), 1.1(b) and 1.1 (c)*, at the same time that they complete their voting form;
- (c) such vote is provisional until such time as the said Registration Form is approved by the Whakapapa Validation Committee as set out in the First Schedule; and
- (d) where the said Registration Form is declined in accordance with the First Schedule, the said vote will be invalidated.

#### **4. SPECIAL GENERAL MEETING REQUIRED**

##### **4.1 Calling a meeting**

A special general meeting of the Trust must be called for the purposes of considering one or more Special Resolutions. No other business may be transacted at such special general meeting.

#### **5. NOTICE**

##### **5.1 Notice of special general meeting**

The Trust shall give not less than 28 days notice of the date, time and place of the special general meeting called for the purposes of considering any Special Resolution (to the intent that notice of the postal vote and the special general meeting shall be given in the same notice).

##### **5.2 Method of giving notice**

Notice of a special general meeting called for the purposes of considering a Special Resolution shall be:

- (a) in writing and posted to all Adult Registered Members at the last address shown for each such Adult Registered Member on the Ngati Maru (Taranaki) Register and to any other Adult Member who has made a written request for a notice;
- (b) advertised prominently in any major metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trust considers that a significant number of Members of Ngati Maru (Taranaki) reside; and

- (c) advertised on a radio station or radio stations broadcasting in the district or districts where the Trust considers that a significant number of Members of Ngati Maru (Taranaki) reside.

### **5.3 Content of notice to members**

All notices given in accordance with *rule 5.2(a) of this Schedule* shall contain:

- (a) the date, time and place of the special general meeting called for the purposes of considering the Special Resolution;
- (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, including the date postal voting closes;
- (e) a statement that postal votes may either be delivered to the Chief Returning Officer at the special general meeting, or posted; and
- (f) a voting form.

### **5.4 Content of advertisement**

All advertisements published in accordance with *rule 5.2(b) and 5.2(c) of this Schedule* shall contain the matters referred in *rule 5.3(a) and (b) of this Schedule* together with details of how and where any further information can be obtained.

## **6. POSTAL VOTING**

### **6.1 Other details to accompany vote**

Each voting form must contain sufficient information to identify the voter and the voting documents issued to that voter.

### **6.2 Timing of postal votes**

Votes must be cast no later than the closing date for voting. Votes otherwise validly cast are valid and able to be counted if they are received by the Chief Returning Officer no later than three 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.

### **6.3 Postal Votes may be received at the special general meeting**

Voting forms may be delivered to the Chief Returning Officer at the special general meeting, rather than being posted.

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

### **7.1 Appointment of Chief Returning Officer**

For the purposes of the Special Resolution, the Trust shall appoint a Chief Returning Officer who shall not be a Trustee or employee of the Trust, and who shall be a person of standing within the community.

### **7.2 Chief Returning Officer to receive voting forms**

Voting forms must be addressed to the Chief Returning Officer.

### **7.3 Chief Returning Officer to be present at special general meeting**

The Chief Returning Officer must be present at the special general meeting. The Chief Returning Officer will be available to collect any completed voting

forms at the special general meeting. The Chief Returning Officer shall also ensure that additional voting forms are available at the special general meeting.

**7.4 Only one vote to be cast**

The Chief Returning Officer must ensure that appropriate measures are in place to ensure that only one vote is cast by each Adult Registered Member and each Adult Member who is eligible to vote on the Special Resolution.

**7.5 Recording of votes**

A record shall be kept by the Chief Returning Officer of all votes received.

**8. COUNTING OF VOTES**

**8.1 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.

**8.2 Certification and notifying result**

Subject to *rule 8.3 of this Schedule*, 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.

**8.3 Provisional votes**

Where, in respect of any Special Resolution, one or more provisional votes have been cast in accordance with *rule 3 of this Schedule*:

- (a) If the validity or otherwise of the provisional votes may affect the outcome of the Special Resolution, the Chief Returning Officer must not certify the result of the Special Resolution until the validity of the

provisional votes has been confirmed pursuant to *rule 3.3(c) 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 Special Resolution, the Chief Returning Officer may certify the result notwithstanding that the validity of the provisional votes have not been confirmed pursuant to *rule 3.3(c) of this Schedule* and the provisional votes have not been counted.

## **9. PROCEEDINGS AT SPECIAL GENERAL MEETING**

- 9.1** Except as otherwise set out in *this Schedule* the provisions of *clause 10* 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.