

Date [] 2013

DEED OF TRUST OF NGĀTI PAOA IWI TRUST

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NGĀTI PAOA IWI TRUST GOVERNANCE ENTITY TRUST DEED

Executed as a deed on the day of 2013

BACKGROUND

- A. The Ngāti Paoa Trust is the mandated iwi entity for Ngāti Paoa for Treaty Settlement purposes. Mandate was achieved in May 2011.
- B. The Ngāti Paoa Trust expects to initial a Deed of Settlement with the Crown to settle its historical Treaty of Waitangi claims in 2013.
- C. In order to meet the requirements prescribed by the Crown the Ngāti Paoa Trust is establishing a single post settlement governance entity to receive and administer the settlement assets received as part of Ngāti Paoa's historical Treaty of Waitangi settlement to be agreed with the Crown.

1. DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

In this Trust Deed, unless the context otherwise requires:

“Adult Member of Ngāti Paoa” means a Member of Ngāti Paoa who is 18 years of age or over;

“Adult Registered Member of Ngāti Paoa” means a Member of Ngati Paoa identified on the Register as being 18 years of age or over;

“Annual Plan” means the annual plan of the Trust which is prepared in accordance with *clause 8.1*;

“Annual Report” means the annual report of the Ngāti Paoa Group which is prepared by the Trustees in accordance with *clause 9.1*;

“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 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 Executive**” means the person appointed in accordance with *clause 4.1*;

“**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 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 7.1* of the Fourth Schedule;

“**Consolidated Financial Statements**” means the consolidated financial statements of the Ngāti Paoa Group prepared by the Trustees in accordance with *clause 10.1*;

“**Custodian Trustee**” means the custodian trustee that may be appointed or incorporated in accordance with *clause 24.1*;

“**Customary Rights**” means rights according to tikanga Māori (Māori customary values and practices) including:

- (a) rights to occupy land; and
- (b) rights in relation to the use of land or other natural or physical resources;

“**Deed**” and “**Trust Deed**” mean this deed of trust and include the background and the schedules to this deed;

“**Deed of Settlement**” means the deed or deeds that will be entered into between representatives of Ngāti Paoa and the Crown recording the settlement of the Ngāti Paoa Claims;

“**Deputy Chairperson**” means the deputy chairperson from time to time of the Trust if one is appointed in accordance of *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; or
- (b) legal adoption; or
- (c) Māori customary adoption in accordance with Ngāti Paoa’s tikanga (Māori customary values and practices);

“**Disputes Committee**” means a committee formed in accordance with *clauses 30.4 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;

“Establishment Trustees” means those Trustees elected immediately following the initial Trustees in accordance with *rule 4.2* of the Second Schedule;

“Five Year Plan” means the five year plan of the Trust prepared in accordance with *clause 8.2*;

“Income Year” means any year or accounting period beginning 1 April of one calendar year and ending 31 March of the following calendar year or any other period that the Trustees by resolution adopt;

“Initial Trustees” means the Trustees identified in *clause 3.1*;

“Major Transaction” in relation to any member of the Ngāti Paoa 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; or
- (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 Paoa Group); or
- (e) any acquisition of Property by a member of the Ngāti Paoa Group from any other member of Ngāti Paoa Group; or
- (f) any disposition of Property by a member of the Ngāti Paoa Group to any other member of the Ngāti Paoa 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 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, the value of the Trust’s Assets shall be calculated based on the value of the assets of the Ngāti Paoa Group;

“Māori Fisheries Act” means Māori Fisheries Act 2004;

“**MCACS Act**” means the Māori Commercial Aquaculture Claims Settlement Act 2004;

“**Member of Ngāti Paoa**” means an individual referred to in paragraph (a) of the definition of Ngāti Paoa;

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

“**Ngāti Paoa Iwi**” means:

- (a) the collective group composed of individuals who descend from Ngāti Paoa Iwi’s Ancestor.

“**Ngāti Paoa Ancestor**” means an individual who exercised Customary Rights by virtue of being descended from:

- (a) Paoa; and
- (b) who exercised customary rights predominantly in relation to the Ngāti Paoa Area of Interest at any time after 6 February 1840;

“**Ngāti Paoa Area of Interest**” means the Area of Interest of Ngāti Paoa as identified and defined in the Deed of Settlement;

“**Ngāti Paoa Claims**” means Ngāti Paoa historical claims against the Crown in respect of the Crown’s breaches of its obligations to Ngāti Paoa under the Treaty of Waitangi, as identified in the Deed of Settlement;

“**Ngāti Paoa Group**” means the Trust and its Subsidiaries (if any);

“**Ngāti Paoa Register**” means the register of Members of Ngāti Paoa that is to be maintained by the Trust in accordance with the First Schedule to this Deed;

“**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 10.4* of the Second Schedule or *rule 8.3* of the Fourth Schedule, as the case may be;

“**Registrar-General of Land**” or “**Registrar-General**” means the Registrar-General of Land appointed in accordance with section 4 of the Land Transfer Act 1952;

“**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 within that deed;

“**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 Māori Fisheries Act 2004 or the Māori Commercial Aquaculture Claims Settlement Act 2004 a resolution by not less than 75% of the Adult Members of Ngāti Paoa voting in accordance with the Fourth Schedule; and
- (b) in all other cases a resolution by not less than 75% of the Adult Registered Members of Ngāti Paoa who validly cast a vote in accordance with the process set out in the Fourth Schedule;

“Statements of Intent” means the statements of intent prepared by a Subsidiary in accordance with *clause 10.1*;

"Subsidiaries" or **"Subsidiary"** means any entity or trust that is:

- (a) wholly owned; or
- (b) controlled directly

by the Trust;

“Trust” means the trust created by this Deed which is to be called the Ngāti Paoa Iwi 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 Trustees, 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 Trustees;

“Trust’s Purpose” means the object and purpose set out in *clause 2.4*;

“Trust Period” means the period from the date of this Deed until the Vesting Day;

“Trustees” means the trustees appointed from time to time in accordance with clause 3.1 and the Second Schedule of this Deed to represent Ngāti Paoa and to act as the trustees for the time being of the Trust and **“Trustee”** shall mean any one (1) of those persons; and

“Vesting Day” has the meaning set out in *clause 28*.

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 a person 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 Deed;
- (f) the schedules to this Deed shall form part of this Deed;
- (g) headings appear as a matter of convenience only and shall not affect the interpretation of this Deed; and
- (h) references to a company are references to a company incorporated pursuant to the Companies Act 1993.

2. CONSTITUTION, STATUS AND OBJECT OF THE TRUST

2.1 Trust Established

The Trustees acknowledge that they hold the Trust's Assets upon the trusts and with the powers set out in this Deed. The Trustees further acknowledge that the trust hereby created shall be known as the Ngāti Paoa Iwi Trust.

2.2 Trust Administration

The Trust shall be governed and administered by and in accordance with this Deed.

2.3 Powers of Trust

The Trustees continue to have all the powers of a natural person and may exercise those powers in accordance with the terms of this Trust. 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; and
- (f) to borrow or to lend money.

2.4 Object and purpose of the Trust

The purpose for which the Trust is established is to receive, manage, hold and administer the Trust's Assets on behalf of and for the benefit of the present and future Members of Ngāti Paoa in accordance with this Deed.

Without limiting in any way the generality of the foregoing, the trustees may:

- (a) promote the educational, spiritual, economic, social and cultural advancement or well-being of Ngāti Paoa and its Members;
- (b) provide for the on-going maintenance and establishment of places of cultural or spiritual significance to Ngāti Paoa and its Members;
- (c) promote the health and well-being generally, including of the aged or those suffering from mental or physical sickness or disability of Ngāti Paoa and its Members;
- (d) undertake commercial activities to support the object and purpose of the Trust;
- (e) any other purpose that is considered by the Trustees from time to time to be beneficial to the Trust and its Members.

2.5 Restriction on Major Transactions

Notwithstanding *clause 2.3*, the Trustees

must not enter into a Major Transaction; and

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:

- (a) is approved by way of Special Resolution in accordance with the Fourth Schedule; or
- (b) 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 the Establishment Trustees in accordance with the Second Schedule, the initial two Trustees shall be:

Bryce Herron; and

Gary Thompson

Who are independent Trustees.

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 Extent of Trustees' discretion to manage Trust affairs

Subject to any requirements imposed by this Deed, the Deed of Settlement, the Settlement Act, the Māori Fisheries Act, the MCACS 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.

3.4 Proceedings of Trustees

Except as otherwise provided in the Deed the proceedings and other affairs of the Trustees shall be conducted in accordance with the rules set out in the Third Schedule.

3.5 Trustees Remuneration

Trustees' remuneration must:

- (a) be authorised by a resolution of Adult Registered Members of Ngāti Paoa in accordance with *clause 13.2*. 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.

3.6 Trustee Expenses

Trustees will be entitled to be reimbursed reasonable expenses reasonably incurred in relation to their acting as Trustees.

4. CHIEF EXECUTIVE AND OTHER EMPLOYEES

4.1 Trustees to appoint Chief Executive

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

4.2 Delegations to Chief Executive

The Trustees shall ensure that any Chief Executive is appointed on terms which require that the Chief Executive 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.

4.3 Trustee Role

A Trustee may not hold the position of Chief Executive nor be an employee of, or a contractor to, any entity or trust in the Ngāti Paoa Group.

5. TRUSTEES MAY ESTABLISH SUBSIDIARIES

5.1 Establishment of Subsidiaries

In receiving, controlling, and supervising the use of the Trust's Assets on behalf of Ngāti Paoa, whether pursuant to the Deed of Settlement, the Settlement Act, the Māori Fisheries Act, the MCACS Act or otherwise, the Trustees may establish and oversee the operations of any Subsidiaries.

5.2 Ownership and Control of Subsidiaries

The Trustees shall ensure that any Subsidiary is established on terms which require the Subsidiary to manage any of the Trust's Assets it holds solely for the benefit of Ngāti Paoa. The Trustees shall ensure that they have and retain all the shares in any Subsidiary that is a Company and the sole power to appoint and remove the trustees and directors or any responsible body of any Subsidiary.

5.3 Trustees to monitor

The Trustees shall exercise their shareholding or power of appointment in respect of any Subsidiaries in such a way as to ensure that these entities carry out their activities in a manner which is consistent with the Trust's object and purpose.

5.4 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 object and purpose.

5.5 Directors responsible for governance

For the avoidance of doubt, and except as expressly provided by this Deed, all entities or trusts within the Ngāti Paoa Group shall be governed by their respective boards or other responsible bodies and the role of the Trustees in respect of those companies and other entities shall be limited to the exercise of the rights conferred on the Trustees as shareholders or (as applicable) appointor and beneficiary of the relevant entity or trust.

5.6 Remuneration of directors and other trustees

The Trustees shall ensure that Subsidiaries are established on terms which give the Trustees the power to determine the remuneration payable to any director or trustee or controlling body of any Subsidiary.

5.7 No influence in determining remuneration

No Trustee receiving any remuneration referred to in *clause 5.6* 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.

6. APPOINTMENT OF DIRECTORS AND TRUSTEES

6.1 Appointment and removal of directors and trustees

The Trustees shall ensure that Subsidiaries are established on terms which ensure that the directors and trustees or other controlling body of the Subsidiary shall be appointed and removed by the Trustees.

6.2 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.

6.3 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. APPLICATION OF INCOME AND CAPITAL

7.1 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 Members of Ngāti Paoa;
- (b) use or apply any capital of the Trust's Assets to or for the benefit of Members of Ngāti Paoa. 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.

7.2 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 Trustees in their discretion think fit, including:

- (a) as a reserve against losses and contingencies, and the Trustees 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.

7.3 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 Trustees 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 Members of Ngāti Paoa.

7.4 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 7* during or within the six (6) months from the end of that Income Year 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.

8. PLANS

8.1 Trustees to prepare Annual Plan

In addition to the requirement in *clause 8.3*, the Trustees shall prepare no later than one (1) month before the commencement of each Income Year after Settlement Date an Annual Plan which specifies in respect of that Income Year information including:

- (a) the strategic vision of the Trust for the Ngāti Paoa Group, consistent with the longer term vision of the Ngāti Paoa Group as identified in the Five Year Plan;
- (b) the nature and scope of the activities proposed by the Trustees for the Ngāti Paoa Group in the performance of the Trust's Purpose;
- (c) the ratio of capital to total assets;
- (d) the performance targets and measurements by which performance of the Ngāti Paoa Group may be judged;
- (e) the manner in which it is proposed that projected income will be dealt with;
- (f) any proposals for the ongoing management of the Trust's Assets having regard to the interests of all Members of Ngāti Paoa; and
- (g) any other information as the Trustees in their discretion consider necessary or appropriate.

8.2 Trustees to prepare Five Year Plan

In addition to the requirement in *clause 8.3*, the Trustees shall also produce within 18 months following Settlement Date, and update not less than every two (2) years, a Five Year Plan. Such a plan shall set out the longer term vision of the Trustees in respect of the matters referred to in *clause 8.1(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's Assets.

8.3 Initial Annual Plan and Five Year Plan

In addition to the requirements in *clauses 8.1 and 8.2* the Trustees 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 *clause 8.1 and 8.2*. Those plans shall have effect until such time as they are replaced by new plans as required in *clause 8.1 and 8.2*.

9. ANNUAL REPORTS, ACCOUNTS AND AUDITOR

9.1 Preparation of annual report

The Trustees must, within five (5) months after the end of each Income Year after Settlement Date, and no later than 20 Business Days prior to an annual general meeting, cause to be prepared an annual report on the affairs of the Ngāti Paoa 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 Paoa Group for that Income Year. The Consolidated Financial Statements shall include as a separate item details of any remuneration or fees paid 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).

9.2 Audit of financial statements

The Trustees must also ensure that the Consolidated Financial Statements for each Income Year after Settlement Date 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.

9.3 Appointment of auditor

The auditor shall be appointed by the Trustees prior to the end of the Income Year after Settlement Date to which the audit relates and, where possible, the fee of the auditor shall also be fixed at that time. 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 Trust's accountant shall not be appointed as the auditor.

10. SUBSIDIARIES TO PREPARE PLANS AND REPORTS

10.1 Subsidiaries to prepare Plans and Statements of Intent

The Trustees shall procure that each Subsidiary will:

- (a) within three (3) months of the establishment of the Subsidiary, prepare a Statement of Intent setting out its long term objectives and the general principles by which it proposes to operate;
- (b) as required by the Trustees, update the 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) within three (3) months of the establishment of the Subsidiary, prepare a Five Year Plan which shall be updated not less than every two (2) years, and which sets out its medium term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the Statement of Intent referred to in paragraph (a) of this clause;
- (d) no later than one (1) month following the completion of the Five Year Plan referred to in paragraph (c) of this clause, 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 five year planning objectives and fulfil the objectives and principles of the Statement of Intent;
- (e) 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 Trustees may require from time to time).

10.2 Trustee approval required

Prior to being implemented all Statements of Intent, Five Year Plans 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.

10.3 Reports to comply with Companies Act 1993

The Trustees shall procure that all annual reports 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 the company or any of its subsidiaries, or the classes of business in which the company 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;
- (c) the auditor's report of the financial statements (or group financial statements) of the company for that Income Year.

10.4 Subsidiaries to meet Companies Act standard

All reports of any Subsidiary that is a trust shall be provided to the same standard, including as to form and content, as is required under *clause 10.3* as if the Subsidiary was a company.

10.5 Report to include comparison against plans

In addition to the matters set out in *clauses 10.3* and *10.4*, the Trustees shall procure that all reports by any Subsidiary include a comparison of its performance against both its respective annual plans for that Income Year and its medium and longer term planning objectives (as set out in the Five Year Plan and Statement of Intent).

10.6 Protection of Information

For the avoidance of doubt, nothing in this *clause 10* limits or affects the rights of the Trustees, as shareholders in any Subsidiary that is a company, to agree pursuant to section 211(3) of the Companies Act 1993 not to include information in the annual report of the Subsidiary.

11. DISCLOSURE OF PLANS, REPORTS AND MINUTES

11.1 Documents to be available for inspection

The Trustees shall hold at their offices and make available for inspection by any Member of Ngāti Paoa during normal business hours on any Business Day:

- (a) the Annual Report for each of the preceding three (3) Income Years;
- (b) the Consolidated Financial Statements for the preceding three (3) Income Years;
- (c) the Annual Plan;
- (d) the Five Year Plan;
- (e) the Statements of Intent;
- (f) the minute book kept in accordance with *clause 13.14* of all decisions taken and business transacted at every annual general meeting and special general meeting;
- (g) their own personal details on the Register;
- (h) the Deed and any amendment to the Deed; and
- (i) the current constitution or trust deed of any Subsidiary.

11.2 Costs of copying

Any Member of Ngāti Paoa shall be entitled to obtain copies of the information referred to in *clause 11.1*. However the Trustees shall also be entitled to recover at their discretion all reasonable copying or postage costs (if any).

12. NO DISCLOSURE OF SENSITIVE INFORMATION

- 12.1** For the avoidance of doubt, but subject to the Trustees reporting obligations in *clauses 9.1, 11.1(a), 11.1(b), 11.1(f), 13.1(a) and 13.1(b)*, the Trustees may at their sole discretion limit disclosure of any information about the activities or proposed activities of the Trustees and the Ngāti Paoa Group which the Trustees consider on reasonable grounds to be commercially or otherwise sensitive.

13. GENERAL MEETINGS

13.1 Trustees to hold annual general meeting

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

- (a) report on the operations of the Ngāti Paoa Group during the preceding Income Year;
- (b) present the Annual Report 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 for the next Income Year;
- (f) approve the Trustees' remuneration;
- (g) undertake all other notified business; and
- (h) at the discretion of the chairperson of the meeting, undertake any other general business raised at that meeting.

13.2 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 Paoa 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 and that remuneration shall be determined by the Trustees pursuant to *clause 5*.
- (b) The appointment of the auditor for the next Income Year must be authorised by a resolution of the Adult Registered Members of Ngāti Paoa present at the annual general meeting.

13.3 Notice of general meeting

The Trustees shall give not less than twenty one (21) 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 Paoa at the last address shown for each such Adult Registered Member of Ngāti Paoa on the Ngāti Paoa Register. 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 on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngāti Paoa 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.

13.4 Notice of special meetings

In addition to the annual general meeting of the Trust, the Trustees shall convene a special general meeting of the Trustees for the Members of Ngāti Paoa on the requisition of:

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

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 Trustees setting out the purposes for which the meeting has been requisitioned and the specific agenda items proposed for such a meeting. The Trustees shall not be required to give notice calling the meeting until such a statement with agenda items has been received.

13.5 Annual general meeting not limited to notified business

At the discretion of the chairperson of the meeting, 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.

13.6 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.

13.7 Invalidation

The proceedings of a meeting are not invalidated by 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 Paoa.

13.8 Deficiency of notice

Subject to *clause 13.6*, a deficiency or irregularity in a notice of any special or general meeting will not invalidate anything done at the meeting if the deficiency or irregularity is not material.

13.9 Quorum

The quorum required for any annual or special general meeting of the Trust shall be 25 Adult Registered Members of Ngāti Paoa 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 Paoa he or she is entitled to vote.

13.10 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 (1) of their number to substitute as the chairperson for that meeting.

13.11 Voting

To the extent that a vote is sought or required at any annual or special general meeting, every Adult Registered Member of Ngāti Paoa present shall have one (1) vote. All resolutions except Special Resolutions require the approval of not less than a majority of the Adult Registered Members of Ngāti Paoa 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, 13.1(e), 13.1(f) 13.2, 25.1, 26 and 27* 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 Purpose. The latest version of the Ngāti Paoa Register will be present at any annual or special general meetings.

13.12 Adjourned meetings

If after one (1) hour of the time appointed for an annual or special general meeting, a quorum is not present, the meeting will stand adjourned to be re-convened 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 hour from the time appointed for that adjourned meeting, the Adult Registered Members of Ngāti Paoa present will constitute a quorum.

13.13 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 or 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.

13.14 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.

13.15 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.

13.16 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.

14. DISCLOSURE OF INTERESTS

14.1 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 Trustees or any other member of the Ngāti Paoa Group;
- (d) is the parent, child, spouse, de facto or civil union partner 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.

14.2 Disclosure 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 Trustees, disclose to his or her co-Trustees at a meeting of the Trustees:

- (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.

14.3 Recording of Interest

A disclosure of interest by a Trustee (and the nature and the extent or monetary value of that interest) shall be recorded in the minute book and the interest register of the Trust.

15. DEALINGS WITH "INTERESTED" TRUSTEES

- 15.1** 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.

16. PROHIBITION OF BENEFIT OR ADVANTAGE

- 16.1** In the carrying on of any business by any member of the Ngāti Paoa Group under this 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.

17. DISCLOSURE OF TRUSTEE REMUNERATION ETC

- 17.1** The Trustees shall, in accordance with *clause 9.1*, 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 insurance separately in the financial statements including any payments made pursuant to *clause 20*.

18. ADVICE TO TRUSTEES

18.1 Trustees 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.

18.2 Trust may obtain a legal opinion

If the Trustees are in doubt over 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 lawyer who has held a practising certificate for at least seven (7) years. The right to obtain and act upon a legal opinion, however, will not restrict any right on the part of the Trustees to apply to the High Court of New Zealand for directions.

19. LIABILITY OF TRUSTEES

- 19.1** 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 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.

20. INDEMNITY AND INSURANCE

20.1 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'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, where:

- (a) those proceedings do not arise out of any failure by the Trustee, officer or employee; and
- (b) 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 Trust's Purpose.

20.2 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.

20.3 Indemnity and insurance re specific trusts

If any assets are held by the Trustees 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.

20.4 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 of the Trustees 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.

21. NGĀTI PAOA NOT TO BE BROUGHT INTO DISREPUTE

21.1 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 Paoa Group into disrepute. Examples of actions (or omissions):

- (a) a Trustee refusing to act when they should;
- (b) sustained absence of a Trustee without permission or reasonable excuse;
- (c) conviction of a serious dishonesty offence or an indictable offence; or
- (d) bankruptcy or being subject to a compulsory treatment order.

21.2 Directors not to bring into disrepute

The Trustees shall also ensure that Subsidiaries are established on terms which provide that the directors or trustees of any such Subsidiary are not to act in a manner which brings or is likely to bring the Trust or any member of the Ngāti Paoa Group into disrepute.

21.3 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 Paoa 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.

21.4 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 Paoa at the next annual general meeting of the Trust following such censure or removal.

21.5 Effect of Removal

A Trustee removed from office in accordance with *clause 21.3* 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.

Each of the Trustees grants a power of attorney in favour of the other Trustees to convey the Trust's Assets to the other Trustees and any replacement trustee in the event that the Trustee is removed from office under *clause 21.3*.

21.6 Replacement of Trustee

The removal of a Trustee in accordance with *clause 21.3* shall give rise to a casual vacancy which shall be filled in accordance with *rule 4.6* of the Second Schedule.

The election process must take place within three (3) months of any removal of a Trustee in accordance with this clause.

22. GIFTS OR DONATIONS

22.1 Trustees 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 purpose of the Trust or for any specific purpose that comes within the Trust's Purpose. Such a trust may include any trust for the benefit of the Members of Ngāti Paoa or any of them. Any property held by the Trustees pursuant to this clause shall be dealt with in accordance with the terms of that trust and shall not constitute part of the Trust's Assets.

22.2 Specific trusts to be separate

If the Trustees accept a trust for any specific purpose as outlined in *clause 22.1* above they 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.

22.3 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 Trustees 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. RECEIPTS FOR PAYMENTS

23.1 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.

24. CUSTODIAN TRUSTEE

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

- (a) The Trustees shall require the Custodian Trustee to sign this Deed agreeing to be bound by its terms;
- (b) The Trust's Assets may be vested in the Custodian Trustee as if the Custodian Trustee were sole Trustee;
- (c) The Custodian Trustee holds the title so vested in him or her or it on trust for the Trustees;

- (d) The management of the Trust's Assets and the exercise of all powers and discretions exercisable by the Trustees under this Deed shall remain vested in the Trustees as fully and effectively as if there were no Custodian Trustee;
- (e) The sole function of the Custodian Trustee shall be to hold the Trust's Assets property, invest its 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;
- (f) 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 Trustees providing the Trustees are made parties to the proceeding;
- (g) The Custodian Trustee shall not be liable for any act or default on the part of any of the Trustees, provided the Custodian Trustee is not knowingly a participant in any wilful breach of trust by such Trustee(s);
- (h) 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, as between the Trustees and the Custodian Trustee, the Custodian Trustee shall not be liable for the costs and the Trustees shall indemnify the Custodian Trustee for such proceedings; and
- (i) No person dealing with the Custodian Trustee shall be concerned to enquire as to the concurrence or otherwise of the Trustees or be affected by notice of the fact that the Trustees have not concurred.

25. AMENDMENTS TO DEED

25.1 Special Resolution required

Subject to *clause 25.2* and *clause 25.3*, all amendments to the Deed shall only be made with the approval of a Special Resolution passed in accordance with the Fourth Schedule.

25.2 Limitations on Amendment

No amendment shall be made to the Deed which:

- (a) changes the Trust's Purpose so that the Trustees are no longer required to act for the collective benefit of the present and future Members of Ngāti Paoa;
- (b) changes this *clause 25.2*;
- (c) changes *clause 27*;
- (d) changes the finally agreed definition of Member of Ngāti Paoa, Ngāti Paoa Ancestor, Ngāti Paoa Area of Interest, or Ngāti Paoa Claims after settlement legislation has been passed;

- (e) changes the requirement for a Special Resolution (as defined from time to time) in *clause 25.1*;
- (f) changes the membership and beneficiary of the Trust; and
- (g) changes *rule 3.1* of the Fourth Schedule relating to the voting threshold of 75% of the Adult Members of Ngāti Paoa.

25.3 Amendment to make definitions consistent with Deed of Settlement and Settlement Legislation

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

25.4 Consideration of proposals

Every Adult Registered Member of Ngāti Paoa may put forward for consideration by the Trustees proposals for amendments to the Deed. Any proposal put forward under this *clause 25.4* must be in writing and addressed to the Chairperson at the registered office of the Trust. Any proposal put forward under this *clause 25.4* must be considered by the Trustees at their next available meeting. If the proposal for an amendment to the Deed complies with *clauses 25.2* and *25.4*, the Trustees must call a special general meeting to consider the proposal. If the Trustees do not discard the proposal in accordance with *clause 25.5* they may, in their discretion, discuss it at the next annual general meeting.

25.5 Proposals to be discarded

Where a proposal for amendments to the Deed does not comply with *clauses 25.2* and *26.4*, the Trustees may discard the proposal and the Trustees will not be required to call a special general meeting in accordance with the Fourth Schedule.

26. RESETTLEMENT

- 26.1** 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 present and future Members of Ngāti Paoa provided that the resettlement is approved by a Special Resolution.

27. TERMINATION OF TRUST BY MEMBERS

- 27.1** Subject to *clause 25.2*:

- (a) the Trust established by this Deed may be terminated or dissolved if the Adult Registered Members of Ngāti Paoa have, by Special Resolution, resolved to do so; and
- (b) on the termination or dissolution of this Trust under this clause, 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 Paoa as long as such payment does not offend against the rule against perpetuities to the extent such rule applies to this Trust.

28. PERPETUITIES AND VESTING DAY

- 28.1** 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 Paoa then living as tenants in common in equal shares.
- 28.2** 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 28(1)* shall be void.

29. ARCHIVING OF RECORDS

- 29.1 Records to be held for seven years**

All minutes and other records of any proceedings of the Trustees and any Subsidiaries in the Ngāti Paoa Group shall be held by the Trust and those Subsidiaries for a period of seven (7) years.
- 29.2 Records to be archived**

At the expiry of seven (7) years the Trustees shall archive the records of the Trust and the Subsidiaries in the Ngāti Paoa Group for such period as the Trustees consider necessary.
- 29.3 Records may be retained for longer**

Notwithstanding *clauses 29.1* and *29.2* the Trustees and any of the Subsidiaries within the Ngāti Paoa 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 the Subsidiary to which the information relates.

30. DISPUTE RESOLUTION

- 30.1 Disputes**

In the event that a dispute arises between:

- (a) any Members of Ngāti Paoa; or
- (b) the Trustees and any Members of Ngāti Paoa

regarding membership or otherwise in connection with the tikanga, reo, kawa, whakapapa and korero of Ngāti Paoa then that dispute shall be referred in first instance to the Trustees.

30.2 Notice of Dispute

All disputes referred to the Trustees in accordance with *clause 30.1* shall be submitted to the Trustees by notice in writing and the Trustees shall acknowledge receipt in writing within 10 Business Days of the date of receipt of the notice.

30.3 Reference of Dispute

If a dispute is not settled within 30 days of the receipt by the Trustees of written notice of the dispute in accordance with *clause 30.2* then it shall be referred to a Disputes Committee constituted in accordance with *clause 30.4* and *30.5*.

30.4 Disputes Committee to be appointed as required

There shall not be a permanent Disputes Committee. Disputes Committees shall be appointed 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 30.3*.

30.5 Appointment and composition of Disputes Committee

A Disputes Committee shall comprise three members who shall be appointed by the Trust as follows:

- (a) One (1) independent (non-Ngāti Paoa) member nominated by the President from time to time of the Auckland District Law Society or his or her nominee, such member to be a barrister or solicitor with seven (7) or more years experience, to act as the chair of the Disputes Committee; and
- (b) Two Adult Registered Members of Ngāti Paoa appointed for their skills and expertise in dealing with the issues that are the subject of the relevant dispute, provided that such members cannot also be Trustees or employees of the Trust.

30.6 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.

30.7 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 final and binding on the parties.

30.8 Disputes Committee May convene hui

In facilitating the resolution of any dispute a Disputes Committee may convene a general meeting of Ngāti Paoa in order to discuss the matters that are in dispute.

30.9 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 Paoa as set out in this Deed.

30.10 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. REVIEW OF TRUST DEED

31.1 Review of trust deed

The Trustees shall, within four (4) years of the Settlement Date, initiate a review of the terms and operation of this Deed and, in particular, shall review the arrangements relating to the election of Trustees and all other aspects of the representation of Ngāti Paoa by the Trust.

31.2 Deed review process

In conducting this review the Trustees shall engage and consult with Ngāti Paoa in order to seek the views of Ngāti Paoa 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 Paoa by the Trust and shall have regard to the tikanga of Ngāti Paoa.

31.3 Review to be independently facilitated

The process of engagement and consultation required by *clause 31.2* 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 Paoa;
- (b) facilitate any hui;
- (c) receive, compile and review any written submissions received from Ngāti Paoa; 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.

31.4 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 31.3*, 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.

32. FISHERIES SETTLEMENT ASSETS

32.1 Definitions

For the purposes of this *clause* 32:

"Annual Catch Entitlement" has the meaning given to it in section 2(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;

"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;

"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;

"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 Paoa;

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

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

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

"**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;

"**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 Paoa 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 Paoa to withdraw its Fisheries Settlement Assets and transfer these assets to its own Mandated Iwi Organisation. In the event that Ngāti Paoa chooses to withdraw it is intended that the Trust will become the Mandated Iwi Organisation for Ngāti Paoa.

32.3 Withdrawal from the Pare Hauraki Fishing Trust

If Ngāti Paoa chooses to withdraw from the 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 Paoa 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 comply with the provisions of this Deed as they relate to Subsidiaries.

32.6 Strategic Governance

The Trust must, to the extent that is practically possible, exercise strategic governance over any Asset Holding Company any Fishing Enterprise and any joint venture that involves Fisheries Settlement Assets.

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 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 disposal 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.

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 the 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 Paoa 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 the 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 30* 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.

32.18 Resettlement

Any resettlement of any of the Fisheries Settlement Assets must be done in accordance with the Legislation.

SIGNED BY Bryce Herron as an initial Trustee
in the presence of:

Name: _____

Occupation: _____

Address: _____

SIGNED BY Gary Thompson as an initial Trustee
in the presence of:

Name: _____

Occupation: _____

Address: _____

**FIRST SCHEDULE
NGĀTI PAOA MEMBERSHIP REGISTER**

1. TRUST TO KEEP REGISTER

1.1 Trust to maintain register

The Trustees shall administer and maintain the Ngāti Paoa Register which is a register of Members of Ngāti Paoa.

1.2 Register to comply with this Schedule

The Ngāti Paoa 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 Paoa Register shall record in it the full names, dates of birth, postal addresses and email addresses of Members of Ngāti Paoa.

2.2 Beneficiary Registration Number

The Trustees will allocate a beneficiary identification number to each Adult Registered Member of Ngāti Paoa on the Register. The Trustees will, immediately after allocation, notify the relevant Adult Registered Member of Ngāti Paoa 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 Paoa must be made in writing to the Trustees in the application form approved from time to time by the Trustees. 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 Paoa; and
- (c) such evidence as the Trustees may from time to time require as to that applicant's status as a Member of Ngāti Paoa.

3.2 Applications to be made by

An application for registration as a Member of Ngāti Paoa may be made by:

- (a) Members of Ngāti Paoa who are 18 years of age or older, on their own behalf or by their legal guardian;

- (b) other Members of Ngāti Paoa who are under the age of 18 years, by their parent or legal guardian on their behalf.

4. DECISIONS AS TO MEMBERSHIP

4.1 Membership Validation Committee to be established

The Trustees shall establish a Membership Validation Committee to make decisions on all applications made pursuant to *rule 3.1* of this Schedule for registration as a Member of Ngāti Paoa.

4.2 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 Paoa, appointed by the Trustees from time to time, with the expertise and knowledge of Ngāti Paoa whakapapa necessary to make determinations regarding membership applications. Trustees with the required expertise and knowledge of Ngāti Paoa whakapapa may be appointed to the Membership 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 by the Trustees to the Membership 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 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 Paoa.

4.5 Successful applicants to be notified and registered

In the event that the Membership Validation Committee decides that the application should be accepted then such decision shall be notified in writing to the Trustees, which shall in turn 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 Paoa Register.

4.6 Notification to 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.

4.7 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 Membership 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 (1), any previous application) as to the applicant's status as a Member of Ngāti Paoa.

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 Paoa Register is maintained in a condition that is as up to date, accurate and complete as possible in recording Members of Ngāti Paoa.

5.2 Assistance in identifying membership

In maintaining the Ngāti Paoa Register the Trustees shall include in the policies that it develops policies for assisting in the identification and registration of those Members of Ngāti Paoa who are not for the time being on the Ngāti Paoa Register. Such policies shall include policies as to the nature of the assistance that the Trustees will provide to those persons who believe that they are Members of Ngāti Paoa but for whatever reason are not able to establish such membership.

5.3 Responsibility of Members of Ngāti Paoa

Notwithstanding rule 1.1 of this Schedule it shall be the responsibility of each person who is a Member of Ngāti Paoa (or in the case of those persons under 18 years of age, the parent or guardian of that person) to ensure that his or her name is included in the Ngāti Paoa Register and that his or her full postal address for the time being is provided and updated. Any Member of Ngāti Paoa may choose to terminate their registration of membership of Ngāti Paoa, by notifying the Trustees in writing.

5.4 Consequences of registration

Registration of any person on the Ngāti Paoa Register as a Member of Ngāti Paoa shall be conclusive evidence of that person's status as a Member of Ngāti Paoa.

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 as a Trustee a nominee must, as at the closing date for nominations, be recorded in the Ngāti Paoa Register as an Adult Registered Member of Ngāti Paoa and be eligible in accordance with *rule 6.7* of this Schedule.

2.2 Trustees Roles

A Trustee may not hold the position of Chief Executive nor be an employee of, nor a contractor to, any entity or trust in the Ngāti Paoa Group.

2.3 Trustees may be directors or trustees

Subject to *clause 6.2*, a Trustee may be a director or a trustee of a Subsidiary.

2.4 Number of Trustees to be Limited

There shall be no less than five (5) and no more than seven (7) Trustees.

3. ELECTION OF TRUSTEES

3.1. Election of Trustees

The Adult Registered Members of Ngāti Paoa listed in the Ngāti Paoa Register shall be entitled to elect the Trustees in accordance with the rules for elections as set out in this Schedule.

3.2. Candidates

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 Paoa 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* and *rule 4.3* of this Schedule the Trustees from time to time shall hold office for a term of three (3) years.

4.2 Retirement of initial Trustees and Election of Establishment Trustees

As at the date of the annual general meeting of the Trust in the first Income Year following Settlement Date, both of the initial Trustees shall retire and an election shall be held for seven (7) Establishment Trustee positions.

4.3 Retirement of Establishment Trustees

Elections must be held to replace the Establishment Trustees as follows:

- (a) as at the date of the annual general meeting of the Trust in the second Income Year following Settlement Date the two (2) lowest polling Establishment Trustees as elected in accordance with *rule 4.2* of this Schedule shall retire and an election shall be held for those Trustee positions;
- (b) as at the date of the annual general meeting of the Trust in the third Income Year following Settlement Date the next two (2) lowest polling Establishment Trustees as elected in accordance with *rule 4.2* of this Schedule shall retire and an election shall be held for those Trustee positions;
- (c) as at the date of the annual general meeting of the Trust in the fourth Income Year following Settlement Date the remaining Establishment Trustees as elected in accordance with *rule 4.2* of this Schedule shall retire and an election shall be held for those Trustee positions; and
- (d) Where the order of retirement under this rule is unclear for some Trustee positions the order of retirement for those Trustees shall be determined by lot.

4.4 Review of Trustee Election process

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 *rules 4.6(a)* and *4.6(b)* exceeds six 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 4.3* 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 *rule 4.6* of this Schedule 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 Trustees shall give notice calling for nominations for those Trustee positions for which elections are required at least 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, the requirement in *rule 2.1* of this Schedule in terms of Trustee eligibility and the latest date by which nominations must be made and lodged with the Trustees or such other person as the notice directs.

6.2 Timing for nominations

All nominations must be lodged with the Trustees no later than 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 by:

- (a) post (including by electronic form where available) to all Adult Registered Members of Ngāti Paoa at the last address shown for such adult Registered Member of Ngāti Paoa on the Ngāti Paoa Register and to any other Member of Ngāti Paoa 18 years of age or over who has made a written request for a notice. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the last known physical address; and

- (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 Trustees consider that a significant number of Members of Ngāti Paoa reside; and
- (c) such other means as the Trustees 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 Paoa Register, and shall set out the date upon which a registration must be received for the applicant, if successful, to be eligible to vote in the notified election, being the same date as that fixed as the latest date for making and lodging nominations.

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.

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 Trustees, withdraw his or her nomination.

6.7 Eligibility for nomination

Notwithstanding the foregoing rules of this Schedule, an Adult Registered Member of Ngāti Paoa 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 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004); or
- (d) is subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 or is subject to a care and protection order under the Protection of Personal and Property Rights Act 1988;
- (e) has within the last three (3) years been removed from the office of Trustee in accordance with *clause 21.3*.

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 delivered to the Chief Returning Officer by post or by electronic form where 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 No elections where nominees equal vacancies

In the event that the total number of nominations of Trustees is less than or 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.

7.3 Adult Members to vote in elections

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

- (a) each such Adult Member of Ngāti Paoa will only be eligible to cast one vote in an election listing their preferred Trustees up to the number of Trustee positions to be filled in an election; and
- (b) each such Adult Member of Ngāti Paoa must, at the last day of voting, either be recorded in the Ngāti Paoa Register as an Adult Registered Member of Ngāti Paoa or have 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 Trustees 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).

8.2 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 7.1* of this Schedule.

8.3 Method of giving notice

Notice under *rule 8.2* of this Schedule shall be given by:

- (a) post (including by electronic form where available) to all Adult Registered Members of Ngāti Paoa at the last address shown for such Adult Registered Member of Ngāti Paoa on the Ngāti Paoa Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the last known physical address;
- (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 Trustees consider that a significant number of Members of Ngāti Paoa reside;
- (c) 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 nominees for election as Trustees; 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.

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 voter.

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 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 Trustees shall appoint as required 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 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.

10.2 Chief Returning Officer to receive voting forms

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

10.3 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 Registered Member of Ngāti Paoa.

10.4 Provisional votes

Where an Adult Member of Ngāti Paoa is not also an Adult Registered Member of Ngāti Paoa 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 Paoa 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 Paoa is declined in accordance with the First Schedule, the said vote will be invalidated.

10.5 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 Trustees. The Trustees 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 13.1(d)*. The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as 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 10.4(a)* of this Schedule and any valid Provisional Vote has been counted;
- (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 10.4(a)* 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 Trustees.

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 Trustees 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 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 Trustees shall ensure that an Electoral Review Officer is appointed. The Election 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 Trustees 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 referred to 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 Trustees.

13.6 Costs

Upon making an application for review the applicant shall also lodge with the Trustees the sum of \$500 in lieu of the costs of undertaking the review. That sum shall be held by the Trustees pending the outcome of the review application. If the application is successful, then the \$500 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 Trustees 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 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 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 Trustees. The Trustees 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 Trustees 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 (3) 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;
- (f) is bankrupt or makes any composition or arrangement with his or her creditors;
- (g) is convicted of an indictable offence; or
- (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 21.3*.

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 Trustees 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 five (5) Trustees may at any time by notice in writing to the Trustees summon a meeting of the Trustees and the Trustees 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 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 Trustee 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

Subject to *rule 2.3* of this Schedule, 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** Five (5) Trustees then in office 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.

4.2 Voting on appointment

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 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 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 (1) 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 appointed under *rule 6.1* of this Schedule 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 or 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. APPOINTMENT OF 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, but such terms to include as a minimum a requirement that the committee act in accordance with *rules 6.2 and 6.3* of this schedule, 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 Deed, any committee established by the Trustees may co-opt any person to be a member of that committee and otherwise 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;
- (e) 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
- (f) a minute of the proceedings at a 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.

**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*; or
- (b) amend this Deed in accordance with *clause 25*; or
- (c) approve a resettlement in accordance with *clause 26*; or
- (d) terminate the Trust in accordance with *clause 27*;

shall only be passed as set out in this Schedule.

2. POSTAL VOTING AND SPECIAL GENERAL MEETING

2.1 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 purpose of considering the Special Resolution, or by post.

3 VOTING

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

4. SPECIAL GENERAL MEETING REQUIRED

4.1 A special general meeting 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 Trustees shall give not less than twenty-one (21) 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 given by:

- (a) post (including by electronic form where available) to all Adult Registered Members of Ngāti Paoa at the last address shown for each such Adult Registered Member of Ngāti Paoa on the Ngāti Paoa Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the last known physical address; and
- (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 Trustees consider that a significant number of Members of Ngāti Paoa reside;
- (c) such other means as the Trustees may determine.

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 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 special general meeting, or posted or by electronic means; and
- (f) a voting form. 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.

5.4 Content of advertisement

All advertisements published in accordance with *rule 5.2(b)* of this Schedule shall contain the matters referred in *rule 5.3(a)* and *5.3(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 (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.

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 or sent by electronic means.

7. APPOINTMENT OF CHIEF RETURNING OFFICER

7.1 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 7.2 to 8.3* of this Schedule.

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 Eligibility to Vote

Those eligible to vote on a special resolution are:

- (a) those Adult Members of Ngāti Paoa recorded in the Ngāti Paoa Register as an Adult Registered Member of Ngāti Paoa on the closing day for voting; and
- (b) subject to rule 7.5(b) of this Schedule, any other Adult Member of Ngāti Paoa 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*.

7.5 Only one vote to be cast

The Chief Returning Officer must:

- (a) ensure that appropriate measures are in place to ensure that only one (1) vote is cast by each Adult Registered Member of Ngāti Paoa; and
- (b) where any Provisional Vote is cast pursuant to rule 7.4(b) of this Schedule, before counting that Provisional Vote, consult with the Membership Validation

Committee to ensure that the person casting the vote is eligible to be registered on the Ngāti Paoa Register as an Adult Registered Member.

7.6 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

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 Trustees.

8.3 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 7.5(b)* 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 has not been confirmed pursuant to *rule 7.5(b)* 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 13* of the 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.