



# WHAKATŌHEA

PRE-SETTLEMENT CLAIMS TRUST

**TRUST DEED**

April 2016

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TRUST DEED OF THE WHAKATŌHEA PRE-SETTLEMENT CLAIMS TRUST

DATED THIS

DAY OF

2016

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**PREAMBLE**

- A. Whakatōhea filed an historical claim with the Waitangi Tribunal against the Crown in 1989 for the unjustified confiscation of Whakatōhea land in 1867. The claim was registered by the Waitangi Tribunal as Wai 87. That claim was amended in 1999 to include claims for loss of rivers, harbours and foreshore and seabed. The Crown has acknowledged that it treated Whakatōhea unjustly and wishes to settle the Historical Claims of, and build an enduring Treaty relationship with, the Iwi of Whakatōhea.
- B. The Iwi of Whakatōhea wish to establish an entity to obtain a mandate to negotiate with the Crown a full and final settlement of all Historical Claims of Whakatōhea. This Deed establishes the Whakatōhea Pre-settlement Claims Trust (to be known as the **Pre-settlement Trust**), which is intended to be the mandated entity to negotiate with the Crown for the full and final settlement of all Historical Claims of Whakatōhea.
- C. The beneficiaries of the Pre-settlement Trust are ngā uri who affiliate to hapū o Whakatōhea. The Pre-settlement Trust will be supported by the Whakatōhea Claims Committee.
- D. The Pre-settlement Trust will operate until such time as a new post-settlement governance entity is established for the Iwi of Whakatōhea.
- E. The Pre-settlement Trust will seek a mandate to enter into direct negotiations with the Crown for the settlement of Historical Claims through a robust ratification process involving ngā uri o Whakatōhea.
- F. This Deed establishes the Pre-settlement Trust and sets out the terms on which the Pre-settlement Trust will operate.

**1. DEFINITIONS AND INTERPRETATIONS**

**1.1 Defined Terms:**

In this Deed, unless the context otherwise requires:

**Adult Member of Whakatōhea** means a member of Whakatōhea who is 18 years of age or over;

**Adult Registered Member** means an Adult Member of Whakatōhea who is identified on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board;

**Balance Date** means 30 June or any other date adopted from time to time by the Trustees;

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

**Chairperson** means the chairperson from time to time of the Pre-settlement Trust elected by the Pre-settlement Trustees in accordance with clause 6.6;

**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 10.1* of the Second Schedule; or
- (b) The person appointed as chief returning officer for the purposes of a Members Resolution in accordance with *rule 6.1* of the First Schedule;

**Claimant** means:

For the purposes of settlement, the Whakatōhea claimant group encompasses the whakapapa of:

- a. The descendants of Muriwai and Tūtāmure and;
- b. Affiliate to one or more of the hapū and marae o Whakatōhea, listed at **page 5 and 6** of this document.

**Completion Date** means the date on which:

- (a) a Post Settlement Governance Entity (PSGE) is established for Whakatōhea; and
- (b) the objects set out in clause 3.2 have been:
  - (i) achieved by the Pre-Settlement Trust; or
  - (ii) assumed by the PSGE;

**Deed** means this deed of trust and includes the Preamble and the schedules to this deed of trust;

**Deed of Settlement** means a deed between Whakatōhea and the Crown setting out the terms on which Whakatōhea and the Crown will settle the Historical Claims;

**Financial Year** means the period of 12 consecutive months ending on the Balance Date;

**Hapū** means:

- (a) Ngāti Rua;
- (b) Ngāi Tamahaua;
- (c) Ngāti Patumoana;
- (d) Ngāti Ngāhere;

- (e) Ngāti Ira; and
- (f) Te Upokorehe;

**Hapū ahi mātao** means the hapū o Whakatōhea, other than the hapū ahi kāroa, that existed from time to time;

**Historical Claims** means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that Whakatōhea, or a representative entity of Whakatōhea, had at, or at any time before, the Settlement Date, or may have at any time after the Settlement Date, and that:

- (a) is, or is founded on, a right arising:
  - (i) from the Treaty of Waitangi/Te Tiriti o Waitangi or its principles; or under legislation; or
  - (ii) at common law, including aboriginal title or customary law; or
  - (iii) from fiduciary duty; or
  - (iv) otherwise; and
- (b) arises from, or relates to, acts or omissions before 21 September 1992:
  - (i) by, or on behalf of, the Crown; or
  - (ii) by or under legislation; and
- (c) includes the claims listed in the Third Schedule;

**Iwi** means the collective of hapū who represent the interests of uri o Whakatōhea.

**Kaumātua Kaunihera** means the unincorporated collective of individuals that operate from time to time as the council of elders of Whakatōhea, as recognised by the Trustees;

#### **Marae o Whakatōhea**

Whakatōhea has a number of marae within its tribal boundary. The following eight marae are active and functional. Marae means:

- (a) Omarumutu
- (b) Opape
- (c) Waiaua
- (d) Terere
- (e) Opeke
- (f) Roimata
- (g) Kutarere
- (h) Maromahue

**Members Resolution** means a resolution passed by Adult Members in accordance with the First Schedule;

**Minute Book** means the written record of the administration of the Trust maintained by the Trustees in accordance with clause 8.6;

**Operational Date** means the date on which the results of the first election of Trustees are concluded in accordance with the Second Schedule and the Chief Returning Officer has certified the results to the Initial Trustee;

**PSGE** means a post settlement governance entity that has been ratified by Whakatōhea uri to receive redress in settlement of any Historical Claim;

**Settlement Date** means the date on which the Historical Claims are settled;

**Special Meeting** means a meeting called by Trustees or 5% Adult Registered Members and held pursuant to clauses 7.6 and 7.7.

**Trust** means the trust created by this Deed which is to be called the Whakatōhea Pre-settlement Claims Trust;

**Trustees** means the trustees of the Pre-settlement Trust from time to time;

**Trust Fund** has the meaning given to it in clause 2.2;

**Whakatōhea** means:

- (a) the collective group, composed of uri who descend from one or more Whakatōhea Ancestors;
- (b) every whānau, hapū or group to the extent that it is comprised of individuals referred to in paragraph (a) of this definition, including hapū;
- (c) every individual referred to in paragraph (a) of this definition;

**Whakatōhea Ancestors** means:

- (a) Tūtāmure; and
- (b) Muriwai;

**Whakatōhea Uri** means every individual referred to in paragraph (c) of the definition of Whakatōhea.

## **1.2 Interpretation:**

In this Deed, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa;

- (b) Words importing one (1) 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;
- (h) References to a company are references to a company incorporated pursuant to the Companies Act 1993; and
- (i) References to a subsidiary or subsidiaries shall be references to a subsidiary or subsidiaries as defined by the Companies Act 1993.

## **2. ESTABLISHMENT OF TRUST**

- 2.1 Name of the Trust:** The Trust shall be known as “The Whakatōhea Pre-settlement Claims Trust” or the “Pre-settlement Trust”.
- 2.2 Trust Fund:** The Trustees declare that they will hold \$100.00 settled upon trust for those purposes referred to in clause 3 of this Deed together with all other money and property which may be added to it by way of capital or income (the **Trust Fund**).
- 2.3 Office of the Trust:** The registered office of the Trust shall be situated at the Whakatōhea Māori Trust Board, 122 St John St, Opōtiki, or such other address as may be determined by the Trustees from time to time.
- 2.4 Limitation:** The objects of the Trust extend only to any matters or things which are for a charitable purpose as defined in the Charities Act 2005.
- 2.5 Administration of the Trust:** The Trust shall be governed by the Trustees elected from time to time in accordance with clause 6.

## **3. PURPOSE, OBJECTS AND FUNCTIONS**

### **3.1 Purpose:**

- (a) The primary purpose of the Trust is to negotiate the settlement of the Historical Claims for Whakatōhea and to advance the objects in clause 3.2 (the **Primary Charitable Purpose**).



- (b) In addition to the Primary Charitable Purpose, the purposes of the Trust shall include to carry out any charitable purpose in New Zealand relating to the relief of poverty, the advancement of education, the advancement of religion, and any other purpose beneficial to the community.
- (c) The purposes of the Trust shall not include or extend to any purpose which is non-charitable within the laws of New Zealand and the powers of the Trustees and activities of the Trust shall be restricted accordingly and limited to New Zealand.

**3.2 Objects:** The objects of the Trust (the Objects) are:

- (a) To develop and implement a process for the Trust to obtain a mandate from Whakatōhea members to negotiate with the Crown for the settlement of the Historical Claims.
- (b) To develop a Deed of Mandate to submit to the Crown in order for the Trust to obtain a mandate to negotiate the settlement of the Historical Claims.
- (c) To prepare for and enter into negotiations with the Crown for the settlement of the Historical Claims.
- (d) To communicate widely with Whakatōhea Uri, whānau, Hapū and marae.
- (e) To successfully negotiate a Deed of Settlement with the Crown.
- (f) To present an initialled Deed of Settlement to the Adult Members of Whakatōhea for ratification.
- (g) To develop and initiate a Post Settlement Governance Entity (PSGE) structure.

**3.3 Objects independent:** The Trustees shall be empowered to carry out any one or more of the objects of the Trust independently of any other object of the Trust.

**3.4 Functions:** The Trust will:

- (a) Inform Whakatōhea Uri of the process undertaken by the Trust to obtain a comprehensive full and final settlement of all Historical Claims.
- (b) Appoint and manage negotiators (who will not be Trustees) to act for and on behalf of Whakatōhea to negotiate the settlement of the Historical Claims.
- (c) Communicate with Members of Whakatōhea at Hapū, marae and hui-a-iwi, smaller local hui and through website, pānui and hui in other areas where Whakatōhea Uri reside.
- (d) Provide Treaty settlement education and awareness about the settlement process to enable informed decisions to be made by Whakatōhea Uri.
- (e) Facilitate, and initiate legal or specialist advice in relation to the settlement of the Historical Claims, including representation matters, overlapping claims and any other specialist matters as required.

- (f) Work with the Whakatōhea Māori Trust Board or other suitably qualified organisation to provide financial, payroll, HR, Information systems, Whakatōhea Uri database, policy, and communication services to the Trust.
- (g) Provide monthly reports on the activities of the Pre-settlement Trust to Whakatōhea Uri.
- (h) Do all such other things as may be required in furtherance of the Objects.

**3.5 Roles and responsibilities:** In order to achieve the Objects, and in addition to the functions of the Trust, the Trust will:

- (a) maintain the highest level of trust and integrity by acting in the best interests of Whakatōhea;
- (b) maintain a robust and widely consultative process in relation to the settlement of the Historical Claims with Whakatōhea Uri, Hapū and marae of Whakatōhea;
- (c) report to and engage with Whakatōhea Uri, Hapū and marae of Whakatōhea at hui in locations at which they reside in significant concentrations and ensure that all hui are advertised as widely as practicable;
- (d) report to Whakatōhea Uri monthly or as required to ensure Whakatōhea Uri are well informed of the operations of the Trust;
- (e) provide clear processes for appointment of negotiators to negotiate with the Crown for the settlement of the Historical Claims;
- (f) oversee and co-ordinate all aspects of negotiations including the contracting of specialist advice when required;
- (g) ensure that ratification processes are transparent, and accountable to Whakatōhea Uri and Hapū;
- (h) guide and make strategic governance decisions relating to negotiations including the approval of key milestones and documents such as the mandate and negotiations strategies, Terms of Negotiations, Agreement in Principle or other similar non-binding agreements and the Deed of Settlement;
- (i) monitor and report regularly on all financial matters relating to the Historical Claims negotiations process;
- (j) provide strategic oversight and strategic development to the Claimants of Whakatōhea; and
- (k) work in conjunction with the Whakatōhea Māori Trust Board to provide financial oversight for the Historical Claims negotiations process.

#### **4. POWERS OF THE TRUSTEES**

**4.1 General:** The Trustees shall exercise their powers jointly in pursuit of the general administration of the Trust. In addition to all other powers conferred by the law, the Trustees shall have

the same powers as a natural person acting as a beneficial owner of the Trust Fund. Such powers shall not be limited or restricted by any principle of construction or rule of law or statutory power or provision, except to the extent set out in this Deed.

- 4.2 Promotion of objects:** The Trustees shall promote the Objects of the Trust. The Trustees shall act on behalf of and in the interests of the Trust and Whakatōhea Uri.
- 4.3 Advertise and Inform:** The Trustees shall have the power to make known and further the Objects of the Trust by advertising the manner in which the Trust Fund or any part of it has been, is being or will be applied, through established media and by advertising in any medium. The Trustees may also disseminate information of any nature relating to the Trust by written publication or otherwise.
- 4.4 Collect Funds:** The Trustees shall have the power to collect funds and raise money by all lawful means and receive, accept, encourage and enlist financial and other contributions, subscriptions, sponsorships, donations, legacies, endowments or bequests from any source. The Trustees may also conduct fundraising campaigns in order to further the exclusively charitable objects of the Trust.
- 4.5 Receive Grants and Subsidies:** The Trustees shall have the power to receive from the New Zealand Government or any council, board, territorial authority, or body under the jurisdiction of such Governmental authority or from any national or international organisation, any grant, subsidy or payment of any kind in order to further the Objects of the Trust.
- 4.6 Specified Trust:** The Trustees shall have the power to carry out any specified trust attaching or relating to any contribution, subscription, sponsorship, donation, legacy, endowment, grant, bequest, subsidy or payment received to the extent such specified trust conforms with the objects of the Trust.
- 4.7 Apply Funds:** The Trustees shall have the power to apply any money forming part of the Trust Fund to the promotion and advancement and development of the Objects of the Trust.
- 4.8 Invest Funds:** The Trustees shall have the power to invest any money forming part of the Trust Fund in any of the ways authorised by law for the investment of trust funds including (if the Trustees think fit) on mortgage of land either by the Trustees alone or together with any person or persons as a contributory mortgagee.
- 4.9 Acquire property:** The Trustees shall have the power to acquire any real or personal property or interest in such property (whether in New Zealand or elsewhere) whether by purchase, lease, hire, exchange or otherwise and on such terms and conditions as the Trustees think fit.
- 4.10 Pay Debts:** The Trustees shall have the power to apply any income or capital of the Trust Fund, for, or towards payment of any fees, costs, disbursements, debts or other liabilities or any part of such liabilities, owing by or in respect of the Trust or incurred in connection with the Trust or Trust entities. Such power shall apply whether or not the liabilities are charged upon the Trust Fund or on any part of it, and whether or not the Trustees are contractually or otherwise legally liable for the payment of the fees, costs, disbursements, debts or other liabilities.

- 4.11 Establish Reserve Fund:** The Trustees shall have the power to establish and subscribe to any depreciation or reserve fund for any purpose the Trustees deem advisable and to determine in their discretion whether that fund is income or capital.
- 4.12 Maintain Property:** The Trustees shall have the power generally to maintain, manage, repair, improve or develop any real or personal property, or any interest, which forms part of the Trust Fund in such manner as the Trustees think fit.
- 4.13 Settle Accounts:** The Trustees shall have the power to agree and settle accounts with all persons liable to account to the Trustees and to compromise questions relating to the Trust Fund and to grant receipts, discharges and releases from such accounts.
- 4.14 Appoint Agents:** The Trustees shall have the power to instruct and pay any person to transact all or any business or do any act required to be transacted or done in the execution of the trusts of this Deed including the receipt and payment of money. The Trustees shall not be responsible for any default of any such person appointed in good faith or for any loss occasioned by such person's instruction.
- 4.15 Delegate:** The Trustees shall have the power to delegate any of its powers to any Trustee or Trustees, or person or persons (including a committee or an employee), provided that such delegation shall be recorded in writing by the Trustees.
- 4.16 Make Policies, Rules etc.:** The Trustees shall have the power to make policies, rules, guidelines and other determinations in governing the Trust.
- 4.17 Bank Accounts:** The Trustees shall have the power to open or maintain such current or other accounts at such banks or other institutions and in such manner as the Trustees from time to time determine.
- 4.18 Insure:** The Trustees shall have the power to insure against loss or damage by any cause of any insurable property forming part of the Trust Fund, and to insure against any risk or liability against which it would be prudent for a person to insure if they were acting for themselves, for such amounts and on such terms as the Trustees may from time to time think fit.
- 4.19 Statutory Authorisation:** The Trustees shall have the power to do all or any of the things which they are authorised to by the Trustee Act 1956.
- 4.20 General:** The Trustees shall have the power to do all such other things as in the opinion of the Trustees are incidental or conducive to the attainment of the Objects of the Trust.

## **5. DUTIES OF TRUSTEES**

- (a) The Trustees must always act, collectively and individually in accordance with their fiduciary duties and obligations.
- (b) In performing their duties, each Trustee will act in good faith.
- (c) The Trustees must not, collectively and individually, act or agree to act in a manner which contravenes this Deed.

- (d) Every Trustee, when exercising powers or performing duties as a trustee, must exercise the care, diligence and skill to be reasonably expected of a person in like circumstances and in accordance with the Trustee Act 1957 and clauses 3 and 4.
- (e) Every Trustee must not act in a manner that brings the Trust into disrepute.

## **6. TRUSTEES**

**6.1 Period prior to the Operational Date:** Despite any other provision in this Deed, for the period from the date of this Deed to the Operational Date:

- (a) the sole trustee of the Trust shall be [insert name of independent Trustee] (the **Initial Trustee**);
- (b) the purposes and functions of the Initial Trustee are to:
  - (i) fulfil the obligations and duties of the Trustees for the first election of Trustees held pursuant to clause 6.2(a); and
  - (ii) receive and hold the Trust Fund and hold office as Trustee in a custodian capacity until the first Trustees are elected or appointed (as the case may be) in accordance with clause 6.2;
- (c) the Initial Trustee will have no authority to exercise any powers of the Trust, except to the extent required to transfer the Trust Fund to the Trustees elected or appointed in accordance with clause 6.2 and on the trusts of this Deed; and
- (d) the Initial Trustee must not hold office as a Trustee following the Operational Date.

**6.2 Election or appointment of Trustees:** On and from the Operational Date, the Trustees shall be elected or appointed as follows:

- (a) each Hapū is entitled to elect one (1) Trustee to the Trust, in accordance with the process set out in the Second Schedule; and
- (b) each of the eight (8) functioning Marae of Whakatōhea is entitled to appoint one (1) Trustee to the Trust, in accordance with clause 6.4(b); and
- (c) the Whakatōhea Māori Trust Board is entitled to appoint (1) Trustee to the Trust, in accordance with clause 6.4(c).

**6.3 Number of Trustees:** The Trust shall comprise:

- (a) as at the date of this Deed, the Initial Trustee;
- (b) on and from the Operational Date;
  - (i) six (6) Trustees being elected in accordance with clause 6.2(a), provided that if the definition of Hapū is amended in accordance with clause 15 the number of Hapū Trustees shall also be amended accordingly;

- (ii) eight (8) marae Trustees being appointed in accordance with clause 6.2(b); and
- (iii) one (1) trustee being appointed in accordance with clause 6.2 (c).

**6.4 Election, Appointment and Removal process:** The process for the election of Trustees referred to in clause 6.2(a) is set out in the Second Schedule.

- (a) The six Hapū of Whakatōhea, may elect and remove their Hapū Trustee as referred to in clause 6.2 (b) by notice in writing to the Trust outlining the date of Hapū trustee meeting held and providing the minutes of meeting outlining the motion for the election or removal of their Trustee.
- (b) The trustees of each eight (8) functioning Marae of Whakatōhea, may appoint and remove their Trustee referred to in clause 6.2(b) by notice in writing to the Trust outlining the date of marae trustee meeting held and providing minutes of meeting outlining the motion for the appointment or removal of their Trustee.
- (c) The Whakatōhea Māori Trust Board may appoint and remove their Trustee referred to in clause 6.2(c) by notice in writing to the Trust outlining the date of the Whakatōhea Māori Trust Board meeting held and providing the minutes of meeting outlining the motion for appointment or the removal of their Trustee.

**6.5 Term of Office:** Subject to clause 6.1(d) the term of office of every Trustee shall be three years, unless he or she resigns or is removed from office in accordance with this Deed.

**6.6 Chairperson:** The Trustees shall annually determine from amongst their number who shall be the chairperson of the Trust. The chairperson shall hold office for a period of one (1) year from his or her appointment, or such other period as determined by the Trustees.

**6.7 Eligibility to be a Trustee:** The following persons shall not be eligible for appointment, or to remain in office, as a Trustee:

- (a) **Bankrupt:** a person who has been adjudged bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 299 of the Insolvency Act 2006;
- (b) **Conviction:** a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or 5 years has passed since the person was convicted and they have served the sentence or otherwise suffered the sentence imposed on them;
- (c) **Imprisonment:** a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or 5 years has passed since the person has served the sentence or otherwise suffered the sentence imposed on them;
- (d) **Disqualified Director:** a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 382 or section 383 or section 385 of the Companies Act 1993;

- (e) **Property Order:** a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988; and if any of the above events occur to an existing Trustee, they shall be deemed to have vacated their office upon such event;
- (f) **Charities Act:** a person who is disqualified from being an officer of a charitable entity pursuant to section 16 of the Charities Act 2005; and
- (g) **Employee:** a person who is a paid employee of the Trust or a paid employee of any council, trust or other organisation which provides funds to the Trust.

**6.8 Resignation:** Any Trustee may resign from the Trust by giving no less than 30 days' written notice to the remaining Trustees and such notice shall take effect from the date specified in the notice or, if there is no date specified, upon the expiry of 30 days from the date the notice was received by the remaining Trustees.

**6.9 Failure to Attend:** A Trustee who fails to attend three consecutive meetings of the Board of Trustees without prior written notice and reasonable explanation (as determined by the other Trustees) shall be deemed to have vacated their office.

**6.10 Death:** Upon the death of a Trustee their position shall be deemed to be vacant.

**6.11 Trustee may be censured:** Any Trustee that acts in a manner that brings or is likely to bring the Trust into disrepute may, by a resolution passed by 75% of all other Trustees, be formally censured.

**6.12 Censure to be notified:** The censure of a Trustee in accordance with clause 6.11 shall, together with reasons, be reported within five (5) Business Days of such censure to either:

- (a) the Hapū that elected him or her in accordance with clause 6.2(a) and the Second Schedule; or
- (b) the marae that appointed him or her in accordance with clause 6.2(b) and 6.4(b); or
- (c) the Whakatōhea Māori Trust Board in the case of the Trust appointed in accordance with clause 6.2(c).

**6.13 Vacancies of Trustees:** Where a Trustee ceases to hold office in accordance with this Deed, the remaining Trustees may fill that vacancy as follows:

- (a) Where the vacancy occurs in relation to a Trustee elected by a Hapū (clause 6.2(a)):
  - (i) the vacancy shall be filled by the next highest polling candidate in the most recent election for that Hapū ; or
  - (ii) in the event that there were no other candidates in the most recent election, or the next highest polling candidate does not wish to take up the position, then the vacancy shall be filled by an election for that Trustee position, in accordance with the process set out in the Second Schedule.

- (b) Where the vacancy occurs in relation to a Trustee appointed by a marae (clause 6.2(b)) the appointing marae is to advise the Trust as soon as reasonably practicable in writing of the individual appointed to fill the vacancy.
- (c) Where the vacancy occurs in relation to the Trustee appointed by the Whakatōhea Māori Trust Board (clause 6.2(c)) the Whakatōhea Māori Trust Board is to advise the Trust as soon as reasonably practicable in writing of the individual appointed to fill the vacancy.
- (d) The term of office for a Trustee appointed or elected under this clause 6.13 shall be the remainder of the term of the Trustee being replaced.

**6.14 Recording:** Upon every appointment, reappointment, removal or cessation of office of any Trustee, the Trustees shall record such fact in the Minute Book of the Trust.

## **7. MEETINGS OF THE TRUSTEES AND ANNUAL REPORT**

**7.1 Time and Place for Meetings:** The Trustees shall meet at such places and times, and in such manner, as they determine. The Chairperson shall chair Trustee meetings, or in his/her absence any other Trustee as determined by the Trustees.

**7.2 Facsimile/Email Resolutions:** A resolution in writing signed or assented to by facsimile or other form of visible or other electronic communication by the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustees.

**7.3 Meetings by Tele-Conference etc.:** A meeting of the Trustees may be held where one or more of the Trustees are not physically present at the meeting, provided that:

- (a) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication; and
- (b) notice of the meeting is given to all the Trustees in accordance with the procedures agreed from time to time by the Trustees and such notice specifies that Trustees are not required to be present in person at the meeting.

**7.4 Annual Report:** The Trust must, within five (5) months after the end of each Financial Year, prepare an annual report on the affairs of the Trust for that Financial Year, which includes:

- (a) a summary of the activities of the Trust for that Financial Year; and
- (b) the audited financial statements of the Trust for that Financial Year.

**7.5 Annual General Meeting:** The Trust will, in each calendar year after the date of this Deed, hold an Annual General Meeting in addition to any other meetings held in that year.

- (a) The Annual General Meeting must be held within 9 calendar months of the end of the Financial Year and in no event is more than 15 months to elapse between the date of one Annual General Meeting and the next.



- (b) The purpose of the Annual General Meeting will be:
  - (i) To report on the operations of the Trust.
  - (ii) To provide an update on Treaty Settlement related matters.
  - (iii) To present and review the Annual Report for the most recently completed Financial Year, the Chairperson's report and the audited financial statements of the Trust for that Financial Year.
  - (iv) To undertake all other notified business.
- (c) At least 21 Business Days before the date of any Annual General Meeting the Trustees will provide written notice of the Annual General Meeting:
  - (i) In writing and posted (including, by electronic form where available) to all Adult Registered Members at the last address shown for each such Adult Registered Member of on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board; and
  - (ii) in any major metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Whakatōhea Uri reside.
- (d) All notices given pursuant to clause 7.5(c) shall contain:
  - (i) The date, time, venue and agenda of the Annual General Meeting.
  - (ii) information regarding where copies of any relevant information may be obtained, including the details of any Members Resolution proposed to be put to the Annual General Meeting and the reasons for it.
  - (iii) Such other information as may be required.

**7.6 Special Meeting:** In addition to the Annual General Meeting of the Trust, the Trustees shall:

- (a) convene a Special Meeting at the written request of:
  - (i) the Chairperson and Deputy Chairperson for the time being of the Trust; or
  - (ii) the majority of the Trustees then in office; or
  - (iii) 5% of the Adult Registered Members;
- (b) give notice of such a Special meeting in the same manner as for a notice of the Annual General Meeting under clause 7.5(c) and 7.5(d) and those requesting the Special Meeting must provide a statement to the Trustees setting out the purposes for which the Special Meeting has been requested and the specific agenda items proposed for such a Special Meeting; and

- (c) not be required to give notice calling the Special Meeting until such a statement with agenda items has been received.
- (d) Where a Special Meeting is called by either the Chair or Deputy Chair, for which the only resolutions do not include a Members Resolution, then the trustees shall vote on such resolutions,

**7.7 Special Meeting limited to notified business:**

No business shall be transacted at any Special Meeting other than the business expressly referred to in the notice calling that Special Meeting.

**8. ADMINISTRATION**

**8.1 Quorum:** A quorum of one more than half of the total number of the Trustees is required for all meetings of the Trustees.

**8.2 Voting:** Each Trustee present at a meeting shall be entitled to one (1) vote.

**8.3 Majority Decisions:** Except as otherwise provided in this Deed, all resolutions passed at a meeting of the Trustees shall be by a majority of Trustees present at the meeting and any such resolution shall be binding on all Trustees. The Chairperson shall have a deliberative (or original) vote as well as a casting vote in the event of a tie or equality of votes.

**8.4 Conflicts of Interest:** A Trustee who has or may have a conflict of interest (as determined by the Trustees) must immediately disclose the interest to the registered office and to the Chairperson. The interest must be recorded in the Minute Book. The conflicted Trustee may participate in the deliberations affecting the matter but s/he shall not vote on such matter and shall leave the meeting for any such vote, unless there is a unanimous resolution of the other non-conflicted Trustees approving the vote by the conflicted Trustee.

**8.5 Minutes:** A Minute Book shall be provided and kept by the Trustees. Minutes of the proceedings of all meetings of the Trustees shall be prepared and entered in the Minute Book, and if confirmed at a subsequent meeting of the Trustees, shall be signed by the Chairperson as a true and correct record. The Minute Book and all other books and records of the Trust shall be held at the Registered Office of the Trust.

**8.6 Bank Accounts:** The Trustees shall keep an account or accounts at such bank or banks or financial institutions as they shall from time to time determine. Cheques and other debits from the account or accounts shall be signed by such person or persons as the Trustees shall from time to time authorise in writing.

**8.7 Accounts and Audit:** The Trustees shall keep full and correct records and accounts of all of their receipts, credits, payments, assets, liabilities and transactions and all other matters necessary for showing the true state and condition of the Trust. As soon as practicable after the end of each Financial Year, the Trustees shall ensure that financial statements are prepared including a statement of position, a statement of financial performance and notes to those statements giving a true and fair view of the financial position of the Trust for that Financial Year. Such financial statements may be audited by a chartered accountant appointed for that purpose by the Trustees, as the Trustees determine.

## **8.8 Execution of Documents:**

- (a) If the Trustees are not incorporated as a Board under the Charitable Trusts Act 1957 documents to be executed by or for the Trust shall be signed by any two of the Trustees, one signatory to be the chairperson.
- (b) If the Trust is incorporated as a Board under the Charitable Trusts Act 1957, documents to be executed by the Board shall be executed under its common seal and attested by any two of the Trustees, one of whom shall be the Chairperson.

**8.9 Common Seal:** If incorporated, the Board shall have a common seal that shall be kept at the Registered Office of the Trust or in the custody and control of a Trustee nominated by the board. When required, the common seal will be affixed to any document following a resolution of the Board and will be attested by any two of the Trustees, one of whom shall be the Chairperson.

**8.10 Other procedures:** Subject to the provisions of this Deed, the Trustees may otherwise regulate their procedure as they see fit.

**8.11 Tax Returns:** The Trustees shall ensure that all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations and other information required by the Inland Revenue Department are prepared and filed so as to allow the Trust to retain its agreed status for taxation purposes.

## **9. STAFF**

**9.1 Appointment:** The Trustees may employ such staff as they consider appropriate to work for the Trust on such terms as they consider appropriate.

**9.2 Attendances at Trustees' Meetings:** Staff employed under clause 9.1 may be required to attend meetings of the Trustees but shall not be entitled to vote.

## **10. TRUSTEES' LIABILITY**

**10.1 Liability for Loss:** No Trustee shall be liable for any loss to the Trust Fund arising:

- (a) **Investment:** by reason of any improper or imprudent investment made by any Trustee in good faith;
- (b) **Agent:** from the negligence or fraud or delay of any agent instructed by any Trustee in good faith;
- (c) **Mistake:** by reason of any mistake or omission made by any Trustee in good faith;
- (d) **Delay:** by reason of any delay caused by any Trustee;
- (e) **Deposit of Funds:** by reason of all or part of the Trust Fund being lawfully deposited in the hands of any banker or solicitor;

- (f) **Security:** by reason of the insufficiency or deficiency of any security upon which all or part of the Trust Fund may be invested;
- (g) **General:** by any other act of any Trustee; unless attributable to that Trustee's own dishonesty or to the wilful commission or omission of any act known by that Trustee to be in breach of trust.

**10.2 Trustee Act 1956:** Subject to clause 13, the care, diligence and skill to be exercised by the Trustees shall not be that required by sections 13B or 13C of the Trustee Act 1956 but shall at all times be the care, diligence and skill required that a prudent person of business would exercise in managing the affairs of others, even though the Trustees may from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others.

**10.3 Proceedings:** No Trustee shall be bound to take, or be liable for their failure to take, any proceedings against another Trustee or Trustees for any breach or alleged breach of trust committed by such other Trustee or Trustees.

## **11. TRUSTEES' REMUNERATION AND EXPENSES**

**11.1 Professional Remuneration:** Subject to clause 11.2 any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade shall be entitled to be paid all usual professional, business and trade charges for business transacted, time expended and all acts done by him or her or any of their employees or partners in connection with the Trust, including acts which a Trustee not being in any profession, business or trade could have done personally.

**11.2 General Remuneration:** Each Trustee other than a Trustee remunerated under clause 11.1 or 4.14 (to the extent that such remuneration covers the services to which that clause applies) may be entitled to such remuneration for their services as a Trustee, as determined by the Trustees, as may be reasonable having regard to their duties and responsibilities as Trustees.

**11.3 Expenses:** Each Trustee shall be entitled to be indemnified against, and reimbursed for, all travelling, accommodation and other expenses properly incurred by them in attending to and returning from meetings or in connection with the trusts of this Deed as determined by the Trustees.

**11.4 Proviso:** No Trustee receiving any remuneration referred to in clauses 11.1 or 4.14 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence (directly or indirectly) the nature or amount of that payment or circumstance in which it is to be paid. Such remuneration must be determined by the remaining Trustees on the basis of the current market rate for that type of work.

**11.5 Not employed:** For the purposes of this Deed, the remuneration referred to in clauses 11.1 or 4.14 is not considered as employment.

## **12. LIABILITY, INDEMNITY AND INSURANCE**

**12.1 Limitation of liability:** No Trustee is liable for the consequence of any act or omission, or for any loss, unless the consequence or loss is attributable to his or her dishonesty, or to the wilful commission by him or her of any act known by him or her to be in breach of trust, or to the wilful omission by him or her of any act when the omission is known by him or her to be a breach of trust.

**12.2 General indemnity:** Each Trustee shall be indemnified out of the Trust Fund for and in respect of any loss or liability which such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees under this Deed, unless such loss or liability is attributable to such Trustee's dishonesty or to the wilful commission or omission by such Trustee of an act known by such Trustee to be a breach of trust.

**12.3 Action by Trust:** The Trust may provide insurance for any person who is a Trustee in respect of any costs incurred by that person in any proceedings:

- (a) brought by the Trust against any person in his or her capacity as Trustee; and
- (b) In which judgment is given in that person's favour, or he or she is acquitted, or relief is granted to him or her by the Court.

**12.4 Action by a third party:** The Trust may provide insurance for any person who is a Trustee in respect of any costs incurred by that person in any proceedings:

- (a) brought by any person other than the Trust against any person in his or her capacity as Trustee; and
- (b) which do not result from a failure by that Trustee to act in good faith.

**12.5 Record of indemnity and insurance:** The Trustees will ensure the particulars of any indemnity given or insurance provided for any person under clauses 12.3 to 12.4 are recorded in the minutes of the meeting at which that indemnity or insurance is approved.

**12.6 Meanings:** In this clause:

- (a) Trustee includes a former trustee;
- (b) indemnity includes relief or excuse from liability; and
- (c) proceedings includes civil, criminal and administrative proceedings.

### **13. NO PRIVATE PECUNIARY PROFIT**

Nothing expressed or implied in this Deed shall permit the activities of the Trustees, or any business carried on by or on behalf of or for the benefit of the Trustees upon the trusts of this Deed, to be carried on for the private pecuniary profit of any individual.

### **14. WHAKATŌHEA CLAIMS COMMITTEE**

**14.1 Whakatōhea Claims Committee to be established:** The Trustees shall establish a sub-committee, to be called, the Whakatōhea Claims Committee to provide non-binding advice and

recommendations to the Trustees on any matters relating to the settlement of the Historical Claims that the Whakatōhea Claims Committee sees fit.

**14.2 Composition of Whakatōhea Claims Committee:** The Whakatōhea Claims Committee will comprise:

- (a) representatives of Hapū;
- (b) representatives of marae;
- (b) representatives of the Kaumātua Kaunihera; and
- (c) Whakatōhea Wai Claimants.

**14.3 Hapū representatives:** Each Hapū may appoint member(s) to the Claims Committee. The Hapū will inform the Trust in writing of the appointment, removal and replacement of representatives on the Whakatōhea Claims Committee. The eligibility criteria for Trustees, as set out in clause 6.7, will apply to appointments made by Hapū to the Whakatōhea Claims Committee.

**14.4 The Kaumātua Kaunihera:** The Kaumātua Kaunihera may appoint as many representatives as it wishes to the Whakatōhea Claims Committee. The Kaumātua Kaunihera will inform the Trust in writing of the appointment, removal and replacement of representatives on the Whakatōhea Claims Committee. The eligibility criteria for Trustees, as set out in clause 6.7 will apply to appointments by the Kaumātua Kaunihera to the Whakatōhea Claims Committee.

**14.5 The Whakatōhea Wai Claimants:** Each Claimant may each appoint one representative (per WAI claim) to the Whakatōhea Claims Committee. The Claimants are to inform the Pre-settlement Trust in writing of the appointment, removal and replacement of such representatives. Each WAI claim will be limited to one (1) representative on the Whakatōhea Claims Committee, per WAI claim. The eligibility criteria for Trustees, as set out in clause 6.7, will apply to appointments by the Claimants to the Whakatōhea Claims Committee.

**14.6 Whakatōhea Wai Claimants:** Each appointed representative will have the right to assist with the negotiations of their claim.

**14.7 Costs:** Members of the Whakatōhea Claims Committee and their respective electors and/or appointers will be responsible for their own costs and expenses.

## **15. REQUIREMENTS TO AMEND HAPŪ IN THE TRUST DEED**

### **15.1 Hapū ahi mātao:**

- (a) The Trustees shall in negotiation with the Whakatōhea Māori Trust Board maintain a register of Hapū ahi mātao.
- (b) The Trustees may recognise a hapū that is no longer functioning as a Hapū by including that hapū on the register maintained pursuant to clause 15.1(a) if the Trustees are satisfied (acting reasonably) that the hapū existed historically as a hapū of Whakatōhea.

### **15.2 Hapū:**

The Trustees may add a group to the definition of Hapū in clause 1.1 if:

- (a) a request to amend the definition of Hapū in clause 1.1 has been submitted to the Trustees in writing; and
- (b) the Trustees are satisfied (acting reasonably) that the group:
  - (i) descends from a Whakatōhea Ancestor;
  - (ii) has active, functioning marae;
  - (iii) belongs to, or associates with, a maunga (mountain) and awa (river); and
  - (iv) is recognised as a functioning hapū of Whakatōhea by other Hapū and neighbouring iwi; and
- (c) the Trustees have consulted with the Kaumātua Kaunihera on the issue; and
- (d) the Trustees by a seventy-five per cent (75%) majority support the request to add the group to the definition of Hapū; and
- (e) a Members Resolution to amend the definition of Hapū has been passed in accordance with the First Schedule.

## **16. DISPUTES PROCESS**

### **16.1 Notice of disputes**

In the event that a dispute arises relating to the operations of the Trust, the dispute shall be referred in the first instance by the person raising the dispute (the **Petitioner**) giving notice in writing to the Trust setting out full particulars of the nature of the dispute (a **Dispute Notice**). The Trust shall acknowledge receipt in writing within 10 Business Days of the date of receipt of the Dispute Notice.

### **16.2 Process**

- (a) Any dispute regarding membership of Whakatōhea or otherwise in connection with the tikanga, reo, kawa, whakapapa and kōrero of Whakatōhea shall be referred by the Trust to the Kaunihera Kaumātua. The Kaunihera Kaumātua may provide non-binding advice to the Trust on the manner in which the dispute should be resolved.
- (b) In relation to all other disputes, the Chairperson (or a delegated member) shall attempt to resolve the dispute amicably by bona fide discussion including meeting with the Petitioner within 10 (ten) Business Days of receipt of the Dispute Notice, seeking relevant information where required from the Petitioner, person(s) or group(s) involved in the complaint or dispute and report-back to the Trust.
- (c) Following the provision of non-binding advice (if any) pursuant to clause 16.2(a) or the report-back to the Trust from the Chairperson (or a delegated member) pursuant to clause 16.2(b) the Trust shall make a decision on the dispute and inform the Petitioner.

### **16.3 Mediation**

If a Petitioner is not satisfied with the Trust's decision pursuant to clause 16.2, the Petitioner may refer the dispute by written notice to the other (a **Mediation Notice**) to mediation.

#### **16.4 Other avenues**

If a dispute is not resolved pursuant to clause 16.2 or clause 16.3, the Trust and the Petitioner shall be free to pursue other avenues to resolve the dispute, including by pursuing legal proceedings.

### **17. AMENDMENT**

#### **17.1 Clauses that cannot be changed:** No resolution is to be of any effect if:

- (a) it is designed to vary, or would have the effect of varying, the definition of Whakatōhea so as to:
  - (i) exclude persons who affiliate, by whakapapa, to the iwi of Whakatōhea; or
  - (ii) include persons who do not affiliate, by whakapapa, to the iwi of Whakatōhea; or
- (b) the consequence is to amend the Deed in a manner that prejudices in a material manner the Trust's entitlement to charitable status under the laws of New Zealand, or its entitlement to an income tax exemption.

#### **17.2 Changes to the Deed:** Subject to clause 17.1, the Trustees have the power to amend, revoke or add to the provisions of this Deed, provided that:

- (a) the amendment is put to, and agreed to by a resolution of 75% of the Trustees; and
- (b) in the case of an amendment that amends the clauses listed in clause 17.3, the amendment is approved by a Members Resolution.

#### **17.3 Certain amendments require approval by a Members Resolution**

The clauses for the purpose of clause 17.2 are: 3.1, 5, 6.1, 6.2, 6.3, 6.4, 6.5, 7.4, 7.5, 7.6, 14, 15, 17 and 18.

### **18. LIQUIDATION/DISSOLUTION**

#### **18.1 Windup:** The Trust will be wound up or dissolved as soon as reasonably practicable after the Completion Date.

#### **18.2 Early wind-up:** The Trust may only be wound up or dissolved prior to the Completion Date upon a unanimous resolution of all the Trustees at a meeting of the Trustees called for that purpose. There shall be no less than thirty (30) days' notice given of such a meeting to the Trustees.

#### **18.3 Surplus Property:** On the winding-up of the Trust or its dissolution by the Registrar of the High Court under the Charitable Trusts Act 1957, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisation within New Zealand as the Trustees decide, or, if the Trustees are unable to make such decision, shall be



disposed of in accordance with the directions of the High Court under section 27 of the Charitable Trusts Act 1957.

**19. GOVERNING LAW**

**19.1 This Deed** and the Trust shall be construed in accordance with and governed by the laws of New Zealand.

**19.2 The Courts** of New Zealand have exclusive jurisdiction to decide all claims, actions or other proceedings in connection with the Trust or this Deed.

**20. EXECUTION**

Executed as a Deed this..... day of.....

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## **FIRST SCHEDULE**

### **PROCEDURE FOR PASSING A MEMBERS RESOLUTION**

#### **1. THIS SCHEDULE TO APPLY**

A Members Resolution shall only be passed as set out in this Schedule.

#### **2. MEMBERS RESOLUTIONS TO BE CONSIDERED AT ANNUAL GENERAL MEETINGS OR SPECIAL MEETINGS**

A Members Resolution can only be considered and passed at an Annual General Meeting or a Special Meeting. No other business may be transacted at a Special Meeting.

#### **3. VOTING**

Voting on a Members Resolution shall occur by placing voting forms into a secret ballot box in person at the Annual General Meeting or Special Meeting held for the purposes of considering the Members Resolution.

#### **4. VOTING THRESHOLD**

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

#### **5. VOTING INFORMATION AND PROCESS**

##### **5.1 Other details to accompany vote:**

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

##### **5.2 Manner in which votes may be cast**

A vote on a Members Resolution may be cast by:

- (a) delivery to the Chief Returning Officer at the Annual General Meeting or Special Meeting;  
or
- (b) by placing voting forms into a secret ballot box in person at the Annual General Meeting or Special Meeting or
- (c) by electronic means (if voting by such means is available).

##### **5.3 Eligibility to vote:**

Each Adult Member is eligible to vote on a Members Resolution, provided that:

- (a) Each such Adult Member will only be eligible to cast one (1) vote;

- (b) Subject to *rule 5.4 (c)* of this Schedule each Adult Member must, at the date of the Annual General Meeting or Special Meeting, be recorded on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board;
- (c) Where an Adult Member is not recorded on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board but wishes to vote on a Members Resolution, that Adult Member must:
  - (i) complete an application for registration on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board, including sufficient information for registration, and submit this completed application form with a completed voting form;
  - (ii) if the application for registration is validated by the Whakatōhea Māori Trust Board operating in accordance with its usual procedure:
    - (A) the voting form will be counted by the Chief Returning Officer in accordance with *rule 7* of this Schedule;
    - (B) that Adult Member will be added to the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board unless he or she has indicated on the application for registration that he or she does not wish to be added to this roll.
- (d) Where, in accordance with *rule 5.4(c)(ii)(B)* of this Schedule, an Adult Member has indicated on the application for registration that he or she does not wish to be added to the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board, then:
  - (i) the application form and any contact details for that Adult Member will not be retained by the Trust; and
  - (ii) the Adult Member in question will be required to complete the steps in *rule 5.4(c)* of this Schedule in order to participate in voting on any future Members Resolutions.

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

### **6.1 Appointment of Chief Returning Officer:**

For the purposes of a Members Resolution, the Trustees shall appoint a Chief Returning Officer who shall not be a Trustee or employee of the Trust.

### **6.2 Chief Returning Officer to receive voting forms:**

Voting forms must be addressed to the Chief Returning Officer.

### **6.3 Chief Returning Officer to be present at Annual General Meeting or Special Meeting to consider a Members Resolution:**

The Chief Returning Officer must be present at the Annual General Meeting or the Special Meeting to consider a Members Resolution. The Chief Returning Officer will be available to collect any completed voting forms at the Annual General Meeting or the Special Meeting. The

Chief Returning Officer shall also ensure that additional voting forms are available at the Annual General Meeting or the Special Meeting.

**6.4 Only one vote to be cast:**

The Chief Returning Officer must ensure that appropriate measures are in place to ensure that only one (1) vote is cast by each Adult Registered Member.

**6.5 Recording of votes:**

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

**7. COUNTING OF VOTES**

**7.1 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.

**7.2 Certification and notifying result:**

Once all votes have been counted and the result of the Members Resolution determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the Members Resolution and communicate the result to the Trustees.

**8. OUTCOME OF A MEMBERS RESOLUTION**

If the Chief Returning Officer advises the Trustees, in accordance with *rule 7.2* of this Schedule, that a Members Resolution has been approved by not less than 75% of the votes validly cast, in accordance with *rule 3.1* of this Schedule, then the Trustees are to give effect to that Members Resolution.

## SECOND SCHEDULE

### ELECTIONS OF HAPŪ TRUSTEES

#### 1. PROCEDURE

##### 1.1 This Schedule to apply:

The Trustees referred to in clause 6.2(a) (in this Second Schedule referred to as “Hapū Trustees”) shall be elected in accordance with the rules and procedures set out in this Schedule.

##### 1.2 Election to be by Hapū

Each Hapū shall be entitled to elect one Hapū Trustee.

##### 1.3 Hapū Trustee elections to be held at same time

The elections for each Hapū Trustee shall be held at the same time, so that the elected Hapū Trustees for each Hapū take office on the same date, being the day immediately following the day on which the terms of office of the incumbent Hapū Trustees expire.

#### 2. ELIGIBILITY FOR APPOINTMENT

##### 2.1 Nominee:

To be elected, a nominee for election as a Hapū Trustee must, as at the closing date for nominations:

- (a) not be otherwise disqualified in accordance with clause 6.7; and
- (b) either:
  - (i) be recorded in the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board as an Adult Registered Member; or
  - (ii) if not recorded in the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board as an Adult Registered Member:
    - (A) complete an application for registration on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board, including sufficient information for registration, and submit this completed application form with a completed nomination form as set out in *rules 6.5 and 6.6* of this Schedule; and
    - (B) if the application for registration is validated by the Whakatōhea Māori Trust Board operating in accordance with its usual procedure and satisfies the other criteria of this Schedule, then:
      - (AA) that nomination will be accepted; and
      - (BB) that Adult Member will be added to the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board unless the

Adult Member in question has indicated on the application for registration that he or she does not wish to be added to this roll;

**2.2 Adult Member not registered on the roll**

Where, in accordance with *rule 2.1(b)(ii)(B)(BB)* of this Schedule, an Adult Member has indicated on the application for registration that he or she does not wish to be added to the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board, then:

- (a) the application form and any contact details for that Adult Member will not be retained by the Trust; and
- (b) the Adult Member in question will be required to complete the steps in *rule 2.1(b)(ii)* of this Schedule in respect of seeking a nomination for election as a Hapū Trustee in any future election of Hapū Trustees in which that Adult Member wishes to be nominated.

**2.3 Nominee may stand for election in one Hapū**

No person may stand as a nominee in any Hapū Trustee election for more than one Hapū.

**2.4 Trustees Roles:**

A Trustee may not be an employee of the Trust.

**3. ELECTION OF HAPŪ TRUSTEES**

**3.1** The top polling nominee in each Hapū election will be elected as the Hapū Trustee for that Hapū.

**3.2** If there are an equal number of votes for the top two or more polling nominees in a Hapū election, then the Hapū Trustee will be determined by lot.

**4. ELIGIBILITY OF RETIRING HAPŪ TRUSTEES:**

Retiring Hapū Trustees shall be eligible for re-election.

**5. MAKING OF NOMINATIONS**

**5.1 Nominations**

All Adult Registered Members of the Hapū for which elections are held are entitled to be nominated for election as a Hapū Trustee.

**5.2 Notice for nomination:**

Nominations from all Adult Registered Members for the election of a Trustee position on the Pre-settlement Trust will be open for a period of twenty one (21) business working days. 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 persons as the notice directs.

**5.3 Timing for nominations:**

Nominations for Trustee positions will close at 12 noon on the last day of the nomination period.

**5.4 Form of notice:**

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

- (a) By newspaper advertisement published on at least two (2) separate days and inserted in appropriate major metropolitan newspapers and/or any provincial newspaper circulating in regions where the Trustees consider that a significant number of members of Whakatōhea reside; and
- (b) By such other means as the Trustees may determine.

**5.5 Nomination to be in writing:**

The nomination of a candidate for election as a Hapū Trustee shall be in writing signed by not less than five (5) Adult Registered Members that list the same Hapū as their primary affiliation on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board.

**5.7 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. HOLDING OF ELECTIONS**

**6.1 Mode of Voting at Elections:**

Subject to *rule 7.2* 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.

**6.2 No elections where only one or no nominee:**

- (a) In the event that only one nomination is received in respect of the election of a Hapū Trustee for a Hapū, no election shall be necessary and the person so nominated shall be deemed to have been duly elected.
- (b) In the event that no nominations are received in respect of the election of a Hapū Trustee for a Hapū, no election shall be necessary and the position shall remain vacant until the next election held in accordance with this Schedule.

**6.3 Eligibility to vote in elections:**

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

- (a) Each such Adult Member will only be eligible to cast one (1) vote listing their preferred Trustee; and
- (b) Subject to *rule 6.3 (c)* of this Schedule each Adult Member must, at the date fixed as the latest date for making and lodging nominations, be recorded on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board.
- (c) Where an Adult Member is not recorded on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board but wishes to vote in an election of Trustees, that Adult Member must:
  - (i) complete application for registration on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board, including sufficient information for registration, and submit this completed application form with a completed voting paper;



- (ii) if the application for registration is validated, the voting paper will be counted by the Chief Returning Officer in accordance with *rule 9.2* of this Schedule; and
  - (iii) if the application for registration is validated that Adult Member will be added to the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board unless the Adult Member in question has indicated on the application form for registration that they do not wish to be added to this roll;
- (d) Where, in accordance with *rule 6.3(c)(iii)* of this Schedule, an Adult Member has indicated on the application for registration that he or she does not wish to be added to the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board, then:
- (i) the application form and any contact details for that Adult Member will not be retained by the Trust; however, will be retained by the Chief Returning Officer for validation by Kaumātua and Hapū delegate(s);
  - (ii) the Adult Member in question will be required to complete the steps in *rule 6.3(c)* of this Schedule in respect of any future election of Trustees in which that Adult Member wishes to vote.

## **7. NOTICE OF ELECTIONS**

### **7.1 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).

### **7.2 Period of notice:**

Voting for the election of Trustees will be open for a period of twenty one (21) business working days. The method by which votes may be cast as set out in *rule 6.1* of this Schedule.

### **7.3** Voting will close at 12 noon on the last day of the voting period.

### **7.4 Method of giving notice:**

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

- (a) Posting notice (including, by electronic form where available) to each Adult Registered Member shown on the roll of beneficiaries maintained by the Whakatōhea Māori Trust Board as entitled to vote at the election. If notice to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the Adult Registered Member's last known physical address;
- (b) Inserting an advertisement on at least two (2) separate days in major metropolitan newspapers and in any provincial newspapers circulating in regions within the area of Whakatōhea's customary interests;
- (c) Advertising on a radio station or radio stations broadcasting in the district or districts where the Trustees consider that a significant number of Whakatōhea Uri reside; and

(d) Posting notice on the Trust's website (if one is functioning).

**7.5 General content of notices:**

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

- (a) A list of the nominees for election as Hapū Trustees for the relevant Hapū; and
- (b) The mode by which votes may be cast as set out in *rule 6* of this Schedule.

**7.6 Additional content of notice:**

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

- (a) A voting form that complies with *rule 8.1* of this Schedule; 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.

**7.7 Additional information in other notices:**

Each notice given in accordance with *rule 7.3(b)*, *7.3(c)* and *7.3(d)* of this Schedule shall also give details about how voting forms may be obtained.

**8. VOTING**

**8.1 Other details to accompany vote:**

Each voting form must contain information that is sufficient to identify the Adult Member who will be voting.

**8.2** Voting for the election of Trustees will be open for a period of twenty one (21) business working days. The method by which votes may be cast as set out in *rule 6.1* of this Schedule.

**8.3** Voting will close at 12 noon on the last day of the voting period.

**8.4 Manner in which votes may be cast**

A vote may be cast by:

- (a) placing voting forms into a secret ballot box in person where this option is made available; or
- (b) post addressed to the Chief Returning Officer; or
- (c) by electronic means (if voting by such means is available).

**8.5 Timing of Votes:**

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

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

### **9.1 Appointment of Chief Returning Officer:**

For the purposes of elections the Trustees shall appoint as required a Chief Returning Officer who shall not be a Trustee or employee of the Trust. The Chief Returning Officer shall be responsible for coordinating Trustee elections.

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

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

### **9.3 Only one vote to be cast:**

The Chief Returning Officer shall ensure that appropriate measures are in place to ensure that only one (1) vote is cast by each Adult Member.

### **9.4 Recording of votes:**

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

## **10. COUNTING OF VOTES**

### **10.1 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.

### **10.2 Certification and notifying election result:**

Once all votes have been counted and the result of the election determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the election and communicate the result of the election to the Trustees. The Trustees shall thereafter advise the candidates of the result and give notice of the same on the Trust's website within a month of notification. Notifying results also in appropriate newspapers.

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

### **11.1 Compiling and sealing voting records:**

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

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

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.

### THIRD SCHEDULE

#### REGISTERED HISTORICAL CLAIMS

1	WAI 87	Whakatōhea Raupatu Claim	The Late Claude Augustus Edwards
2	WAI 203	Mokomoko whanau claim	The Late Tuiringa Mokomoko
3	WAI 267	School History	Ariana Delamere
4	WAI 339	Hiwarau Block	The Late Tuiringa Mokomoko
5	WAI 558	Ngāti Ira o Waioweka Rohe	John Hone Kameta
6	WAI 864	Moutohora quarry	Russell Hollis, John Hata, Len Brown and the Maori Trustee for and on behalf of the owners of Whakapaupakihi 2
7	WAI 1092	Te Upokorehe Claim	The Late Charles Aramoana
8	WAI 1433		Nepia Whānau Trust
9	WAI 1511	Ngai Tamatea	Keita Hudson
10	WAI 1758	Roimata marae, Te Upokorehe hapū, Ngāti Raumoia Roimata Marae Trust	Wallace Aramoana, Lance Reha, Gaylene Kohunui, Wayne Aramoana, Sandra Aramoana, Roimata marae, Te Upokorēhē Hapū Ngāti Raumoia Roimata Marae Trust
11	WAI 1775	Ngāti Patumoana	John Hata
12	WAI 1781	Ngai Tamahaua	Biddle Claim
13	WAI 1782	Ngāti Rua	Paruru Claim
14	WAI 1787	Rongopopoia ki Te Upokorehe	Hinehou Leef, Mekita Te Whenua, Richard Wikotu, Rocky Ihe, Kahukore Baker
15	WAI 1794	Turangapikitoi hapū	Muriwai Wehi
16	WAI 1795	Ngāti Rua	Tawhirimatea Williams
17	WAI 1884	Ngāti Ngāhere	The Late Tarati Carrington
18	WAI 2006	Te Upokorehe and Whakatoia hapū	Priscilla Pihitahi Sandys
19	WAI 2008	Pākowhai	Peter Warren
20	WAI 2055	Ngai Tama of Opape	Dr Guy Naden
21	WAI 2066	Ngāti Ruatakenga	Takaparae Papuni
22	WAI 2107	Ngāti Ngāhere, Ngāti Ira	Lee Ann Martin, descendant of Kurei Tamaipaoa and Tuku Maaka, Mokomoko, Te Manawa o Kimohia, Mererua Wahine, Karaitiana Ruru, Horikerei
23	WAI 2160	Whakatōhea / Ngāti Muriwai	Theresa McMurtie

**Disclaimer:**

The Collective have taken reasonable care to ensure the list of WAI claims is accurate and complete. Should further information come to light indicating additional Whakatōhea related claims that have not been included in this list, the Collective reserve the right to include them as appropriate.