

**NGĀTI TAMA KI TE TAU IHU
CULTURAL TRUST**

DEED OF TRUST

[date] 2014

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This Deed is made on this 23rd day of February

2014

BETWEEN Moetu Tuuta

Judith Billens

AND Margaret Little (“Establishment Trustees”)

RECITALS

- A. The Establishment Trustees are Members of Ngāti Tama ki Te Tau Ihu. They wish to establish a charitable trust for incorporation pursuant to the provisions of the Charitable Trusts Act to be known as the Ngāti Tama ki Te Tau Ihu Cultural Trust on the terms of this Deed for the benefit of Ngāti Tama ki Te Tau Ihu.
- B. The intention is that the Ngāti Tama ki Te Tau Ihu Cultural Trust will receive, hold, manage and administer Property received from other members of the Ngāti Tama ki Te Tau Ihu Group, and others, and distribute such funds in accordance with the Trust’s charitable purposes.
- C. The Establishment Trustees have received the sum of \$1000 to be held by them in their joint names on trust together with any further Property acquired or vested in the Trustees upon the terms of this Deed.
- D. This Deed sets out the functions and purposes, and provides for the control, governance and operation, of the Ngāti Tama ki Te Tau Ihu Cultural Trust.

TERMS OF TRUST

1. INTERPRETATION

Defined terms

- 1.1 In this Deed (including its Schedules):

Ancestor of Ngāti Tama ki Te Tau Ihu has the meaning given to that term in the Te Waipounamu Trust Deed;

Annual General Meeting means a meeting of the Te Waipounamu Trust that is held in accordance with clause 15 and Schedule 3 of the Te Waipounamu Trust Deed;

Annual Plan means the annual plan of the Trust which is prepared by the Trustees in accordance with clause 13.3;

Annual Report means the annual report of the Trust which is prepared by the Trustees in accordance with clause 13.2;

Associate means a person who is appointed by the Trustees under clause 6.13;

Board has the meaning given to that term in clause 2.3;

Chairperson means the chairperson from time to time of the Trust appointed by the Trustees in accordance with clause 6.8;

Charitable Purpose means every purpose within New Zealand which in accordance with the laws of New Zealand for the time being is charitable, whether such purpose involves the relief of poverty, the advancement of education or religion, or any other object or purpose that is charitable within the laws of New Zealand and includes the meaning of charitable purpose as defined in section YA 1 of the Income Tax Act 2007;

Charitable Trusts Act means the Charitable Trusts Act 1957;

Charities Act means the Charities Act 2005;

Custodial Trust Fund means the trust fund held by the Custodian Trustee under clause 15;

Custodian Trustee means a person appointed as a custodian trustee under clause 15;

Deed means this deed and includes any schedules and amendments to this deed;

Deputy Chairperson means the deputy chairperson from time to time of the Trust if one is appointed in accordance with clause 6.9;

Establishment Trustees mean the three (3) persons who are named in and are signatories to this Deed as the first trustees of the Trust;

Financial Year means the 12 month period ending on 30 September in any year or any other 12 month period determined by the Trustees;

General Manager means a person appointed under clause 16.1(a) to perform general management and administrative duties for the Trust;

General Meeting of the Te Waipounamu Trust has the meaning given to the term General Meeting in the Te Waipounamu Trust Deed;

Major Transaction means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Property by the Trust the value of which is more than 25% of the value of the Te Waipounamu Trust Fund before the acquisition;
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Property by the Trust the value of which is more than 25% of the value of the Te Waipounamu Trust Fund before the disposition; or
- (c) a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities the value of which is more than 25% of the value of the Te Waipounamu Trust Fund 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 Te Waipounamu Trust Fund; or
- (e) any internal acquisition or disposition of Property by the Trust from or to any other member of the Ngāti Tama ki Te Tau Ihu Group;

and nothing in paragraph (c) of this definition applies by reason only of the Trust giving, or entering into an agreement to give, a charge secured over Property of the Trust the value of which is more than 25% of the value of the Te Waipounamu Trust Fund for the purpose of securing the repayment of money or the performance of an obligation. For the purposes of this definition, the value of the Te Waipounamu Trust Fund shall be calculated based on the value of the Property of the Ngāti Tama ki Te Tau Ihu Group.

Member of Ngāti Tama ki Te Tau Ihu means an individual referred to in paragraph (b) of the definition of Ngāti Tama ki Te Tau Ihu;

Ngāti Tama ki Te Tau Ihu means:

- (a) the collective group composed of individuals who are descended from an Ancestor of Ngāti Tama ki Te Tau Ihu (and recognised by the Crown as its treaty partner, Ngāti Tama ki Te Tau Ihu); and
- (b) includes those individuals referred to in (a); and
- (c) includes any whānau, hapū, or group to the extent that it is composed of individuals referred to in subclauses (a) and (b) of this definition (and, for the purposes of this definition, “whānau” includes any whānau or individual in a whānau, to the extent the whānau is defined by those individuals referred to in (a), and their civil union partners and children of the civil union, their de facto partners and children of the defacto relationship, and their spouses, and children of the marriage (as those terms applied in relation to proceedings under the Family Proceedings Act 1980 as at the date of this Deed));

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

- (d) birth; or
- (e) legal adoption; or
- (f) Māori customary adoption in accordance with Ngāti Tama ki Te Tau Ihu tikanga (customary values and practice);

Ngāti Tama ki Te Tau Ihu Group means the Te Waipounamu Trust and the Trust Entities;

Objects of the Te Waipounamu Trust means the objects set out in clause 3.1 of the Te Waipounamu Trust Deed;

Objects of the Trust means the objects set out in clause 3.1;

Officer means a director, trustee or board member, as the case may be, of a Trust Entity;

Perpetuity Period means the period from the date of this Deed until the Vesting Day;

Property means all real and personal property and includes choses in action, rights, interests and money;

Public Notice means a notice that:

- (a) is published in a newspaper circulating in any area where, in the reasonable opinion of the Trustees, a significant concentration of the Members of Ngāti Tama ki Te Tau Ihu reside; and
- (b) may also be published by panui or electronic media;

Registered Adult Member has the meaning given to that term in the Te Waipounamu Trust Deed;

Special Resolution has the meaning given to that term in the Te Waipounamu Trust Deed;

Te Waipounamu Trust means the trust known as the Ngāti Tama ki Te Waipounamu Trust established by the Te Waipounamu Trust Deed;

Te Waipounamu Trust Deed means the deed of trust dated 23 April 2013 establishing the trust known as the Ngāti Tama ki Te Waipounamu Trust;

Te Waipounamu Trust Fund has the same meaning as the term Trust Fund in the Te Waipounamu Trust Deed;

Te Waipounamu Trustee means the persons elected as trustees of the Te Waipounamu Trust;

Trust means the trust known as the Ngāti Tama ki Te Tau Ihu Cultural Trust established by this Deed;

Trust Entity means:

- (a) a company, trust or other entity wholly owned or controlled by the Te Waipounamu Trustees for any purpose; and
- (b) any wholly owned or controlled subsidiary of a company, trust or other entity referred to in paragraph (a) of this definition;

Trust Fund means the said sum of \$1,000.00 and any Property, including income, held from time to time by the Trustees on the trusts of this Deed;

Trustee means a person appointed under clause 6.1 or an Establishment Trustee;

Vesting Day has the meaning set out in clause 20.1; and

Working Day means the days Monday through Friday exclusive of any public holiday and the period from 24 December to 2 January (inclusive) and any days that the

Te Waipounamu Trustees publicly notify that the office of the Te Waipounamu Trust will be closed.

General interpretation

- 1.2 In this 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 gender;
 - (c) references to persons include corporations and unincorporated bodies of persons, governments, or other public bodies or agencies whether or not having a separate legal personality;
 - (d) references to a statute shall be deemed to be references to that statute as amended, re-enacted or substituted from time to time;
 - (e) references to a clause, rule, recital, paragraph or a schedule shall be to a clause, rule, recital, paragraph or a schedule to this Deed;
 - (f) the schedules to this Deed shall form part of this Deed; and
 - (g) headings appear as a matter of convenience only and shall not affect the interpretation of this Deed.

2. ESTABLISHMENT OF TRUST

- 2.1 The Trustees acknowledge and declare that they hold the Trust Fund upon the trusts and with the powers set out in this Deed. The name of the trust established by this Deed is the “**Ngāti Tama ki Te Tau Ihu Cultural Trust**”.
- 2.2 The Trust shall be governed by and in accordance with this Deed.
- 2.3 The Trust shall be administered by a board comprised of the Trustees (**Board**).
- 2.4 The office of the Trust will be in such place in Nelson or elsewhere in New Zealand as the Board may determine.
- 2.5 Immediately following execution of this Deed the Board will:
- (a) file an application for incorporation under the provisions of the Charitable Trusts Act; and
 - (b) register the Trust under the Charities Act.
- 2.6 Upon incorporation under the Charitable Trusts Act the powers and discretions conferred upon the Trustees by law or by this Deed shall be conferred upon the Trustees as a trust board.
- 2.7 Upon incorporation under the Charitable Trusts Act the Trust shall have a common seal which shall be affixed by the authority of the Trustees previously given to any

document requiring execution by the Trustees. Every such affixing shall be attested by two Trustees and shall be sufficient evidence of authority to affix the seal.

- 2.8 No person dealing with the Trustees shall be bound or concerned to see or inquire as to the authority to affix the seal, or to inquire as to the authority under which any document was sealed or in whose presence it was sealed.
- 2.9 A register shall be kept recording all applications of the common seal and the use of the seal shall be reported at subsequent Trustee meetings.

3. OBJECTS AND LIMITATIONS OF TRUST

- 3.1 The Objects of the Trust shall be to receive, hold, manage and administer the Trust Fund for every Charitable Purpose benefiting Ngāti Tama ki Te Tau Ihu whether it relates to the relief of poverty, the advancement of education (including cultural education) or religion or any other matter beneficial to the community of Ngāti Tama ki Te Tau Ihu and the present and future Members of Ngāti Tama ki Te Tau Ihu irrespective of where those Members reside.
- 3.2 It is an overriding restriction and requirement that all provisions in this Deed are subject to the Objects of the Trust being limited to Charitable Purposes, and as further limited by clause 3.1 of this Deed.
- 3.3 Furthermore, the actions of the Trustees (including performance of functions under this Deed) must not prejudice in a material manner the Trust's entitlement to charitable status under the law of New Zealand, or its entitlement to an income tax exemption under the Income Tax Act 2007 in respect of income derived by it.

4. DUTIES OF TRUSTEES

Fundamental duty

- 4.1 The Trustees must always act, collectively and individually, to fulfil the Objects of the Trust. In performing their duties each Trustee will act in accordance with their fiduciary duties and obligations.

No disrepute

- 4.2 A Trustee must not act in a manner which brings or is likely to bring Ngāti Tama ki Te Tau Ihu or the Ngāti Tama ki Te Tau Ihu Group into disrepute including, without limitation, by:
- (a) refusing to act when he or she should;
 - (b) sustained absences without permission or reasonable excuse;
 - (c) breaching an obligation of confidentiality or non-disclosure;
 - (d) otherwise breaching this Deed or the duties imposed on the Trustees by law,

and any Trustee who acts in such a manner may, by a resolution passed unanimously by the other Trustees, be formally censured or removed from office.

Standard of care

4.3 Every Trustee:

- (a) when exercising powers or performing duties as a Trustee, must exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others; and
- (b) where a Trustee's profession, employment or business is or includes acting as a trustee or investing money on behalf of others that Trustee, in exercising any power of investment, shall exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others.

No prejudice or discrimination

4.4 A Trustee must not, when exercising powers or performing duties as a Trustee, act or agree to act in a manner which unfairly prejudices or unfairly discriminates against any particular Members of Ngāti Tama ki Te Tau Ihu unless that Trustee believes on reasonable grounds that the fundamental duty set out in clause 4.1 requires such action and the action will not breach the Trustee's fiduciary duties and obligations.

5. POWERS OF TRUSTEES

General Powers

5.1 Subject to clauses 3.2, 3.3 and 5.3, the Trustees:

- (a) shall have the fullest powers to do all such things that they in their sole discretion consider necessary to perform and carry out the Objects of the Trust;
- (b) shall have in the administration, management and investment of the Trust Fund all the rights, powers and privileges of a natural person and all other powers that trustees are permitted to have under New Zealand law;
- (c) subject to the trusts imposed by this Deed, may deal with the Trust Fund as if they were the absolute owners of, and beneficially entitled to, the Trust Fund; and
- (d) shall have the powers set out in Schedule 1 and may, in their discretion, exercise any one or more of those powers in pursuit of the general administration of the Trust.

Investment and management

5.2 The investment and management of the assets and funds of the Trust will be at the sole discretion of the Trustees limited only by the terms hereof provided that no benefit or advantage of the kind referred to in sections CW42(1)(c) and CW42(3)-(8) of the Income Tax Act 2007 will be derived by or paid to any person referred to in those sections except as therein exempted from the application of that section.

Major Transactions

- 5.3 The Trustees must not enter into any Major Transaction unless the Major Transaction is approved by Special Resolution of Registered Adult Members or is contingent upon approval by Special Resolution of Registered Adult Members.

6. APPOINTMENT AND REMOVAL OF TRUSTEES

Number of Trustees

- 6.1 Subject to any casual vacancies occurring in the office of Trustee, the Trust shall have three (3) Trustees who shall hold office in accordance with this Deed, of whom at least one (1) Trustee must at all times be a current Te Waipounamu Trustee.

Criteria for Appointment of Trustees

- 6.2 To be eligible for appointment as a Trustee a candidate must:
- (a) be a current Registered Adult Member;
 - (b) not be disqualified by reason of any matters referred to in clauses 6.4(c) to 6.4(g);
 - (c) not have resigned from the position of Trustee in the three (3) years prior to the date of appointment; and
 - (d) be aged 18 years or older.

Removal of Trustee

- 6.3 Any Trustee may be removed from office by written notice to the Trust signed on behalf of the Te Waipounamu Trustees at any time with or without reason, including (without limitation) if the Te Waipounamu Trustees are satisfied that the relevant Trustee:
- (a) is not performing satisfactorily the role and/or duties of a Trustee; or
 - (b) without limiting clause 6.3(a) has been absent from three or more successive meetings of the Trustees without the written permission of the Te Waipounamu Trust; or
 - (c) without limiting clause 6.3(e), does not have the appropriate business skills and experience that are required of a Trustee, bearing in mind the nature of the business and role of the Trust and any subsidiaries now undertakes or is likely to undertake in the future and the mix of skills and experience required by the Trustees; or
 - (d) without limiting clause 6.3(a), is acting in a manner which brings or is likely to bring Ngāti Tama ki Te Tau Ihu, the Te Waipounamu Trust or the Trust into disrepute; or
 - (e) is in neglect of his or her duty as a Trustee or has committed an act of gross misconduct; or

- (f) was originally appointed as a representative of the Te Waipounamu Trustees, but has subsequently ceased to be a Te Waipounamu Trustee.

Cessation of office of Trustee

6.4 Any person shall cease to be a Trustee if he or she:

- (a) has been in office for more than three (3) years since his or her last election; or
- (b) resigns as a Trustee by giving notice in writing to the Trust; or
- (c) has within the last three (3) years been removed from the office of trustee in accordance with clause 4.2; or
- (d) becomes of unsound mind, or becomes a person in respect of whose affairs an order under the Protection of Personal and Property Rights Act 1988 is made, or otherwise becomes unfit or unable to act as a Trustee; or
- (e) is or becomes a 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
- (f) is or has ever been convicted of an offence:
 - (i) involving dishonesty as defined in section 2(1) of the Crimes Act 1961;
 - (ii) under section 373(4) of the Companies Act 1993; or
 - (iii) that, in the Trustees' sole discretion, is likely to bring Ngāti Tama ki Te Tau Ihu, the Trust or any Trust Entity into disrepute; or
- (g) is otherwise disqualified from being an officer under section 16 of the Charities Act; or
- (h) dies.

6.5 The Trustee concerned shall cease to hold office:

- (a) in a case where clause 6.4(a) applies, from the end of the day three (3) years after the date on which that Trustee was last appointed to office;
- (b) in a case where either clause 6.4(b) applies from the date the notice of resignation has been delivered to the Trust or the Te Waipounamu Trust, as appropriate;
- (c) in a case where clause 6.4(c) applies, from the date of the resolution of the other Trustees referred to in clause 4.2;
- (d) in a case where clauses 6.4(d) to (g) apply, from the date on which the relevant order, conviction or disqualification is made; and

- (e) in a case where clause 6.4(h) applies, from the date on which the relevant Trustee dies.

Appointment

- 6.6 Should a vacancy in the office of Trustee occur then the Te Waipounamu Trustees must appoint a new Trustee, by written notice in the form attached as Schedule 3 signed by the chairperson for the time being of the meeting at which the appointment was made, in accordance with section 4 of the Charitable Trusts Act.

Rotation of Trustees

- 6.7 Subject to clause 6.6, at the Annual General Meeting in each year one of the Trustees for the time being shall retire from office. The Trustee to retire in each year shall be that one who has been longest in office since they were last elected or deemed elected. As between the Establishment Trustees, the order of retirement shall be: Judith Billens shall retire in 2015, Margaret Little shall retire in 2016 and Moetu Tuuta shall retire in 2017. The length of time a Trustee has been in office shall be calculated from that person's last election where such person has previously retired or vacated office. Subject to clause 6.2 a retiring Trustee shall be eligible for re-election and shall act as a Trustee throughout the meeting at which such person retires.

Meetings of Trustees

- 6.8 Meetings of the Trustees shall be governed by the rules contained in Schedule 2.

Chairperson and Deputy Chairperson

- 6.9 The Trustees shall elect one Trustee to act as Chairperson at each meeting of Trustees.
- 6.10 The Trustees may also elect one Trustee to act as Deputy Chairperson either as the need arises or from meeting to meeting as the Trustees may decide. In the absence of the Chairperson the Deputy Chairperson shall have the powers and perform the duties of the Chairperson.

Subcommittees

- 6.11 The Trustees may by majority appoint two (2) or more Trustees to form a sub-committee to inquire into or progress any matter on behalf of the Trust.
- 6.12 Any sub-committee of Trustees appointed by the Trustees shall:
- (a) co-opt, if necessary, other persons for consultation and advice;
 - (b) elect a chairperson;
 - (c) regulate its meetings according to established policies and procedures;
 - (d) make decisions by consensus and where consensus is not reached, the question shall be passed by a majority of votes;

- (e) make monthly reports to the Trustees including any income received or expenditure incurred;
 - (f) incur no debts or liabilities without the prior written approval of the Trustees;
 - (g) not enter into any contract or agreement that will bind the Trustees without first having obtained the prior written approval of the Trustees; and
 - (h) ensure its activities and actions are consistent with the Objects of the Trust and the other provisions of this Deed.
- 6.13 The Trustees may resolve to appoint up to two Registered Adult Members as Associates. The Associates shall attend and observe Trustee meetings and any other meetings or hui to which they are invited by the Trustees. The purpose of the appointment of Associates is to develop a pool of Registered Adult Members with the knowledge and skills to be nominated for election as a Trustee.
- 6.14 Associates shall be appointed for a period of twelve (12) months or such lesser period as the Trustees determine and shall be subject to, and comply with, the rules imposed on them by the Trustees including, in particular, in respect of the confidentiality of the Trust's affairs.
- 6.15 An Associate whose term has expired may be eligible for re-appointment if the Trustees so determine.
- 6.16 Associates are not Trustees and shall not have any power of decision or voting rights in their capacity as Associates nor shall they be entitled to exercise any vote at a meeting of Trustees, although they shall be considered Trustees for the purposes of clause 10.
- 6.17 No Trustee shall be entitled to appoint any person as an alternate trustee to act on their behalf in any capacity.

7. APPLICATION OF INCOME AND CAPITAL

- 7.1 The Trustees may at any time after the payment of, or provision for, all reasonable costs, charges and expenses in respect of the establishment, management and administration of the Trust, pay or apply all or any of the income of the Trust in any Financial Year to or for the benefit of the Members of Ngāti Tama ki Te Tau Ihu in accordance with the Objects of the Trust.
- 7.2 If any income of the Trust is not paid or applied in accordance with clause 7.1 during or within six months from the end of the relevant Financial Year, the Trustees must accumulate that income, which must be added to and form part of the capital of the Trust Fund.
- 7.3 The Trustees may at any time pay or apply all or any of the capital of the Trust to or for the benefit of the Members of Ngāti Tama ki Te Tau Ihu in accordance with the Objects of the Trust.

8. RELIANCE ON ADVICE

- 8.1 Subject to clause 8.2, the Trustees may rely on reports, statements, financial data and other information prepared or supplied, and any professional or expert advice given, by any of the following persons:
- (a) any employee or contractor of the Trust whom the Trustees believe on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) any Officer, employee or contractor of the Te Waipounamu Trust or any Trust Entity whom the Trustees believe on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (c) any professional or expert in relation to matters which the Trustees believe on reasonable grounds to be within that person's professional or expert competence; and
 - (d) any Trustee or committee of Trustees appointed in accordance with clause 6.11.
- 8.2 Notwithstanding clause 8.1, the Trustees must:
- (a) act in good faith;
 - (b) make proper inquiry where the need for inquiry is indicated by the circumstances; and
 - (c) have no knowledge that such reliance is unwarranted.

9. DELEGATION OF POWERS

- 9.1 The Trustees may delegate in writing to any Trustee, subcommittee of Trustees, the General Manager or any Trust Entity such of the powers of the Trustees as the Trustees may decide.
- 9.2 Any person or subcommittee or entity acting under delegated power shall act in accordance with the terms of the delegation and this Deed.
- 9.3 The Trustees may revoke any delegation wholly or partly at any time.
- 9.4 Subject to any directions given by the Trustees, any person or subcommittee or entity to whom powers have been delegated may conduct that person's or the subcommittee's or the entity's affairs as that person or the subcommittee or the entity may decide.
- 9.5 The Trustees must, in delegating powers, provide restrictions or rules by which such delegated powers are to be exercised and in each case must require the delegate to report to the Trustees on any action or decision taken as delegate.

10. REMUNERATION

10.1 No private pecuniary profit may be made by any person from the Trust, except that:

- (a) A Trustee or Officer may receive full reimbursement for all reasonable expenses properly incurred by that Trustee or Officer in connection with the affairs of the Trust.
- (b) The Trustees may pay reasonable remuneration to any Trustee in return for services rendered to the Trust (including the provision of services as Trustee) provided that the rate of remuneration is approved by the Te Waipounamu Trustees.
- (c) The Trust may pay reasonable remuneration to any Officer in return for services rendered to the Trust (including the provision of services as Officer) provided that the rate of remuneration is approved by the Trust in accordance with this Deed.
- (d) A Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any entity of which that Trustee is a partner, member, employee or associate in connection with the affairs of the Trust.
- (e) A Trustee may retain any remuneration properly payable to that Trustee by any entity with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatsoever, notwithstanding that the Trustee's connection with that entity is in any way attributable to that Trustee's connection with the Trust provided that:
 - (i) before any reimbursement paid to a Trustee may be regarded as properly incurred by that Trustee, or any remuneration paid to a Trustee may be regarded as reasonable or properly payable, or any charges may be regarded as usual, the amount of that reimbursement, remuneration or charge must have been approved by a resolution of Trustees and in the case of an appointment referred to in clause 19.1(f), the provisions of that clause have been complied with;
 - (ii) the Trustees must disclose in their Annual Report next published after payment of any reimbursement, remuneration or charge:
 - (A) the amount received by each Trustee or any firm or entity;
 - (B) the nature of the reimbursement and the nature and extent of the services rendered or time expended;
 - (C) the method of calculation of the reimbursement, remuneration or charge; and
 - (iii) in the case of an appointment referred to in clause 16.1(f), the full written terms and conditions have been made available for inspection at the office of the Trust by any Registered Adult Member who makes written request for the same.

10.2 Subject to clause 10.1, in the exercise of the powers conferred by this Deed, each Trustee in the discharge of any duty or exercise of any discretion as Trustee shall ensure that any person who is:

- (a) a Trustee; or
- (b) an Officer of the Trust; or
- (c) any associated person (as defined in Sub Part YB of the Income Tax Act 2007),

does not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence the determination of, the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person, and any payment made to any person in breach of this clause 10.2 shall be void.

11. CONFLICT AND DISCLOSURE OF INTEREST

Disclosure of interest

11.1 Subject to clauses 11.2 and 11.3, any Trustee who is in any other capacity interested or concerned in any Property or undertaking in which the Trust is concerned or involved shall disclose the nature and extent of that Trustee's interest to the other Trustees and shall not take part in any deliberations or decisions of the Trustees concerning that matter and shall be disregarded for the purpose of forming a quorum for any such deliberation or decision.

Definition of Interested Trustee

11.2 For the purposes of clause 11.1, a Trustee will be interested or concerned in any Property or undertaking in which the Trust is concerned or involved 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 a person who will or may derive a material financial benefit from the matter, not being a party that is a Trust Entity;
- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the matter; or
- (e) is otherwise directly or indirectly interested in the matter.

Interests in common with iwi

11.3 Notwithstanding clauses 11.1 and 11.2, no Trustee will be interested in a matter where:

- (a) that Trustee is a Member of Ngāti Tama ki Te Tau Ihu and his or her interest is not different in kind from the interests of other Members of Ngāti Tama ki Te Tau Ihu; or
- (b) the Trustee's interest arises solely by virtue of the Trustee's role as a Te Waipounamu Trustee or an Officer.

Recording of interest

- 11.4 A Trustee must, upon becoming aware of any matter in which that Trustee is interested in accordance with clause 11.2, disclose that interest to the other Trustees at the next meeting of Trustees. Any such disclosure of interest by a Trustee shall be recorded in the minute book of the Trust.

12. ACCOUNTS

- 12.1 The Trustees shall keep an account or accounts at such bank or banks as the Trustees may decide. Cheques, withdrawals and authorities shall be signed or endorsed, as the case may be, by such person or persons (including in all instances at least one (1) Trustee) as the Trustees may decide.
- 12.2 The Trustees shall cause true accounts for each Financial Year to be kept in accordance with generally accepted accounting practice of all receipts, credits, payments, assets and liabilities of the Trust Fund and all such other matters necessary for showing the true state and condition of the Trust. The accounts of the Trust shall be audited at least once in each year by a chartered accountant (not being a Trustee) appointed in that capacity by the Trustees.
- 12.3 Nothing in this clause 12 shall derogate from any other obligations of the Trustees in respect of accounts and audits.

13. PLANS AND REPORTING

Reporting

- 13.1 Without derogating from its duties under any enactment or at law, the Trustees have reporting responsibilities in relation to:
- (a) the Trust's performance; and
 - (b) the performance of any joint venture or other entity that conducts business using the Trust Fund or any part of the Trust Fund.

Annual Report

- 13.2 Each year the Trustees must prepare an Annual Report on the affairs of the Trust for the previous Financial Year, made available not less than twenty (20) Working Days before the next Annual General Meeting, that details matters relating to the Trust's performance in the previous year.

Annual Plan

- 13.3 Each year the Trustees shall prepare an Annual Plan for the next Financial Year that:
- (a) details matters relating to the Trust's projected performance and key strategies and vision;
 - (b) details the nature and scope of the activities proposed by the Trustees; and
 - (c) includes any proposals for the ongoing management of the Trust Fund having regard to the interests of all Members of Ngāti Tama ki Te Tau Ihu.

Documents to be available for inspection

- 13.4 The Trustees shall hold at the Te Waipounamu Trust's office and make available for inspection by any Member of Ngāti Tama ki Te Tau Ihu during normal business hours on any Working Day the Deed and any amendment to the Deed.
- 13.5 Any Member of Ngāti Tama ki Te Tau Ihu shall be entitled to obtain copies of the information referred to in clause 13.4 provided, however, that the Trustees shall be entitled to recover at their discretion all reasonable copying or postage costs.

No disclosure of sensitive information

- 13.6 For the avoidance of doubt but subject to the Trustees' reporting obligations in clauses 12 and 13.1 to 13.5 of this Deed the Trustees may at their sole discretion limit disclosure of any information about the activities or proposed activities of the Trustees and the Trust which the Trustees consider on reasonable grounds to be commercially or otherwise sensitive.

14. LIMITATION OF LIABILITY AND INDEMNITY

- 14.1 A Trustee shall only be liable for losses attributable to his or her dishonesty or wilful commission or omission of an act which he or she knows or should have known to be a breach of this Deed.
- 14.2 No Trustee is bound to take any proceedings against another Trustee for any breach or alleged breach of trust by that Trustee.
- 14.3 The Trustees are not liable for any loss or cost to the Trust by any breaches of trust or defaults of any attorney, delegate, manager, agent, secretary, employee or any other person (including, without limitation, any expert or professional person) appointed or engaged or employed by them, despite any rule of law to the contrary.
- 14.4 No Trustee is liable for any breach of trust or for any loss in relation to the Trustee's duties of investment merely because the investments of the Trust Fund are not diversified.
- 14.5 Without prejudice to the right of indemnity by law given to members of the Board, each Trustee is fully indemnified by and out of the Trust Fund (whether from capital or income) for any loss or liability that he or she incurs in the carrying out or omission of any function, duty, power or discretion of the Trustees under this Deed and in respect of any outlay or expenses incurred by him or her in the management and

administration of the Trust unless the loss or liability is attributable to his or her dishonesty or to the wilful commission or omission of an act which he or she knows or should have known to be a breach of this Deed.

- 14.6 The indemnity given by clause 14.5 extends to any loss or liability which a person incurs, after ceasing to be a Trustee, through the carrying out of any function, duty, power or discretion of the Trustees, whether the carrying out took place before, during or after the period in which the person was a Trustee.
- 14.7 In addition to the indemnity outlined in clause 14.5 the Trustees shall purchase appropriate indemnity insurance for each Trustee.
- 14.8 Notwithstanding clauses 14.1 to 14.7 all indemnities and insurance costs may be provided only to the extent that the Trustees in their discretion consider just and equitable.

15. CUSTODIAN TRUSTEE

- 15.1 The Trustees may by deed appoint any person as a Custodian Trustee of the Trust Fund or any part of the Trust Fund.
- 15.2 The provisions of the Trustee Act 1956 shall apply to the Custodian Trustee as if references in the Trustee Act 1956 to a custodian trustee were references to the Custodian Trustee appointed under clause 15.1, except as modified or extended as follows:
- (a) all or any of the Trust Fund may be vested in the Custodian Trustee as if the Custodian Trustee were sole trustee;
 - (b) the portion of the Trust Fund that is from time to time vested in the Custodian Trustee is the "Custodial Trust Fund", and the provisions of section 50 of the Trustee Act 1956 shall apply as if references in it to the trust property were references to the Custodial Trust Fund;
 - (c) the Custodian Trustee must:
 - (i) administer the Custodial Trust Fund in accordance with any direction in writing by the Trustees; and
 - (ii) execute all documents and perform all acts that the Trustees in writing direct.
- 15.3 The Trustees may, at any time and without needing to give any reason, revoke the appointment of any Custodian Trustee or otherwise act pursuant to the provisions of section 50 of the Trustee Act 1956.

16. GENERAL MANAGEMENT OF THE TRUST

Employees and contractors

- 16.1 The Trustees may appoint, remunerate and dismiss contractors to, the Trust, including a General Manager to perform general management and administrative duties for the Trust and on terms to be determined by the Trustees, provided that:
- (a) the Trustees may delegate powers of appointment, remuneration or dismissal, as the case may be, to the General Manager; and
 - (b) if a contractor to the Trust procures, causes, permits or otherwise makes a Trustee available to provide management services to the Trust, the appointment of the contractor shall be of no effect and neither that contractor nor the Trustee shall have any authority on behalf of nor make claim against the Trust unless, prior to the appointment, the full terms and conditions of the proposed appointment have been disclosed in writing to the Trustees, and the Trustees have voted, subject to clause 11.1, to approve the appointment on those terms.

Books and records

- 16.2 The books and records of the Trust shall be kept in the custody of the General Manager at the office of the Te Waipounamu Trust or at such other secure place determined by the Trustees.

Execution

- 16.3 All formal documents, agreements and contracts executed on behalf of the Trust shall be signed by at least two (2) Trustees provided, however, that any such execution has been approved at a meeting of Trustees or, where required, at a General Meeting of the Te Waipounamu Trust.

Office of the Trust

- 16.4 The office of the Trust shall be at such place as the Trustees from time to time determine and advertise to Members of Ngāti Tama ki Te Tau Ihu in any communications.

17. POWER OF AMENDMENT

- 17.1 Subject to clauses 17.2 to 17.4, any amendments to this Deed shall be made only with the approval of a Special Resolution of Registered Adult Members.
- 17.2 The Trustees have power to amend this Deed by a resolution passed by a majority of not less than 75% of Trustees:
- (a) to make any amendment which is of a formal, minor, procedural or technical nature;
 - (b) to correct a manifest error; or

- (c) to make any other modification which the Trustees in their absolute discretion consider necessary:
 - (i) as a result of any law change; or
 - (ii) to ensure that this Deed is consistent with the provisions in the Te Waipounamu Trust Deed, in particular, to make the definitions of *Ancestor of Ngāti Tama ki Te Tau Ihu, Member of Ngāti Tama ki Te Tau Ihu, or Ngāti Tama ki Te Tau Ihu* the same as those set out in the Te Waipounamu Trust Deed, and

if the Deed is amended pursuant to this clause 17.2, a Special Resolution pursuant to clause 17.1 is not required.

17.3 No amendment shall be made to the Deed which:

- (a) changes the Objects of the Trust so that the Trustees are no longer required to act for the benefit of Ngāti Tama ki Te Tau Ihu (considered both in the present and the future);
- (b) changes this clause 17.3;
- (c) changes the requirement for a Special Resolution in clause 17.1;
- (d) changes the definition of Major Transaction or Special Resolution; or
- (e) changes clause 18.

17.4 Notwithstanding any other terms of this Deed, no amendment to this Deed shall be made, and if purported to be made, shall be of no legal effect if the consequence of that amendment is to prejudice in a material manner the Trust's entitlement to charitable status under the law of New Zealand, or its entitlement to an income tax exemption under the Income Tax Act 2007 in respect of income derived by it. Prior to any resolution to amend this Deed being placed before the Trustees, competent advice shall be obtained by the Trustees confirming that the proposed amendments will not jeopardise the charitable status of the Trust or its entitlement to an income tax exemption on income derived by it.

18. DISSOLUTION OF TRUST

18.1 The Trust may be wound up if the Trustees decide that its objectives have been or can no longer practically be achieved or that dissolution is for any other reason desirable. Should the Trust be dissolved in accordance with this clause then any Property remaining after the due settlement of the affairs of the Trust and the payment of all debts and claims shall be paid over or distributed to one or more organisations approved by the Board as having charitable objects similar to those set out herein, or, if the Trustees are unable to make such decision, shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act.

19. RESETTLEMENT

- 19.1 The Trustees have power at any time by deed to settle or resettle upon trust, in any manner which in the opinion of the Trustees is for the advancement and benefit of the Members of Ngāti Tama ki Te Tau Ihu, the whole or any portion or portions of the capital or income of the Trust Fund provided that the resettlement:
- (a) is upon trust for the benefit of Ngāti Tama ki Te Tau Ihu;
 - (b) is on a basis that ensures the continued representation of Ngāti Tama ki Te Tau Ihu;
 - (c) is approved by the Trustees; and
 - (d) is approved by Registered Adult Members by Special Resolution at a General Meeting of the Te Waipounamu Trust.
- 19.2 Any settlement or resettlement under this clause 19 shall not transgress the rule against perpetuities as it applies to the Trust.

20. PERPETUITIES AND VESTING DAY

- 20.1 The Vesting Day for the Trust is the day that is eighty (80) 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 on trust for the Members of Ngāti Tama ki Te Tau Ihu then living as tenants in common in equal shares.

21. GOVERNING LAW

- 21.1 This Deed and the Trust are governed by and construed in accordance with the laws of New Zealand.
- 21.2 The courts of New Zealand have exclusive jurisdiction to decide all claims, actions or other proceedings in connection with the Trust or this Deed.

EXECUTION

Executed as a Deed

SIGNED by **Moetu Tuuta**
as Establishment Trustee
in the presence of

) Moetu Tuuta
)
)

Westrupp
Witness Signature

Name: Jo-Anne Westrupp
Occupation: Kaihau
Residence: Nelson

SIGNED by **Judith Billens**
as Establishment Trustee
in the presence of

) Judith Billens
)
)

Westrupp
Witness Signature

Name: Jo-Anne Westrupp
Occupation: Kaihautu
Residence: Nelson

SIGNED by **Margaret Little**
as Establishment Trustee
in the presence of

) M R Little
)
)

Westrupp
Witness Signature

Name: Jo-Anne Westrupp
Occupation: Kaihautu
Residence: Nelson

SCHEDULE 1: POWERS OF TRUSTEES

1. The Trustees shall have the following powers in accordance with clause 5.1 of this Deed:
 - (a) to invest all or any of the Trust Fund in any Property as permitted by this Deed and in accordance with the laws of New Zealand;
 - (b) to accumulate the income of the Trust Fund;
 - (c) to receive, hold and manage any Property received or obtained by the Trust for the benefit of Ngāti Tama ki Te Tau Ihu;
 - (d) to distribute benefits directly or indirectly to Members of Ngāti Tama ki Te Tau Ihu;
 - (e) to carry on or form any business;
 - (f) to enter into contracts for the provision of services;
 - (g) to acquire, hold and dispose of Property;
 - (h) to receive gifts and donations;
 - (i) to receive and grant leases of Property;
 - (j) to enter into, settle and amend derivative transactions;
 - (k) to apply or set aside any part of the Trust Fund towards the payment of any liabilities or obligations incurred or suffered by the Trustees or falling due in future;
 - (l) to pay any costs or expenses incurred in the course of the Trustees discharging, carrying out or exercising any of their duties and powers;
 - (m) to pay all insurance premiums, rates, taxes, rents and other outgoings in respect of the Trust Fund;
 - (n) in relation to any share or other security that is part of the Trust Fund:
 - (i) to exercise any voting or controlling or decision-making rights or powers attaching to it; and
 - (ii) to concur in any reconstruction or amalgamation or in any modification of the rights of the holders of, or of others interested in, that share or security and generally to act in respect of it;
 - (o) to advertise the Trust and the Objects of the Trust;
 - (p) to appoint or engage any contractors to the Trust;

- (q) to appoint or engage any financial advisor, lawyer, accountant or other expert or professional person and to act upon any opinion, advice or information obtained therefrom;
- (r) to open and maintain a bank account and to decide who will be the signatories to that account;
- (s) to determine all questions and matters of doubt which may arise in the course of the management, administration, investment, realisation, distribution, liquidation, partition, resettlement or winding up of the Trust Fund or the Trust, or to apply for directions under section 66 of the Trustee Act 1956; and
- (t) generally to do all such other lawful acts and things that are incidental or conducive to the attainment of the Objects of the Trust.

SCHEDULE 2: MEETINGS OF TRUSTEES

1. The Trustees shall meet to conduct business at such intervals as the Trustees may decide, but not less frequently than six times in each year. The Trustees may invite to such meetings whoever the Trustees may decide will assist with their deliberations.
2. Except as expressly provided otherwise by this Deed, any matter requiring decision at a meeting of the Trustees shall be decided by a simple majority of the Trustees present and voting on the matter.
3. In the event of an equality of votes the Chairperson shall not have a second or casting vote.
4. Except as expressly provided otherwise by this Deed a resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and constituted. The resolution may consist of several like documents each signed by one or more Trustees. Any such document sent by a Trustee by facsimile or other electronic means shall be deemed to have been duly signed by that Trustee.
5. Any Trustee may at any time give written notice convening a meeting of the Trustees. Such notice shall be given by hand delivery, post facsimile or electronic means to each Trustee at least seven (7) Working Days before the date of the proposed meeting. The notice shall state the time and place of the meeting and, in sufficient terms, the nature of the business to be transacted.
6. The requirement for notice of a meeting may be waived if all the Trustees who are at the time entitled to receive notice of a meeting give their written consent to such a waiver.
7. The quorum necessary for the transaction of the business of the Trustees shall be two Trustees.
8. The Trustees may act notwithstanding any vacancy in their body, but if and so long as the number of Trustees holding office is less than the number fixed by paragraph 7 of this Schedule, the continuing Trustees may act only for the purposes of procuring the election of new Trustees to fill the vacancies.
9. The contemporaneous linking together of the Trustees by telephone or other electronic means of communication shall constitute a meeting of the Trustees and the provisions of this Schedule 2 shall apply to such communications provided the following conditions are met:
 - (a) Each Trustee shall be entitled to notice of such a meeting and to be linked by electronic means for the purposes of the meeting.
 - (b) Each of the Trustees taking part in the meeting must be able to hear each of the other Trustees taking part during the whole of the meeting.
 - (c) At the commencement and conclusion of the meeting the Chairperson must call upon each Trustee to acknowledge his or her attendance.
10. A Trustee may not withdraw from a meeting unless that Trustee has previously obtained the express consent of the Chairperson to do so.

11. A Trustee shall be conclusively presumed to have been present and to have formed part of the quorum of a meeting at all times during the meeting unless that Trustee has previously obtained the express consent of the Chairperson to withdraw from the a meeting.
12. Minutes of the proceedings of all meetings of the Trustees shall be recorded in a book to be kept for that purpose by the General Manager and shall be signed by the chairperson of the meeting at which the minutes are confirmed. Every such minute purporting to be so signed shall be prima facie evidence of the matters recorded. A minute of the proceedings of any meeting by telephone or other electronic means of communication shall be sufficient evidence of the observance of all necessary formalities if the minute of the meeting signed by the chairperson of the meeting shall contain a certificate to that effect.
13. If a quorum is not present within twenty (20) minutes after the time appointed for any meeting, the Chairperson may adjourn the meeting to another time.
14. Any meeting may be adjourned if the Trustees present so resolve. No notice will be necessary for the resumption of adjourned meetings except to Trustees not present at the adjourned meeting.
15. All acts done by any meeting of the Trustees or of any subcommittee shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of a Trustee or person co-opted to a subcommittee, or that a person was disqualified, be valid as if every such person had been duly appointed and was qualified to act.
16. If, in the opinion of the Chairperson, any meeting of Trustees becomes so unruly, disorderly or protracted that the business of the meeting cannot be conducted in a proper and orderly manner the Chairperson may, without giving any reason, direct that any uncompleted item of business be put to a vote without discussion and may adjourn the meeting.
17. Subject to this Deed, the Trustees may regulate their meeting procedures as they see fit.

SCHEDULE 3: FORM OF WRITTEN NOTICE FOR APPOINTMENT OF NEW TRUSTEE

Memorandum of appointment of new trustees

Memorandum of the choice and appointment of new trustees of the following property, namely the Ngāti Tama ki Te Tau Ihu Cultural Trust, at a meeting of the Trustees of Ngāti Tama ki Te Waipounamu Trust duly convened and held for that purpose at or in *[name of place]*, on *[date]*, and of which *[name of chairman]* was chairman.

Names and description of all of the trustees on the deed of trust or last appointment of trustees made on *[date]*:

[name], of *[place]*
[name], of *[place]*

Names and description of all of the trustees in whom the said property now becomes legally vested:

First : old continuing trustees –
[name], of *[place]*
[name], of *[place]*

Second : new trustees now chosen and appointed –
[name], of *[place]*
[name], of *[place]*

Dated: []

[Name]

Chairman of the said meeting

Signed by the said *[name of chairman]*, as chairman of the said meeting in the presence of:

Name:
Occupation:
Town of residence:

Name:
Occupation:
Town of residence: