

IN THE HIGH COURT  
AT AUCKLAND

CIV-2018-AKL-000

I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE

UNDER THE

Resource Management Act 1991 ("**Act**")

IN THE MATTER OF

an appeal under section 299 of the Act

BETWEEN

**SKP INCORPORATED** a duly incorporated society under the Incorporated Societies Act 1908, with purposes including environmental protection, having its registered office at 4 Waiata Road, Onetangi, Waiheke Island 1081

**Appellant**

AND

**AUCKLAND COUNCIL** a unitary authority established under the Local Government (Auckland Council) Act 2009, having its head office at 35 Graham Street, Auckland Central

**Respondent**

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**AFFIDAVIT OF DAVID IAN ROEBECK FOR THE NGATI PAOA TRUST BOARD  
IN SUPPORT OF APPLICATION TO EXTEND TIME FOR FILING AN APPEAL**

**31 AUGUST 2018**

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Counsel instructed:

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**WAIHEKE ISLAND 1840**

**AND**

**KENNEDY POINT BOAT HARBOUR LIMITED**, a duly registered company, carrying on business as a marina developer, having its registered address at 32 Audrey Road, Takapuna, Auckland

**Applicant for consent**

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2018-AKL-000**

**I MUA I TE KOOTI TAIAO O AOTEAROA**

**UNDER THE** Resource Management Act 1991 ("**Act**")

**IN THE MATTER OF** An application for orders for rehearing under  
section 294 of the Act

**BETWEEN** **SKP INCORPORATED**  
**First Applicant**

**AND** **AUCKLAND COUNCIL**  
**Respondent**

**AND** **KENNEDY POINT BOAT HARBOUR LIMITED**  
**Applicant for consent**

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**AFFIDAVIT OF DAVID IAN ROEBECK FOR THE NGATI PAOA TRUST BOARD  
IN SUPPORT OF NOTICE OF MOTION FOR REHEARING**

**31 AUGUST 2018**

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Counsel instructed:

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**WELLINGTON**

I, **David Roebeck**, Principal Officer – Ngati Paoa Trust Board (“**Board**”), of 102 Vineyard Rd, Te Kauwhata, solemnly and sincerely swear:

### **Introduction**

1. I am the “Principal Officer” of the Board and have held this position since March 2017.
2. My role of Principal Officer is defined in Part 6 of the Board’s Trust Deed. Clause 34(2) states that the Principal Officer:
  - ... is accountable to the Trustees of the Trust for the proper performance or exercise of all responsibilities, duties and powers delegated to him or her by the Trustees, or imposed or conferred by this deed or by any enactment, regulation or bylaw.
3. The role generally involves the day to day management of the Board’s affairs as delegated by the Trustees.
4. I am authorised to give this affidavit on behalf of the Board.
5. I also have the following experience:
  - (a) 1981-1990 Jarvis Equipment - National Sales Manager
  - (b) 1990 – 1993 Greystoke Industries – General Manager
  - (c) 1993 – 2018 Self Employed – Consultant / Supplier

### **Purpose of this affidavit**

6. The purpose of this affidavit is to record factual matters that I understand may be relevant to two proceedings to be filed by SKP Incorporated (“**SKP**”), namely:
  - (a) an application to the Environment Court under section 284 for orders for a rehearing of *SKP Incorporated v Auckland Council* [2018] NZEnvC 81; and
  - (b) an appeal to the High Court under section 299, together with an application under section 306 to extend the time period for filing that appeal.
7. The Board supports both applications, and intends to join the application for rehearing as a section 274 party, on the basis that it has an interest in the proceedings that is “greater than the interest that the general public has”. If the Environment Court were to order a rehearing, the Board would seek to appear in front of that Court as a witness called by SKP.
8. In respect of the High Court proceedings, the Board does not intend to join those proceedings, but, if the time period to appeal is extended, and the appeal is successful and matter referred back to the Environment Court, the Board would also seek to appear in front of that Court as a witness called by SKP.

### The key issue – mandate

9. The key issue is the Board’s mandate to speak for Ngati Paoa in respect of resource management (and other matters), as compared to the Ngati Paoa Iwi Trust (“**Trust**”).
10. In short:
  - (a) The Board, incorporated as a charitable trust in 2004, was given mandate in respect of RMA and LGA matters by the Maori Land Court, in 2009. Those orders have not been overturned, and the Board has not surrendered or transferred its mandate (including to the Trust). The Board was further confirmed on 29 June 2011 as the mandated entity to engage (through appointed negotiators) with the Crown on behalf of Ngati Paoa to settle Ngati Paoa’s historical Treaty claims. The Board continues in that role today.
  - (b) In comparison, the Trust was established in 2013 as a post settlement governance entity (“**PSGE**”) to receive and administer the settlement assets. While a deed of settlement has been initialled (in August 2017), it requires ratification and, once ratified, settlement legislation to be enacted before the Trust will receive settlement assets to administer.
  - (c) Accordingly, the Trust has no recognised role or mandate to speak for Ngati Paoa in respect of RMA matters, including resource consents. That privilege lies with the Board.

### The Board

11. The Board was incorporated in 2004 as a board under the provisions of the Charitable Trusts Act 1957. A copy of the Board’s Trust Deed is attached as **Exhibit A**.
12. The Board’s mandate as representative authority for Ngati Paoa in respect of RMA and LGA matters was confirmed by the Maori Land Court (“**MLC**”) in 2009. A copy of that decision is attached as **Exhibit B**. The need for mandate orders from the MLC arose because at the time there were two entities claiming to have the right to represent Ngati Paoa as its governing body, the Ngati Paoa Whanau Trust (“**Whanau Trust**”) and the Board.
13. In confirming the Board’s mandate, the MLC observed at [6] that the Whanau Trust was “not set up structurally to represent Ngati Paoa, its objectives are wide and it does not have as a primary objective to represent Ngati Paoa”. The MLC went on to state, at [9]-[10]:
 

Between February 2002 and 10 December 2004 various Ngati Paoa people set about the task of forming an entity which they say should now be a single governing entity for Ngati Paoa.

On 10 December 2004 the Ngati Paoa Trust Board, a Charitable Trust Board incorporated under the Charitable Trusts Act 1957 was registered with the Registrar of Incorporated Societies (“the Trust Board”).
14. At [40], the MLC made a determination and order pursuant to section 30(1)(b) of Te Ture Whenua Maori Act 1993 that (emphasis added):

... the Ngati Paoa Trust Board is the appropriate representative of Ngati Paoa in relation to:

- a) **The Resource Management Act 1991**; and
- b) The Local Government Act 2002.

15. This order has not been overturned or otherwise replaced.
16. In 2011, the Board was confirmed as having mandate to represent Ngati Paoa in its settlement negotiations with the Crown. The Minister for Maori Affairs and the Minister for Treaty Negotiations recognised this in a letter dated 29 June 2011, stating:

We have been advised that the Ngati Paoa Trust Board has the support of the Ngati Paoa claimant community and are therefore the appropriate representatives of Ngati Paoa to negotiate a comprehensive settlement of Ngati Paoa's historical Treaty settlement claims with the Crown. We are, therefore, pleased to recognise the mandate of the Ngati Paoa Trust Board for this purpose.

17. A copy of the 29 June 2011 letter is attached at **Exhibit C**.
18. This mandate was again confirmed in a further letter from the Minister for Treaty Negotiations dated 13 May 2016, where the Minister stated:

... the Ngati Paoa Trust Board still holds the mandate to represent the claimant community of Ngati Paoa in historical Treaty of Waitangi negotiations with the Crown.

19. A copy of the 13 May 2016 letter is attached at **Exhibit D**.
20. The Board continues its role for Ngati Paoa in respect of settlement negotiations to this day. It also wishes to continue to be recognised as the mandated authority for Ngati Paoa in RMA matters, but that is being hampered by the refusal of Auckland Council to recognise the Board's mandate (at this point). I explain this further below.

### **The Trust**

21. The Trust was established in 2013 as a post settlement governance entity, in order to meet the requirements prescribed by the Crown. A copy of its deed of trust is attached as **Exhibit E**. I note that it is referred to as "Final Draft", and I understand it to be the final version.
22. The Trust's purpose is confirmed in Preamble C, as follows (emphasis added):

In order to meet the requirements prescribed by the Crown the Ngāti Paoa Trust is establishing a single post settlement governance entity **to receive and administer the settlement assets received** as part of Ngāti Paoa's historical Treaty of Waitangi settlement to be agreed with the Crown

23. The Trust's purpose is further stated in clause 2.4:

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

24. While “additional” purposes are then stated, including a “catch-all” clause (e), as follows, there is no statement of purpose of representing Ngati Paoa in respect of RMA matters:

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

- (a) promote the educational, spiritual, economic, social and cultural advancement or well-being of Ngāti Paoa and its Members;
  - (b) provide for the on-going maintenance and establishment of places of cultural or spiritual significance to Ngāti Paoa and its Members;
  - (c) promote the health and well-being generally, including of the aged or those suffering from mental or physical sickness or disability of Ngāti Paoa and its Members;
  - (d) undertake commercial activities to support the object and purpose of the Trust;
  - (e) any other purpose that is considered by the Trustees from time to time to be beneficial to the Trust and its Members.
25. I accept that the Trust could, in theory, “take over” representation from the Board for Ngati Paoa on RMA matters. However, that has not occurred. The Board continues to hold, under the authority of the 2009 MLC order that mandate, which has not been set aside. The Board has also not relinquished or transferred that role.
26. In many respects, as a PSGE, the Trust has no role until settlement has occurred and it has received Ngati Paoa’s settlement assets to administer.
27. In my experience, it is not uncommon, however, for entities, once established, to search for a role, or potentially for individuals (or a small number of individuals) to take advantage of uncertainty or misunderstanding about what role various entities have.

#### **Auckland Council and the Board**

28. My understanding is that until around 2013-2014, Auckland Council recognised the Board as the mandated authority to represent Ngati Paoa for RMA matters.
29. This included the early stages of the Stony Ridge quarry expansion proposal sought by Auckland Council. The Council sought consent in 2012.
30. At that point, an objection was lodged by Lucy Tukua on behalf of the Board, of which she was a trustee at that time. The Council’s resource consent application was declined, in large part because of the Board’s objections on behalf of Ngati Paoa.
31. However, in 2013, an agreement was reached between Auckland Council and the *Trust* that the *Board’s* objection would be removed, and a monetary settlement was agreed involving a lump sum and an annual payment from the Council to the Trust. Consequently, after reaching agreement with the Trust, consent was granted by the Environment Court in November 2013.

32. By the time the agreement was reached between Auckland Council and the Trust, Ms Tukua had resigned as a trustee of the Board. The agreement was, however signed by her, as well as Morehu Wilson (who was never a trustee of the Board).
33. The Board investigated its options in 2014 to challenge what had happened. Its advice was that there was a basis to make claims against those involved, including for monetary compensation. I am not intending to waive privilege by referring to this advice – but simply to demonstrate that the Board took the issue very seriously at the time. The Board’s view is that Ngati Paoa does not trade off waahi tapu for monetary gain and it ultimately did not pursue legal action in respect of what happened.
34. However, the Board sought to have the Council comply with the Orders of the Maori Land Court by recognising the Board, rather than the Trust, as the mandated authority for RMA purposes. The Council rejected the Board’s position in a letter of 18 July 2014, stating:

I believe council has acted in good faith, and on the face of the meetings held with representatives of the Ngati Paoa Iwi Trust in October 2013 and with the documentation provided have accepted that entity as the mandated body to deal with the day to day operations on behalf of Ngati Paoa and work with Auckland Council.

Therefore, Council, including its CCOs will continue to recognise the Ngati Paoa Iwi Trust as the mandated body.

35. A copy of the letter is attached as **Exhibit F**. Accordingly, from at least earlier than July 2014, the Council knew that the Board was the mandated authority for Ngati Paoa in respect of resource management matters. I am unaware of the Council ever having given the Board the “documentation provided” to the Council by the Trust which seemed to convince the Council of the Trust’s mandate over that of the Board.
36. For a number of reasons, the Board did not pursue at that point its objection to the Council’s position. This included the fact that a number of the trustees of the Board resigned, were removed for non-attendance, or had reached the end of their four-year term. In addition, the Board had to focus its limited resources on other matters, such as its settlement negotiations with the Crown. (I note also that new Board trustees were appointed in 2017, following orders of the High Court directing this to occur. A copy of the 14 October 2018 decision is attached as **Exhibit G**.)
37. On 3 July 2017, once the new trustees of the Board were in place, the Board wrote again to the Council. In that letter the Board raised many of the concerns I have recorded above, stating:

We as trustees of the Ngati Paoa Trust Board feel humiliated by this underhand act of deception [ie the way the Council settled the Stony Ridge consent issues with the Trust] as we believe wahi tapu is just that, and we the Ngati Paoa do not use it for monetary gain.

We are therefore asking the Auckland Council to rectify this act of misappropriation by having the Ngati Paoa Iwi Trust return the lump sum and subsequent annual payments already paid by the council as the PSGE does not have the authority to receive such a settlement.

Until our settlement claims are finalised we would expect all correspondence relating to Ngati Paoa to be directed to this board.



38. A copy of the 3 July 2017 letter is attached as **Exhibit H**. This letter was sent in advance with a meeting between the Board and the Council (including Stephen Town, the Chief Executive). We made it plain to the Council that the Board was the mandated authority for Ngati Paoa in respect of RMA and local government matters and gave the Council another copy of the 2009 MLC decision. That did not seem to make any difference.
39. In other words, before the KBPL application had been determined (and before the Environment Court hearing), the Council was again aware of the Board's concerns about the Council's recognition of the Trust as having mandate (even if the Council did nothing to try to resolve the issue).
40. I understand, however, that following the 2014 position adopted by the Council (ie that it would deal with the Trust in respect of RMA matters), the Council amended all references including on its website for consultation with iwi to direct any consultation with Ngati Paoa to the Trust (ie *not* the Board). That continues to be the case today, with the Council's website listing the contacts for consultation with Ngai Paoa as the Trust contacts.
41. I am certain it is for this reason that the Board was never contacted by the applicant, directly served, or otherwise notified of the KBPL application.
42. After becoming aware that Council had once again consulted with the Trust instead of the Board in respect of resource management matters affecting Ngati Paoa, on 9 July 2018 the Board sent a letter to Council again restating the Board's position as the mandated authority of Ngati Paoa, and demanding that Council immediately comply with the Board's mandate. A copy of the Board's letter dated 9 June 2018, is attached as **Exhibit I**.
43. While the Board has still not received a formal response from Auckland Council to its letter of 9 June 2018, more recently, the Board has made some progress with the Council.
44. The Board met with the Council on 7 August 2018 and again on Tuesday, 21 August 2018. A copy of the Board's letter dated 27 August 2018 confirming the Board's understanding of the position put forward by Council at the meetings is attached as **Exhibit J**. My understanding is that the Council will soon provide a formal response providing an update on Council's position on these issues. I provide a final update on engagement with the Council at the end of this affidavit.

#### **The Board's discovery of the KBPL application**

45. As I have indicated above, the Board was not consulted, directly notified, served or otherwise made aware of the KBPL application. While the application may have been publicly notified, the Board simply did not become aware of it until around April 2018.
46. It was around that time that I saw an article in the newspaper that suggested that Piritahi Marae was concerned that Ngati Paoa, represented by the Trust, was supporting the KBPL application – when the Marae was opposed to the application.
47. The Board was very concerned, including because the Trust was once again claiming to represent Ngati Paoa, and compromise the Ngati Paoa position against impacts on our waahi tapu and other cultural values. I

would not be surprised if the “agreement” reached between the Trust and KBPL involved some financial or monetary exchange, in the same way that occurred with the Council in respect of the Stony Ridge quarry. That is a significant concern to the Board. As I have stated above, Ngati Paoa does not trade impacts on its waahi tapu and other taonga.

48. I started to make investigations into the application, and sent a facebook messenger message to SKP Inc, who I understood were the main party opposing the marina.
49. After I sent the messenger message to SKP Inc, I received a phone call from Sebastian Cassie of SKP Inc. He was interested in understanding the Board’s position, given that the Piritahi Marae has supported SKP, and SKP was sensitive to the effects of the marina on cultural values.
50. The Board was also careful about deciding how it should proceed, particularly in light of how it had been ignored by the Council in the previous times that it had raised its concerns.
51. In accordance with tikanga, the Board wished to hold hui, and meet face to face with key people, including SKP, Piritahi Marae, and the Council:
  - (a) In respect of SKP, the Board wanted to understand what its options were, and if SKP’s objectives and any approach was something that the Board was comfortable supporting. Several meetings occurred to establish the relationship and understanding. The Board formed the view that SKP was genuine in its concerns, including, about impacts on cultural values.
  - (b) In respect of the Piritahi Marae, the Board met several times. First it was to apologise for the offence and disappointment they felt in “Ngati Paoa” opposing the Marae in its purported support for the application. The Board also wished to better understand the Marae’s concerns on the cultural impacts of the proposal.
  - (c) In respect of the Council, the Board was still hopeful that it might change its position. As I stated above, the Board has now met with the Council twice recently (7 and 21 August 2018) with its understanding recorded in Exhibit I.
52. While the Board is still hopeful for progress to be made direct with the Council, it formed the view that it would support SKP, to ensure that the Board can put forward its position on mandate directly, and ensure that the 2009 MLC order is respected. The Board is also concerned that the Court is likely to have been misled or misrepresented as to the position of Ngati Paoa in relation to its alleged support of the marina. Clearly, there has been no actual consultation with Ngati Paoa through its mandated representative.

### **The Board’s support for SKP’s applications**

53. Accordingly, the Board agreed to support SKP’s application for rehearing and an appeal to the High Court. This is for a number of reasons, including:
  - (a) The Board wishes to exercise its right to participate in the consent process, as mandated authority, for Ngati Paoa. If the Environment Court decision stands and is not re-visited, then

Ngati Paoa, through its mandated authority, will not have had the ability to participate and put its views forward as kaitiaki for the registered beneficiaries that the Board represents.

- (b) Even more concerning, is that Ngati Paoa's concerns will have been represented (or misrepresented) by another entity, the Trust, claiming mandate to speak for Ngai Paoa.
  - (c) This is an untenable situation and totally contradicts the mandate we hold as kaitiaki for Ngati Paoa and our mana whenua interests on Waiheke.
  - (d) The Board is also genuinely concerned on behalf of Ngati Paoa on the effects of the KBPL proposal on cultural values.
  - (e) As an example, when Waiheke was occupied by Ngati Paoa, we didn't just reside in the populated areas of today, we occupied the whole island and different hapu buried their dead predominantly on the coastline. More koiwi than ever before are now being exposed around the coastline of Waiheke. The foreshore on the island is a waahi tapu environment and any disturbance in these areas is likely to uncover our tupuna. Modifications made and consequences of the KBPL proposal will impact on that waahi tapu.
  - (f) We also have concerns about the mauri of the waters, and how the KBPL proposal will impact on that mauri, with its disturbances, discharges and the like. That is an effect that can be related to, but is not dependent on western science saying about ecological effects.
  - (g) Due to the procedures followed by Council and the Trust, we as the kaitiaki for Paoa descendants have been unable to present the views of the iwi we represent.
  - (h) The Board also wishes to support Piritahi Marae, given that the Marae also opposes the application.
54. As I indicated at the outset, if the consent application is reheard in the Environment Court (as a consequence of the application for rehearing or the High Court appeal), the Board will seek to be heard in its opposition, as a witness called by SKP. Ideally, the Board would have submitted, and joined the substantive proceedings as a section 274 party. However, it is probably too late now for joining the substantive proceedings (if reheard). In contrast, the Board understands, if there is a rehearing, that there is no jurisdictional impediment to it being called as a witness for the SKP case.

#### **Latest update**

55. I have had very recent communications with the Council, namely Phil Wilson, the Council's Governance Director, including yesterday, and this morning. I had stressed to Mr Wilson that the Board was becoming increasingly frustrated and if it did not receive appropriate acknowledgement of its mandate for Ngati Paoa, at least in terms of the 2009 MLC Order, the Board would need to look at its options for expressing its concerns and securing recognition of its mandate further.

56. Initially, yesterday, Mr Wilson assured me that that I would have an email by 8pm yesterday (ie 30 August 2018) advising of the Council's position, to be followed up today with a more formal letter.
57. Instead, Mr Wilson sent me a text as he did not have my email to hand. He apologized that the Council had not been able to get its "agreed position (requiring legal settlement and iwi relationship input) sorted" that evening, and indicated that the Board would receive a written answer by close of business today (ie 31 August 2018).
58. This morning I replied by text including stating the following:
- Good morning and Thank you for your message.
- The Board are furious and extremely disappointed at this further delay. They feel that Council (who has already had two months to send a reply) are simply continuing to disrespect and ignore this very serious matter. They were about to call an urgent meeting to move forward today and also call a press conference first thing this morning. However, I have managed to get the board to agree to hold off doing anything further until 2pm today - as I have informed them that I do believe you are genuine in your view that Auckland Council will concede that they have been dealing with the wrong mandated authority and will immediately begin to recognise and respect the Boards exclusive mandate and the order of the Maori Land Court.
59. Mr Wilson replied confirming that the Board would have "something before 2pm", but expressing reservations if we had an expectation of "an exclusive mandate – presumably in regards to spanning the full gamut of RMA, local government, treaty settlement realm. But that will be covered off in a response this afternoon."
60. As I have made clear from the above, the 2009 MLC order conclusively determined the Board's mandate in RMA and local government matters. The Crown has also recognised the Board's mandate for treaty settlement purposes as also explained above. So I am not sure why the Council has reservations in this regard.
61. Mr Wilson, at 20 minutes to 2pm, sent me a further text that said he had left the letter to be finalised by staff. While I would have liked to wait until receiving the letter, the Council has not delivered when it said it would (on several occasions), and I needed to print this affidavit and swear it, so that we can move this matter forward. I remain hopeful of a positive outcome and relationship with the Council recognizing the Board's mandate. I can update the Court accordingly in due course.

Sworn at Auckland )  
 This 31st day of August 2018 )  
 before me: )

\_\_\_\_\_  
 David Ian Roebeck

\_\_\_\_\_  
 Solicitor of the High Court of New Zealand



**SIGNATURES OF THE TRUSTEES WHO ARE MAKING APPLICATION  
TO BE INCORPORATED AS A BOARD:**

**Andy ANDREWS**

Coast Rd R03  
(residential address)

Andrews  
(signature)

Kaiaua Pkero  
(occupation)  
Kaumatua

**Tipa Shane COMPAIN**

31A Beunruk Rd  
(residential address)

[Signature]  
(signature)

Social Entrepreneur  
(occupation)  
(Self Employed)

**Laura Hariata GORDON**

365 Do-buck Rd  
(residential address)

[Signature]  
(signature)

Massey, - Kuia  
(occupation)

**George Tearoha KAHU**

10 Witten Cres  
(residential address)  
Bishopdale

[Signature]  
(signature)

Public Servant / DOL  
(occupation)  
Department of Labour

[Signature]

[Signature]

[Signature]

[Handwritten notes and signatures]  
K-91

**Pirihira KAIO**

11 Park Rd. Surfside, Waikato  
(residential address)

Pirihira  
(signature)

Administrator  
(occupation)

**Anahera SADLER**

4 Matene Place, Otaki  
(residential address)

KAIKO

TE WANANGA-O-RAUKAWA  
(occupation)

Anahera  
(signature)

**Ripeka Patene Pokaitara STOUT**

6 Pohutukaka Ave KAIKUA  
(residential address)

Retired

(occupation)

Ripeka  
(signature)

**Nigel Wiremu Taipurutu  
POKAITARA-THOMPSON**

10 A BEDFORD ST  
(residential address)

Barnell

Health Care Worker  
(occupation)

Nigel  
(signature)

LNK

B

3

3

@

3  
H. K. G. T. - P.S.

**Glen Andrew (Joe) TUPUHI**

16 RIVERVIEW TERRACE HAMILTON  
(residential address)

[Signature]  
(signature)

ASSISTANT GENERAL MANAGER  
(occupation)

**Kelvin Graham (Pahi) TUPUHI**

90 Tekura Kaupapa O Rangiriri  
(residential address)

K. Tupuhi  
(signature)

\_\_\_\_\_  
(occupation)

**WITNESS TO ALL OF THE ABOVE SIGNATURES:**

**David Stuart GRAY**

41 ANZAC RD. TUKEROHE  
(residential address)

KAITIATAKI - A - POKE  
(occupation)

[Signature]  
(signature)

[Handwritten mark]

[Handwritten mark]

[Handwritten marks]



**APPLICATION FOR INCORPORATION OF TRUSTEES AS A BOARD**

I, Tipa Shame Compain  
of Auckland

do solemnly and sincerely declare:

1. THAT I am one of the trustees of The Ngāti Paoa Trust under the Deed of Trust creating the said Trust and am one of the applicants under the Application for Incorporation submitted herewith;
2. THAT there are no trusts (other than those set out in the said Deed of Trust) under which the said applicants hold any property.

AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Oaths & Declarations Act 1957.

[Signature]

Declared at Auckland this 6<sup>th</sup> day of December 2004  
before me:

[Signature]

( Justice of the Peace / Solicitor / Notary Public )

Karl Trotter  
Barrister & Solicitor of the High Court


**CERTIFIED COPY OF RESOLUTION**

*The following resolution was passed at a duly-constituted meeting of The Ngāti Paoa Trust held at Auckland on 20 November 2004:*

**THAT, pursuant to section 9 of the Deed of Trust creating The Ngāti Paoa Trust, application for incorporation under the Charitable Trusts Act 1957 be made to the Registrar of Incorporated Societies at Auckland.**

**CERTIFIED BY:**

Tipa Shame Compair  
(full name)

  
(signature)

31A Beaubank Rd, Kelston  
(residential address)

29/11/2004  
(date)

Consultant  
(occupation)

# DEED OF TRUST

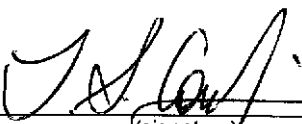
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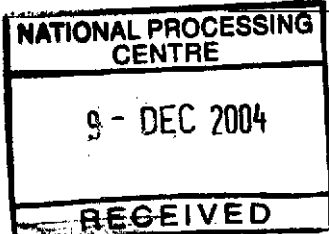
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## THE NGĀTI PAOA TRUST

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I, Tipa Shane Compain, certify that this is a true and correct copy of the Deed of Trust creating The Ngāti Paoa Trust that was executed by the trustees on 20 November 2004.

 29/11/2004  
(signature) (date)  
31 A Beambank Rd Consultant  
(address) (occupation)  
Kelston  
(address)



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# DEED OF TRUST

made this                      day of                      2004.

## PARTIES

Andy **ANDREWS**; and  
Tipa Shane **COMPAIN**; and  
Laura Hariata **GORDON**; and  
George Tearoha **KAHI**; and  
Pirihira **KAIO**; and  
Anahera **SADLER**; and  
Ripeka Patene Pokaitara **STOUT**; and  
Nigel Wiremu Taipurutu **POKAITARA-THOMPSON**; and  
Glen Andrew (Joe) **TUPUHI**; and  
Kelvin Graham (Pahi) **TUPUHI** ("the Trustees")

## INTRODUCTION

- A The Trustees wish to establish a trust for the charitable purposes set out in this deed.
- B The Trustees have paid into a joint bank account in the name of the Trustees the sum of ten dollars (\$10.00) to be held by the Trustees upon the trusts, and with and subject to the powers and discretions, set out in this deed.
- C It is anticipated that further assets may from time to time be purchased, transferred to, or otherwise acquired by the Trustees for the purposes of the Trust.
- D This deed—
1. specifies principles of governance and stewardship with which the Trustees are to comply; and
  2. prescribes procedures to be followed in the governance and management of the Trust; and

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Nigel Wiremu Taipurutu POKAITARA-THOMPSON

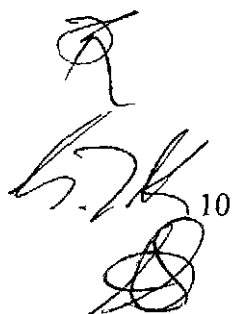
## TRUST DEED

3. preserves the role of tikanga in the governance and management of the Trust; and
4. facilitates the participation of Ngāti Paoa in the making of choices by the Trustees concerning the stewardship of jointly-owned assets and jointly-held rights and interests; and
5. provides a structured framework for transparent decision-making by the Trustees; and
6. promotes the accountability of the Trustees to Ngāti Paoa; and
7. provides for dispute-resolution procedures.

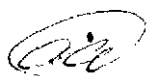
### EXPLANATORY NOTE

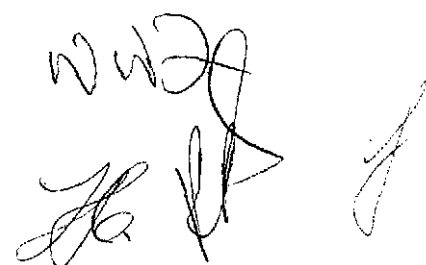
*This Part of the deed explains how The Ngāti Paoa Trust is intended to comply with whatever legislation may be passed by Parliament relating to the distribution of Māori fisheries settlement assets.*

- A In November 2003, the Minister of Fisheries introduced the Māori Fisheries Bill 2003 into the New Zealand House of Representatives.
- B The purpose of the Māori Fisheries Bill 2003 is to implement the agreements made in a certain Deed of Settlement dated 23 September 1992 relating to the allocation of Māori fisheries settlement assets.
- C One of the main elements of the Māori Fisheries Bill 2003 is a set of rules and criteria with which iwi organisations must comply in order to receive settlement assets.
- D At the time of signing of this present deed, the Māori Fisheries Bill 2003 is still before the House, so the exact nature and content of the rules and criteria have yet to be determined.
- E However, it is the intention of the parties to this deed that the Trust created by this deed will comply with the rules and criteria contained in the Māori Fisheries Bill 2003 in whatever form the Bill may finally be enacted and with whatever provisions may be included in the Bill in relation to mandated iwi organisations as defined in the Bill.
- F Therefore, and subject always to the charitable purposes of the Trust set out in section 7,—
1. in this deed, **Māori fisheries legislation** means the Māori Fisheries Bill 2003 in whatever form the Bill may finally be enacted and with whatever provisions it may finally contain, including related regulations and provisions; and
  2. the provisions of this deed are to be interpreted in a manner consistent with the Māori fisheries legislation.



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THE NGĀTI PAOA TRUST

**THIS DEED WITNESSES:**

**1. Name of Trust**

The trust created by this deed shall be known as **The Ngāti Paoa Trust**.

**PART 1: INTERPRETATIONS AND OTHER  
PRELIMINARY PROVISIONS**

*This Part of the deed—*

- *explains the meanings of certain words and phrases as they are used in the deed; and*
- *provides advice and guidance on how to read and understand the deed.*

**2. Interpretation**

(1) In this deed, unless the context otherwise requires,—

**activity** means a good or service provided by, or on behalf of, the Trust, and includes the provision of facilities and amenities and the making of grants and other forms of distribution

**adult member** means a person—

- (a) who has reached the age of 18 years; and
- (b) whose name and details are recorded in the register required to be kept under section 13

**allocated quota** has the meaning given to it in the Māori fisheries legislation

**annual plan** means a plan adopted under section 54

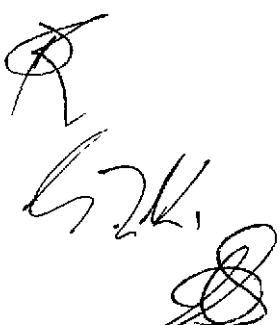
**asset** means any real or personal property of any kind or nature and includes—

- (a) any right or interest in such property; and
- (b) any customary right, customary title, or other similar interest held by, or managed by, or otherwise under the stewardship of, the Trust

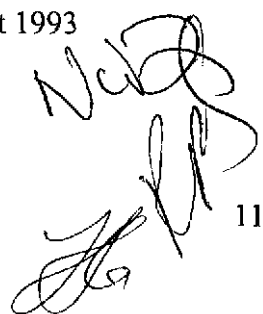
**balance date** has the meaning given to it in the Financial Reporting Act 1993

**charitable purposes** means every purpose within New Zealand which in accordance with the law 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 beneficial to Ngāti Paoa, and shall include any trust established solely and exclusively for charitable purposes

**company** has the meaning given to it in the Companies Act 1993



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## THE NGĀTI PAOA TRUST

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**Māori fisheries legislation** has the meaning given to it in the Explanatory Note to this deed

**Ngāti Paoa** has the meaning given to it in section 3

**person** means any natural person

**postal referendum procedure** has the meaning set out in section 43

**principal officer** has the meaning set out in section 34

**public notice**—

- (a) means such notice as the Trustees believe, on reasonable grounds, to be appropriate in the circumstances, having regard to—
  - (i) the geographical distribution of the intended audience for the notice; and
  - (ii) other characteristics of the intended audience; and
  - (iii) such other factors as the Trustees consider appropriate; and
- (b) may include a notice posted to the address of every person whose details are included in the register of the Trust

**register**, in relation to Ngāti Paoa, has the meaning given to it in section 13, and **registered** has a corresponding meaning

**significance**, in relation to any issue, proposal, decision, or other matter that concerns or is before the Trust, means the degree of importance of the issue, proposal, decision, or matter, as assessed by the Trust, in terms of its likely impact on, or consequences for,—

- (a) the current and future social, economic, environmental, or cultural well-being of Ngāti Paoa;
- (b) any persons who are likely to be particularly affected by, or interested in, the issue, proposal, decision, or matter;
- (c) the capacity of the Trust to perform its role, and the financial and other costs of doing so

**significant**, in relation to any issue, proposal, decision, or other matter, means that the issue, proposal, decision, or other matter has a high degree of significance

**special consultative procedure** means the procedure set out in section 45

**state-owned enterprise** has the meaning given to it in the State-Owned Enterprises Act 1986

**strategic asset**, in relation to the assets held by the Trust, means an asset or group of assets that the Trust needs to retain if the Trust is to—

- (a) protect and preserve the taonga of Ngāti Paoa; or

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TRUST DEED

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(b) maintain its capacity to achieve or promote any outcome that the Trust determines to be important to the current or future well-being of Ngāti Paoa—

and includes—

- (c) any asset included in the register of protected assets of the Trust; and
- (d) any asset or group of assets listed in accordance with section 40(2)

**subordinate decision-making body** means a body appointed under clause 8 of Schedule 1.

**tikanga** has the meaning given to it by Ngāti Paoa

**Trust** means the trust established by this deed

**Trust-controlled organisation** has the meaning set out in section 4

**Trust-controlled trading organisation** has the meaning set out in section 4

**Trust organisation** has the meaning set out in section 4

**Trust Fund** means the sum of ten dollars referred to in the Introduction to this deed, the assets from time to time representing that sum, any further assets which may in the future be acquired by the Trustees from any source whatsoever for the purposes of the Trust, the moneys and investments from time to time representing such assets, and, unless inconsistent with the context, the income received from such assets

**Trustees** means the trustees for the time being of the Trust, whether initial, additional or substituted

**working day** means a day of the week other than—

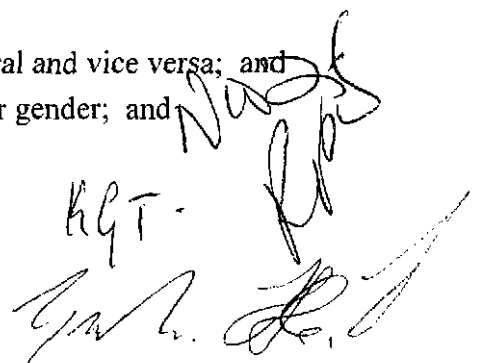
- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on either a Saturday or a Sunday, the following Monday and Tuesday.

(2) In this deed,—

- (a) except as otherwise expressly provided by the deed, the powers or discretions as to the governance and management of the Trust or as to the distribution of the income and the capital of the Trust Fund vested in the Trustees by any clause shall not in any way be limited or restricted by the interpretation of any other clause;
- (b) unless the context otherwise requires,—
  - (i) words importing the singular include the plural and vice versa; and
  - (ii) words importing one gender include the other gender; and



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## THE NGĀTI PAOA TRUST

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- (iii) references to a statute shall be deemed to be references to that statute as amended or re-enacted or substituted from time to time.
  - (c) headings have been inserted for guidance only and shall not be deemed to form part of the content of the deed.
  - (d) words in italics have been inserted for guidance only and shall not be deemed to form part of the content of the deed.
- (3) If any one or more of the Trustees or a Trust-controlled organisation or any other person or organisation is required under this deed to make a document available to Ngāti Paoa, that party must take reasonable steps to—
- (a) ensure that the document or a copy of the document is accessible to Ngāti Paoa, having regard to—
    - (i) the matter to which the document relates; and
    - (ii) the geographical distribution of Ngāti Paoa; and
    - (iii) other characteristics of Ngāti Paoa; and
    - (iv) such other factors as the Trustees consider appropriate; and
  - (b) publicise the fact that the document is available and the manner in which copies of the document may be obtained or viewed, as the circumstances require.

### 3. Meaning of Ngāti Paoa

- (1) In this deed, and subject to the provisions of the charter,—

**Ngāti Paoa** means every person who can trace descent by birth from Paoa, the founding ancestor of the descent group; and

**whāngai** has the meaning given to it by the tikanga of Ngāti Paoa.

- (2) Ngāti Paoa has the right, for the purposes of this deed, to determine the status of persons who can trace descent by whāngai from the founding ancestor.

### 4. Meaning of Trust-controlled organisation and Trust organisation

- (1) In this deed, unless the context otherwise requires,—

**Trust organisation** means—

- (a) a company—
  - (i) in which equity securities carrying voting rights at a meeting of the shareholders of the company are—
    - (A) held by the Trust; or
    - (B) controlled, directly or indirectly, by the Trust; or
  - (ii) in which the Trust has the right, directly or indirectly, to appoint one or more of the directors of the company; or
- (b) an organisation in respect of which the Trust has, whether or not jointly with other organisations or persons—

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TRUST DEED

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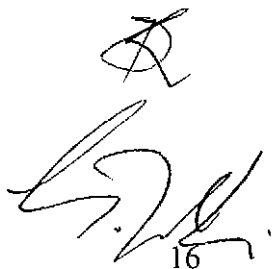
- (i) control, directly or indirectly, of one or more of the votes at any meeting of the members or controlling body of the organisation; or
- (ii) the right, directly or indirectly, to appoint one or more of the trustees, directors or managers (however described) of the organisation;

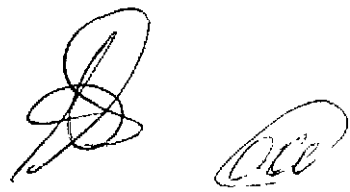
**Trust-controlled organisation** means a Trust organisation that is—


- (a) a company—
  - (i) in which equity securities carrying 50% or more of the voting rights at a meeting of the shareholders of the company are—
    - (A) held by the Trust; or
    - (B) controlled, directly or indirectly, by the Trust; or
  - (ii) in which the Trust has the right, directly or indirectly, to appoint 50% or more of the directors of the company; or
- (b) an organisation in respect of which the Trust has, whether or not jointly with other organisations or persons—
  - (i) control, directly or indirectly, of 50% or more of the votes at any meeting of the members or controlling body of the organisation; or
  - (ii) the right, directly or indirectly, to appoint 50% or more of the trustees, directors, or managers (however described) of the organisation;

**Trust-controlled trading organisation** means a Trust-controlled organisation that operates a trading undertaking for the purpose of making a profit.

- (2) For the purposes of subsection (1), **organisation** means any partnership, trust, arrangement for the sharing of profits, union of interest, co-operation, joint venture, or other similar arrangement; but does not include a company, or a committee or joint committee of the Trust.
- (3) If a Trust organisation is not a company, references in this Act, in relation to the organisation, to—
  - (a) equity securities include any form of voting rights in that organisation; and
  - (b) the directors and board include trustees, managers, or office-holders (however described) in that organisation; and
  - (c) shareholders include any partner, joint venture partners, members, or other persons holding equity securities in relation to that organisation; and
  - (d) the constitution include any rules or other documents constituting that organisation or governing its activities; and
  - (e) subsidiaries include any entity that would be a Trust-controlled organisation if the references to “Trust” in subsection (1) read “Trust-controlled organisation” or “Trust-controlled organisations”.

  
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## THE NGĀTI PAOA TRUST

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- (4) Any organisation exempted under section 5 is not a Trust organisation or a Trust-controlled organisation.

### 5. Exempted organisations

- (1) The Trust may, after taking into account the matters specified in subsection (3), exempt a small organisation for the purposes of section 4(4).
- (2) An exemption must be granted by resolution of the Trustees.
- (3) The matters are—
- the nature and scope of the activities provided by the organisation; and
  - the costs and benefits, if an exemption is granted, to the Trust, the organisation and Ngāti Paoa.
- (4) The Trustees must review an exemption they have granted—
- within 3 years after it is granted; and
  - after the first review, at intervals of not less than 3 years.
- (5) The Trustees may, at any time, revoke an exemption they have granted.

## PART 2: TRUST AND TRUSTEES

*This Part of the deed—*

- *actually creates The Ngāti Paoa Trust;*
- *says that the Trust is being created for what are known as “charitable purposes” under New Zealand law;*
- *explains the role of the Trustees of the Trust;*
- *says what the Trustees can and can't do;*
- *sets out some principles which the Trustees have to comply with;*
- *requires the Trustees to keep a register of all members of Ngāti Paoa;*
- *prevents the Trustees from changing this deed without the approval of Ngāti Paoa; and*
- *protects the assets of Ngāti Paoa in the event that the Trust is wound up.*

### 6. Declaration of trust

The Trustees declare and acknowledge that the Trustees shall hold the Trust Fund upon the trusts, and with and subject to the powers and discretions, contained or implied in this deed.






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**7. Charitable purposes**

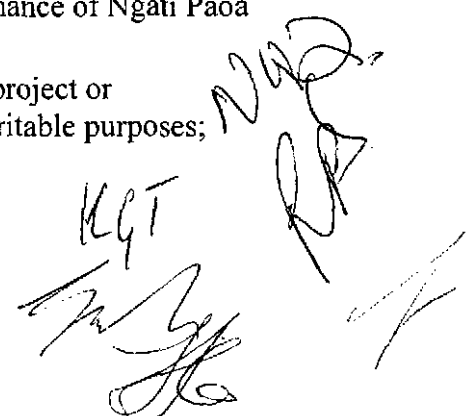
The Trustees shall hold the Trust Fund upon trust to pay or apply in New Zealand the income and the capital of the Trust Fund in such amounts, and at such times, and subject to such terms and conditions, as the Trustees may decide for all or any of the following purposes:

- (a) to educate and otherwise heighten the awareness of Ngāti Paoa in respect of the cultural heritage of Ngāti Paoa and Māori in general:
- (b) to enhance the cultural, social, and educational advancement of Ngāti Paoa, provided that such enhancement of the cultural and social advancement of persons is charitable in accordance with the law of New Zealand from time to time:
- (c) to assist Ngāti Paoa to obtain, maintain and improve their vocational, educational and entrepreneurial skills, knowledge and expertise, provided that such assistance is for the public benefit and in the public interest, and provided further that any individual benefit is incidental to the Trust's charitable purposes:
- (d) to promote commerce and industry within Ngāti Paoa, provided that such promotion is for the public benefit and in the public interest and provided further that any individual benefit is incidental to the Trust's charitable purposes:
- (e) promoting and advancing better health amongst Ngāti Paoa by way of the encouragement of physical activity and a healthy lifestyle, including the promotion of initiatives such as exercise and nutrition:
- (f) the alleviation of poverty including by encouraging and promoting economic development of persons within Ngāti Paoa and provided further that any individual benefit is incidental to the Trust's charitable purposes:
- (g) benefiting the community at large by encouraging the protection of New Zealand's natural resources, the environment and encouraging conservation:
- (h) such other charitable purposes as the Trustees may decide.

**8. Means of achieving charitable purposes**

Without restricting the other provisions of this deed, the Trustees may, in order to achieve the charitable purposes of the Trust as set out in section 7, in addition to all other powers vested in the Trustees,—

- (a) facilitate the efficient and effective management of assets jointly owned by, and rights and interests jointly held by, Ngāti Paoa;
- (b) foster the democratic, transparent and effective governance of Ngāti Paoa in accordance with tikanga;
- (c) provide grants, support and assistance to any person, project or programme where it is consistent with the Trust's charitable purposes;



THE NGĀTI PAOA TRUST

- (d) make known, advertise and otherwise promote the activities and objects of the Trust by such use of any media as the Trustees may decide;
- (e) seek, accept and receive subscriptions, donations, subsidies, grants, endorsements, gifts, legacies, loans and bequests in money, in kind or partly in both;
- (f) acquire, modify, improve, lease, distribute, or use in any way, land, plant, equipment, goods and materials of any nature;
- (g) incorporate, otherwise establish, or subscribe for or purchase shares of, a charitable company or other entity through which to further the charitable purposes of the Trust;
- (h) seek out and enter into strategic relationships with other parties in the pursuit of common goals consistent with the purposes of the Trust;
- (i) undertake such other activities and enterprises to further the charitable purposes of the Trust as the Trustees may decide.

**9. Incorporation**

The Trustees shall, as soon as practicable after the date of this deed, apply for incorporation under Part II of the Charitable Trusts Act 1957 under the name "The Ngāti Paoa Trust". Upon incorporation, the powers and discretions conferred upon the Trustees by law or by this deed shall be conferred upon the Trustees as a trust board.

**10. Role of Trustees**

The role of the Trustees is to—

- (a) give effect, in relation to Ngāti Paoa, to the purposes of the Trust stated in section 7; and
- (b) be responsible and democratically accountable to Ngāti Paoa for the governance of the Trust in accordance with the principles set out in section 20; and
- (c) ensure the performance of the activities set out in the long-term plan of the Trust; and
- (d) discharge the responsibilities, perform the duties, and exercise the rights, conferred on them by or under this deed and by law.

**11. Powers of Trustees**

- (1) To achieve the purposes of the Trust, the Trustees, in carrying out their role,—
  - (a) shall have all the rights, powers and privileges of a natural person; and
  - (b) may deal with the Trust Fund as if they were the absolute owners of, and beneficially entitled to, the Trust Fund; and
  - (c) may do any act or thing, or procure the doing of any act or thing, or enter into any obligation.

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## TRUST DEED

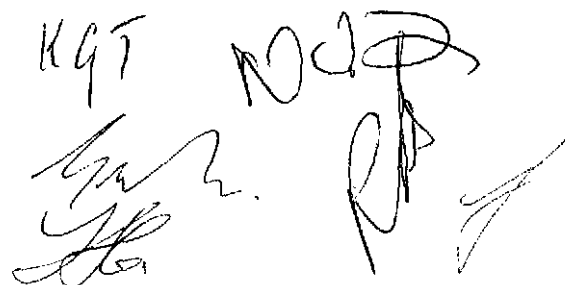
- (2) The powers described in subsection (1) are subject at all times to the provisions of this deed and, in particular, to the provisions of section 66.
- (3) Nothing in this deed shall prevent the Trustees from—
  - (a) engaging in any joint undertaking, joint activity, or cooperative activity, with one or more persons or organisations or entities; or
  - (b) doing anything that would benefit other Māori or the community generally.

### 12. Principles of trusteeship

- (1) The Trustees acknowledge and declare that, in performing their role, they will comply with the principles of trusteeship set out in subsection (2).
- (2) The principles are:
  - (a) the Trustees should make themselves aware of, and should have regard to, tikanga:
  - (b) the Trustees should make themselves aware of, and should have regard to, the views of Ngāti Paoa in relation to the activities of the Trust:
  - (c) when making a decision, the Trustees should take account of—
    - (i) the tikanga of Ngāti Paoa; and
    - (ii) the diversity of Ngāti Paoa; and
    - (iii) the diversity of Ngāti Paoa's interests; and
    - (iv) the geographical distribution of Ngāti Paoa; and
    - (v) the interests of future as well as current members of Ngāti Paoa; and
    - (vi) the likely impact of any decision on the social, economic, environmental and cultural well-being of Ngāti Paoa:
  - (d) the business of the Trust should be conducted in an open, transparent and democratically-accountable manner:
  - (e) the Trustees should give effect to the identified priorities and long-term outcomes of Ngāti Paoa in an efficient and effective manner:
  - (f) the Trustees should collaborate and cooperate with other persons or organisations or entities as they consider appropriate to promote or achieve the priorities and desired outcomes of Ngāti Paoa, and to make efficient use of the assets of the Trust:
  - (g) any commercial activities undertaken by the Trust should be undertaken in accordance with sound business practices:
  - (h) the Trustees should ensure prudent stewardship and the efficient and effective use of the assets of the Trust in the interests of Ngāti Paoa:
  - (i) in taking a sustainable approach, the Trustees should take into account—
    - (i) the social, economic and cultural well-being of Ngāti Paoa and of other people and communities; and



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## THE NGĀTI PAOA TRUST

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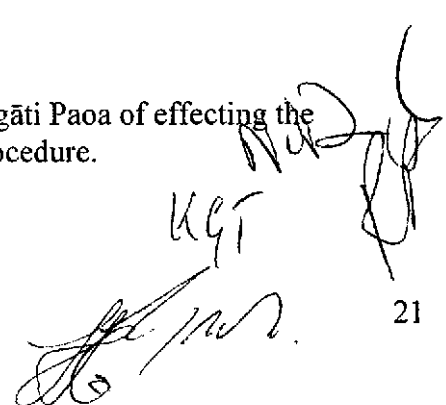
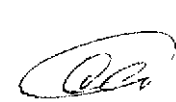
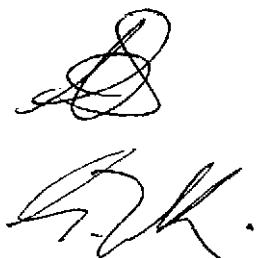
- (ii) the links between Ngāti Paoa and the environment; and
  - (iii) the reasonably foreseeable needs of future generations.
- (3) Despite anything in this deed, if any of these principles are in conflict or inconsistent with the charitable purposes of the Trust as set out in section 7, then such charitable purposes shall prevail. To avoid doubt, it is declared that the Trustees may attempt to resolve any such conflict in accordance with the principle in subsection (2)(d), provided that any such resolution must be consistent with the charitable purposes of the Trust as set out in section 7.

### 13. Trustees to maintain register of Ngāti Paoa

- (1) The Trustees must, at all times, maintain a register of the adult members of Ngāti Paoa.
- (2) The Trustees must—
  - (a) include in the register the contact details and date of birth of each adult member; and
  - (b) make ongoing efforts to add members to the register; and
  - (c) keep the information in the register current.
- (3) The Trustees may not refuse to include any bona fide adult member of Ngāti Paoa in the register.
- (4) The Trustees have the right to require a member of Ngāti Paoa to be included in the register as a co-requisite to that member's right under section 17(1).
- (5) The Trustees may, in addition to the requirement described in subsection (1), maintain a register of all members of Ngāti Paoa.

### 14. Restrictions on amendments to deed

- (1) The Trustees may from time to time amend this deed provided the proposal to amend the deed is—
  - (a) consistent with—
    - (i) the charitable purposes of the Trust; and
    - (ii) the Māori fisheries legislation; and
  - (b) decided by the postal referendum procedure.
- (2) Despite subsection (1)(b), the Trustees may, after taking into account the matters in subsection (3), resolve that an amendment to the deed—
  - (a) is of a minor nature; and
  - (b) ought to be determined by the Trustees without recourse to the postal referendum procedure.
- (3) The matters are—
  - (a) the significance of the amendment; and
  - (b) the costs and benefits to the Trust and Ngāti Paoa of effecting the amendment by the postal referendum procedure.



## TRUST DEED

- (4) To avoid doubt, it is declared that any amendment to the deed made under this section must also be consistent with the charitable purposes of the Trust as set out in section 7.

### 15. Winding up of Trust

- (1) If at any time the Trustees decide that, for whatever reason, it is no longer practical or desirable to carry out the purposes of the Trust, then the Trustees may resolve to wind up the Trust.
- (2) Any resolution to wind up the Trust pursuant to subsection (1) must—
- provide for the vesting of the assets of the Trust in such one or more charitable bodies in New Zealand, and for such charitable purposes, and in such manner, and upon such terms, and in such proportions, as the Trustees may decide, provided that if the Trust is then incorporated under the Charitable Trusts Act 1957 the assets of the Trust shall be disposed of in accordance with the provisions of that Act; and
  - be adopted by the postal referendum procedure.

## PART 3: GOVERNANCE OF THE TRUST

*This Part of the deed—*

- *requires the Trust to have ten Trustees elected by Ngāti Paoa;*
- *explains how Trustees are elected;*
- *requires elections for Trustees to be held at least every four years (and within two years in the case of the first Trustees);*
- *puts restrictions on who can be a Trustee;*
- *describes certain circumstances in which a Trustee has to step down from the position of Trustee;*
- *sets out further principles which the Trustees have to comply with;*
- *requires the Trustees to produce a statement explaining how governance and management work in relation to the Trust;*
- *requires the Trustees to have a charter explaining who Ngāti Paoa are, what their vision is and how they will resolve disputes relating to the Trust;*
- *requires the Trust to have a principal office; and*
- *refers to other, more detailed provisions in Schedule 1.*

### 16. Requirement for Trustees

- (1) The number of natural persons comprising the Trustees shall be ten.
- (2) The persons named in this deed as Trustees are the initial Trustees of the Trust.

## THE NGĀTI PAOA TRUST

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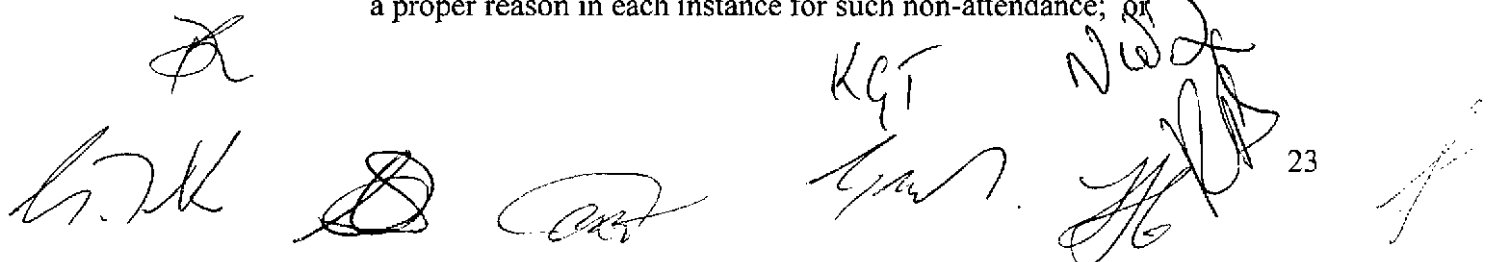
- (3) Despite section 17(2), the initial Trustees may hold office for a period of no more than two years from the date of this deed.
- (4) To avoid doubt, it is declared that an initial Trustee may stand again for office in accordance with section 17 at the expiry of the period described in subsection (3).

### 17. Replacing and appointing Trustees

- (1) The Trustees of the Trust (apart from the initial Trustees, but including any initial Trustee who stands again in accordance with section 16(4)) must be chosen by the postal referendum procedure.
- (2) No Trustee may hold office for more than 4 years without that Trustee's position being subject to a further election process in accordance with this deed.
- (3) An employee of the Trust who is elected to the Trustees must resign from his or her position as an employee of the Trust before taking up his or her position as a Trustee.
- (4) To avoid doubt, it is declared that no Trustee may, whilst holding office as a Trustee, also function as a manager or an executive manager or an executive secretary of the Trust or in any other executive position in relation to the Trust (by whatever name the position is described).
- (5) Nothing in this section entitles any person—
  - (a) who is not a registered member of Ngāti Paoa; or
  - (b) who would, by the application of section 151 of the Companies Act 1993, be disqualified from being appointed or holding office as a director of a company—  
to be chosen or to hold office as a Trustee of the Trust.
- (6) A person may not be chosen as a Trustee of the Trust unless he or she has—
  - (a) consented in writing to being a Trustee; and
  - (b) certified that he or she is not disqualified by virtue of subsection (5).

### 18. Cessation of office of Trustee

- (1) A Trustee may resign by giving notice in writing to the principal officer of the Trust.
- (2) A Trustee ceases to be a Trustee if he or she—
  - (a) resigns as a Trustee; or
  - (b) becomes ineligible by virtue of section 17(5) or section 31(2) to continue as a Trustee; or
  - (c) fails or neglects to attend three consecutive duly-constituted meetings of the Trustees without leave of absence, unless it appears to the other Trustees at their first meeting after the last of such absences that there is a proper reason in each instance for such non-attendance; or



## TRUST DEED

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- (d) dies.
- (3) The Trustee concerned shall cease to hold office—
  - (a) in a case where subsection (2)(c) applies, from the date of the first meeting of the Trustees after that Trustee's third consecutive absence; or
  - (b) in all other cases, from the date of the event which causes the cessation of office.
- (4) Upon the cessation of office described in subsections (2)(a) to (2)(c), the Trustee resigning ceases to be a Trustee of the Trust except as to the acts or deeds necessary for the proper vesting of the Trust Fund in the continuing or new Trustees.
- (5) The acts or deeds described in subsection (4) shall be done and executed at the expense of the Trust.

### 19. Casual vacancies

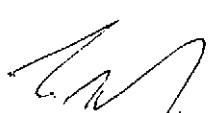




- (1) Should the number of Trustees fall below ten, the remaining Trustees shall have the power to fill any vacant office of Trustee by invitation until a replacement has been appointed in accordance with section 17(1).
- (2) A replacement appointment in accordance with section 17(1) must be made as soon as reasonably practicable after the occurrence of the vacancy.
- (3) An appointment by invitation under subsection (1) may be made by the Trustees in respect of a person whom the Trustees consider, on reasonable grounds, has the skills, knowledge, and experience to contribute to—
  - (a) the effective governance of the Trust; and
  - (b) the achievement of the long-term outcomes of Ngāti Paoa.

### 20. Principles of governance

- (1) In relation to the governance of the Trust, the Trustees must act in accordance with the governance principles set out in subsection (2).
- (2) The Trustees should ensure that—
  - (a) the governance of the Trust is exercised on behalf of, and in the interests of, Ngāti Paoa; and
  - (b) communication between the Trustees and Ngāti Paoa is systematic and effective; and
  - (c) the Trustees give effect to the tikanga of Ngāti Paoa; and
  - (d) the activities of the Trust are focused on achieving the long-term outcomes of Ngāti Paoa; and
  - (e) the Trust makes measurable progress towards the achievement of the long-term outcomes; and

  
  
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## THE NGĀTI PAOA TRUST

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- (f) the information available to the Trustees, both from within the Trust and from external sources, is sufficient to enable the effective governance of the Trust; and
  - (g) the Trust is governed in accordance with its charter; and
  - (h) the governance structure and processes of the Trust are effective, open and transparent; and
  - (i) the standard of care set out in section 28 is observed; and
  - (j) a clear separation is maintained between the governance of the Trust and the management of the Trust; and
  - (k) a clear separation is maintained between the commercial activities of the Trust and the non-commercial activities of the Trust; and
  - (l) the relationship between the Trustees (on the one part) and the principal officer and other staff of the Trust (on the other part) is effective and understood; and
  - (m) the nature and scope of delegation within the Trust is clear and understood; and
  - (n) the nature and scope of delegation within the Trust is designed to facilitate the achievement of the long-term outcomes of the Trust and to avoid unacceptable outcomes; and
  - (o) the delegation of responsibilities, duties and powers to the principal officer is sufficient to enable the effective leadership and management of the staff and resources of the Trust; and
  - (p) the staff of the Trust are led and managed ethically and effectively by the principal officer; and
  - (q) the assets of the Trust are managed prudently, effectively and efficiently by the principal officer.
- (3) Despite subsections (1) and (2), or any other provision of this deed, the Trustees must, in relation to the governance of the Trust, act in accordance with the charitable purposes of the Trust as set out in section 7.

### 21. Governance statement

- (1) The Trustees must prepare and make available to Ngāti Paoa a governance statement that includes information on—
- (a) the communication processes between the Trustees and Ngāti Paoa; and
  - (b) the governance structure and processes of the Trust; and
  - (c) the roles, functions and expected conduct of the Trustees; and
  - (d) the role of tikanga within the Trust; and
  - (e) the nature and scope of the activities of the Trust; and
  - (f) the delegation of responsibilities, duties and powers within the Trust; and

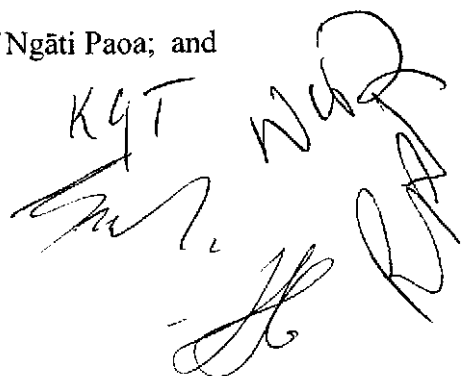
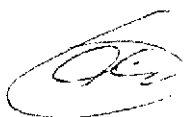
  
  
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## TRUST DEED

- (g) the management structure of the Trust and the relationship between the Trustees (on the one part) and the principal officer and other staff of the Trust (on the other part); and
  - (h) key approved planning and policy documents of the Trust and the processes for their development and review; and
  - (i) consultation and participation policies; and
  - (j) meeting procedures for the Trustees, including provisions for attendance by Ngāti Paoa.
- (2) The initial Trustees must comply with subsection (1) as soon as practicable after the date of this deed.
- (3) The Trust must update the governance statement—
- (a) when any material change takes place in any of the matters described in subsection (1); and
  - (b) as it considers appropriate.
- (4) The governance statement of the Trust must be written in plain language.
- (5) Despite any other provision of this deed, the governance statement must be consistent with the charitable purposes of the Trust as set out in section 7.

### 22. Charter

- (1) The Trustees must, at all times, have a charter under this section.
- (2) Subject to the special provisions in Part 13, the Trustees—
- (a) may amend the charter at any time; and
  - (b) must use the postal referendum procedure in making any amendment to the charter.
- (3) The charter of the Trust must be in a form determined by the Trustees.
- (4) The purposes of the charter are—
- (a) to define and describe Ngāti Paoa; and
  - (b) to establish—
    - (i) the vision of Ngāti Paoa; and
    - (ii) the dispute-resolution procedures of Ngāti Paoa; and
  - (c) to provide for any other matters that Ngāti Paoa thinks fit.
- (5) The charter—
- (a) must contain—
    - (i) a definition and a description of Ngāti Paoa; and
    - (ii) the procedures of Ngāti Paoa for verifying eligibility for membership of Ngāti Paoa; and
    - (iii) the vision of Ngāti Paoa; and
    - (iv) the dispute-resolution procedures of Ngāti Paoa; and
  - (b) may contain—



## THE NGĀTI PAOA TRUST

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- (i) a section setting out the role of tikanga in the governance of the Trust; and
  - (ii) any other matters that Ngāti Paoa thinks fit.
- (6) The charter must—
  - (a) not contravene the provisions of this deed or of any enactment; and
  - (b) be consistent with the charitable purposes of the Trust as set out in section 7.
- (7) The Trustees must, in complying with the requirements of this deed in relation to the preparation and adoption of the charter, act in such manner, and include in the charter such detail, as the Trustees consider on reasonable grounds to be appropriate.
- (8) The Trustees must, within one month after the adoption or the amendment of a charter, make the charter available to Ngāti Paoa and to such other parties as the Trustees consider appropriate.
- (9) A charter has effect as an undertaking by the Trustees to Ngāti Paoa to take all reasonable steps to ensure that—
  - (a) the Trust is governed for the charitable purposes set out in, and in accordance with the provisions of, the deed; and
  - (b) the Trustees achieve the long-term outcomes of Ngāti Paoa set out in the long-term plan of the Trust.

### 23. Seal

- (1) Upon incorporation under the Charitable Trusts Act 1957, 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.
- (2) Every affixing of the common seal of the Trust shall be attested—
  - (a) by two Trustees; or
  - (b) by one Trustee and the principal officer of the Trust—  
and shall be sufficient evidence of authority to affix the seal.
- (3) 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.

### 24. Principal office

- (1) The principal office of the Trust shall be at such place as the Trustees from time to time may decide.
- (2) Any change in the location of the principal office of the Trust must be notified to Ngāti Paoa as soon as practicable.



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## TRUST DEED

### 25. Further provisions

The following functions of the Trust must be carried out in accordance with Schedule 1 and the standing orders of the Trust:

- (a) calling of meetings:
- (b) conduct of meetings:
- (c) subordinate decision-making structures:
- (d) delegations:
- (e) employment of staff.

### PART 4: SPECIAL OBLIGATION ON TRUSTEES

*This Part of the deed creates a special obligation on the initial trustees of the Trust to set up, within the first two years, a system for ensuring that each Ngāti Paoa hapū is represented amongst the Trustees.*

### 26. Replacement electoral system

- (1) Within two years of the date of this deed, the Trustees shall adopt a replacement system for electing Trustees, to replace the provisions of sections 16 and 17.
- (2) The objective of the replacement electoral system described in subsection (1) is to ensure that every hapū of Ngāti Paoa is represented (whether directly or indirectly) by the Trustees.
- (3) The replacement electoral system required to be adopted by subsection (1) is to be adopted by the postal referendum procedure.

### PART 5: OBLIGATIONS AND RESTRICTIONS ON TRUSTEES

*This Part of the deed—*

- *explains the standard of care which applies to Trustees;*
- *prohibits Trustees from entering into contracts with the Trust above a certain total value;*
- *requires Trustees to declare when they have a particular interest in a matter and to stand aside from debate and decisions about that matter; and*
- *protects Trustees from legal action as long as they do their job properly.*


  
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THE NGĀTI PAOA TRUST

27. Interpretation

In this Part—

**contract**, in relation to the Trust,—

- (a) means a contract made by any person directly with the Trust, or with a subordinate decision-making body, or with a Trust-controlled organisation; and
- (b) includes any relationship that is intended to constitute a contract but is not an enforceable contract; and
- (c) includes any subcontract; and
- (d) does not include any contract for the employment of any person as a principal officer or employee of the Trust.

**organisation** means any arrangement for the sharing of profits, company, co-operation, joint venture, partnership, trust, union of interest, or other similar arrangement; but does not include a committee or joint committee of the Trust

**subcontract**, in relation to any contract,—

- (a) means a subcontract made with the contractor under that contract, or with another subcontractor, to do any work or perform any service or supply any goods or do any other act to which the head contract relates; and
- (b) includes any subsidiary transaction relating to any such contract or subcontract.

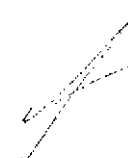
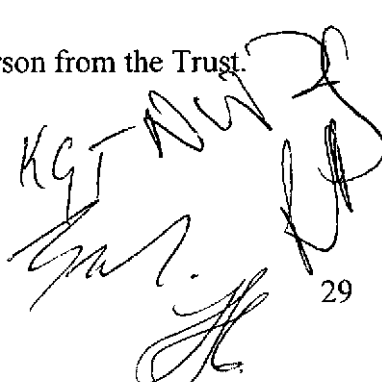
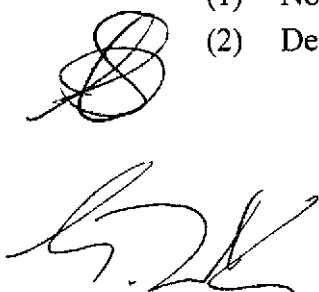
28. Trustees' duty of care

When discharging his or her responsibilities as a Trustee, or exercising his or her powers as a Trustee, or performing his or her duties as a Trustee, or otherwise performing his or her role as a Trustee, a Trustee—

- (a) must act—
  - (i) in good faith; and
  - (ii) in accordance with the charter of the Trust; and
  - (iii) in accordance with the governance principles in section 20; and
- (b) must observe the prohibitions and restrictions in this Part; and
- (c) must avoid conflicts of interest (including, but not limited to, contractual interests and pecuniary interests); and
- (d) must exercise the care, diligence, and skill that a prudent person of business would exercise in the same circumstances in managing the affairs of others.

29. Prohibition on private pecuniary profit

- (1) No private pecuniary profit may be made by any person from the Trust.
- (2) Despite subsection (1),—



## TRUST DEED

- (a) any Trustee may receive full reimbursement for all expenses reasonably and properly incurred by that Trustee in connection with the affairs of the Trust;
  - (b) and subject to section 31, any 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 firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust;
  - (c) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved and for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust;
  - (d) the Trust may pay reasonable remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust.
- (3) Notwithstanding anything contained or implied in this deed, the Trustees, in determining all reimbursements, remuneration and charges payable in the terms of this section, shall ensure that the restrictions imposed by this Part are strictly observed.

### 30. Pecuniary interests

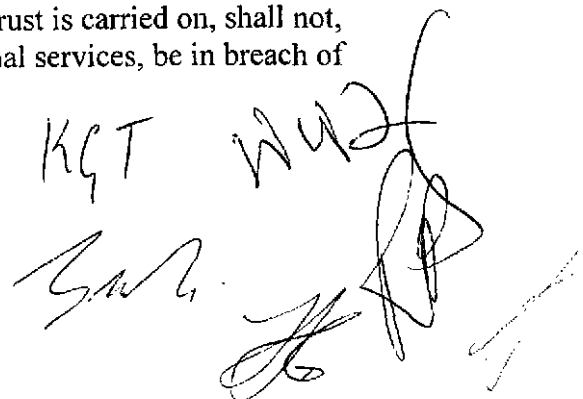
- (1) Despite anything contained or implied in this deed, any person who is—
- (a) a Trustee of the Trust; or
  - (b) a member of a subordinate decision-making body; or
  - (c) a shareholder or director of any company carrying on any business of the Trust; or
  - (d) a settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Trust; or
  - (e) a member or director of a Trust organisation; or
  - (f) an associated person (as defined by the Income Tax Act 1994) of any such settlor, trustee, shareholder, member or director;—
- shall not, by virtue of that capacity, determine, or materially influence in any way (whether directly or indirectly) 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.
- (2) A person who, in the course of and as part of the carrying on of his or her business of a professional practice, renders professional services to the Trust or to any organisation by which any business of the Trust is carried on, shall not, by reason only of his or her rendering of professional services, be in breach of this section.

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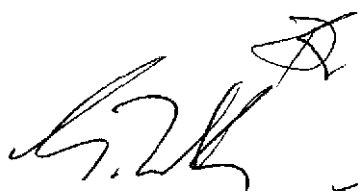
## THE NGĀTI PAOA TRUST

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- (3) A Trustee of the Trust or a member of a subordinate decision-making body shall not vote on, or take part in the discussion of, any matter before the Trust or the subordinate body in which he or she has, either directly or indirectly, any pecuniary interest other than an interest in common with Ngāti Paoa.
- (4) Subsection (2) does not apply if a member of a subordinate body has been elected by, or appointed to represent, any activity, organisation, or group of persons and his or her pecuniary interest is not different in kind from the interests of other persons in the activity, organisation, or group.
- (5) If an organisation has, either directly or indirectly, a pecuniary interest in a matter before the Trust or subordinate body, a Trustee or a member is deemed to have a pecuniary interest in the matter if the Trustee or member, or the spouse or partner of the Trustee or member,—
  - (a) owns, whether directly or through a nominee, 10% or more of the issued capital of the organisation or of any other organisation controlling that organisation; or
  - (b) controls, whether directly or indirectly, or is able to exercise, 10% of the total voting powers exercisable by all the members of the organisation; or
  - (c) is the managing director or the general manager (by whatever names they are called) of the organisation or of any other organisation controlling the organisation.
- (6) Any person to whom this section applies must, when the matter is raised before the Trust or subordinate body, declare to the meeting his or her interest in the matter, and the fact of this disclosure is to be recorded in the minutes of the meeting.

### 31. Contractual interests

- (1) Despite sections 16 and 17 and the provisions of this Part, a person is not capable of being a Trustee of the Trust or a member of a subordinate decision-making body of the Trust if the total of all payments made or to be made by or on behalf of the Trust in respect of all contracts made by it in which that person is interested exceeds \$10,000 in any given year.
- (2) For the purposes of subsection (1), a person is deemed to be interested in a contract made by the Trust with an organisation if—
  - (a) the person—
    - (i) owns, whether directly or through a nominee, 10% or more of the issued capital of the organisation or of any other organisation controlling that organisation; or
    - (ii) controls, whether directly or indirectly, or is able to exercise, 10% of the total voting powers exercisable by all the members of the organisation; or
    - (iii) is the managing director or the general manager (by whatever names they are called) of the company.



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## TRUST DEED

- (3) For the purposes of this section, an organisation is deemed to control another organisation if it—
- (a) owns, whether directly or through a nominee, 50% or more of the issued capital of the organisation or of any other organisation controlling that organisation; or
  - (b) controls, whether directly or indirectly, or is able to exercise, 50% of the total voting powers exercisable by all the members of the organisation.

### 32. Interested Trustee

Notwithstanding anything contained or implied in this deed, any Trustee who is or may be in any other capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the Trust is or may be in any way concerned or involved shall disclose the nature and extent of that Trustee's interest to the other Trustees, and shall not take any part whatever in any deliberations of the Trustees concerning any matter in which that Trustee is or may be interested other than as a Trustee of the Trust.


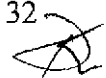
### 33. Liability, indemnity and insurance


- (1) No Trustee shall be liable for any loss incurred by the Trust which is not attributable to—
  - (a) that Trustee's own dishonesty; or
  - (b) the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of trust.
- (2) Each Trustee shall be entitled to a full and complete indemnity from the Trust Fund for any personal liability which that Trustee may incur in any way arising from or in connection with that Trustee acting or purporting to act as a Trustee of the Trust, provided such liability is not attributable to that Trustee's own dishonesty, or to the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of trust.
- (3) No Trustee shall be bound to take any proceedings against any co-Trustee for any breach or alleged breach of trust committed by that co-Trustee.
- (4) The Trust may not indemnify a director of a Trust organisation for any liability arising from that director's acts or omissions in relation to that Trust organisation.

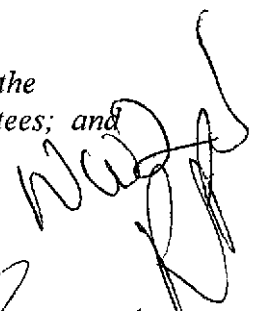

## PART 6: MANAGEMENT OF THE TRUST

*This Part of the deed—*

- *requires the Trust to have a principal officer who is accountable to the Trustees for the responsibilities delegated to him or her by the Trustees; and*

  
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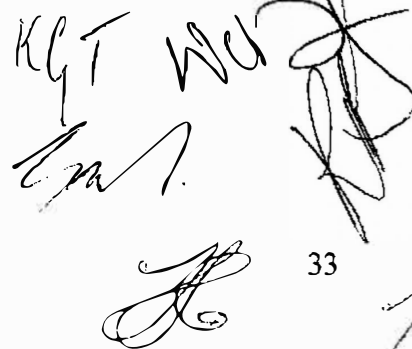
## THE NGĀTI PAOA TRUST

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- *explains the principal officer's responsibilities; and*
- *makes reference to other relevant information in Schedule 1.*

### 34. Principal officer

- (1) The Trust must, in accordance with clause 11 of Schedule 1, appoint a principal officer.
- (2) A principal officer appointed under subsection (1) is accountable to the Trustees of the Trust for the proper performance or exercise of all responsibilities, duties and powers delegated to him or her by the Trustees, or imposed or conferred by this deed or by any enactment, regulation or bylaw.
- (3) Despite anything else in this deed, the performance or exercise by the principal officer of all responsibilities, duties and powers must be consistent with the charitable purposes of the Trust as set out in section 7.
- (4) The principal officer is responsible for—
  - (a) providing adequate advice and information to the Trustees; and
  - (b) implementing the resolutions of the Trustees; and
  - (c) ensuring, so far as is practicable, that the management structure and processes of the Trust—
    - (i) reflect and reinforce the separation of governance and management responsibilities; and
    - (ii) reflect and reinforce the separation of commercial and non-commercial activities; and
    - (iii) reflect tikanga; and
    - (iv) reflect and reinforce best management practice; and
    - (v) are capable of delivering adequate advice and information to the Trustees; and
    - (vi) are capable of achieving the long-term outcomes of the Trust; and
  - (d) ensuring the prudent, effective, and efficient management of the assets of the Trust; and
  - (e) maintaining systems and processes to enable effective planning and accurate reporting of the financial and other performance of the Trust; and
  - (f) employing, on behalf of the Trustees, the staff of the Trust; and
  - (g) negotiating the terms of employment of the staff of the Trust; and
  - (h) providing effective and ethical leadership for the staff of the Trust; and
  - (i) maintaining systems and processes which foster high performance by the staff of the Trust.
- (5) Additional provisions relating to the principal officer are set out in Schedule 1



## TRUST DEED

### PART 7: DECISION-MAKING BY THE TRUSTEES

*This Part of the deed—*

- *sets out a detailed, step-by-step process which the Trustees have to go through to make decisions;*
- *requires all decisions of the Trustees to take into account all relevant options;*
- *requires all decisions of the Trustees to take into account the views of Ngāti Paoa;*
- *gives the Trustees some flexibility in the way they make decisions;*
- *allows the Trustees to make decisions that are inconsistent with the Trust's plans or policies at the time, but also requires them to explain such decisions and to say how the plans and policies will be amended to take account of these decisions; and*
- *requires the Trustees to have a policy which states in advance the matters that are considered by Ngāti Paoa to be important matters which need to be dealt with in a certain way.*

#### **35. Decision-making**

- (1) Every decision made by the Trustees pursuant to this deed must be—
  - (a) made in accordance with such of the provisions of sections 36, 37, 39 and 40 as are applicable; and
  - (b) consistent with the charitable purposes of the Trust as set out in section 7.
- (2) Subsection (1)(a) is subject, in relation to compliance with sections 36 and 37, to the judgments made by the Trustees under section 38.
- (3) The Trustees—
  - (a) must ensure that, subject to subsection (2), their decision-making processes promote compliance with subsection (1); and
  - (b) in the case of a significant decision, must ensure, before the decision is made, that subsection (1) has been appropriately observed.
- (4) To avoid doubt, it is declared that, subject to subsection (2), subsection (1) applies to every decision made by or on behalf of the Trustees pursuant to this deed, including a decision not to take any action.
- (5) Where the Trustees are authorised or required to make a decision in the exercise of any power, authority, or jurisdiction given to them by this deed, or by any enactment, regulation, or bylaw, the provisions of subsections (1) to (4) and the provisions applied by those subsections, unless inconsistent with the specific requirements of the deed, enactment, regulation, or bylaw under which the decision is to be made, apply in relation to the making of the decision.
- (6) This section and the sections applied by this section do not limit any duty or obligation imposed on the Trustees by any enactment.



THE NGĀTI PAOA TRUST

**36. Requirements in relation to decisions**

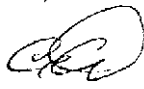
- (1) The Trustees must, in the course of the decision-making process,—
  - (a) seek to identify all reasonably practicable options for the achievement of the objectives of a decision; and
  - (b) assess those options by considering—
    - (i) the benefits and costs of each option in terms of the present and future social, economic, environmental and cultural well-being of Ngāti Paoa; and
    - (ii) the extent to which long-term outcomes would be promoted or achieved in an integrated and efficient manner by each option; and
    - (iii) any other matters that, in the opinion of the Trustees, are relevant.
- (2) This section is subject to section 38.

**37. Views of descent group in relation to decisions**

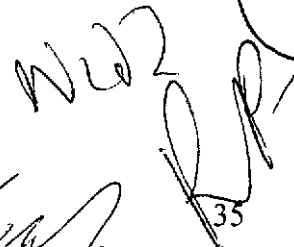
- (1) The Trustees must, in the course of the decision-making process in relation to a matter, give consideration to the views and preferences of Ngāti Paoa.
- (2) The Trustees may, in the course of the decision-making process in relation to a matter, give additional consideration to the views and preferences of—
  - (a) the members of Ngāti Paoa most likely to be affected by, or most likely to have an interest in, the matter; and
  - (b) any other parties likely to be affected by, or to have an interest in, the matter.
- (3) The consideration in subsections (1) and (2) must be given at the appropriate stage or stages of the decision-making process, which may include the stage at which—
  - (a) the options that may be reasonably practicable options for promoting or achieving the long-term outcomes are identified; and
  - (b) the reasonably practicable options are assessed; and
  - (c) one or more proposals are developed; and
  - (d) one or more decisions are made.
- (4) The Trustees are not required by this section alone to undertake any consultation process or procedure.
- (5) This section is subject to section 38.

**38. Compliance with procedures in relation to decisions**

- (1) It is the responsibility of the Trustees to make, in their discretion, judgments—
  - (a) about how to achieve compliance with sections 36 and 37 that is largely in proportion to the significance of the matters affected by the decision; and
  - (b) about, in particular,—



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- (i) the extent to which different options are to be identified and assessed; and
  - (ii) the timing of the consideration to be given to the views of Ngāti Paoa; and
  - (iii) the timing of the consideration to be given to the views of any other parties; and
  - (iv) the degree to which benefits and costs are to be quantified; and
  - (v) the extent and detail of the information to be considered; and
  - (vi) the extent and nature of any written record to be kept of the manner in which it has complied with those sections.
- (2) In making judgments under subsection (1), the Trustees must have regard to the significance of all relevant matters and, in addition, to—
- (a) the principles set out in section 12; and
  - (b) the duty of care set out in section 28; and
  - (c) the extent of the Trust's assets; and
  - (d) the extent to which the nature of a decision, or the circumstances in which a decision is taken, allow the Trustees scope and opportunity to consider a range of options or the views and preferences of other persons.

### 39. Identification of inconsistent decisions

- (1) If a decision of the Trustees is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy of the Trust or any plan required by this deed or by any enactment, the Trustees must, when making the decision, clearly identify—
- (a) the inconsistency; and
  - (b) the reasons for the inconsistency; and
  - (c) any intention of the Trustees to amend the policy or plan to accommodate the decision.
- (2) Subsection (1) does not derogate from any other provisions of this deed or of any enactment.

### 40. Policy on significance

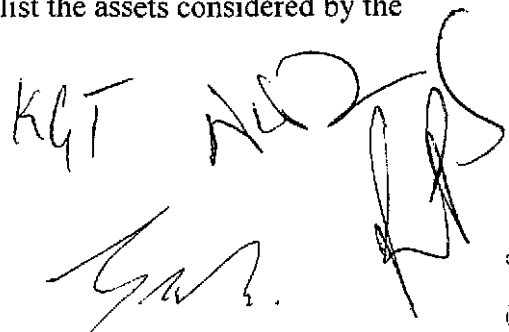
- (1) The Trustees must adopt a policy setting out—
- (a) the Trustees' general approach to determining the significance of proposals and decisions in relation to issues, assets, or other matters; and
  - (b) any thresholds, criteria, or procedures that are to be used by the Trustees in assessing the extent to which issues, proposals, decisions, or other matters are significant.
- (2) The policy adopted under subsection (1) must list the assets considered by the Trustees to be strategic assets.

  
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## THE NGĀTI PAOA TRUST

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- (3) Despite subsection (1)(a), the list of strategic assets under subsection (2) must include any allocated quota or income shares owned or held, or entitled to be owned or held, by the Trust.
- (4) A policy adopted under subsection (1) may be amended from time to time.
- (5) The Trustees must use the postal referendum procedure both in relation to—
  - (a) the adoption of a policy under subsection (1); and
  - (b) the amendment, under subsection (4), of a policy adopted under subsection (1).

### **PART 8: PARTICIPATION BY, AND CONSULTATION WITH, NGĀTI PAOA**

*This Part of the deed—*

- *contains detailed provisions about various ways in which the Trustees are required to seek the views of Ngāti Paoa;*
- *requires the Trustees to have a policy setting out how they will increase the participation of Ngāti Paoa in the affairs of the Trust;*
- *sets out some principles of consultation;*
- *describes the way the Trustees are to carry out postal voting;*
- *describes the way the Trustees are to consult with Ngāti Paoa; and*
- *describes how voting at hui-a-iwi is to take place.*

#### **41. Policy on participation**

- (1) The Trustees must adopt a policy setting out—
  - (a) the Trustees' general approach to fostering participation in the decision-making processes of the Trust by Ngāti Paoa; and
  - (b) any specific strategies or plans of the Trustees to foster such participation.
- (2) A policy adopted under subsection (1) may be amended from time to time.

#### **42. Principles of consultation**

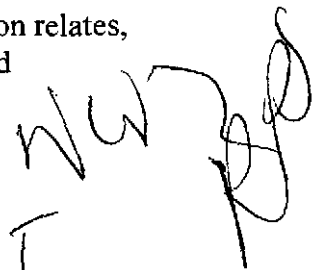
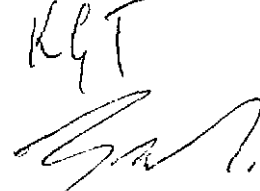
- (1) Consultation that the Trustees undertake in relation to any decision or other matter must be undertaken, subject to subsections (2) and (3), in accordance with the following principles:
  - (a) that persons who will or may be affected by, or have an interest in, the decision or matter, including persons who are not members of Ngāti Paoa, should be provided by the Trustees with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:

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- (b) that the persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the Trustees to present their views to the Trustees:
  - (c) that persons who are invited or encouraged to present their views to the Trustees should be given clear information by the Trustees concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of the views to be presented:
  - (d) that persons who wish to have their views on the decision or matter considered by the Trustees should be provided by the Trustees with a reasonable opportunity to present those views to the Trustees in a manner and format that is appropriate to the preferences and needs of those persons:
  - (e) that the views presented to the Trustees should be received by the Trustees with an open mind and should be given due consideration by the Trustees in making a decision:
  - (f) that persons who present views to the Trustees should be provided by the Trustees with information concerning both the relevant decisions and the reasons for those decisions.
- (2) The principles set out in subsection (1) are, subject to subsection (3), to be observed by the Trustees in such manner as the Trustees consider, in their discretion, to be appropriate in any particular instance.
- (3) The Trustees must, in exercising their discretion under subsection (2), have regard to—
- (a) the tikanga of Ngāti Paoa; and
  - (b) the requirements of section 37; and
  - (c) the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the Trustees; and
  - (d) the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and
  - (e) the provisions of Schedule 4; and
  - (f) the costs and benefits of any consultation process or procedure.

### 43. Postal referendum procedure

- (1) This section applies if this deed, or any enactment, requires the Trustees to decide on a proposal by the postal referendum procedure.
- (2) When this section applies, the Trustees must—
  - (a) if the proposal is one to which the Māori fisheries legislation relates, comply with the relevant provisions of that legislation; and
  - (b) prepare—



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- (i) a statement of proposal; and
  - (ii) a summary of the information contained in the statement of proposal (which summary must comply with section 49); and
  - (c) make the statement of proposal available for inspection by Ngāti Paoa—
    - (i) at the principal office of the Trust; and
    - (ii) at such other places and in such other ways as the Trustees consider necessary in order to provide all members of Ngāti Paoa with reasonable access to that statement; and
  - (d) distribute to every adult member of Ngāti Paoa—
    - (i) the summary of information; and
    - (ii) information about how a person interested in the proposal may inspect the full proposal; and
    - (iii) postal voting papers; and
  - (e) conduct a postal vote to decide on the proposal; and
  - (f) report the result of the postal vote to Ngāti Paoa as soon as practicable and, in any event, not later than the next annual report of the Trust.
- (3) For the purposes of subsection (2)(e),—
- (a) a proposal approved by 75% or more of the members of Ngāti Paoa who exercise their votes under subsection (2)(e) is deemed to have been approved by a resolution approved by a 75% majority of the Trustees (including vacancies); and
  - (b) a proposal approved by fewer than 75% of the members of Ngāti Paoa who exercise their votes under subsection (2)(e) is deemed to have been defeated by resolution of the Trustees.
- (4) Despite subsection (2), if the tikanga of Ngāti Paoa allows for electronic voting, such voting may be used under this section but must not be mandatory.
- (5) This section does not prevent the Trustees from requesting or considering, before making a decision, comment or advice from an officer of the Trust or from any other person in respect of the proposal.

**44. Postal referendum procedure in relation to long-term plan**

- (1) Where the postal referendum procedure is used in relation to the adoption of a long-term plan under section 52, the statement of proposal referred to in section 43(2)(b) must include a draft of the long-term plan.
- (2) Where the postal referendum procedure is used in relation to the amendment of a long-term plan under section 52, the statement of proposal referred to in section 43—
  - (a) must include a draft of the parts of the long-term plan that are proposed to be amended; and

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- (b) must be accompanied by a draft of any consequential amendments to the long-term plan that will be required if it is amended in the manner proposed.
- (3) Where a statement of proposal to which subsection (1) or subsection (2) applies relates to a proposal for the making of a decision to which section 56 applies, that statement of proposal must (unless the making of that decision was explicitly provided for in the long-term plan last adopted by the Trust) include—
- (a) the details of the proposal; and
  - (b) the reasons for the proposal; and
  - (c) an analysis of the reasonably practicable options, including the proposal, identified under section 36; and
  - (d) in respect of a proposal to transfer ownership or control of a strategic asset from the Trust to a Trust-controlled organisation, a description of any accountability or monitoring arrangements to be used to assess the performance of the Trust-controlled organisation in regard to the asset.
- (4) A statement of proposal to which subsection (1) or subsection (2) applies must also contain a report from the Trust's auditor on—
- (a) the extent to which the statement complies with the requirements of this deed; and
  - (b) the quality of the information and assumptions underlying the forecast information provided in the statement; and
  - (c) the extent to which the forecast information and proposed performance measures will provide an appropriate framework for the meaningful assessment of the actual levels of service provision or performance.
- (5) To avoid doubt, it is declared that the report under subsection (4) must not comment on the merits of any policy content of the statement.

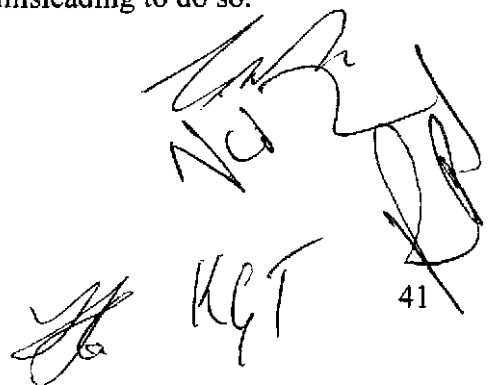
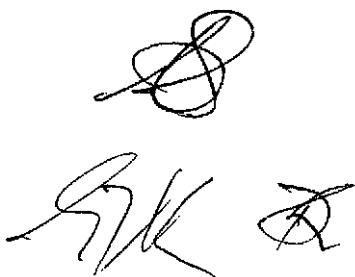
### 45. Special consultative procedure

- (1) If this deed, or any enactment, requires the Trustees to use or adopt the special consultative procedure, the Trustees must—
- (a) prepare—
    - (i) a statement of proposal; and
    - (ii) a summary of the information contained in the statement of proposal (which summary must comply with section 49); and
  - (b) include the statement of proposal on the agenda for a meeting of the Trustees; and
  - (c) make the statement of proposal available for inspection by Ngāti Paoa and (if appropriate) other affected persons—
    - (i) at the principal office of the Trust; and



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- (ii) at such other places and in such other ways as the Trustees consider necessary in order to provide all members of Ngāti Paoa and (if appropriate) other affected persons with reasonable access to that statement; and
  - (d) distribute in accordance with section 49(1)(d) the summary of the information contained in the statement of proposal; and
  - (e) give public notice, and such other notice as the Trustees consider appropriate, of the proposal and the consultation being undertaken; and
  - (f) include in the notice a statement about how a person interested in the proposal—
    - (i) may obtain the summary of information about the proposal; and
    - (ii) may inspect the full proposal; and
  - (g) include in the notice a statement of the period within which submissions on the proposal may be made to the Trustees; and
  - (h) ensure that any person who makes a submission on the proposal within that period—
    - (i) is sent a written notice acknowledging receipt of that person's submission; and
    - (ii) is given a reasonable opportunity to be heard by the Trustees (if that person so requests); and
  - (i) ensure that the notice given to a person under paragraph (h)(i) contains information—
    - (i) advising that person of that person's opportunity to be heard; and
    - (ii) explaining how that person may exercise that person's opportunity to be heard; and
  - (j) ensure that, except as otherwise provided by Schedule 4 or clause 7 of Schedule 1, every meeting of the Trustees at which submissions are heard or at which the Trustees deliberate on the proposal is open to Ngāti Paoa and (if appropriate) any other interested person; and
  - (k) subject to the provisions of Schedule 4, make all written submissions on the proposal available to Ngāti Paoa.
- (2) The period specified in the statement included under subsection (1)(g) must be a period of not less than one month beginning with the date of the first publication of the public notice.
- (3) This section does not prevent the Trustees from requesting or considering, before making a decision, comment or advice from an officer of the Trust or from any other person in respect of the proposal or any submission or both.
- (4) The Trustees may refer to the special consultative procedure by another name or term determined by the Trustees if it is not misleading to do so.



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**46. Special consultative procedure in relation to annual plan**


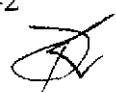
- (1) Where the special consultative procedure is used in relation to the adoption of a annual plan under section 54, the statement of proposal referred to in section 45(1)(a) must include a draft of the annual plan.
- (2) A statement of proposal to which subsection (1) applies must also include—
  - (a) the information that, under clause 2 of Schedule 3, is specified, in relation to the year to which the draft annual plan relates, in the long-term plan in relation to each group of activities; and
  - (b) the reasons why any information included in the draft annual plan departs from information specified, in relation to the year to which the draft annual plan relates, in the long-term plan; and
  - (c) if it is proposed that the making of an amendment to the long-term plan and the adoption of the annual plan should take place concurrently, the summary that is required by section 44 to be contained in the statement of proposal for the amendment.

**47. Other uses of special consultative procedure**

- (1) This section applies in any case where—
  - (a) neither section 45 nor section 46 applies but the Trustees are required to use or adopt the special consultative procedure; or
  - (b) the Trustees choose to use the special consultative procedure.
- (2) In any case to which this section applies, the statement of proposal referred to in section 45(1)(a) is,—
  - (a) if a plan or policy or similar document is proposed to be adopted, a draft of the proposed plan, policy, or document; and
  - (b) in any other case, a detailed statement of the proposal.
- (3) A statement of proposal under subsection (2)(b) must include—
  - (a) a statement of the reasons for the proposal; and
  - (b) an analysis of the reasonably practicable options, including the proposal, identified under section 36; and
  - (c) any other information that the Trustees identify as relevant.

**48. Procedure for decision at hui-a-iwi**

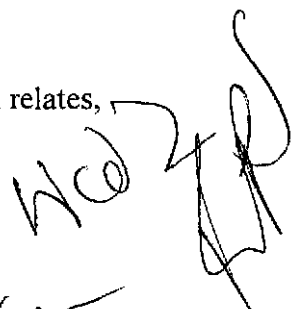
- (1) This section applies if this deed, or any enactment, requires the Trustees to decide on a proposal by conducting a referendum of the adult members of Ngāti Paoa at a hui-a-iwi.
- (2) If subsection (1) applies, the Trustees must—
  - (a) if the proposal is one to which the Māori fisheries legislation relates, comply with the relevant provisions of that legislation; and
  - (b) prepare—

  
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- (i) a statement of proposal; and
  - (ii) a summary of the information contained in the statement of proposal (which summary must comply with section 49); and
  - (c) include the statement of proposal on the agenda for a hui-a-iwi of Ngāti Paoa; and
  - (d) make the statement of proposal available for inspection by Ngāti Paoa and (if appropriate) other affected persons—
    - (i) at the principal office of the Trust; and
    - (ii) at such other places and in such other ways as the Trustees consider necessary in order to provide all members of Ngāti Paoa and (if appropriate) other affected persons with reasonable access to that statement; and
  - (e) distribute the summary of information to every adult member of Ngāti Paoa; and
  - (f) give public notice, and such other notice as the Trustees consider appropriate, of—
    - (i) the proposal; and
    - (ii) the hui-a-iwi being called to decide on the proposal; and
  - (g) include in the notice a statement about how a person interested in the proposal—
    - (i) may inspect the full proposal; and
    - (ii) may (if the person prefers) make written submissions to the Trustees on the proposal; and
    - (iii) may attend, and speak at, the hui-a-iwi to be convened to decide on the proposal; and
  - (h) include in the notice a statement of the period within which the written submissions on the proposal referred to in subsection (2)(g)(ii) may be made to the Trustees; and
  - (i) ensure that any person who makes a submission on the proposal within that period is sent a written notice acknowledging receipt of that person's submission; and
  - (j) convene the hui-a-iwi to decide on the proposal in accordance with the tikanga of Ngāti Paoa; and
  - (k) ensure that, subject to the provisions of Schedule 4, any submissions, or a fair summary of any submissions, received under subsection (2)(g)(ii) are made available to the attendees at the hui-a-iwi before the matter is determined by the hui.
- (3) The period specified in the statement included under subsection (2)(h) must be a period of not less than one month beginning with the date of the first publication of the notice.
- (4) The hui-a-iwi required by this section may also be an ordinary meeting of the Trustees.

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## TRUST DEED

- (5) This section does not prevent the Trustees from requesting or considering, before making a decision, comment or advice from an officer of the Trust or from any other person in respect of the proposal or any submission or both.

### 49. Summary of information

- (1) A summary of the information contained in a statement of proposal must—
- (a) be a fair representation of the major matters in the statement of proposal; and
  - (b) be in a form determined by the Trustees; and
  - (c) in the case of a matter to which section 17(1) relates, be a description of the extent to which each of the candidates has the skills, knowledge, and experience to—
    - (i) contribute to the effective governance of the Trust; and
    - (ii) contribute to the achievement of the long-term outcomes of Ngāti Paoa; and
  - (d) be distributed as widely as reasonably practicable (having regard to the matters in subsection (2)) as a basis for general consultation; and
  - (e) indicate where the statement of proposal may be inspected, and how a copy may be obtained; and
  - (f) state the period within which submissions on the proposal may be made to the Trustees.
- (2) The matters referred to in subsection (1)(d) are—
- (a) the matter to which the proposal relates; and
  - (b) the geographical distribution of Ngāti Paoa; and
  - (c) any other characteristics of Ngāti Paoa; and
  - (d) the location and characteristics of any other interested or affected parties; and
  - (e) any other matter which the Trustees consider appropriate.

## PART 9: PLANNING AND ACCOUNTABILITY

*This Part of the deed—*

- *explains the planning processes which the Trustees must follow;*
- *requires the Trustees to identify the long-term outcomes which Ngāti Paoa want to achieve;*
- *requires the Trustees to have a long-term plan, approved by Ngāti Paoa, which explains how the vision of Ngāti Paoa will be achieved and how the long-term outcomes will be achieved;*

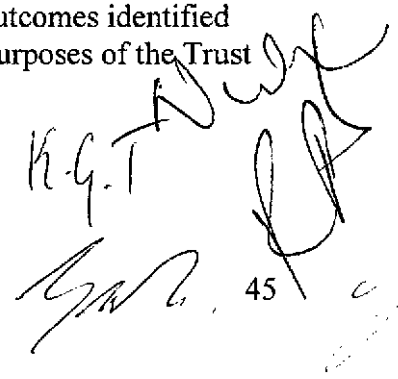
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- *requires the Trustees to cooperate with other groups and organisations which can assist with the achievement of the long-term outcomes;*
- *restricts the activities which the Trustees are allowed to be involved in to those activities that are contained in the long-term plan;*
- *requires the Trustees to have an annual plan every year;*
- *requires the Trustees to report annually on the performance of the Trust; and*
- *requires the long-term plan and the annual reports to be independently audited.*

### **50. Process for identifying long-term outcomes**

- (1) The Trustees must, not less than once every 6 years, carry out a process to identify long-term outcomes for the future of Ngāti Paoa.
- (2) The purposes of the identification of long-term outcomes are—
  - (a) to provide opportunities for Ngāti Paoa to discuss desired outcomes in terms of the present and future social, economic, cultural and environmental well-being of Ngāti Paoa; and
  - (b) to allow Ngāti Paoa to discuss the relative importance and priorities of identified outcomes to the present and future social, economic, cultural and environmental well-being of Ngāti Paoa; and
  - (c) to provide scope to measure progress towards the achievement of outcomes; and
  - (d) to promote the better co-ordination and application of the assets of Ngāti Paoa; and
  - (e) to inform and guide the setting of priorities in relation to the activities of the Trust and other organisations.
- (3) The Trustees may decide for themselves the process that is to be used to facilitate the identification of long-term outcomes under subsection (1), but the Trustees—
  - (a) must, before finally deciding on that process, take steps—
    - (i) to identify, so far as practicable, other organisations and groups capable of influencing either the identification or the promotion of long-term outcomes; and
    - (ii) to secure, if practicable, the agreement of those organisations and groups to the process and to the relationship of the process to any existing and related plans; and
  - (b) must ensure that the process encourages Ngāti Paoa and (if appropriate) other interested parties to contribute to the identification of long-term outcomes.
- (4) Despite any other provisions of this deed, the long-term outcomes identified under this section must be consistent with the charitable purposes of the Trust as set out in section 7.



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## TRUST DEED

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- (5) Despite subsection (1), the initial Trustees must carry out the process described in this section within one year of the date of this deed.

### 51. Obligation to report against long-term outcomes

- (1) The Trustees must monitor and, not less than once every 3 years, report on the progress made by Ngāti Paoa in achieving the long-term outcomes for Ngāti Paoa.
- (2) The Trustees may decide for themselves how monitoring and reporting under subsection (1) are to be carried out, but the Trustees must seek to secure the agreement of organisations and groups identified under section 50(3)(a) to the monitoring and reporting procedures, including the incorporation of any research, monitoring, or reporting undertaken by those organisations or groups.
- (3) Despite subsection (1), the initial Trustees must report on the progress made by Ngāti Paoa in achieving the long-term outcomes for Ngāti Paoa within 4 years of the date of this deed.

### 52. Long-term plan

- (1) The Trustees must, at all times, have a long-term plan under this section.
- (2) The Trustees must use the postal referendum procedure in adopting a long-term plan.
- (3) A long-term plan must be adopted before the commencement of the first year to which it relates, and continues in force until the close of the third consecutive year to which it relates.
- (4) The Trustees may amend a long-term plan at any time.
- (5) The Trustees must use the postal referendum procedure in making any amendment to a long-term plan.
- (6) The purposes of a long-term plan are to—
- (a) give effect to the vision of Ngāti Paoa and purposes of the Trust; and
  - (b) describe the long-term outcomes of Ngāti Paoa; and
  - (c) describe the activities of the Trust; and
  - (d) provide a long-term focus for the decisions of the Trustees and activities of the Trust; and
  - (e) provide integrated decision-making and co-ordination of the assets of the Trust; and
  - (f) provide a basis for accountability of the Trustees to Ngāti Paoa; and
  - (g) provide an opportunity for participation by Ngāti Paoa and (if appropriate) other parties in the decision-making processes on activities to be provided by the Trust.
- (7) A long-term plan adopted under this section must—
- (a) cover a period of not less than 10 consecutive financial years; and

## THE NGĀTI PAOA TRUST

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- (b) include the information required by Schedule 3; and
  - (c) be consistent with the charitable purposes of the Trust as set out in section 7; and
  - (d) be written in plain language.
- (8) The Trustees must, in complying with the requirements of this deed in relation to the preparation and adoption of a long-term plan, act in such manner, and include in that plan such detail, as the Trustees consider on reasonable grounds to be appropriate.
- (9) The Trustees must, in deciding what is appropriate for the purposes of subsection (8), have regard to—
- (a) the provisions of sections 36, 37, 38, 39, 41, 42, 43, 44, 55, 56, and 59; and
  - (b) the significance of any matter; and
  - (c) the extent of the Trust's assets.
- (10) The Trustees must, within one month after the adoption of a long-term plan, make the long-term plan available to Ngāti Paoa and to such other parties as the Trustees consider appropriate.
- (11) Despite subsection (1), the initial Trustees must comply with the requirements of this section within 18 months of the date of this deed.

### 53. Audit of long-term plan

- (1) The long-term plan must contain a report from the Trust's auditor on—
- (a) the extent to which the Trustees have complied with the requirements of this deed in respect of the plan; and
  - (b) the quality of the information and assumptions underlying the forecast information provided in the plan; and
  - (c) the extent to which the forecast information and performance measures provide an appropriate framework for the meaningful assessment of the actual levels of service provision and performance of the Trust.
- (2) A report under subsection (1) may be in the form of confirmation or amendment of the report made by the auditor under section 44(4).
- (3) To avoid doubt, it is declared that a report under subsection (1) must not comment on the merits of any policy content of the statement.

### 54. Annual plan

- (1) The Trustees must prepare and adopt an annual plan for each financial year.
- (2) The Trustees must use the special consultative procedure in adopting an annual plan.
- (3) An annual plan must be adopted before the commencement of the year to which it relates.

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## TRUST DEED

- (4) Despite subsection (1), for the first year to which a long-term plan under section 52 relates, the financial statement included in that long-term plan in relation to that year must be regarded as the annual plan adopted by the Trustees for that year.
- (5) The purposes of an annual plan are to—
  - (a) give effect to the long-term plan in the year to which it relates; and
  - (b) support the long-term plan in providing integrated decision-making and co-ordination of the assets of the Trust; and
  - (c) contain the proposed annual budget for the year to which the annual plan relates; and
  - (d) identify any variation from the financial statements included in the Trust's long-term plan in respect of the year; and
  - (e) contribute to the accountability of the Trustees to Ngāti Paoa; and
  - (f) extend opportunities for participation by Ngāti Paoa and (if appropriate) other parties in the decision-making processes of the Trustees.
- (6) Each annual plan adopted under this section must—
  - (a) be prepared in accordance with the principles and procedures that apply to the preparation of the financial statements included in the long-term plan; and
  - (b) contain appropriate references to the long-term plan in which the Trust's activities for the financial year covered by the annual plan are set out; and
  - (c) include the information required by Schedule 3; and
  - (d) be consistent with the charitable purposes of the Trust as set out in section 7; and
  - (e) be written in plain language.
- (7) The Trustees must, within one month after the adoption of an annual plan, make the annual plan available to Ngāti Paoa and to such other parties as the Trustees consider appropriate.
- (8) Despite subsection (1), the first year for which the initial Trustees must prepare an annual plan is the second year covered by the long-term plan referred to in section 52(11).

### 55. Effect of resolution adopting long-term plan or annual plan

- (1) The effect of a long-term plan and an annual plan adopted by the Trustees is to provide a formal statement of the Trustees' intentions in relation to the matters covered by the plan.
- (2) A resolution to adopt a long-term plan or an annual plan does not constitute a decision to act on any specific matter included in the plan.



## THE NGĀTI PAOA TRUST

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- (3) Subject to section 39, and except as provided in section 56, the Trustees may make decisions that are inconsistent with the contents of any long-term plan or annual plan.
- (4) No person is entitled to require the Trustees to implement the provisions of a long-term plan or an annual plan.

### **56. Certain decisions to be made only if provided for in long-term plan**

- (1) This section applies to the following decisions of the Trustees:
  - (a) a decision to alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Trust, including a decision to commence or cease any such activity;
  - (b) a decision to transfer ownership or control (whether permanently or temporarily) of a strategic asset to or from the Trust;
  - (c) a decision to construct, replace, abandon, or significantly alter the characteristics of a strategic asset;
  - (d) a decision that will, directly or indirectly, significantly affect the capacity of the Trust, or the cost or benefits to the Trust, in relation to any activity identified in the long-term plan.
- (2) The Trustees must not make a decision to which this section relates unless—
  - (a) the decision is explicitly provided for in the Trust's long-term plan; and
  - (b) the proposal to provide for the decision was included in a statement of proposal prepared under section 43.

### **57. Annual report**

- (1) The Trustees must prepare and adopt in respect of each financial year an annual report containing in respect of that year the information required by Schedule 3.
- (2) The purposes of an annual report are—
  - (a) to compare the actual activities and the actual performance of the Trust in the year with the intended activities and the intended performance as set out in respect of that year in the long-term plan and the annual plan; and
  - (b) to promote the Trustees' accountability to Ngāti Paoa for the decisions made throughout the year by the Trustees.
- (3) Each annual report must be completed and adopted, by resolution, within 4 months after the end of the financial year to which it relates.
- (4) The Trustees must, within one month after the adoption of an annual report,—
  - (a) make the annual report available to Ngāti Paoa; and
  - (b) send a summary of the information contained in the annual report to every member of Ngāti Paoa.

## TRUST DEED

- (5) A summary of the information contained in an annual report must be written in plain language and must represent, fairly and consistently, the information regarding the major matters dealt with in the annual report.
- (6) Despite subsection (1), the first year for which the initial Trustees must prepare an annual report is the second year covered by the long-term plan referred to in section 52(11).

### 58. Audit of information in annual report and summary

- (1) In addition to the information required by Schedule 3, the annual report must contain the auditor's report on—
  - (a) the financial statements referred to in clause 12 of Schedule 3; and
  - (b) the Trust's compliance with the requirements of Schedule 3 that are applicable to the annual report.
- (2) In addition to the information required by section 57(5), the summary required by section 57(4)(b) must contain the auditor's report on whether the summary represents, fairly and consistently, the information regarding the major matters dealt with in the annual report.

## PART 10: FINANCIAL MANAGEMENT

*This Part of the deed requires the Trustees—*

- *to manage the Trust prudently and carefully for the benefit of Ngāti Paoa;*
- *to have a policy setting out the terms and conditions on which they are allowed to borrow money and incur other liabilities;*
- *to have a policy setting out how the Trust's funds can be invested;*
- *to have a policy setting out how, when and to whom the Trust will make grants and other distributions;*
- *to have a policy setting out the terms and conditions on which the Trust will enter into partnerships with other groups and organisations;*
- *to keep a register of all charges over any asset of the Trust; and*
- *to maintain a register of protected assets which may not be used as security for borrowing or subjected to any kind of charge.*

### 59. Financial management

- (1) The Trustees must manage the revenues, expenses, assets, liabilities, investments, and general financial dealings of the Trust prudently and in a manner that is consistent with, furthers, and achieves the charitable purposes of the Trust as set out in section 7.

THE NGĀTI PAOA TRUST

- (2) The Trustees must determine and make any distribution of financial returns (whether capital or income) or other benefits arising from the performance of their role prudently and in a manner that is consistent with, furthers, and achieves the charitable purposes of the Trust as set out in section 7.

**60. Financial policies**

- (1) The Trustees must, in order to provide predictability and certainty about financial management, adopt the financial policies described in subsection (4).
- (2) The Trustees must, subject to subsection (3), use the postal referendum procedure in adopting a policy under this section.
- (3) A policy under this section may be adopted by the Trustees as part of a long-term plan.
- (4) The Trustees must adopt—
- (a) a liability management policy; and
  - (b) an investment policy; and
  - (c) a distribution policy; and
  - (d) a financial partnerships policy.
- (5) A policy described in this section may be amended only as an amendment to a long-term plan.
- (6) Despite any other provisions of this deed, a policy described in this section must be consistent with the charitable purposes of the Trust as set out in section 7.

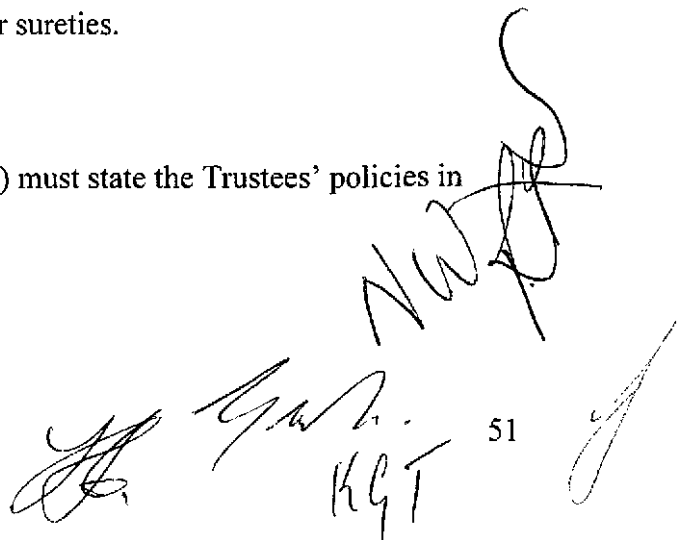
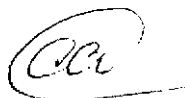
**61. Liability management policy**

A policy adopted under section 60(4)(a) must state the Trustees' policies in respect of the management of both borrowings and other liabilities and exposures, including—

- (a) interest rate exposure; and
- (b) liquidity; and
- (c) credit exposure; and
- (d) debt repayment; and
- (e) specific borrowing limits; and
- (f) the giving of securities and charges; and
- (g) the giving of guarantees and other sureties.

**62. Investment policy**

- (1) A policy adopted under section 60(4)(b) must state the Trustees' policies in respect of investments, including—



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- (a) the objectives in terms of which financial and equity investments are to be managed; and
  - (b) the mix of investments; and
  - (c) the acquisition of new investments; and
  - (d) an outline of the procedures by which investments are managed and reported on to the Trustees; and
  - (e) an outline of how risks associated with investments are assessed and managed.
- (2) Nothing in this section limits the accountability of a Trustee under section 28, or under any enactment.

### 63. Distribution policy

A policy adopted under section 60(4)(c) must state the Trustees' policies in respect of the distribution of financial returns (whether capital or income) and other benefits arising from the performance of their role, including—

- (a) the objectives in terms of which distributions are to be made; and
- (b) the approach of the Trustees to determining what proportion (if any) of financial returns and other benefits is to be distributed and what proportion (if any) is to be reinvested in the activities of the Trust; and
- (c) a description of the persons, groups of persons, and entities to which the Trustees are permitted to make distributions; and
- (d) an outline of the procedures by which distribution decisions are to be made and reported on by the Trustees.

### 64. Financial partnerships policy

A policy adopted under 60(4)(d)—

- (a) must state the Trustees' policies in respect of the commitment of Trust resources to partnerships between the Trust and any of—
  - (i) the Crown; and
  - (ii) Crown entities; and
  - (iii) state-owned enterprises; and
  - (iv) local authorities; and
  - (v) the private sector; and
- (b) must include—
  - (i) the circumstances (if any) in which the Trustees will provide funding or other resources to any form of partnership whether by way of grant, loan, or investment, or by way of acting as guarantor for any such partnership; and

## THE NGĀTI PAOA TRUST

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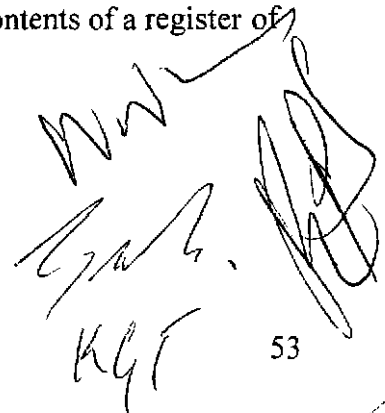
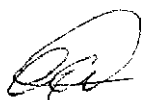
- (ii) what consultation the Trustees will undertake in respect of any proposal to provide funding or other resources to any form of partnership; and
- (iii) what conditions, if any, the Trustees will impose before providing funding or other resources to any form of partnership; and
- (iv) an outline of how the risks associated with any such provision of funding or other resources are assessed and managed; and
- (v) an outline of the procedures by which any such provision of funding or other resources will be monitored and reported on to the Trustees; and
- (vi) an outline of how the Trustees will assess, monitor, and report on the extent to which long-term outcomes are furthered by any provision of funding or other resources.

### 65. Register of charges

- (1) The Trustees must establish and maintain at the principal office of the Trust a register of, and keep copies of, all instruments creating a charge over any of the assets of the Trust.
- (2) The register referred to in subsection (1) must be available for inspection during ordinary office hours.
- (3) No fee is payable for inspection of the register.
- (4) The Trust may charge for supplying any person with copies of, or any particulars from, the register.
- (5) Nothing in this section entitles any person to view the contents of any instrument creating a charge over any asset of the Trust.

### 66. Register of protected assets

- (1) The Trustees must establish and maintain at the principal office of the Trust a register of protected assets.
- (2) A copy of the Trust's register of protected assets must be appended as a schedule to every instrument creating a charge over any asset of the Trust.
- (3) If the Trust purchases, receives by way of settlement or gift, or otherwise acquires an interest in any asset, the Trustees may resolve to include such asset or part thereof in the register of protected assets.
- (4) Despite the provisions of this deed, the Trustees have no power to create a charge over any asset included in the Trust's register of protected assets.
- (5) Nothing in this section entitles any person to view the contents of a register of protected assets.



**PART 11: TRUST-CONTROLLED ORGANISATIONS**

*This Part of the deed—*

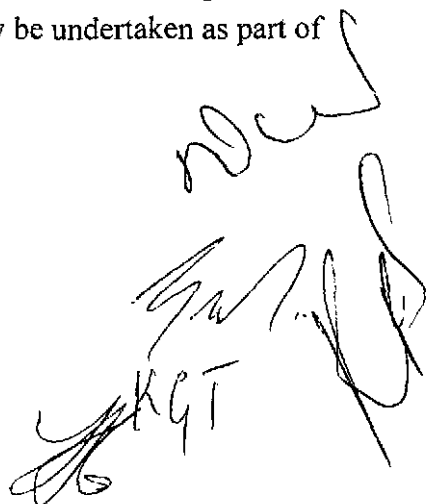
- *governs the relationship between the Trust and any organisations which it may own or control;*
- *sets out the procedures and standards to be observed by the Trustees if the Trust owns or controls any other organisations;*
- *requires a postal vote of Ngāti Paoa to be held before the Trustees can set up, or become involved in, a Trust-controlled organisation;*
- *requires directors to be appointed to Trust-controlled organisations who have the skills, knowledge and experience to do a good job of governing the organisations;*
- *requires the appointment process to be fair and transparent;*
- *prevents employees from also acting as directors;*
- *ensures that Trust-controlled organisations are focused on the objectives set for them by the Trustees;*
- *requires every Trust-controlled organisation to have a statement of intent, agreed between the organisation and the Trustees, setting out the activities and objectives of the organisation;*
- *requires the Trustees to regularly monitor the performance of Trust-controlled organisations;*
- *requires Trust-controlled organisations to report annually to the Trustees;*  
*and*
- *requires the reports of Trust-controlled organisations to be independently audited.*

**67. Saving in respect of certain fisheries activities**

This Part is subject to the special provisions relating to fisheries activities set out in Part 13.

**68. Consultation required before establishment**

- (1) A proposal to establish a Trust-controlled organisation must be adopted in accordance with section 43 before the Trust may establish, or become a shareholder in, or exercise control over, the Trust-controlled organisation.
- (2) The consultation required in subsection (1) may be undertaken as part of another proposal or as part of a long-term plan.



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### 69. Appointment of directors

- (1) The Trustees must adopt a policy that sets out an objective and transparent process for—
  - (a) the identification and consideration of the skills, knowledge, and experience required of directors of a Trust organisation; and
  - (b) the appointment of directors to a Trust organisation; and
  - (c) the remuneration of directors of a Trust organisation.
- (2) The Trustees may appoint a person to be a director of a Trust organisation only if the person has, in the opinion of the Trustees, the skills, knowledge, and experience to—
  - (a) contribute to the achievement of the principal objective of the organisation; and
  - (b) contribute to the effective governance of the organisation, given the nature and scope of its activities.
- (3) An employee of a Trust organisation who is appointed to the board of a Trust organisation must resign from his or her position as an employee of the Trust organisation before taking up his or her position as a director.

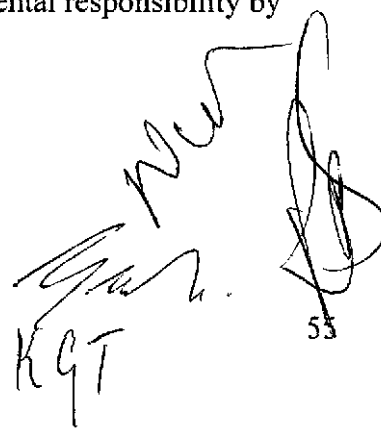
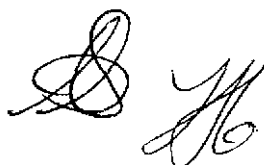
### 70. Role of board of directors

- (1) The board of directors of a Trust-controlled organisation is accountable to the Trust for the governance of the organisation in accordance with—
  - (a) principles of sound governance; and
  - (b) the statement of intent of the organisation.
- (2) The role of the board of directors is to ensure that the organisation—
  - (a) applies principles of sound governance; and
  - (b) meets the objectives and performance standards set out in its statement of intent; and
  - (c) meets any other requirements in its statement of intent.
- (3) This section does not limit or affect the other duties that a board of directors or an individual director of a Trust-controlled organisation has.

### 71. Principal objective

The principal objective of a Trust-controlled organisation is to—

- (a) achieve the objectives (whether commercial or non-commercial) of its shareholders as specified in its statement of intent; and
- (b) exhibit a sense of social, cultural and environmental responsibility by having regard to the interests of—
  - (i) Ngāti Paoa; and
  - (ii) any community in which it operates;



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and by endeavouring to accommodate or encourage these interests when able to do so; and

- (c) if the Trust-controlled organisation is a Trust-controlled trading organisation, conduct its affairs in accordance with sound business practice.

### 72. Decisions relating to operation of Trust-controlled organisations

All decisions relating to the operation of a Trust-controlled organisation must be made by, or under the authority of, the board of directors of the organisation in accordance with—

- (a) sound governance practice; and
- (b) the statement of intent of the organisation; and
- (c) the constitution of the organisation.

### 73. Statement of intent required

- (1) A Trust-controlled organisation must have a statement of intent that complies with Schedule 2.
- (2) However, if the shares of a Trust-controlled organisation are listed on a stock exchange, the Trust-controlled organisation is not required to have a statement of intent.
- (3) A statement of intent in force at the time that subsection (2) first applies to a Trust-controlled organisation ceases to have effect from that time.
- (4) A statement of intent—
  - (a) must not be inconsistent with the constitution of a Trust-controlled organisation; and
  - (b) may include and apply to 2 or more related Trust-controlled organisations; and
  - (c) must be written in plain language.

### 74. Performance monitoring

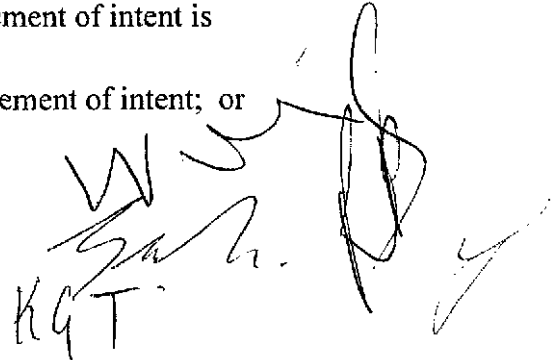
- (1) The Trustees must regularly undertake performance monitoring of all Trust-controlled organisations to evaluate the contribution of these organisations to the achievement of—
  - (a) the Trust's objectives for the organisation; and
  - (b) the desired results, as set out in the organisation's statement of intent; and
  - (c) the long-term outcomes of Ngāti Paoa.
- (2) The Trustees must, as soon as practicable after a statement of intent is delivered to them,—
  - (a) agree to the Trust-controlled organisation's statement of intent; or

  
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- (b) if they do not agree, take all practicable steps under clause 6 of Schedule 2 to require the statement of intent to be modified.

**75. Annual report**

- (1) Within three months after the end of each financial year, the board of directors of a Trust-controlled organisation must deliver to the shareholders, and make available to Ngāti Paoa, a report on the organisation's operations during that year.
- (2) The report must include the information required to be included by—
- (a) sections 76 and 77; and
  - (b) its statement of intent.
- (3) This section does not apply to a Trust-controlled organisation if its shares are listed on a stock exchange.

**76. Content of reports**

A report on the operations of a Trust-controlled organisation under section 75 must—

- (a) contain the information that is necessary to enable an informed assessment of the operations of that organisation and its subsidiaries, including—
- (i) a comparison of the performance of the organisation and its subsidiaries with the statement of intent; and
  - (ii) an explanation of any material variances between that performance and the statement of intent; and
- (b) state the dividend (if any) authorised to be paid or the maximum dividend proposed to be paid by that organisation for its equity securities (other than fixed-interest securities) for the financial year to which the report relates; and
- (c) be written in plain language.

**77. Financial statements and auditor's report**

- (1) A report on the operations of a Trust-controlled organisation under section 75 must include—
- (a) audited consolidated financial statements for that financial year for that organisation and its subsidiaries; and
- (b) an auditor's report on—
- (i) those financial statements; and
  - (ii) the performance standards and other measures by which performance was judged in relation to that organisation's objectives.

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## TRUST DEED

- (2) The audited financial statements under subsection (1)(a) must be prepared in accordance with generally-accepted accounting practice.

### 78. Protection from disclosure of sensitive information

Nothing in this deed requires the inclusion in any statement of intent, annual report, or financial statement required to be produced under this deed by a Trust-controlled organisation of any information that may properly be withheld under Schedule 4.

### 79. Transfers to Trust-controlled organisations

The Trustees may transfer an existing asset of the Trust to a Trust-controlled organisation provided—

- (a) the transfer is agreed to by—
- (i) the Trustees; and
  - (ii) the Trust-controlled organisation; and
  - (iii) any other party or parties with a material interest in the transfer; and
- (b) in the case of a strategic asset, the proposal to make the transfer is adopted in accordance with section 56.

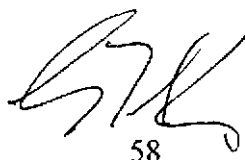
## PART 12: DISPUTE RESOLUTION

*This Part of the deed—*

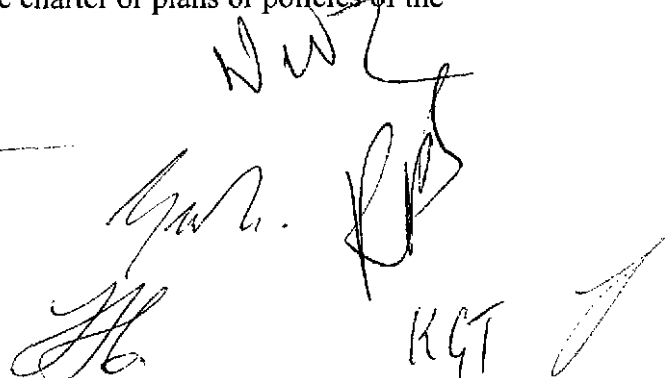
- *requires the charter of the Trust to contain dispute-resolution procedures; and*
- *specifies what issues may be dealt with by the procedures.*

### 80. Requirement for dispute resolution procedures

- (1) The charter of the Trust must prescribe dispute resolution procedures for dealing with specified issues.
- (2) The dispute resolution procedures under subsection (1) must be in accordance with the tikanga of Ngāti Paoa.
- (3) In this section, **specified issue** means—
- (a) an issue raised by an adult member of Ngāti Paoa alleging that any decision, act, or omission of the Trustees, or of an officer or employee of the Trust, concerning a matter addressed in this deed or in the charter of the Trust is contrary to this deed, or the charter or plans or policies of the Trust, or any enactment.



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## THE NGĀTI PAOA TRUST

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- (b) an issue raised by a shareholder in, or a director of, or any other person with a legitimate interest in, a Trust-controlled organisation alleging that any decision, act, or omission of the Trustees, or of an officer or employee of the Trust, concerning a matter addressed in this deed and relating to the Trust-controlled organisation is contrary to the deed:
- (c) an issue raised by an applicant in relation to a decision made by the principal officer of the Trust under clause 13(i) of Schedule 4.

### PART 13: PROVISIONS RELATING TO FISHERIES ACTIVITIES

*This Part of the deed—*

- *applies only if the Trust becomes a mandated iwi organisation under the Māori fisheries legislation; and*
- *sets out a number of terms and conditions which have to be met if the Trust is to continue as a mandated iwi organisation.*

#### **81. Application of Part**

This Part applies if the Trust becomes a mandated iwi organisation under the Māori fisheries legislation.

#### **82. Ownership of fisheries assets to be separate**

If the Trust purchases, owns, or otherwise acquires any allocated quota or income shares, it must establish a Trust-controlled organisation in which it—

- (a) either controls, directly or indirectly, 100% of the votes at any meeting of the members or controlling body of the organisation; or
- (b) has the right, directly or indirectly, to appoint 100% of the trustees, directors, or managers (however described) of the organisation—  
to hold the quota and income shares.

#### **83. Ownership of fisheries operations to be separate**

If the Trust purchases, owns, or otherwise acquires any operation to harvest, process or market fish, it must establish a Trust-controlled organisation in which it—

- (a) either controls, directly or indirectly, 100% of the votes at any meeting of the members or controlling body of the organisation; or
- (b) has the right, directly or indirectly, to appoint 100% of the trustees, directors, or managers (however described) of the organisation—  
to own the operation.

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## TRUST DEED

### 84. Ownership and operations organisations to be separate

- (1) A Trust-controlled organisation described in section 82 must be separate and distinct from a Trust-controlled organisation described in section 83.
- (2) Trustees may comprise no more than 40% of the members of the controlling bodies of either of the Trust-controlled organisations described in sections 82 and 83.
- (3) The financial returns from a Trust-controlled organisation described in section 82 or section 83 must be made solely to the Trust.

### 85. Restrictions on amendments to constitution

- (1) The constitution of a Trust-controlled organisation described in section 82 or section 83 may only be amended if—
  - (a) the amendment is consistent with all of the Māori fisheries legislation; and
  - (b) the postal referendum procedure is used to effect the amendment; and
  - (c) the resolution effecting the amendment is approved by a 75% majority of the Trustees (including vacancies); and
  - (d) the amendment is reported to Ngāti Paoa as soon as practicable.
- (2) Despite subsection (1) and section 22, the Trustees may not, within 2 years of the date on which the Trust is recognised as a mandated iwi organisation, amend the constitution of a Trust-controlled organisation described in section 82 or section 83 in respect of any matter to which the relevant provisions of the Māori fisheries legislation relate.
- (3) Despite subsection (1)(b), the Trustees may, after taking into account the matters in subsection (4), resolve that an amendment to the constitution of a Trust-controlled organisation—
  - (a) is of a minor nature; and
  - (b) ought to be determined by the Trustees without recourse to the postal referendum procedure.
- (4) The matters are—
  - (a) the significance of the amendment; and
  - (b) the costs and benefits to the Trust, the Trust-controlled organisation and Ngāti Paoa of effecting the amendment by the special consultative procedure.

### 86. Restrictions on amendments to charter

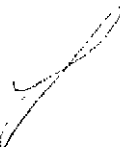
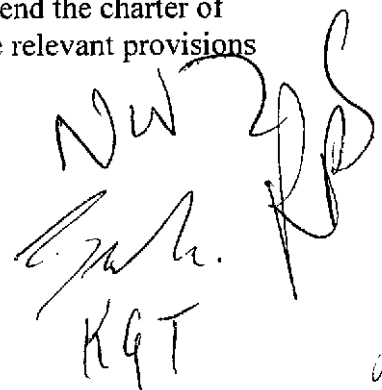
Despite section 22, the Trustees may not, within 2 years of the date on which the Trust is recognised as a mandated iwi organisation, amend the charter of the Trust in respect of any matter to which all or any of the relevant provisions in the Māori fisheries legislation relate.



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THE NGĀTI PAOA TRUST

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**87. Annual general meeting**

- (1) For the purposes of the Māori fisheries legislation, one meeting of the Trustees in each year is to be designated the annual general meeting of the Trust.
- (2) At the annual general meeting, the Trustees must deal with the matters required by the Māori fisheries legislation to be dealt with at the meeting.

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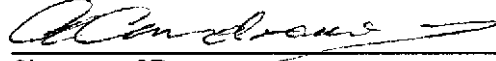
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TRUST DEED

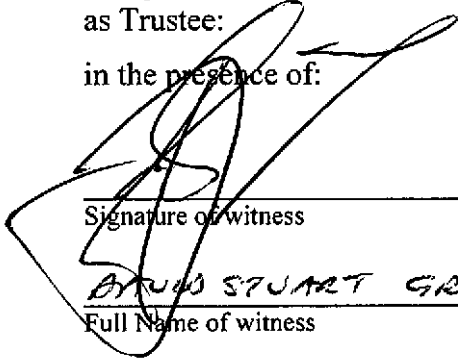
SIGNED AS A DEED

SIGNED by  
Andy ANDREWS  
as Trustee:

in the presence of:



Signature of Trustee



Signature of witness

DAVID STUART GRAY

Full Name of witness

KAITATAKI - A - ROHE

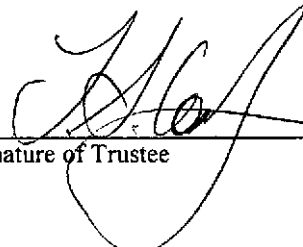
Occupation of witness

PUKEKOHE

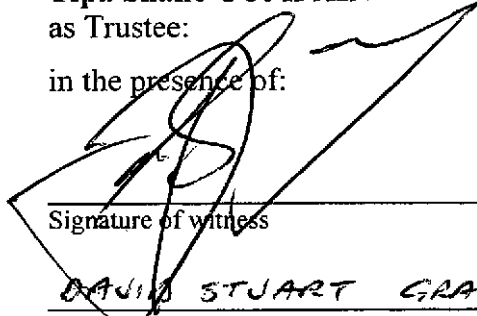
City/town of residence

SIGNED by  
Tipa Shane COMPAIN  
as Trustee:

in the presence of:



Signature of Trustee



Signature of witness

DAVID STUART GRAY

Full Name of witness

KAITATAKI - A - ROHE

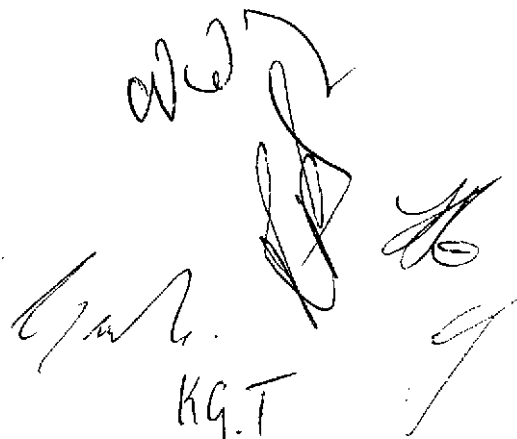
Occupation of witness

PUKEKOHE

City/town of residence



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THE NGĀTI PAOA TRUST

SIGNED by  
Laura Hariata GORDON  
as Trustee:

in the presence of:

Signature of Trustee

Signature of witness

DAVID STUART GRAY  
Full Name of witness

KAITATAKI - A - ROHE  
Occupation of witness

PUKEKOHE  
City/town of residence

SIGNED by  
George Tearoha KAHI  
as Trustee:

in the presence of:

Signature of Trustee

Signature of witness

DAVID STUART GRAY  
Full Name of witness

KAITATAKI - A - ROHE  
Occupation of witness

PUKEKOHE  
City/town of residence

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HGT. *[Handwritten mark]*

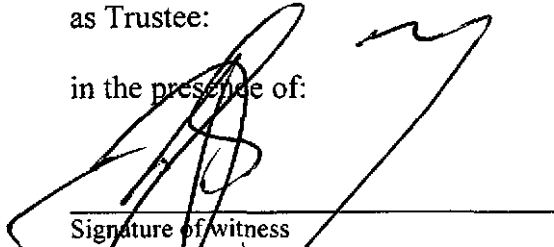
TRUST DEED

SIGNED by  
Pirihira KAIO  
as Trustee:



Signature of Trustee

in the presence of:



Signature of witness

DAVID STUART GRAY

Full Name of witness

KAITATAKI - A - ROME  
Occupation of witness

PUKEKOHU  
City/town of residence

SIGNED by  
Anahera SADLER  
as Trustee:



Signature of Trustee

in the presence of:

Signature of witness

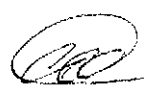
DAVID STUART GRAY

Full Name of witness

KAITATAKI - A - ROME  
Occupation of witness

PUKEKOHU  
City/town of residence

52/64



14/2/11  
Kaitaki R.O.S.



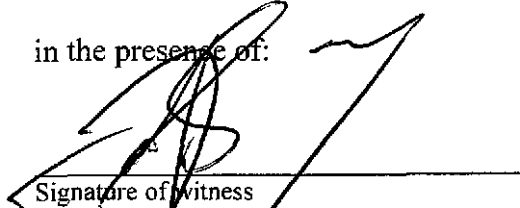
THE NGĀTI PAOA TRUST

SIGNED by  
Ripeka Patene Pokaitara STOUT  
as Trustee:



Signature of Trustee

in the presence of:



Signature of witness

DAVID STUART GRAY

Full Name of witness

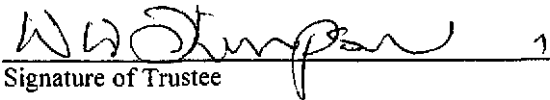
KAITATAKI - A - ROHE

Occupation of witness

PUKEKOHE

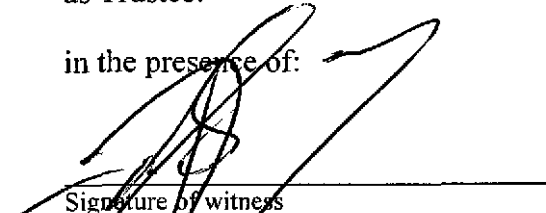
City/town of residence

SIGNED by  
Nigel Wiremu Taipurutu  
POKAITARA-THOMPSON  
as Trustee:



Signature of Trustee

in the presence of:



Signature of witness

DAVID STUART GRAY

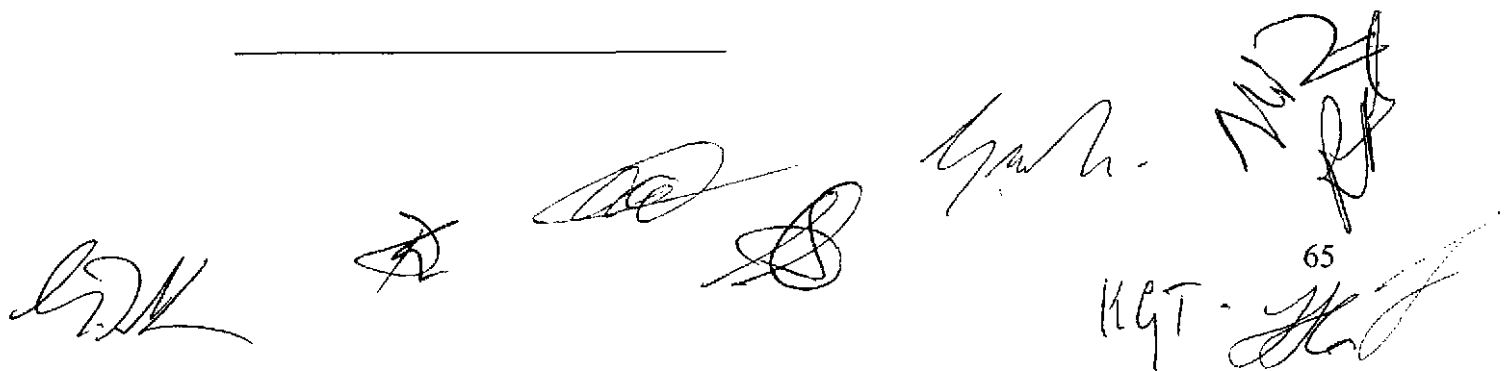
Full Name of witness

KAITATAKI - A - ROHE

Occupation of witness

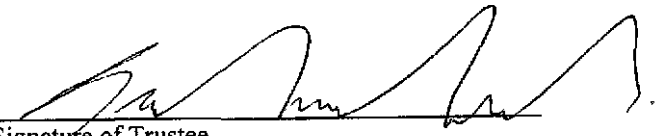
PUKEKOHE

City/town of residence

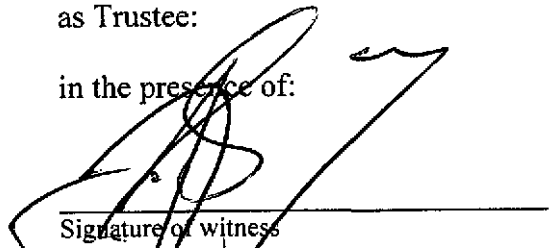


TRUST DEED

SIGNED by  
**Glen Andrew (Joe) TUPUHI**  
as Trustee:

  
\_\_\_\_\_  
Signature of Trustee

in the presence of:

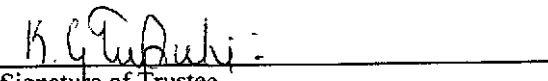
  
\_\_\_\_\_  
Signature of witness

DAVID STUART GRAY  
Full Name of witness

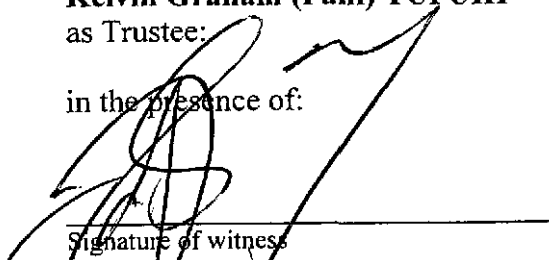
KAITATAKI - A - ROHE  
Occupation of witness

PUKEKOHE  
City/town of residence

SIGNED by  
**Kelvin Graham (Pahi) TUPUHI**  
as Trustee:

  
\_\_\_\_\_  
Signature of Trustee

in the presence of:


  
\_\_\_\_\_  
Signature of witness


DAVID STUART GRAY  
Full Name of witness

KAITATAKI - A - ROHE  
Occupation of witness

PUKEKOHE  
City/town of residence

  
66





THE NGĀTI PAOA TRUST

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SPK. ~~SPK.~~

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H.  
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K-GT  
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SCHEDULES

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SK ~~Handwritten scribble~~

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H. G. M. K-9T

NWD  
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## SCHEDULE 1: MEETINGS, SUBORDINATE DECISION- MAKING, DELEGATION, EMPLOYMENT OF STAFF

*This schedule to the deed contains a number of detailed provisions about how the Trustees are to conduct their meetings, what other bodies they can set up to make decisions, how they are to go about delegating their powers and how the relationship between the Trustees and the principal officer is to be conducted.*

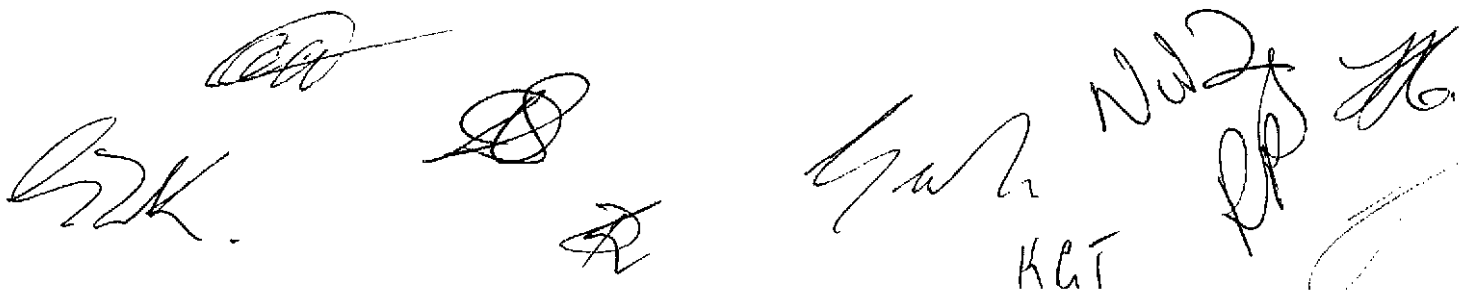
### MEETINGS

*This part of the schedule—*

- *gives instructions for organising and running meetings;*
- *says who can attend meetings;*
- *requires notice of meetings to be given to Ngāti Paoa;*
- *allows certain meetings to be called at short notice; and*
- *allows the Trustees to decide for themselves certain other matters to do with the running of meetings.*

#### 1. General provisions for meetings

- (1) The Trustees must hold the meetings that are necessary for them to carry out their role.
- (2) A Trustee has, unless lawfully excluded, the right to attend any meeting of the Trustees, or of a committee of the Trust.
- (3) A member of a subordinate decision-making body of the Trust appointed under clause 9 of this schedule has, unless lawfully excluded, the right to attend any meeting of the subordinate decision-making body.
- (4) A meeting of the Trustees must be called and conducted in accordance with—
  - (a) this schedule; and
  - (b) the standing orders of the Trust.
- (5) The Trustees must hold ordinary meetings at the times and places that they appoint.
- (6) Unless clause 4 applies, the principal officer must give notice in writing to each Trustee of the time and place of an ordinary meeting—
  - (a) not less than 14 days before the meeting; or
  - (b) if the Trustees have adopted a schedule of meetings, not less than 14 days before the first meeting on the schedule.
- (7) If the Trustees adopt a schedule of ordinary meetings,—
  - (a) the schedule—

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## TRUST DEED

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- (i) may cover any future period that the Trustees consider appropriate; and
  - (ii) may be amended; and
  - (b) notification of the schedule or of any amendment to that schedule constitutes a notification of every meeting on the schedule or amendment.
- (8) Unless clause 4 applies, the principal officer must also give Ngāti Paoa—
- (a) reasonable notice of the ordinary meetings of the Trustees; and
  - (b) a fair representation of the matters to be dealt with at the meetings.

### 2. Meetings not invalid because notice not given

- (1) A meeting of the Trustees is not invalid if notice of that meeting was not received, or not received in due time, by a Trustee unless—
- (a) it is proved that the person responsible for giving notice of the meeting acted in bad faith or without reasonable care; and
  - (b) the Trustee concerned did not attend the meeting.
- (2) Any Trustee may waive any requirement regarding the giving of notice of a meeting to that Trustee.

### 3. First meeting of Trustees

- (1) The first meeting of the Trustees after the date of this deed must be called by the Regional Manager of the Counties/Manukau region of Te Puni Kōkiri (or his or her successor).
- (2) The Regional Manager must give the persons elected as Trustees not less than 7 days' notice of the meeting.
- (3) The Regional Manager (or, in the absence of the Regional Manager, a nominee of the Regional Manager) must chair the meeting until a chairperson has been chosen by the Trustees.
- (4) The business that must be conducted at the meeting must include—
- (a) a general explanation, given or arranged by the Regional Manager, of—
    - (i) Part 5 of this deed; and
    - (ii) Schedule 4 of this deed; and
    - (iii) other laws affecting the Trustees, including the Trustee Act 1956 and the Charitable Trusts Act 1957; and
  - (b) the election of the chairperson; and
  - (c) the adoption of a set of standing orders; and
  - (d) the fixing of the date and time of the first ordinary meeting of the Trustees, or the adoption of a schedule of ordinary meetings; and
  - (e) the election of the deputy chairperson (if any).

  
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## THE NGĀTI PAOA TRUST

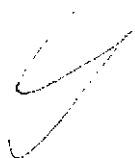
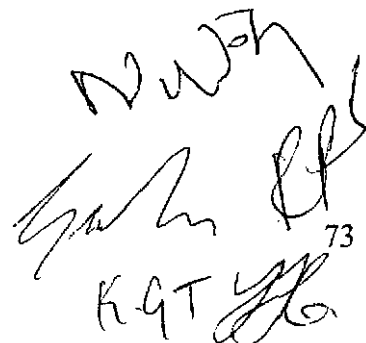
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### 4. Extraordinary meetings

- (1) An extraordinary meeting of the Trustees may be called by—
  - (a) a resolution of the Trustees; or
  - (b) a requisition in writing delivered to the principal officer and signed by not less than one-half of the Trustees (including vacancies); or
  - (c) the principal officer.
- (2) Notice of the time and place of the meeting called under subclause (1) and of the matters in respect of which the meeting is being called must be given by the principal officer or by another person on the principal officer's behalf, by whatever means is reasonable in the circumstances, to each Trustee not less than 4 days before the time appointed for the meeting.
- (3) Despite subclause (2), an extraordinary meeting of the Trustees may be held with less than 4 days notice provided every Trustee waives the requirement regarding the giving of not less than 4 days notice of the meeting.

### 5. Conduct of meetings

- (1) The Trustees must, from time to time, elect from amongst their number a chairperson.
- (2) The Trustees must adopt a set of standing orders for the conduct of their meetings.
- (3) The Trustees must prescribe the form of standing orders to be adopted by a subordinate decision-making body for the conduct of its meetings.
- (4) The standing orders of the Trust must not contravene this deed, or any enactment.
- (5) The standing orders of the Trust must provide—
  - (a) that the quorum for meetings of the Trustees is 7; and
  - (b) that each Trustee is entitled to exercise one vote on any proposal to be decided by the Trustees; and
  - (c) in the event of a tied vote on any proposal, the chairperson does not have an additional, casting vote.
- (6) The standing orders of the Trust must specify—
  - (a) voting procedures at meetings of the Trustees; and
  - (b) the rights of Ngāti Paoa to attend, and to speak at, meetings of the Trustees; and
  - (c) the rights of persons not belonging to Ngāti Paoa to attend, and to speak at, meetings of the Trustees; and
  - (d) procedures in relation to the keeping of minutes.
- (7) Despite subclause (6)(d), the following matters must be recorded in writing:
  - (a) all resolutions of the Trustees;
  - (b) all declarations under section 30.



## TRUST DEED

### 6. Alternate forms of meeting

- (1) The contemporaneous linking together of the Trustees by telephone, videoconferencing or other electronic means of communication shall constitute a meeting of the Trustees and the provisions of this schedule shall apply to such meetings, provided the following conditions are met:
  - (a) each Trustee then in New Zealand shall be entitled—
    - (i) to notice of such a meeting; and
    - (ii) to be linked for the purposes of the meeting;
  - (b) each of the Trustees taking part in the meeting must be able to hear, for the whole of the meeting, each of the other Trustees taking part in the meeting;
  - (c) at the commencement and conclusion of such meeting each Trustee must acknowledge his or her presence for the purpose of the meeting;
  - (d) no Trustee may withdraw from such a meeting without the express consent of the chairperson;
  - (e) a Trustee shall be conclusively presumed to have been present and to have formed part of the quorum of such a meeting at all times during the meeting unless that Trustee has obtained the consent described in subclause (1)(d).
- (2) A minute of a meeting described by subclause (2) shall be sufficient evidence of the proceedings of the meeting provided the minute is certified by the chairperson as a correct minute.





### 7. Exclusion of certain persons from meetings

- (1) The Trustees may, by resolution, exclude any or all of the following from the whole, or part, of any of their meetings or the meetings of any of the Trust's subordinate decision-making bodies:
  - (a) Ngāti Paoa;
  - (b) members of the public;
  - (c) employees of the Trust.
- (2) The Trustees may exercise the power in subclause (1) if they are satisfied on reasonable grounds that not to do so would be likely to—
  - (a) result in the disclosure of information for which good reason for withholding would exist under Schedule 4; or
  - (b) prejudice the orderly conduct of the meeting.
- (3) The Trustees must exercise the power in subclause (1) to the appropriate extent in respect of any matter to be dealt with by the Trustees under—
  - (a) the dispute-resolution procedures required by section 80; and
  - (b) the procedures for verifying eligibility for membership of Ngāti Paoa required by section 22(5)(a)(ii).

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# THE NGĀTI PAOA TRUST

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## SUBORDINATE DECISION-MAKING AND DELEGATION

*This part of the schedule—*

- *allows the Trustees to set up other bodies, like sub-committees, and to delegate decision-making authority to them;*
- *requires such bodies to be subject in all things to the Trustees;*
- *requires at least one member of every body to be a Trustee;*
- *holds the members of these bodies to the same standards as the Trustees themselves; and*
- *puts restrictions on what the Trustees may delegate.*

### **8. Power to appoint subordinate decision-making bodies**

- (1) The Trustees may appoint, discharge and reconstitute—
  - (a) the committees, subcommittees, and other subordinate decision-making bodies that they consider appropriate; and
  - (b) a joint committee with a local authority, a public body or other entity.
- (2) A subordinate decision-making body—
  - (a) is subject in all things to the control of the Trustees;
  - (b) must carry out the directions of the Trustees given in relation to the body or the affairs of the body; and
  - (c) must act and make decisions at all times consistent with the charitable purposes of the Trust as set out in section 7.

### **9. Membership of subordinate decision-making bodies**

- (1) The Trustees may appoint or discharge any member of a subordinate decision-making body.
- (2) The members of a subordinate decision-making body may be, but need not be, Trustees, and the Trustees may appoint to a subordinate decision-making body a person who is not a Trustee if, in the opinion of the Trustees, that person has the skills, attributes, or knowledge that will assist the work of the body.
- (3) Despite subclause (2),—
  - (a) at least one member of a subordinate decision-making body must be a Trustee; and
  - (b) an employee of the Trust may not act as a member of a subordinate decision-making body.
- (4) When discharging his or her responsibilities, or exercising his or her powers, or performing his or her duties, as a member of a subordinate decision-making body, the provisions of section 28 apply to a person appointed under subclause (2) who is not a Trustee as if the person were a Trustee.



## TRUST DEED

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### 10. Delegations

- (1) Unless expressly provided otherwise in this deed, or in any other enactment, the Trustees may delegate to a subordinate decision-making body, or to a Trustee, or to the principal officer, any of their responsibilities, duties, or powers, including the power to delegate, except—
  - (a) the power to exercise fiduciary discretions relating to the investment and management of the Trust Fund;
  - (b) the power to adopt a charter, long-term plan, annual plan, or annual report; or
  - (c) the power to appoint a principal officer; or
  - (d) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan; or
  - (e) the power to adopt policies required to be adopted and consulted on under this deed in association with the long-term plan; or
  - (f) the power to adopt a policy on participation.
- (2) Nothing in this clause restricts the power of the Trustees to delegate to a subordinate decision-making body, or to a Trustee, or to the principal officer, the power to do anything precedent or subsequent to the exercise by the Trustees (after consultation with the body or person) of any power specified in subclause (1).
- (3) The Trustees must, at all times,—
  - (a) maintain a register of the responsibilities, duties and powers they have delegated; and
  - (b) make the register available for inspection at the principal office of the Trust by—
    - (i) Ngāti Paoa; and
    - (ii) (if appropriate) other parties.
- (4) Nothing in this clause shall entitle a person to view the contents of a register kept under subclause (3)(a) without reasonable cause.





### EMPLOYMENT OF STAFF

*This part of the schedule—*

- *specifies the kind of person who may be chosen as the principal officer;*
- *requires the Trustees to enter into an annual performance agreement with the principal officer; and*
- *requires the Trustees to review the performance of the principal officer at least twice a year.*



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K.P.T.

## THE NGĀTI PAOA TRUST

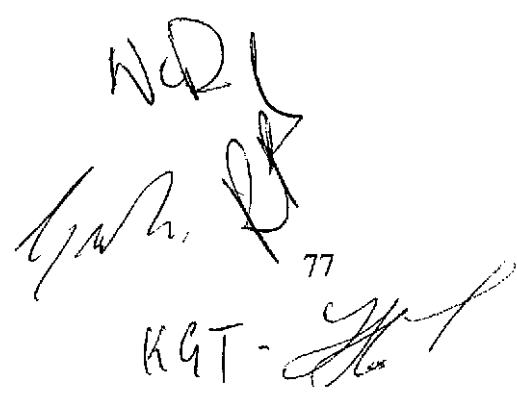
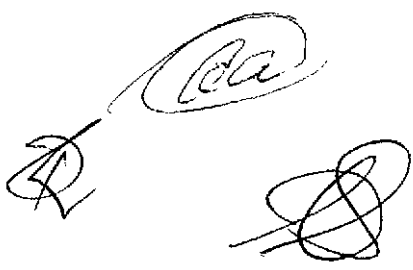
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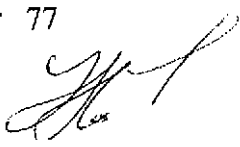
### 11. Appointment and employment of principal officer

- (1) The Trustees must, in making an appointment under section 34, have regard to the need to appoint a person who will discharge the accountability and responsibilities placed on the appointee by that section.
- (2) The Trustees may employ the principal officer on such terms and conditions as they see fit, having regard to—
  - (a) the skills, attributes, and experience of the principal officer; and
  - (b) the nature and scope of the Trust's activities; and
  - (c) the particular requirements of the Trust; and
  - (d) the general level of remuneration for comparable senior positions in comparable organisations.

### 12. Principal officer's performance

- (1) The Trustees and the principal officer must enter into an annual performance agreement.
- (2) The purposes of an annual performance agreement are—
  - (a) to provide an objective basis for accountability of the principal officer to the Trustees; and
  - (b) to support the long-term plan and the annual plan by providing a strategic framework for the decisions and actions of the principal officer; and
  - (c) to foster high performance by the principal officer; and
  - (d) on an ongoing basis, to measure the performance of the principal officer and to provide regular feedback to him or her about his or her performance; and
  - (e) to provide a framework for the professional development of the principal officer; and
  - (f) to provide an objective basis for reviewing the terms and conditions of employment of the principal officer.
- (3) The performance agreement must be in a form determined by the Trustees.
- (4) The Trustees must, not less than once every 6 months, conduct and complete a review of the performance of the principal officer.
- (5) A review of the performance of the principal officer must objectively assess the performance of the principal officer against the specific targets, standards and timeframes set out in the performance agreement.
- (6) Nothing in this clause limits the accountability of the principal officer under section 34(2).



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TRUST DEED

SCHEDULE 2: STATEMENTS OF INTENT

*This schedule to the deed—*

- *explains the purposes of a statement of intent;*
- *explains how statements of intent are to be agreed upon; and*
- *says what a statement of intent must contain.*

**1. Purposes of statement of intent**

The purposes of a statement of intent are to—

- state the activities and intentions of a Trust-controlled organisation for the year and the objectives to which those activities will contribute; and
- provide an opportunity for shareholders to determine the direction of the organisation; and
- provide a basis for the accountability of the board of directors of the organisation to the shareholders of the organisation for the performance of the organisation.

**2. Saving in respect of certain fisheries activities**

(1) This schedule is subject to—

- the special provisions relating to fisheries set out in Part 13; and
- the Māori fisheries legislation.

(2) In the event of a conflict between the provisions of this Schedule and the provisions of the Māori fisheries legislation, the provisions of the Māori fisheries legislation shall prevail.


**3. Statements of intent for Trust-controlled organisations**

The board of directors of a Trust-controlled organisation must deliver to the Trustees each year a draft statement of intent not less than 4 months before the end of the Trust's financial year.

**4. Completion of statements of intent**

The board of the Trust-controlled organisation must—



- consider, not less than 2 months before the end of the Trust's financial year, any comments made by the Trustees to the board on the draft statement of intent; and
- deliver the completed statement of intent to the Trustees before the end of the Trust's financial year.

  
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THE NGĀTI PAOA TRUST

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**5. Modification of statement of intent by board of directors**

The board of directors of the Trust-controlled organisation may, by written notice, modify a statement of intent at any time if the board has first—

- (a) given written notice to the Trustees of the proposed modification; and
- (b) considered any comments made on the proposed modification by the Trustees within—
  - (i) one month after the date on which the notice under subclause (a) was given; or
  - (ii) any shorter period that the Trustees may agree.

**6. Modification of statement of intent by resolution of Trustees**

- (1) Despite any other provision of this deed or of the constitution of any Trust-controlled organisation, the Trustees may, by resolution, require the board of directors of the organisation to modify the statement of intent by including or omitting any provision or provisions of the kind referred to in clause 9(1), and any board to whom notice of the resolution is given must comply with the resolution.
- (2) Before giving notice of the resolution to the board, the Trustees must consult the board as to the matters to be referred to in the notice.

**7. Statement of intent required if exemption revoked**

If an exemption granted under section 5 is revoked, the Trust-controlled organisation must—

- (a) if there is more than 6 months remaining in the Trust's financial year, prepare a statement of intent for that financial year; or
- (b) if there are not more than 6 months remaining in the Trust's financial year, prepare a statement of intent for the following financial year.

**8. Obligation to make statements of intent available**

A completed statement of intent and each modification that is adopted to a statement of intent must be made available to Ngāti Paoa by the Trustees within one month of the date on which it is adopted by the Trustees.

**9. Contents of statement of intent**

- (1) A statement of intent must, to the extent that is appropriate given the organisational form of the Trust-controlled organisation, specify for the group comprising the Trust-controlled organisation and its subsidiaries (if any), and in respect of the financial year immediately following the financial year in which it is required by clause 3 to be delivered and each of the immediately following 2 financial years, the following information:

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## TRUST DEED

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- (a) the objectives of the group; and
  - (b) the principles of sound governance that the board of directors of the organisation will apply to the governance of the group under section 70; and
  - (c) the nature and scope of the activities to be undertaken by the group; and
  - (d) the ratio of consolidated shareholders' funds to total assets, and the definitions of those terms; and
  - (e) the accounting policies of the group; and
  - (f) the performance standards and other measures by which the performance of the group may be judged in relation to its objectives; and
  - (g) an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the Trust; and
  - (h) the kind of information to be provided to the Trustees by the group during the course of those financial years, including the information to be included in each half-yearly report (and, in particular, what prospective financial information is required and how it is to be presented); and
  - (i) the procedures to be followed before the group, or any member of the group, subscribes for, purchases, or otherwise acquires shares in, or an interest in, any company or other organisation; and
  - (j) the board's estimate of the commercial value of the Trust's investment in the group and the manner in which, and the times at which, that value is to be reassessed; and
  - (k) if the Trust-controlled organisation is an organisation to which section 82 or section 83 relates, the information required by the Māori fisheries legislation; and
  - (l) any other matters that are agreed by the Trustees and the board.
- (2) Any financial information, including (but not limited to) forecast financial information, must be prepared in accordance with generally accepted accounting practice.



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# THE NGĀTI PAOA TRUST

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## SCHEDULE 3: TRUST PLANS AND REPORTS

*This schedule to the deed sets out the detail of what has to be in the long-term plan, the annual plans and the annual reports of the Trust, and requires the Trust to have an independent auditor.*

### INFORMATION TO BE INCLUDED IN LONG-TERM PLAN

*This part of the schedule—*

- *ensures that the long-term plan of the Trust is focused on the long-term outcomes which Ngāti Paoa want to achieve;*
- *requires each activity of the Trust to be planned for in a systematic way;*
- *ensures that Trust-controlled organisations are also included in the long-term plan;*
- *requires the Trust's financial policies (see section 60) and the Trust's policy on significance (see section 40) to be included in the long-term plan; and*
- *requires the Trustees to explain any assumptions they have made in the course of preparing the plan.*

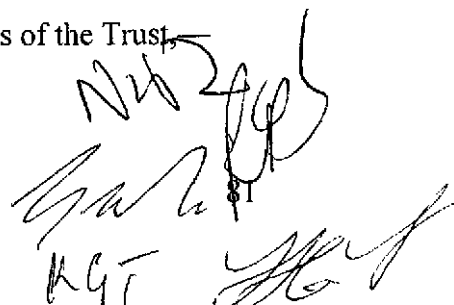
#### 1. Long-term outcomes

A long-term plan must, to the extent determined appropriate by the Trustees,—

- (a) describe the long-term outcomes for Ngāti Paoa; and
- (b) describe how the long-term outcomes were identified; and
- (c) describe how the long-term outcomes relate to other key strategic planning documents or processes (if any); and
- (d) outline how the Trustees will, in order to further long-term outcomes, work with—
  - (i) central government; and
  - (ii) local government; and
  - (iii) non-government organisations; and
  - (iv) the private sector; and
- (e) state what measures will be used to assess progress towards the achievement of the long-term outcomes; and
- (f) state how the Trustees will monitor and, not less than once in every 3 years, report on Ngāti Paoa's progress towards achieving the long-term outcomes.

#### 2. Group of activities

- (1) A long-term plan must, in relation to each group of activities of the Trust,



## TRUST DEED

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- (a) identify the activities within the group of activities; and
  - (b) identify the rationale for providing the group of activities, including the long-term outcomes to which the group of activities primarily relates; and
  - (c) outline any significant negative effects that any activity within the group of activities may have on the social, economic, environmental, or cultural well-being of Ngāti Paoa; and
  - (d) identify the assets or groups of assets (if any) required by the group of activities; and
  - (e) identify, in relation to those assets, how the Trustees will assess and manage the asset management implications arising from the group of activities; and
  - (f) include the information specified in subclause (2).
- (2) The information referred to in subclause (1)(f) is—
- (a) a statement of the intended level of service provision for the group of assets, including the performance standards and other measures by which actual levels of service provision may meaningfully be assessed; and
  - (b) financial projections for the group of activities.
- (3) The information referred to in subclause (2)(b) is to be provided—
- (a) in detail in relation to each of the first 3 financial years covered by the plan; and
  - (b) in outline in relation to each of the subsequent years covered by the plan.

### 3. Trust-controlled organisations

A long-term plan must, in relation to each Trust-controlled organisation in which the Trust is a shareholder or has an interest,—

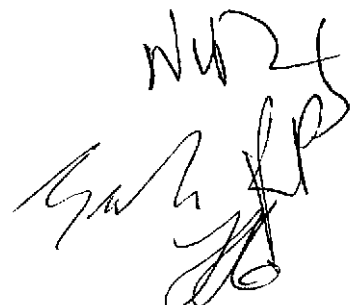
- (a) name the organisation and any subsidiaries of the organisation; and
- (b) identify—
  - (i) the Trust's significant policies and objectives in regard to ownership or control of the organisation; and
  - (ii) the nature and scope of the activities to be provided by the organisation; and
  - (iii) the key performance standards and other measures by which the performance of the organisation may be judged.

### 4. Financial policies

A long-term plan must include the financial policies of the Trust adopted under section 60.



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## THE NGĀTI PAOA TRUST

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### 5. Significance

A long-term plan must include a summary of the Trust's policy on significance adopted under section 40.

### 6. Forecast financial statements

- (1) A long-term plan must include, for each of the financial years covered by the plan, forecast financial statements for the Trust.
- (2) A long-term plan may include, for each of the financial years covered by the plan, forecast financial statements for any Trust-controlled organisation or any other entity under the Trust's control.

### 7. Significant forecasting assumptions

A long-term plan must clearly identify—

- (a) all of the significant forecasting assumptions and risks underlying the financial estimates; and
- (b) in any case where significant forecasting assumptions involve a high level of uncertainty—
  - (i) the fact of that uncertainty; and
  - (ii) an estimate of the potential effects of that uncertainty on the financial estimates provided.

## INFORMATION TO BE INCLUDED IN ANNUAL PLAN

*This part of the schedule sets out the information that must be included in the Trust's annual plans.*

### 8. Forecast financial statements

- (1) An annual plan must include, for the financial year to which it relates, forecast financial statements for the Trust.
- (2) An annual plan may include, for the financial year to which it relates, forecast financial statements for any Trust-controlled organisation or any other entity under the Trust's control.

### 9. Concurrent planning processes

To avoid doubt, it is declared that the preparation and adoption by the Trustees of an annual plan, and the making by the Trustees of an amendment to the long-term plan, may take place concurrently.

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## TRUST DEED



### INFORMATION TO BE INCLUDED IN ANNUAL REPORTS

*This part of the schedule—*

- *explains what information has to be included in the annual reports of the Trust;*
- *requires certain information in an annual report to be independently audited;*
- *requires the performance of Trust-controlled organisations to be commented on in an annual report; and*
- *requires the annual report to be signed by the chairperson and the principal officer.*


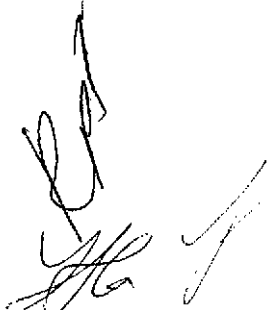
#### **10. Group of activities**

- (1) An annual report must, in relation to each group of activities of the Trust—
- (a) identify the activities within the group of activities; and
  - (b) identify the long-term outcomes to which the group of activities primarily contributes; and
  - (c) report the results of any measurement undertaken during the year of progress towards the achievement of those outcomes; and
  - (d) describe any identified effects that any activity within the group of activities has had on the social, economic, environmental, or cultural well-being of Ngāti Paoa; and
  - (e) include an audited statement—
    - (i) setting out a comparison between the actual levels of service provision or other performance of that group of activities and the intended level of service provision or performance (as set out in the long-term plan); and
    - (ii) giving the reasons for any significant variance between the actual service provision or performance and the intended service provision or performance.
  - (f) include an audited statement—
    - (i) describing any significant asset acquisitions or replacements undertaken by the Trust during the year; and
    - (ii) giving the reasons why the Trust acquired or replaced those assets; and
    - (iii) giving the reasons for any significant variation between the projected acquisitions and replacements set out in the long-term plan and those actually made during the year.

  
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- (2) An annual report must report—
- (a) the activities and results of the Trust under—
    - (i) section 13(2)(b); and
    - (ii) section 41(1); and
  - (b) any resolutions of the Trustees under section 14; and
  - (c) any decisions or intentions of the Trustees under section 39; and
  - (d) any breach of a policy adopted by the Trustees under section 60.
- (3) If the Trust becomes a mandated iwi organisation, an annual report must report any matter required by the Māori fisheries legislation to be reported on.

**11. Trust-controlled organisations**

An annual report must, in relation to each Trust-controlled organisation in which the Trust is a shareholder or has an interest, include—

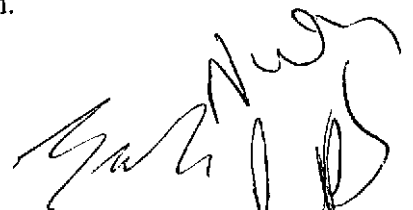
- (a) a report on the extent to which the Trust's significant policies and objectives in regard to ownership or control of the organisation (as set out in the relevant long-term or annual plan) have been implemented or attained during the year to which the report relates; and
- (b) a comparison between the nature and scope of the activities intended to be provided by the organisation during the year (as set out in the relevant plan) and the nature and scope of the actual activities of the organisation during the year; and
- (c) a comparison between actual performance and the key performance standards and measures set out in the relevant plan; and
- (d) if the Trust becomes a mandated iwi organisation, any matter required by the Māori fisheries legislation to be reported on.

**12. Financial statements**

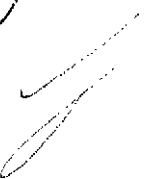
- (1) An annual report must include—
- (a) audited financial statements for the financial year for the Trust; and
  - (b) audited consolidated financial statements for the year; and
  - (c) such other information as is necessary to enable an informed assessment of the operations of each entity reported on.
- (2) The audited financial statements under subclause (1) must be prepared in accordance with generally-accepted accounting practice.

**13. Statement of compliance**

- (1) An annual report must include a statement that the requirements of this deed in relation to the annual report have been complied with.
- (2) The statement must be signed by—



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## TRUST DEED

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- (a) the chairperson of the Trustees; and
- (b) the principal officer of the Trust.

### TRUST AUDITORS

*This part of the schedule requires the Trustees to appoint an independent auditor.*

#### 14. Requirement for auditor

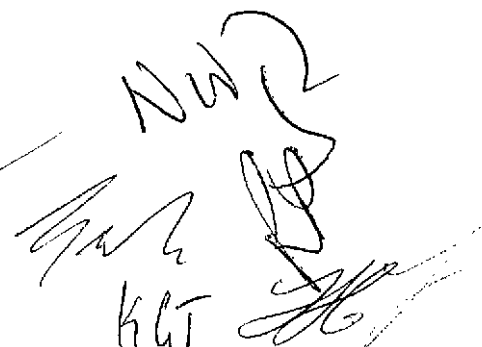
- (1) The Trustees must, from time to time, appoint an auditor for the purposes of this deed.
- (2) An auditor appointed under subclause (1)—
  - (a) must be a chartered accountant under the Institute of Chartered Accountants of New Zealand Act 1996; and
  - (b) must not be—
    - (i) a Trustee; or
    - (ii) a director of a Trust organisation; or
    - (iii) an officer or employee of the Trust or of a Trust organisation; or
    - (iv) a member of Ngāti Paoa.
- (3) The appointment under subclause (1) of a partnership or firm under the name of the partnership or firm shall be deemed to be the appointment of all the persons who are partners in, or members of, the partnership or firm at the time of the appointment.

  
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**SCHEDULE 4: TRUST INFORMATION**

*This schedule to the deed—*

- *defines "Trust information"; and*
- *establishes the principle that information will be made available unless there is good reason not to make it available; and*
- *explains when, how and to whom the Trustees are to make information available; and*
- *sets out the procedure for dealing with requests for information.*

**1. Purposes of Schedule**

The purposes of this Schedule are—

- (a) to provide for the availability to Ngāti Paoa of information held by the Trust in order—
  - (i) to enable more effective participation by Ngāti Paoa in the activities of the Trust and the decisions of the Trustees; and
  - (ii) to promote the accountability of the Trustees to Ngāti Paoa; and
- (b) to protect information and the deliberations of the Trustees to the extent consistent with the interests of Ngāti Paoa and the public interest generally, and the preservation of personal privacy.

**2. Interpretation**

(1) In this Schedule—

**applicant** means a person who makes a request for information under this deed

**application** means a request for information under this deed

**Trust information** means information, including any document, held by the Trust

**disclose** means to make information available under this deed; and **disclosure** has a corresponding meaning

**document** means a document in any form, and includes—

- (a) any writing on any material; and
- (b) any information recorded or stored by means of any tape-recorder, computer, or other device, and any material subsequently derived from information so recorded or stored; and
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means; and
- (d) any book, map, plan, graph, or drawing; and

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- (e) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

**working day** means any day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, Queen's Birthday, and Waitangi Day; and
- (b) a day in the period commencing with the 25<sup>th</sup> day of December in any year and ending with the 15<sup>th</sup> day of January in the following year.
- (2) Subject to subclause (3), information that is held by a Trustee or principal officer or employee of the Trust in that person's capacity as such a Trustee or officer or employee shall be deemed to be held by the Trust.
- (3) Despite subclause (2), nothing in this deed applies to any information that any Trustee or principal officer or employee of the Trust would not hold but for that person's membership of, or connection with, an organisation other than the Trust, except where that membership or connection is in that person's capacity as such a Trustee or officer or employee of the Trust.
- (4) Despite subclause (3), information that—
- (a) is held by any person (whether a Trustee or principal officer or employee of the Trust or not) who is appointed by the Trustees as a member or director of any Trust organisation or any subsidiary decision-making body; and
- (b) is held by any such appointee in that person's capacity as a member or director of any organisation or body so established—
- shall be deemed to be held by the Trust.
- (5) Where the Trust enters into a contract (other than a contract of employment) with any person or organisation in relation to any matter, any information that is held by that person or organisation and to which the Trustees are, under or by virtue of the contract, entitled to have access, shall be deemed to be held by the Trust.

### 3. Principle of availability

The question of whether any Trust information is to be made available shall be determined in accordance with the purposes of this deed and the principle that information shall be made available unless there is good reason for withholding it.

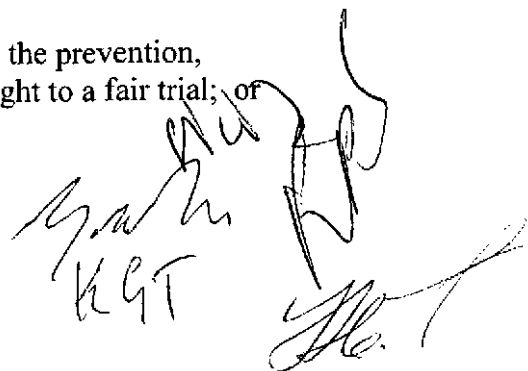
### 4. Conclusive reasons for withholding information

For the purposes of clause 3, good reason for withholding information exists if the disclosure of that information would be likely—

- (a) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or

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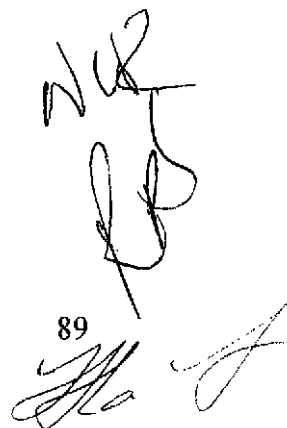
- (b) to endanger the safety of any person; or
- (c) to create serious offence to tikanga.

**5. Other reasons for withholding information**

- (1) Where this clause applies, good reason for withholding information exists, for the purposes of clause 3, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the interests of Ngāti Paoa or in the public interest generally, to disclose the information.
- (2) Subject to the other provisions of this deed, this clause applies if the withholding of information is necessary to—
  - (a) protect the privacy of natural persons, including that of deceased natural persons; or
  - (b) protect information where the disclosure of the information—
    - (i) would disclose a trade secret; or
    - (ii) would be likely to unreasonably prejudice the commercial position of the person who supplied or is the subject of the information; or
  - (c) protect information which is subject to an obligation of confidence or which any person has or could be compelled to provide under the authority of any enactment, where the disclosure of the information—
    - (i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the interests of Ngāti Paoa or the public interest generally that such information should continue to be supplied; or
    - (ii) would be likely otherwise to damage the interests of Ngāti Paoa or the public interest generally; or
  - (d) avoid prejudice to measures protecting the health or safety of Ngāti Paoa or members of the public; or
  - (e) avoid prejudice to measures that prevent or mitigate material loss to Ngāti Paoa or members of the public; or
  - (f) maintain the effective conduct of the affairs of the Trust or of public affairs generally through—
    - (i) the free and frank expression of opinions by or between Trustees or the principal officer or employees of the Trust, or any person to whom clause 9 of Schedule 1 applies, in the course of their duty; or
    - (ii) the protection of such Trustees, officers, employees, or members from improper pressure or harassment; or
  - (g) maintain legal professional privilege; or



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- (h) enable the Trustees to carry on, without prejudice or disadvantage, negotiations (including industrial relations and commercial negotiations); or
- (i) prevent the disclosure or use of information for improper gain or improper advantage.

### 6. Information concerning existence of information

If an application relates to information to which clause 4 or clause 5(2)(b) applies or would, if the information existed, apply, the Trustees may, if they are satisfied that the interest protected by those clauses would be likely to be prejudiced by the disclosure of the existence or non-existence of such information, give notice in writing to the applicant that they neither confirm nor deny the existence or non-existence of the information.

### 7. Requests for Trust information

- (1) An adult member of Ngāti Paoa may request the Trustees to disclose to that person any Trust information.
- (2) A request for information—
  - (a) must be in writing; and
  - (b) must be specified in appropriate detail.
- (3) If the applicant asks that the application be treated with urgency, that person shall give that person's reasons for seeking the information urgently.
- (4) An application is to be made to the principal officer of the Trust or, in that officer's absence, the delegate of that officer.
- (5) An adult who is not a member of Ngāti Paoa may request the Trust to disclose to that person any Trust information.
- (6) If subclause (5) applies to a person, the principal officer of the Trust has the discretion either to proceed with an application or to decline to proceed with the application.

### 8. Duty to assist

It is the duty of the Trust to give reasonable assistance to a person who—

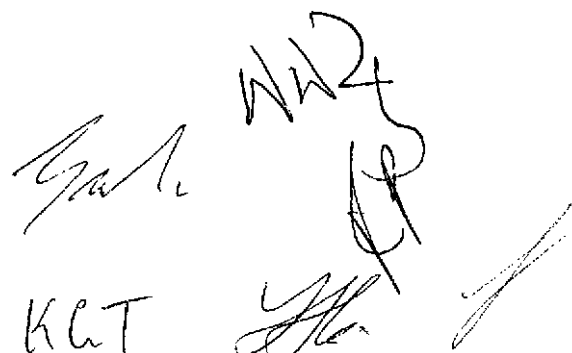
- (a) wishes to make a request in accordance with clause 7; or
- (b) in making a request, has not made the request in accordance with the clause—

to make a request in accordance with the clause.

  
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### 9. Decisions on requests

- (1) Subject to this deed, the Trustees shall, as soon as practicable, and in no case later than 20 working days after the day on which the application was received by the Trust,—
  - (a) decide whether the application is to be granted and, if it is to be granted, in what manner and for what charge (if any); and
  - (b) give or post to the person who made the application notice of the decision on the application.
- (2) If an application is made in accordance with this Part, the decision on that application may be made by the principal officer of the Trust (or, in that officer's absence, the delegate of that officer).
- (3) Nothing in subclause (2) shall prevent the principal officer (or his or her delegate) from consulting with the Trustees or with any other person in relation to the decision.
- (4) The Trust may make a reasonable charge for the supply of information in accordance with this Part.
- (5) The Trust may require that the whole or part of any charge be paid in advance.

### 10. Extension of time limit

- (1) If an application is made in accordance with this Part, the principal officer (or his or her delegate) may extend the time limit in respect of the application if—
  - (a) the application is for a large quantity of information, or necessitates a search through a large quantity of information, and meeting the original time limit would unreasonably interfere with the operations of the Trust; or
  - (b) consultations necessary to make a decision on the application are such that a proper response to the request cannot reasonably be made within the original time limit.
- (2) An extension of time under subclause (1) shall be for a reasonable period of time, having regard to all the circumstances.
- (3) The extension shall be effected by giving or posting notice of the extension to the applicant within 20 working days after the day on which the application is received.
- (4) The notice effecting the extension shall—
  - (a) specify the period of the extension; and
  - (b) give the reasons for the extension; and
  - (c) contain such other information as may be necessary in the circumstances.

### 11. Documents

- (1) If the information requested by an applicant is comprised in a document, the information may be made available in one or more of the following ways:

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## TRUST DEED

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- (a) by giving the applicant a reasonable opportunity to inspect the document; or
  - (b) by providing the applicant with a copy of the document; or
  - (c) if the document is an article or thing from which sounds or visual images are capable of being reproduced, by making arrangements for the applicant to hear or view the sounds or images; or
  - (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing the applicant with a written transcript of the words recorded or contained in the document; or
  - (e) by giving the applicant an excerpt or summary of the contents; or
  - (f) by furnishing the applicant with oral information about the contents.
- (2) Subject to clause 12, the Trust shall make the information available in the way preferred by the applicant, unless to do so would—
- (a) impair efficient administration; or
  - (b) be contrary to any legal duty of the Trust in respect of the document; or
  - (c) prejudice the interests protected by clauses 4 and 5 and (in the case of clause 5) there is no countervailing interest on the part of Ngāti Paoa or public interest generally.
- (3) If the information is not provided in the way preferred by the applicant, the Trust shall, subject to clause 6, give the applicant—
- (a) the reason for not providing the information in that way; and
  - (b) if the applicant requests, the grounds in support of that reason (unless the giving of the grounds would itself prejudice the interests protected by clauses 4 and 5 and there are no countervailing interests).

### 12. Deletion of information from documents

- (1) If the information requested by an applicant is comprised in a document, and if there is good reason for withholding some of the information contained in the document, the other information in the document may be made available by making a copy of the document available with such deletions or alterations as are necessary.
- (2) If subclause (1) applies, the Trust shall, subject to clause 6, give the applicant—
- (a) the reason for withholding the information; and
  - (b) if the applicant requests, the grounds in support of that reason (unless the giving of the grounds would itself prejudice the interests protected by clauses 4 and 5 and there are no countervailing interests).

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**13. Refusal of requests**

An application may be refused on one or more of the following grounds:

- (a) that, by virtue of clause 4 or clause 5, there is good reason for withholding the information:
- (b) that, by virtue of clause 6, the Trustees neither confirm nor deny the existence of the information:
- (c) that the disclosure of the information would—
  - (i) be contrary to the provisions of a specified enactment; or
  - (ii) constitute contempt of Court or of the House of Representatives:
- (d) that the information is, or will soon be, publicly available:
- (e) that the document alleged to contain the information does not exist or cannot be found:
- (f) that the information cannot be made available without substantial collation or research:
- (g) that the information is not held by the Trust:
- (h) that the application is frivolous or vexatious, or that the information requested is trivial:
- (i) that the applicant is not a member of Ngāti Paoa.

**14. Reason for refusal to be given**

If an application is refused, the Trust shall—

- (a) subject to clause 6, give to the applicant—
  - (i) the reason for its refusal; and
  - (ii) if the applicant requests, the grounds in support of that reason (unless the giving of the grounds would itself prejudice the interests protected by clauses 4 and 5 and there are no countervailing interests); and
- (b) give to the applicant information concerning the applicant's right, under Part 12, to seek an investigation and review of the refusal.

KGT

Signature .....  
*Uoijcitol of the Pi\*h Ōoult EŪe\*istia! EŌe]ut\* Ūe\*istia!*

**IN THE MĀORI LAND COURT  
 OF NEW ZEALAND  
 WAIKATO-MANIAPOTO DISTRICT**

A20080014049

IN THE MATTER OF an application under section 30 of Te Ture Whenua Māori Act 1993 by Ngāti Pāoa Whānau Trust to determine representation for Ngāti Pāoa - **Application 27 - File 57992**

AND

IN THE MATTER OF an application under section 30 of Te Ture Whenua Māori Act 1993 by the Ngāti Pāoa Trust Board a Charitable Trust Incorporated under the Charitable Trusts Act 1957 - **Application 20080014049**

Hearing: 28 October 2009  
 (Heard at Hamilton)

Coram: Judge S R Clark  
 Professor Wharehuia Milroy – Additional Member  
 Professor Pou Temara – Additional Member

Appearances: Mr P F Majurey, Counsel for Ngāti Pāoa Trust Board

Judgment: 26 November 2009

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**RESERVED DECISION OF THE COURT**

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**Introduction**

[1] In 1994 the Ngāti Pāoa Whānau Trust<sup>1</sup> (“the Whānau Trust”) filed an application pursuant to section 30 of Te Ture Whenua Māori Act 1993 (“TTWMA”)

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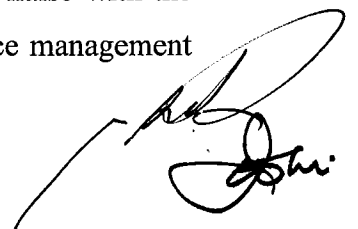
<sup>1</sup> A charitable trust incorporated under the Charitable Trusts Act 1957. It was registered with the Registrar of Incorporated Societies on 26 July 1989

seeking determinations and orders that they were the appropriate Ngāti Pāoa representatives to:

- a) Receive settlement monies from Railcorp in respect of a Treaty of Waitangi settlement proposed between Railcorp and Ngāti Pāoa;
- b) Represent Ngāti Pāoa in claims before the Waitangi Tribunal;
- c) Treat with and receive benefits from the Treaty of Waitangi Fisheries Commission;
- d) Liaise with regional and district councils in the context of resource management issues.

[2] A hearing took place before the Māori Land Court over a nine day period between 6 September 1994 and 30 March 1995. The Māori Land Court issued a reserved decision dated 17 November 1995 in which the following determinations and orders were made:

- a) That the appropriate representatives of Ngāti Pāoa to receive settlement monies from Railcorp in respect of the settlement proposed between Railcorp and Ngāti Pāoa are the trustees for the time being of the Ngāti Pāoa Whānau Trust. The determination was conditional upon those trustees filing in the Court within two months of the date of the determination an undertaking to hold those funds for the benefit of Ngāti Pāoa on an interest bearing account and then to apply and pay those funds to the benefit of Ngāti Pāoa as further directed by the Court;
- b) That the appropriate representative of Ngāti Pāoa to treat with and receive benefits from the Waitangi Fisheries Commission for the period up to 31 March 1997 was the Hauraki Māori Trust Board;
- c) That the appropriate representatives of Ngāti Pāoa to liaise with the district and regional councils in the context of resource management

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issues up to 31 March 1998 were the trustees for the time being of the Ngāti Pāoa Whānau Trust. (Ref 96A H 193 and 194).

[3] The Court went on to indicate that there remained matters for it to address including a direction as to the final destination of the proceeds of the railway settlement. The Court indicated its intention to direct payment to a body representative of Ngāti Pāoa when established, the application was then adjourned sine die.

[4] Undertakings dated 6 December 1995 were received at the Māori Land Court from seven of the Whānau Trust trustees. The relevant part of the undertaking reads as follows:

*“UNDERTAKING BY TRUSTEE OF NGATI PAOA WHANAU TRUST*

*I the undersigned, a Trustee of Ngati Paoa Whanau Trust hereby undertake to the Maori Land Court pursuant to its determination made in the Maori Land Court Waikato-Maniapoto Maori Land Court District and dated the 17th day of November 1995 the following:*

*'To hold those funds for the benefit of Ngati Paoa on interest bearing account and then to apply and pay those funds to the benefit of Ngati Paoa as further directed by the Court'*

*Signed by:”*

[5] Following receipt of the undertakings sealed orders were issued by the Māori Land Court. In due course the Whānau Trust received \$1,000,000 from Railcorp.

**Establishment of the Ngāti Pāoa Trust Board**

[6] In its reserved decision of 17 November 1995 the Court was hesitant to make the orders sought in favour of the Whānau Trust. The Court referred to opposition to the application by other entities such as the Hauraki Māori Trust Board and Te Rūnanga o Ngāti Pāoa. The Court recorded that the Whānau Trust did not produce to the Court either a copy of its trust deed or any of its accounts showing how it administered its trust for the benefit of Ngāti Pāoa. A copy of the trust deed was provided by a witness from the Hauraki Māori Trust Board. On examining it the Court was critical that the trust deed did not provide for consultation or

accountability and allowed the trustees to act alone to appoint further trustees. The Court noted that the Whānau Trust was not set up structurally to represent Ngāti Pāoa, its objectives are wide and it does not have as a primary objective to represent Ngāti Pāoa (ref 96A H 186).

[7] Notwithstanding those misgivings, the Court did go on to appoint the Whānau Trust as the interim representative to receive the Railcorp settlement monies as it was apparent that the Whānau Trust was the only serious contender for payment. The Court went on to urge that there be ongoing work to establish a representative entity for Ngāti Pāoa.

[8] The Court reiterated those sentiments when after making the section 30(1)(b) determination and orders it said:

*“There are matters still for the Court to address including a direction as to the final destination of the proceeds of the Railways settlement. The Court indicates its intention to direct payment to a body representative of Ngati Paoa when established. The application is adjourned sine die and any person interested may seek leave of the Court to set down for hearing any matter arising out of the Court’s above determinations.”* (Ref 96A H 194 and 195)

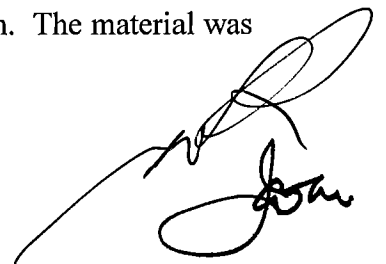
[9] Between February 2002 and 10 December 2004 various Ngāti Pāoa people set about the task of forming an entity which they say should now be a single governing entity for Ngāti Pāoa.

[10] On 10 December 2004 the Ngāti Pāoa Trust Board, a Charitable Trust Board incorporated under the Charitable Trusts Act 1957 was registered with the Registrar of Incorporated Societies (“the Trust Board”).

### **The Applications**

[11] On 21 October 2008 the Māori Land Court received two eastlight folders from the Trust Board. That material contained a report which summarised the activities and work undertaken during the formation of the Trust Board.

[12] There was no accompanying covering letter or application. The material was in due course referred to the Acting Chief Judge.

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[13] On 9 April 2009 a letter was sent from the Office of the Chief Judge of the Māori Land Court to Mr Glen Tupuhi, the Chairperson of the Trust Board. The letter sought information from Mr Tupuhi as to whether the material before the Court constituted a fresh section 30 application or was intended to reconvene the 1995 application.

[14] Mr Tupuhi responded by way of letter dated 11 May 2009 indicating that the report on the formation of the Ngāti Pāoa Trust together with the accompanying material was intended to act as a fresh application for section 30 orders. It was also the intention of the Trust Board to reconvene the 1995 application to receive the Railways settlement monies.

[15] On 27 May 2009 Acting Chief Judge Isaac issued a direction concerning both applications (ref 2009 Chief Judge's MB 180). That direction refers to the fact that Mr Tupuhi, the named applicant for the Trust Board sought a new section 30 determination as to the appropriate representatives for Ngāti Pāoa and also wished to convene the issues relating to railways settlement monies previously adjourned in the 1995 hearing. Judge Clark was also appointed as a replacement for the now retired Judge Carter who presided at the 1994 and 1995 hearing.

[16] Thus the issues for the Māori Land Court are:

- a) What decisions need to be made in relation to the 1995 Whānau Trust section 30 orders and determinations?
- b) What orders if any need to be made in relation to the section 30 application by the Trust Board?

### **Judicial Conference**

[17] A judicial conference was held in Hamilton on 21 August 2009. Mr Tupuhi appeared on behalf of the Trust Board. Counsel for the Hauraki Māori Trust Board also appeared. There was considerable discussion during the course of that

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conference as to the scope of any forthcoming hearing and potential jurisdictional issues that may arise. (Ref 140 W 64-84).

[18] This was reflected in the directions which the Court issued following that judicial conference. At paragraph 7 the direction reads as follows:

***“Scope of the Hearing***

7. *There was considerable discussion about the scope of the application. Following that, Mr Tupuhi confirmed that the scope of the application will be limited to completing the 1995 decision of the Māori Land Court. Thus the scope of matters to be heard at the forthcoming hearing are limited to deciding:*

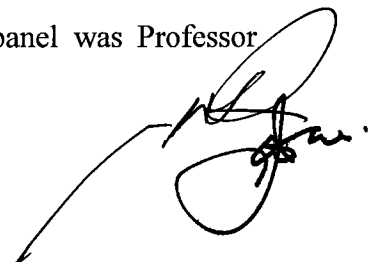
- (a) *The appropriate representatives of Ngāti Paoa to receive settlement monies being the proceeds of the Railways settlement, such monies currently being held on trust by the Ngāti Paoa Whānau Trust;*
- (b) *The appropriate representatives of Ngāti Paoa to liase with District and Regional Councils.”* (Ref 140 W 57)

[19] The directions went on to refer to certain jurisdictional issues. At paragraph 12 the direction reads as follows:

“12. *Mr Tupuhi’s attention is drawn particularly to the following matters, which the Court requires evidence/submissions on:*

- (a) ...
- (b) ...
- (c) *The Court requires evidence confirming the location of the money received in relation to the Railways settlement and bank accounts confirming whether there have been any withdrawals or disbursements from that account;*
- (d) *The specific directions that are being sought in relation to the railway settlement monies, which I understand is currently held by the Ngāti Paoa Whānau Trust;*
- (e) *The jurisdiction and ability of the Māori Land Court to make directions concerning the transfer, gift, settlement of any monies from the Ngāti Paoa Whānau Trust to the Ngāti Paoa Charitable Trust...”* (Ref 140 W 58)

[20] On 8 September 2009 Chief Judge Isaac appointed Professor Pou Temara pursuant to section 33(1) of TTWMA to act as a lay member of the panel. Professor Temara’s appointment was to replace Denise Jarem, a previous panel member who had passed away. The other additional lay member of the panel was Professor



Wharehuia Milroy who also sat on the 1995 application. (Ref 2009 Chief Judge's MB 270).

### **Interested Parties**

[21] At the judicial conference there was discussion around appropriate individuals and organisations to notify about the forthcoming hearing. At paragraph 13 of the directions there is a lengthy list of those persons and entities to whom a copy of: the Court's directions of 24 August 2009; a copy of the minutes of 21 August 2009 judicial conference; and a copy of a fixture notice were sent to.

[22] In support of the Trust Board application Mr Tupuhi filed a letter with the Māori Land Court dated 9 October 2008 indicating support from the Ngāti Maru Ki Hauraki Incorporated Society, the Ngāti Whanaunga Incorporated Society, Ngāti Tamatera Incorporated Society and Te Patukirikiri Iwi Incorporated Society.

[23] Prior to the hearing, the Court received an e-mail dated 20 October 2009 from Mary Forbes on behalf of Te Runanganui o Ngāti Pāoa. That e-mail was supportive of the establishment of the Trust Board as a governance entity for the people of Ngāti Pāoa.

[24] Counsel for the Hauraki Māori Trust Board and the Hauraki Mandated Representatives appeared at the judicial conference on 21 August 2009. Their solicitors filed memoranda with the Court dated 25 September 2009 and 14 October 2009. In the latter memorandum the solicitors advised the formal withdrawal from these proceedings by the Hauraki Māori Trust Board and Hauraki Mandated Representatives.

[25] At the judicial conference on 21 August 2009 Mrs Charlotte Peka appeared on behalf of Ngāti Horowhenua. On 28 October 2009 Mr Tooke appeared on behalf of Ngāti Hako. He stressed from his perspective, the primacy of Hako Hauraki, the tūpuna and Ngāti Hako's tangata whenua status vis-à-vis Ngāti Pāoa and Marutūahu.

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[26] On 12 October 2009 the Court received correspondence from Mrs Hariata Gordon, who is referred to as the chairperson of the Whānau Trust. In addition she sent a set of financial statements on behalf of the Ngāti Pāoa Waiheke Island Farm Interim Trust (“the Farm Trust”) for the financial year ending 30 June 2009.

[27] In her correspondence Mrs Gordon stated that at a meeting of the Whānau Trust held on 27 September 2009, the trustees had resolved that the \$1,000,000 railway settlement fund be retained by the Whānau Trust, as the interest accrued from the fund covers the cost of keeping the Farm Trust from insolvency. Mrs Gordon went on to implore the Court to allow the Whānau Trust to retain the railway settlement fund of \$1,000,000 with the interest used to cover the ongoing costs of the Farm Trust, also known as Waiheke Station.

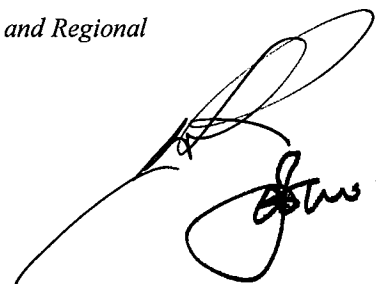
[28] Neither Mrs Gordon nor any of the other trustees of the Whānau Trust appeared before us on 28 October 2009. However on 30 October 2009 Mrs Gordon again corresponded with the Court by way of two facsimiles. The first contained a copy of the Certificate of Incorporation for the Whānau Trust and a copy of the Whānau Trust deed. The second facsimile attached the draft agreement between Ngāti Pāoa and the Crown Congress Joint Working Party dated 22 October 1992.

### **Resource Management Representation**

[29] On 17 November 1995 the Māori Land Court made an order pursuant to section 30(1)(b) of TTWMA that the appropriate representatives of Ngāti Pāoa to liaise with the district and regional councils in the context of resource management issues up to the 31st day of March 1998 were the trustees for the time being of the Ngāti Pāoa Whānau Trust. That order obviously had a limited shelf life and we now treat that order as having expired.

[30] As signalled in a direction dated 24 August 2009, the Court indicated that a focus of the hearing would be to determine:

*“The appropriate representatives of Ngāti Paoa to liaise with District and Regional Councils.” (ref 140 W 57)*

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[31] In his oral submissions before the Court Mr Majurey, on behalf of the Trust Board argued that matters had moved on considerably since 1995 and that the wording adopted in the 1995 decision would be inappropriate in terms of the agencies that a Ngāti Pāoa representative would need to liaise with today and in the future.

[32] He submitted that if the Court was so minded, it could make an order appointing the Ngāti Pāoa Trust Board as an appropriate representative in relation to the Resource Management Act, the Local Government Act and the Hazardous Substances and New Organisms Act.

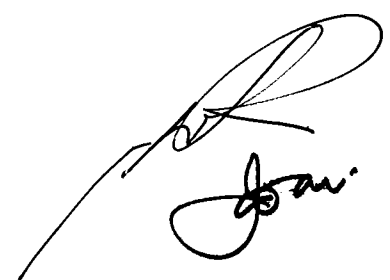
[33] Mr Majurey submitted that there was no opposition to the making of an order and there was no prejudice to any other entity. He also submitted that whilst remaining true to the spirit of the 1995 order, it was appropriate to vary the wording somewhat to take into account that the landscape had changed since 1995.

[34] The Hauraki Māori Trust Board and Hauraki Mandated Representatives by memorandum dated 25 September 2009 made submissions on this issue. They were at pains to point out that they did not oppose orders sought by the applicant provided that such orders do not provide an exclusive right of representation to the Trust Board and in particular do not prevent the Hauraki Māori Trust Board from participating on behalf of Hauraki iwi generally in relevant resource management matters and representing Ngāti Pāoa in such matters when mandated or authorised by Ngāti Pāoa.

[35] At the hearing before us on 28 October 2009 it became apparent that Mr Majurey would need to file further documentation with the Court including draft orders. Mr Majurey did so by way of memorandum dated 5 November 2009. In this context the orders sought are set out at paragraph 10 of the memorandum as follows:

*“(a) The Ngāti Pāoa Trust Board is the appropriate representative of Ngāti Pāoa in relation to:*

- (i) The Resource Management Act 1991;*
- (ii) The Historic Places Act 1993;*
- (iii) The Local Government Act 2002;*



(iv) *The Hazardous Substances and New Organisms Act 1996;*

(v) *The Public Works Act 1981.*”

[36] It is appropriate to appoint a new representative for Ngāti Pāoa in the area of resource management and local government matters. Having said that, the Court is not prepared to go to the extent as sought by the Trust Board.

[37] Although we accept that the application when initially filed before the Court sought section 30 orders on a wide basis, following the judicial conference on 21 August 2008 there was agreement by the applicant that the eventual hearing of this matter would be limited to deciding the appropriate representatives of Ngāti Pāoa to liaise with district and regional councils.

[38] It was on that basis that copies of minutes, directions and fixture notices were sent to all interested parties including the Hauraki Māori Trust Board. Although the Hauraki Māori Trust Board formally withdrew their participation in this process, at the judicial conference on 21 August 2009 their counsel was concerned to understand the scope of the application and forthcoming hearing.

[39] Whilst we understand why the Trust Board seeks to be appointed as the appropriate representative in relation to all of those matters set out at paragraph 35, that was not the basis on which we understood the hearing would proceed and more importantly not the basis on which other interested parties understood that the hearing would proceed. To that extent we are only prepared to go so far as making orders which reflect the agreement reached with the applicant at the judicial conference on 21 August 2009 as to the scope of the hearing.

[40] Thus we make a determination and order pursuant to section 30(1)(b) of Te Ture Whenua Māori Act 1993 that the Ngāti Pāoa Trust Board is the appropriate representative of Ngāti Pāoa in relation to:

- a) The Resource Management Act 1991; and
- b) The Local Government Act 2002.

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### Appropriate Representatives for Receipt of Railcorp Settlement Monies

[41] As a result of the letter received from Mrs Gordon dated 12 October 2009 Mr Majurey candidly accepted that there is now a contest as to which entity would be appropriate to ultimately receive the Railcorp settlement monies, the Whānau Trust or the Trust Board.

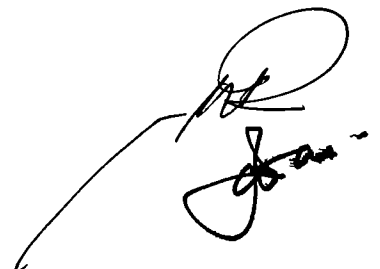
[42] Mr Majurey submitted, and the Court agrees, that notwithstanding that there may be jurisdictional issues as to whether or not a Court could make an order directing the transfer of such monies from the Whānau Trust to the Trust Board, there was nothing preventing the Court from making a section 30 determination and order as to the appropriate representative for receipt of those monies.

[43] At paragraph 10 of his memorandum of 5 November 2009 Mr Majurey seeks an order from the Court in the following terms:

*“(b) The Ngāti Pāoa Trust Board is the appropriate representative of Ngāti Pāoa to receive settlement monies being the proceeds of the Railways settlement, such monies currently being held by the Ngāti Pāoa Whanau Trust Board.”*

[44] It is appropriate to recall that in its 1995 decision, the Court had serious misgivings as to whether to appoint the Whānau Trust as an appropriate entity to receive the Railcorp settlement monies. The Court noted that the Whānau Trust deed was not set up structurally to represent Ngāti Pāoa, its objectives were wide and it does not have as a primary objective to represent Ngāti Pāoa. The Court made it very clear that the appointment of the Whānau Trust as the entity to receive the Railcorp settlement monies was very much an interim step. The Court anticipated that an entity representative of all of Ngāti Pāoa would eventually be formed and the Court would make final directions vesting the Railcorp settlement monies in that representative body.

[45] The Trust Board placed before the Court a report outlining the background on the formation of the Ngāti Pāoa Trust Board. Accompanying that report were two castlight folders of supporting materials. That material satisfies us that between

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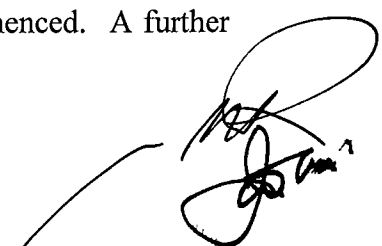
February 2002 and November 2004, considerable work was undertaken in the creation of the Trust Board.

[46] On 3 February 2002 a meeting was held, facilitated by Te Puni Kōkiri. Three groups which at that time purported to speak for Ngāti Pāoa were in attendance namely the Ngāti Pāoa Whānau Trust, Te Rūnanganui o Ngāti Pāoa and Te Taumatanui o Te Maru o Pāoa. The minutes of that first meeting reflect a desire by those in attendance to develop a single governance entity. Further hui were held in February, March and April 2002. Representatives of all three groups formed a working committee. An inaugural hui-a-iwi was held on 11 May 2002. The hui supported the creation of a single governance entity.

[47] A second hui-a-iwi was held on 21 December 2002. On 10 December 2002 a contract was entered into between Te Puni Kōkiri and Manukau Business Services Limited. The purpose of the contract was that the Manukau Business Services Limited would supply services to the Ngāti Pāoa Working Committee over a two year period. The first schedule to that contract refers to the primary role and purpose of that project being to facilitate initiatives, systems, processes and procedures that looked to strengthen Ngāti Pāoa as an iwi with the ultimate aim of initiating a single governing body that represents iwi membership.

[48] A report was prepared for the Working Committee in February 2003. The purpose of the document was to recommend a process for developing a single governing entity for Ngāti Pāoa. Work continued towards that aim throughout 2003. A hui-a-iwi was held in June 2003 at which the future of the three existing Ngāti Pāoa entities was discussed. A pānui was produced following the hui, referring to a concern that once the new entity was created, existing entities ceased to exist. Whilst the Working Committee could not guarantee that would happen, committee members representing the three entities indicated at that stage that the process of creating the new entity was fair, transparent and robust and that the existing entities would dissolve themselves and merge with the new entity in due course.

[49] In August 2003 the process of drafting a trust deed commenced. A further hui-a-iwi was held over Labour weekend in October 2003.

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[50] A final version of the trust deed was approved by the Working Committee in February and March 2004. In April 2004 there was a mail out to all members of Ngāti Pāoa with a document summarising the trust deed.

[51] Following that a series of information hui were held in May and June 2004 at Kaiaua, South Auckland, Hamilton and Palmerston North. In October 2004 voting took place as to the adoption and ratification of the trust deed and the election of initial trustees. There was overwhelming support for the adoption of the trust deed and it was subsequently registered with the Registrar of Incorporated Societies in December 2004.

[52] The Court notes that minutes record that Mrs Gordon was present at the initial facilitation hui, and at many other hui which took place between February 2002 and October 2004. Mrs Gordon was also elected as an initial trustee of the Trust Board. We were informed during the course of the hearing that Mrs Gordon is no longer a trustee of the Ngāti Pāoa Trust Board.

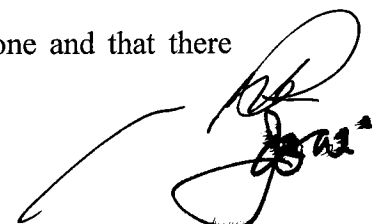
[53] The Trust Board deed is a comprehensive one. The definition of Ngāti Pāoa at section 3 is wide reaching defining Ngāti Pāoa as:

*"...every person who can trace descent by birth from Paoa, the founding ancestor of the descent group;"*

[54] Section 7 of the trust deed sets out the charitable purposes of the Trust Board. In its 1995 decision the Māori Land Court was critical of the Whānau Trust deed in that its objectives were very wide and it did not have as its primary objective to represent Ngāti Pāoa. We agree. In contrast section 7 of the Trust Board deed makes it abundantly clear that the Trust Board exists to promote the well being and advancement of Ngāti Pāoa.

[55] We agree with Mr Majurey's submission that the process undertaken leading to the establishment of the Ngāti Pāoa Trust Board was exhaustive, inclusive and wide ranging.

[56] As a result of the 1995 decision, the Whānau Trust trustees would have been well aware that the order the Court then made was an interim one and that there

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would be a further direction as to the final destination of the proceeds of the Railcorp settlement monies.

[57] We note that both before and after the hearing on 28 October 2009, Mrs Hariata Gordon wrote to the Court providing us with various items of correspondence and further information.

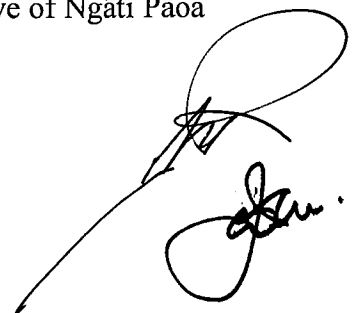
[58] In her letter of 12 October 2009 Mrs Gordon referred to the following matters:

- a) That at a meeting of the Ngāti Pāoa Whānau Trust on 27 September 2009, the trustees resolved that the \$1,000,000 Railway settlement fund be retained by the Whānau Trust as the interest accrued from the fund covers the cost of keeping the Farm Trust from insolvency;
- b) On behalf of the Whānau Trust, she requested that it be permitted to retain the Railway settlement fund of \$1,000,000 with the interest used to cover the ongoing costs, in particular, of the Farm Trust.

[59] It is regrettable that neither Mrs Gordon nor any of the other trustees appeared before us on 28 October 2009. Having said that the Court is satisfied that given the existence of the 12 October 2009 correspondence, the Ngāti Pāoa Whānau trustees were well aware of the pending hearing and that the final destination of the Railcorp settlement monies was at issue.

[60] We find that the plea by the Whānau Trust to be allowed to retain the Railcorp settlement monies should fall on deaf ears. As we have stressed a number of times the decision of the Court in 1995 was an interim one only. There is nothing in the correspondence before us which persuades us that we should not make the order as sought by the Trust Board.

[61] Pursuant to section 30(1)(b) TTWMA the Court makes a determination and order that the Ngāti Pāoa Trust Board is the appropriate representative of Ngāti Pāoa

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to receive settlement monies being the proceeds of the Railway settlement, such monies currently being held by the Ngāti Pāoa Whānau Trust Board.

### **Order in Relation to Transfer of Railcorp Settlement Monies**

[62] The Māori Land Court has jurisdiction pursuant to section 30(1)(b) TTWMA to determine, by order, who are the most appropriate representatives of a class or group of Māori.

[63] In the 1995 decision, the Māori Land Court determined that the Ngāti Pāoa Whānau Trust was, for certain purposes an appropriate entity. Although that entity is described as a “whānau trust”, its correct legal status is that it is a charitable trust. Likewise in relation to the Ngāti Pāoa Trust Board, it is a charitable trust incorporated under the Charitable Trusts Act 1957. There appears to be nothing in TTWMA which prevents the Court from appointing as an appropriate section 30 representative a charitable trust. Indeed that is what the Māori Land Court did in 1995 and what this Court has done in relation to the orders made at paragraphs 40 and 61.

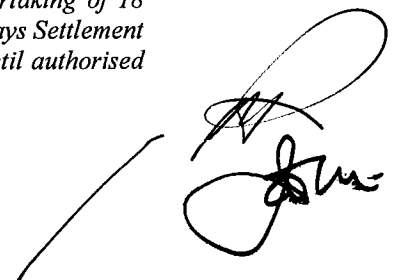
[64] However, the Trust Board seeks additional orders from the Court asking it to make orders in relation to the transfer of those monies currently held by the Whānau Trust to the Trust Board.

[65] The orders sought by the Trust Board raise a jurisdictional issue.

[66] This jurisdictional issue was raised directly by the Court during the judicial conference on 21 August 2009 (ref 140 W 68) and in the directions dated 24 August 2009 (ref 140 W 58).

[67] The specific orders the Trust Board seek are set out at paragraph 10(c) and (d) in Mr Majurey’s memorandum of 5 November 2009. They read as follows:

“(c) *The Ngāti Pāoa Whānau Trust Board must honour its undertaking of 18 December 1995 to the Māori Land Court to not use the Railways Settlement monies (principal and interest) for any purpose unless and until authorised by order of the Māori Land Court;*

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a series of loops and a final flourish.

- (d) *All Railway Settlement monies (principal and interest) held by the Ngāti Pāoa Whanau Trust Board or Ngāti Pāoa Waiheke Island Farm Interim Trust shall be transferred to the nominated bank account of the Ngāti Pāoa Trust Board by 3pm, [insert date]."*

[68] The jurisdiction of the Māori Land Court in relation to trusts is limited to the following types of trusts:

- a) Every trust constituted under Part 12 of TTWMA;
- b) Every other trust constituted in respect of Māori land;
- c) Every other trust constituted in respect of any general land owned by Māori – section 236(1) TTWMA.

[69] Mr Majurey rightly conceded before us that the Ngāti Pāoa Whānau Trust is not a trust which was constituted under Part 12 of TTWMA.

[70] Mr Majurey submitted that if the Court has jurisdiction then sections 237 and 242 of TTWMA were relevant. Section 237 provides that the Māori Land Court may exercise all and the same powers as the High Court in relation to any trust. Section 242 provides that the Court may make orders for payment of money held in trust to be paid to person or persons beneficially entitled. The key issue however is does the Court have jurisdiction to make the orders sought?

[71] Mr Majurey drew to our attention comments made in the financial statements of the Farm Trust, which were filed in advance of the hearing by Mrs Gordon. At note 1 on page 11 the following sentence appears:

*"The financial statements presented here are for the entity NGATI PAOA WAIHEKE ISLAND FARM INTERIM TRUST which operates as part of the Ngati Paoa Whanau Trust incorporated under the Charitable Trusts Act 1956 on 26 July 1989."*

[72] At note 1(d) under the heading "Income Tax" the following sentence appeared:

*"As the Ngati Paoa Whanau Trust is responsible financially for the farm, it has been considered part of the operations of the Trust which is not subject to income tax as it is a charitable Trust exempted by the Inland Revenue Department."*

[73] The Farm Trust is the owner of various blocks of Māori freehold land. The proposition being put forward to the Court is that if the Farm Trust is a division of or subsidiary of the Whānau Trust, then the Court has jurisdiction to make the orders sought.

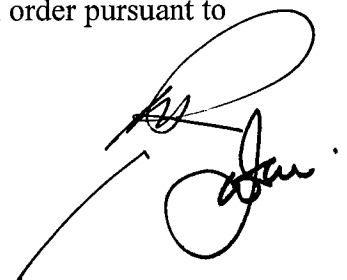
[74] The Court indicated to Mr Majurey that it had requested information from its own records as to the status of the Farm Trust. That information was not available to the Court at the hearing on 28 October 2009. At the conclusion of the hearing the Court made a direction to the Case Manager to carry out further inquiries and to ascertain from the records of the Māori Land Court whether the Farm Trust or the Whānau Trust own any Māori freehold land or general land owned by Māori.

[75] A report was prepared by the Case Manager and forwarded to the parties on 2 November 2009.

[76] That report confirms three things:

- a) That there is in existence a trust known as the “Ngāti Pāoa Tribal Trust” or “Ngāti Pāoa Marae Trust”. This is a different entity than the Ngāti Pāoa Whānau Trust or the Ngāti Pāoa Trust Board and is irrelevant for the purposes of this exercise;
- b) There is no record of any information that the Whānau Trust owns Māori freehold land or general land owned by Māori;
- c) There are records and information before the Court concerning the Farm Trust. This Trust was established in 1989 consequent upon a Crown decision to return certain lands to Ngāti Pāoa. The lands initially returned had the status of Crown lands (ref 91 H 83-88 inclusive).

[77] On 2 October 1997 the Māori Land Court made orders terminating the initial trust and establishing a whenua tōpū trust. The Court also made an order pursuant to

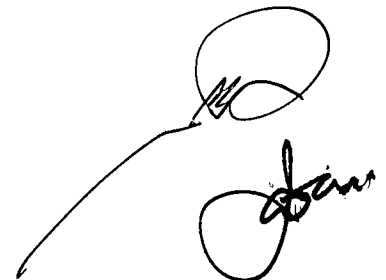
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section 133 of Te Ture Whenua Māori Act 1993 declaring that the lands become Māori freehold lands (98 H 206-216).

[78] That decision was subsequently appealed to the Māori Appellate Court. On 9 March 1999 the appeal was upheld. The Appellate Court annulled the orders constituting the whenua tōpū trust. However the Court did not annul the orders in relation to the change of status from Crown to Māori freehold land. Thus the Farm Trust owns a significant amount of land on Waiheke Island, the status of those lands being Māori freehold land.

[79] We accept that based on comments made in the most recent financial statement for the Farm Trust for the year ending 30 June 2009 together with comments made by Mrs Hariata Gordon in her accompanying correspondence of 12 October 2009 that:

- a) Interest from the Railway settlement funds have been used to financially prop up the Farm Trust;
- b) That payments have been made from the interest accrued to various Ngāti Pāoa marae;
- c) That those payments that have been made have been in breach of the undertaking which Mrs Gordon gave to the Māori Land Court on 6 December 1995;
- d) Current liabilities record a loan from “Ngāti Pāoa Whānau” of \$376,126.00. Whilst there is no definitive evidence on point, it is possible that this loan has come from the Whānau Trust;
- e) There has been such an intermingling of funds that the accountants have treated the Farm Trust as a subsidiary or as part of the overall operations of the Whānau Trust.

A handwritten signature in black ink, consisting of a large, stylized initial 'H' followed by a cursive name, likely 'Hariata Gordon'.

[80] However the issue of jurisdiction remain. In order to make the orders sought by the Trust Board, we have to be satisfied that the Whānau Trust is constituted in respect of Māori land or general land owned by Māori.

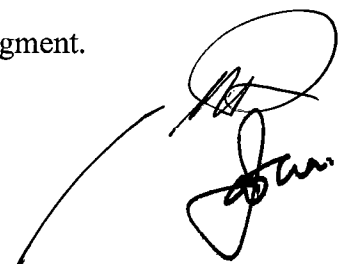
[81] There is no evidence before us that the Whānau Trust was initially established in respect of Māori land or general land owned by Māori. In its 1995 decision, the Court recorded that the Whānau Trust was established for the purpose of receiving and administering a gift of \$1,400,000 from the Methodist Church. This was a gift which Mrs Gordon had arranged through a connection she had with that Church. The \$1,000,000 later received in relation to the Railcorp settlement, were monies received in settlement of a Treaty of Waitangi matter, such monies being received from the Crown or a State Owned Enterprise.

[82] Notwithstanding the: unauthorised use of the Railcorp settlement monies; a breach of undertaking; intermingling of funds; and the characterisation and treatment of the Farm Trust as part of the Whānau Trust by accountants, we consider that, that is not sufficient to give us jurisdiction to make the orders sought.

[83] The mere fact that the Whānau Trust has disbursed some of the Railcorp settlement monies to the Farm Trust, albeit when it should not have, does not in our opinion mean that the Whānau Trust is constituted in respect of any Māori freehold land. It would be straining the meaning of section 236 if we were to conclude otherwise.

[84] No doubt this part of the decision will be of disappointment to the Trust Board, however our decision comes down to one of jurisdiction. Although we lack jurisdiction to make all of the orders sought by the Trust Board, no doubt other Courts have that jurisdiction.

[85] We also note that the Trust Board sought an order in relation to the undertakings of 6 December 1995. Specifically that the trustees must honour their undertakings. The initial section 30(1)(b) order made by the Māori Land Court in 1995 was conditional upon receipt of an undertaking from the trustees of the Whānau Trust. That undertaking is set out in full earlier in this judgment.

A handwritten signature in black ink, appearing to be 'John', is located in the bottom right corner of the page. The signature is written in a cursive style and is partially enclosed by a large, loopy flourish that extends upwards and to the left.

[86] Whilst on the face of it the Māori Land Court requested and received undertakings, it did so from trustees over which it has no jurisdiction other than to make the type of order contemplated by section 30. Thus logically we cannot see how we can enforce such an undertaking. It may be that we can be persuaded otherwise, however our tentative view is that we cannot enforce the undertakings.

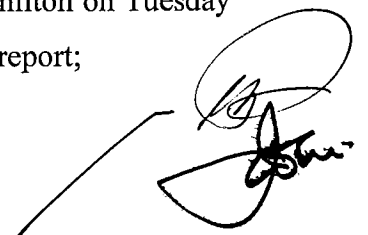
### **Additional Orders**

[87] Although the Māori Land Court lacks jurisdiction in relation to the Whānau Trust it does have jurisdiction over the Farm Trust.

[88] Based on Mrs Gordon's correspondence of 12 October 2009 together with the most recent set of financial statements for the Farm Trust we are satisfied that the Farm Trust has received Railcorp settlement monies from the Whānau Trust. We note that Mrs Gordon is a trustee and chairperson of both the Whānau Trust. Glenice Wigg was a trustee of the Whānau Trust at the date of the 1995 Court decision and remains as a trustee of the Farm Trust.

[89] Therefore the Court of its own motion makes the following orders:

- a) Pursuant to section 238(1) of TTWMA, the trustees of the Ngāti Pāoa Waiheke Island Farm Interim Trust are to file in this Court by 4.00pm, 11 December 2009, a written report confirming the dates and amounts of Railcorp settlement monies received from the Ngāti Pāoa Whānau Trust since 17 November 1995. A copy of that report is to be served upon the offices of Atkins Holm Joseph Majurey for the attention of Mr Majurey by the same date and time. If upon receiving that report the Trust Board is of the opinion that further orders are sought, any such applications are to be filed and served by 4.00pm, 18 December 2009;
- b) Pursuant to section 238(1) of TTWMA, the trustees of the Whānau Trust are to appear at the Māori Land Court, at Hamilton on Tuesday 22 December 2009, 10.00am for questioning on the report;

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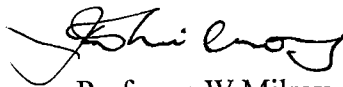
- c) Pursuant to section 19(1)(b) of TTWMA the Court orders an injunction restraining the trustees and any employees, contractors, agents or servants of the Ngāti Pāoa Waiheke Island Farm Interim Trust from dealing in or with the assets of the Ngāti Pāoa Waiheke Island Farm Interim Trust until such further order of the Court.

[90] The Case Manager is directed to immediately serve a copy of this decision and sealed order for injunction by registered post upon the trustees, bankers and accountants of the Ngāti Pāoa Waiheke Island Farm Interim Trust whose address details are set out in the financial statements of that Trust for the year ending 30 June 2009.

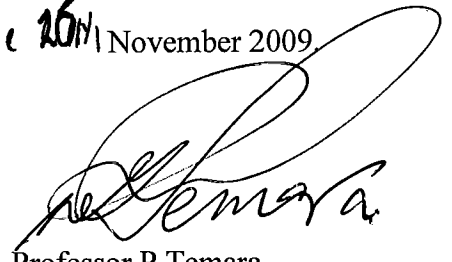
Pronounced in open Court in Hamilton at 4<sup>45</sup> pm on the 16<sup>th</sup> November 2009.



S R Clark  
JUDGE



Professor W Milroy  
ADDITIONAL MEMBER



Professor P Temara  
ADDITIONAL MEMBER



This is the annexure marked "Exhibit C" referred to in the affidavit of David Ian Roebeck and sworn at Auckland this 31st day of August 2018 before me:



## Office of Hon Dr Pita R Sharples

**MP for Tamaki Makaurau**  
**Minister of Māori Affairs**  
 Associate Minister of Corrections  
 Associate Minister of Education

Signature .....  
*Uoijitōi of the Pi\* h Ōu'it EŪe\* ist'ia! EŌe] ut\* Ūe\* ist'ia!*

29 JUN 2011

Glen Tupuhi  
 Ngāti Pāoa Trust Board  
 PO Box 1062  
 PUKEKOHE 2340  
[glen@terunanga.org.nz](mailto:glen@terunanga.org.nz)

Tēnā koutou

Thank you for submitting the Ngāti Pāoa Deed of Mandate for negotiations with the Crown on behalf of Ngāti Pāoa.

We have been advised that the Ngāti Pāoa Trust Board has the support of the Ngāti Pāoa claimant community and are therefore the appropriate representatives of Ngāti Pāoa to negotiate a comprehensive settlement of Ngāti Pāoa's historical Treaty settlement claims with the Crown. We are, therefore, pleased to recognise the mandate of the Ngāti Pāoa Trust Board for this purpose.

We were encouraged by the positive meeting we held together with your negotiators on 28 May 2011 and look forward to finalising an Agreement in Principle with you in the near future. Kāti mō tēnei wā.

Heoi anō

nā Hon Dr Pita R Sharples  
 Minister of Māori Affairs

nā Hon Christopher Finlayson  
 Minister for Treaty of Waitangi  
 Negotiations

Cc: Morehu Anthony Wilson  
 Ngāti Pāoa Negotiator  
[morehu@gmail.com](mailto:morehu@gmail.com)

Cc: Hauāuru Eugene Rawiri  
 Ngāti Pāoa Negotiator  
[hauauru.rawiri@gmail.com](mailto:hauauru.rawiri@gmail.com)



## Office of Hon Christopher Finlayson

### EXHIBIT NOTE

This is the annexure marked "Exhibit D" referred to in the affidavit of David Ian Roebeck and sworn at Auckland this 31st day of August 2018 before me:

Signature .....  
Solicitor of the High Court / Registrar / Deputy Registrar

13 MAY 2016

Dr John A Gray  
Partner  
Insight Legal  
PO Box 333  
**WARKWORTH 0941**

**Email:** [jgray@insightlegal.co.nz](mailto:jgray@insightlegal.co.nz)

Dear Dr Gray

**Re: Ngāti Paoa Trust Board**

Thank you for your letter dated 6 May 2016 about the mandate of the Ngāti Paoa Trust Board.

The motion you refer to in your letter was passed at a hui-a-iwi held on 28 April 2016. This was passed by a percentage of 89.6% of those members of Ngāti Paoa who attended the meeting.

To answer your question, the Ngāti Paoa Trust Board still holds the mandate to represent the claimant community of Ngāti Paoa in historical Treaty of Waitangi negotiations with the Crown.

If you have any questions, please contact Leah Campbell, Deputy Director, Negotiations and Settlements at [leah.campbell@justice.govt.nz](mailto:leah.campbell@justice.govt.nz) or 04 913 9202

Yours sincerely

Hon Christopher Finlayson  
**Minister for Treaty of Waitangi Negotiations**

Date [                      ] 2013

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## DEED OF TRUST OF NGĀTI PAOA IWI TRUST

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**EXHIBIT NOTE**

This is the annexure marked "**Exhibit E**" referred to in the affidavit of David Ian Roebeck and sworn at Auckland this 31st day of August 2018 before me:

Signature .....  
*Solicitor of the High Court / Registrar / Deputy Registrar*

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

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

“**Chief Returning Officer**” means as the context requires:

- (a) the person appointed from time to time as chief returning officer for the purposes of Trustee elections in accordance with *rule 10* of the Second Schedule; or
- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with *rule 7.1* of the Fourth Schedule;

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

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

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

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

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

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

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

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

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

“**Disputes Committee**” means a committee formed in accordance with *clauses 30.4 and 31.5*;

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

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

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

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

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

**“Major Transaction”** in relation to any member of the Ngāti Paoa Group means:

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

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust’s Assets (whether the Assets are held by the Trust or any other member of the Ngāti Paoa Group); or
- (e) any acquisition of Property by a member of the Ngāti Paoa Group from any other member of Ngāti Paoa Group; or
- (f) any disposition of Property by a member of the Ngāti Paoa Group to any other member of the Ngāti Paoa Group;

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

For the purposes of paragraphs (a) to (c) of this definition, the value of the Trust’s Assets shall be calculated based on the value of the assets of the Ngāti Paoa Group;

**“Māori Fisheries Act”** means Māori Fisheries Act 2004;

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

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

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

“**Ngāti Paoa Iwi**” means:

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

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

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

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

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

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

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

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

“**Provisional Vote**” means a vote cast pursuant to *rule 10.4* of the Second Schedule or *rule 8.3* of the Fourth Schedule, as the case may be;

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

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

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

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

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

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

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

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

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

by the Trust;

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

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

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

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

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

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

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

## 1.2 Interpretation

In this Trust Deed, unless the context otherwise requires:

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

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

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

### **2.1 Trust Established**

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

### **2.2 Trust Administration**

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

### **2.3 Powers of Trust**

The Trustees continue to have all the powers of a natural person and may exercise those powers in accordance with the terms of this Trust. Without limiting in any way the generality of the foregoing, the Trustees shall have the powers:

- (a) to receive or accept, or to make any disposition of, any real property, including any interest of any type in real property (whether corporeal or incorporeal hereditament);
- (b) to receive or accept, or to make any disposition of, any personal property (whether chattels, choses in action, intellectual property, and otherwise howsoever), including any interest of any type in personal property;
- (c) to receive or grant any security, including any mortgage, pledge, charge, security interest, or otherwise howsoever, in relation to all, or any part of, the Property;
- (d) to contract, to grant a release, to grant a power of attorney, to appoint an agent, a receiver, or a stakeholder, to settle property on, or declare, a trust;



- (e) to issue or take any debt or equity security; and
- (f) to borrow or to lend money.

## **2.4 Object and purpose of the Trust**

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

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

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

## **2.5 Restriction on Major Transactions**

Notwithstanding *clause 2.3*, the Trustees

must not enter into a Major Transaction; and

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

unless that Major Transaction:

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

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

### **3.1 Initial Trustees**

Pending election and appointment of the Establishment Trustees in accordance with the Second Schedule, the initial two Trustees shall be:

Bryce Herron; and

Gary Thompson

Who are independent Trustees.

**3.2 Appointment in accordance with Second Schedule**

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

**3.3 Extent of Trustees' discretion to manage Trust affairs**

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

**3.4 Proceedings of Trustees**

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

**3.5 Trustees Remuneration**

Trustees' remuneration must:

- (a) be authorised by a resolution of Adult Registered Members of Ngāti Paoa in accordance with *clause 13.2*. In recommending trustee remuneration levels the Trustees must first seek professional advice in that regard; but
- (b) in respect of the initial Trustees in *clause 3.1*, who will be appointed before the first annual general meeting, be set by them for the period they hold office as initial Trustees, on the basis of professional advice they must seek.

**3.6 Trustee Expenses**

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

**4. CHIEF EXECUTIVE AND OTHER EMPLOYEES**

**4.1 Trustees to appoint Chief Executive**

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

**4.2 Delegations to Chief Executive**

The Trustees shall ensure that any Chief Executive is appointed on terms which require that the Chief Executive shall be responsible for the employment of all other employees of the Trust and shall exercise such other powers and discretions as are delegated to him or her by the Trustees from time to time.

**4.3 Trustee Role**

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

## **5. TRUSTEES MAY ESTABLISH SUBSIDIARIES**

### **5.1 Establishment of Subsidiaries**

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

### **5.2 Ownership and Control of Subsidiaries**

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

### **5.3 Trustees to monitor**

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

### **5.4 Trustee to fund Subsidiaries**

The Trustees may fund Subsidiaries (if any) by distributing capital or income or by making advances to the Subsidiary or by such other means as is consistent with the Trust's object and purpose.

### **5.5 Directors responsible for governance**

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

### **5.6 Remuneration of directors and other trustees**

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

### **5.7 No influence in determining remuneration**

No Trustee receiving any remuneration referred to in *clause 5.6* shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall the Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

## **6. APPOINTMENT OF DIRECTORS AND TRUSTEES**

### **6.1 Appointment and removal of directors and trustees**

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

### **6.2 Trustees as directors and trustees of Subsidiaries**

No more than 40% of the Trustees then in office may be appointed as directors or trustees of any individual Subsidiary.

### **6.3 Appointments with regard to skills and expertise**

A director, a trustee or a controlling body of any Subsidiary shall only be appointed by the Trustees if that person has the particular skills and expertise that are necessary for the appointment having regard to the activities that the Subsidiary undertakes or is likely to undertake in the future and the mix of skills and expertise that is necessary on the relevant Subsidiary.

## **7. APPLICATION OF INCOME AND CAPITAL**

### **7.1 Trustees may apply income and capital:**

During the Trust Period, and subject to any other requirements in this Trust Deed, the Trustees may:

- (a) provide for the payment, application or appropriation, or decide to pay, apply or appropriate as much of the available income in any Income Year to or for the benefit of Members of Ngāti Paoa;
- (b) use or apply any capital of the Trust's Assets to or for the benefit of Members of Ngāti Paoa. for the Trust's Purpose without first using or applying the whole or any portion of the income of the Trust's Assets for that year; or
- (c) set aside reserves or accumulations for future use or application by the Trustees,

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

### **7.2 Payments out of income**

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

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

### **7.3 Matters to consider in applying income**

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

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

### **7.4 Accumulation in six months where income not applied**

Any income from any Income Year that is not paid or applied in accordance with this *clause 7* during or within the six (6) months from the end of that Income Year shall be accumulated and any income so accumulated shall be added to and form part of the capital of the Trust's Assets and shall be subject to the trusts and powers herein declared in respect of the capital of the Trust's Assets.

## **8. PLANS**

### **8.1 Trustees to prepare Annual Plan**

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

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

### **8.2 Trustees to prepare Five Year Plan**

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

by the Trustees of the commercial, management and distribution policies that the Trustees intend to follow in respect of the Trust's Assets.

### **8.3 Initial Annual Plan and Five Year Plan**

In addition to the requirements in *clauses 8.1 and 8.2* the Trustees shall, within one (1) month of establishment of the Trust prepare and produce an Annual Plan and Five Year Plan that comply with the matters in *clause 8.1 and 8.2*. Those plans shall have effect until such time as they are replaced by new plans as required in *clause 8.1 and 8.2*.

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

### **9.1 Preparation of annual report**

The Trustees must, within five (5) months after the end of each Income Year after Settlement Date, and no later than 20 Business Days prior to an annual general meeting, cause to be prepared an annual report on the affairs of the Ngāti Paoa Group covering the accounting period ending at the end of that Income Year which includes a comparison of performance against the Annual Plan, and Consolidated Financial Statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of the Ngāti Paoa Group for that Income Year. The Consolidated Financial Statements shall include as a separate item details of any remuneration or fees paid to any Trustee or any Trustee's firm (including without limitation any such payment to any Trustee as a director or trustee of a Subsidiary) and details of any premiums paid in respect of Trustees' indemnity insurance (or any indemnity payments made by an insurer).

### **9.2 Audit of financial statements**

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

### **9.3 Appointment of auditor**

The auditor shall be appointed by the Trustees prior to the end of the Income Year after Settlement Date to which the audit relates and, where possible, the fee of the auditor shall also be fixed at that time. No Trustee or employee of the Trust (including any firm of which such a person is a member or employee) may be appointed as the auditor. For the avoidance of doubt, the Trust's accountant shall not be appointed as the auditor.

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

### **10.1 Subsidiaries to prepare Plans and Statements of Intent**

The Trustees shall procure that each Subsidiary will:

- (a) within three (3) months of the establishment of the Subsidiary, prepare a Statement of Intent setting out its long term objectives and the general principles by which it proposes to operate;
- (b) as required by the Trustees, update the Statement of Intent to take into account changes in circumstances that may arise from time to time, including without limitation changes to the nature of its business and the business of any of its subsidiaries;
- (c) within three (3) months of the establishment of the Subsidiary, prepare a Five Year Plan which shall be updated not less than every two (2) years, and which sets out its medium term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the Statement of Intent referred to in paragraph (a) of this clause;
- (d) no later than one (1) month following the completion of the Five Year Plan referred to in paragraph (c) of this clause, and thereafter no later than two (2) months before the commencement of each Income Year, prepare an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its five year planning objectives and fulfil the objectives and principles of the Statement of Intent;
- (e) in addition to any normal reporting requirements, within two (2) calendar months after the completion of the first, second and third quarter of each Income Year send to the Trustees reports on its operations and financial position together with an unaudited summary of financial results as at the end of that period (such reports to be in such form as the Trustees may require from time to time).

#### **10.2 Trustee approval required**

Prior to being implemented all Statements of Intent, Five Year Plans and Annual Plans must be approved by the Trustees. Such approval shall be given in light of the Trust's overall plans and policies in respect of the Trust's Assets.

#### **10.3 Reports to comply with Companies Act 1993**

The Trustees shall procure that all annual reports by any Subsidiary that is a company comply in all respects with the requirements of the Companies Act 1993, including without limitation:

- (a) the description required by section 211(1)(a) of the Companies Act 1993 of the nature of the business of the company or any of its subsidiaries, or the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise;
- (b) the financial statements (or as appropriate group financial statements) for that Income Year completed and signed in accordance with the Financial Reporting Act 1993;
- (c) the auditor's report of the financial statements (or group financial statements) of the company for that Income Year.

#### **10.4 Subsidiaries to meet Companies Act standard**

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

#### **10.5 Report to include comparison against plans**

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

#### **10.6 Protection of Information**

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

### **11. DISCLOSURE OF PLANS, REPORTS AND MINUTES**

#### **11.1 Documents to be available for inspection**

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

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

#### **11.2 Costs of copying**

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

### **12. NO DISCLOSURE OF SENSITIVE INFORMATION**



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

### **13. GENERAL MEETINGS**

#### **13.1 Trustees to hold annual general meeting**

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

- (a) report on the operations of the Ngāti Paoa Group during the preceding Income Year;
- (b) present the Annual Report and duly audited Consolidated Financial Statements;
- (c) present the proposed Annual Plan;
- (d) announce the names of all newly appointed Trustees;
- (e) approve the appointment of the auditor for the next Income Year;
- (f) approve the Trustees' remuneration;
- (g) undertake all other notified business; and
- (h) at the discretion of the chairperson of the meeting, undertake any other general business raised at that meeting.

#### **13.2 Approval of Trustees' remuneration and appointment of auditor**

- (a) No remuneration will be paid to a Trustee in his or her capacity as a Trustee unless that remuneration has been authorised by a resolution of the Adult Registered Members of Ngāti Paoa present at the annual general meeting. Each such resolution will express the remuneration to be paid to the Trustees as a monetary sum per annum payable either to all Trustees taken together or to any person who from time to time holds office as a Trustee. This clause does not apply to any remuneration paid to any Trustee in his or her capacity as a director or trustee of a Subsidiary and that remuneration shall be determined by the Trustees pursuant to *clause 5*.
- (b) The appointment of the auditor for the next Income Year must be authorised by a resolution of the Adult Registered Members of Ngāti Paoa present at the annual general meeting.

### **13.3 Notice of general meeting**

The Trustees shall give not less than twenty one (21) days notice of the holding of the annual general meeting, such notice to be posted (including, by electronic form where available) to all Adult Registered Members of Ngāti Paoa at the last address shown for each such Adult Registered Member of Ngāti Paoa on the Ngāti Paoa Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must subsequently be sent to the last known physical address. Notice of the meeting shall also be inserted prominently on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngāti Paoa reside. All such notices shall contain:

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

### **13.4 Notice of special meetings**

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

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

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

### **13.5 Annual general meeting not limited to notified business**

At the discretion of the chairperson of the meeting, any general business raised at the designated time for general business at any annual general meeting may be transacted in addition to the business expressly referred to in the notice calling that meeting.

### **13.6 Special meeting limited to notified business**

No business shall be transacted at any special general meeting other than the business expressly referred to in the notice calling that meeting.

### **13.7 Invalidation**

The proceedings of a meeting are not invalidated by the accidental omission to give notice to, or a failure to receive notice of an annual or special general meeting by, a Member of Ngāti Paoa.

### **13.8 Deficiency of notice**

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

### **13.9 Quorum**

The quorum required for any annual or special general meeting of the Trust shall be 25 Adult Registered Members of Ngāti Paoa present in person, and one or more Trustees present in person. For the avoidance of doubt, if a Trustee is an Adult Registered Member of Ngāti Paoa he or she is entitled to vote.

### **13.10 Chairing of meetings**

The Chairperson for the time being of the Trust will be the chairperson of any annual or special general meeting and will preside over and have control over the meeting. If the Chairperson is not present at the time appointed for holding a meeting, then the Deputy Chairperson shall be the chair. If the Deputy Chairperson is also not present, then the Trustees present shall elect one (1) of their number to substitute as the chairperson for that meeting.

### **13.11 Voting**

To the extent that a vote is sought or required at any annual or special general meeting, every Adult Registered Member of Ngāti Paoa present shall have one (1) vote. All resolutions except Special Resolutions require the approval of not less than a majority of the Adult Registered Members of Ngāti Paoa who validly cast a vote. Voting may be by voice or on a show of hands. The chairperson of the meeting may also demand a poll on a resolution either before or after any vote, which among other things, requires the Adult Registered Members to verify their eligibility by a process directed by the chairperson of the meeting. However, except as provided in *clauses 2.5, 13.1(e), 13.1(f) 13.2, 25.1, 26 and 27* and where Special Resolutions have been passed in accordance with the Fourth Schedule the Trustees shall not be bound by a resolution passed at any annual or special general meeting, but will only be required to give consideration to any such resolution in administering the Trust's Assets and carrying out the Trust's Purpose. The latest version of the Ngāti Paoa Register will be present at any annual or special general meetings.

### **13.12 Adjourned meetings**

If after one (1) hour of the time appointed for an annual or special general meeting, a quorum is not present, the meeting will stand adjourned to be re-convened seven (7) days after the date of the meeting. On that later day, the meeting will be held again at the same time and in the same place as the adjourned meeting. If a quorum is not present after one hour from the time appointed for that adjourned meeting, the Adult Registered Members of Ngāti Paoa present will constitute a quorum.

### **13.13 Unruly meetings**

If any general meeting becomes so unruly or disorderly that in the opinion of the chairperson of the meeting the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the chairperson becomes unduly protracted, the chairperson may, and without giving any reason, adjourn the meeting or may direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote by a poll, without further discussion and the meeting will be considered closed.

### **13.14 Minutes**

The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every annual general meeting and special general meeting.

### **13.15 Minutes to be evidence of proceedings**

Any minute of the proceedings at an annual general meeting or a special general meeting which is purported to be signed by the chairperson at that meeting shall be evidence of those proceedings.

### **13.16 Minutes to be evidence of proper conduct**

Where minutes of an annual general meeting or a special general meeting have been made in accordance with this clause then, until the contrary is proven, the meeting shall be deemed to have been properly convened and its proceedings to have been conducted properly.

## **14. DISCLOSURE OF INTERESTS**

### **14.1 Definition of interested Trustee**

A Trustee will be interested in a matter if the Trustee:

- (a) is a party to, or will derive a material financial benefit from, that matter;
- (b) has a material financial interest in another party to the matter;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from, the matter, not being a party that is wholly owned, or in the case of a trust controlled, by the Trustees or any other member of the Ngāti Paoa Group;
- (d) is the parent, child, spouse, de facto or civil union partner of another party to, or person who will or may derive a material financial benefit from, the matter; or
- (e) is otherwise directly or indirectly interested in the matter.

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

A Trustee must forthwith, after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Trustees, disclose to his or her co-Trustees at a meeting of the Trustees:

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

#### **14.3 Recording of Interest**

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

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

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

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

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

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

- 17.1** The Trustees shall, in accordance with *clause 9.1*, show the amount of any remuneration paid to any Trustee or any Trustee's firm and the amount of any premiums paid out of the Trust's Assets for any Trustee indemnity insurance separately in the financial statements including any payments made pursuant to *clause 20*.

### **18. ADVICE TO TRUSTEES**

#### **18.1 Trustees may rely on advice**

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

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

## **18.2 Trust may obtain a legal opinion**

If the Trustees are in doubt over any matter relating to the management and administration of the Trust's Assets, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a lawyer who has held a practising certificate for at least seven (7) years. The right to obtain and act upon a legal opinion, however, will not restrict any right on the part of the Trustees to apply to the High Court of New Zealand for directions.

## **19. LIABILITY OF TRUSTEES**

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

## **20. INDEMNITY AND INSURANCE**

### **20.1 Indemnity and insurance for Trustees**

Any Trustee, officer or employee of the Trust may be indemnified or have their insurance costs met out of the Trust's Assets against any liability which he or she incurs in defending any civil or criminal proceedings issued because of his or her actions in relation to the Trust, where:

- (a) those proceedings do not arise out of any failure by the Trustee, officer or employee; and
- (b) he or she was acting in good faith in a manner that he or she believed to be in the best interests of the Trust with the object of fulfilling the Trust's Purpose.

### **20.2 Indemnity and insurance costs to be just and equitable**

All indemnities and insurance costs may only be provided to the extent that the Trustees in their discretion think just and equitable.

### **20.3 Indemnity and insurance re specific trusts**

If any assets are held by the Trustees on any separate specific trust, then any Trustee, officer or employee of the Trust may in respect of proceedings brought in relation to that separate specific trust only be indemnified or have their insurance costs met out of those assets.

### **20.4 Record of decisions**

All decisions made under this clause to give or approve indemnities or meet or approve any insurance costs shall be recorded in the minutes of the meeting of the Trustees at which such a decision was made together with the reasons why such indemnities or insurance costs were thought by them to be just and equitable.

## **21. NGĀTI PAOA NOT TO BE BROUGHT INTO DISREPUTE**

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

No Trustee shall act in a manner which brings or is likely to bring the Trust or any member of the Ngāti Paoa Group into disrepute. Examples of actions (or omissions):

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

### **21.2 Directors not to bring into disrepute**

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

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

Any Trustee that acts in a manner that brings or is likely to bring into disrepute the Trust or any member of the Ngāti Paoa Group may, by a resolution passed by a majority of not less than 75% of the other Trustees, be formally censured or removed from office.

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

The censure or removal of a Trustee in accordance with this clause shall, together with reasons, be reported to the Members of Ngāti Paoa at the next annual general meeting of the Trust following such censure or removal.

### **21.5 Effect of Removal**

A Trustee removed from office in accordance with *clause 21.3* shall cease to hold office as a Trustee forthwith and shall not be entitled to be re-elected as a Trustee for a period of not less than three (3) years following his or her removal.

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

### **21.6 Replacement of Trustee**

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

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

## **22. GIFTS OR DONATIONS**

### **22.1 Trustees may accept specific trusts**

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

### **22.2 Specific trusts to be separate**

If the Trustees accept a trust for any specific purpose as outlined in *clause 22.1* above they must keep the property subject to such trust and any income derived from it separate from the Trust's Assets, and administer that property and income as a separate specific trust in terms of the trust under which it was accepted.

### **22.3 Use of specific trust assets**

The Trustees shall not use the assets of any separate specific trust to make good any deficit, loss, damage or breach of trust relating to any other assets that the Trustees may hold, and the Trustees shall also not use the Trust's Assets to make good any deficit, loss, damage or breach of trust relating to any specific trust.

## **23. RECEIPTS FOR PAYMENTS**

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

## **24. CUSTODIAN TRUSTEE**

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

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



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

## **25. AMENDMENTS TO DEED**

### **25.1 Special Resolution required**

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

### **25.2 Limitations on Amendment**

No amendment shall be made to the Deed which:

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

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

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

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

### **25.4 Consideration of proposals**

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

### **25.5 Proposals to be discarded**

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

## **26. RESETTLEMENT**

- 26.1** The Trustees have the power to settle or resettle any or all of the Trust's Assets upon trust in any manner in which, in the opinion of the Trustees is for the advancement or benefit of the present and future Members of Ngāti Paoa provided that the resettlement is approved by a Special Resolution.

## **27. TERMINATION OF TRUST BY MEMBERS**

- 27.1** Subject to *clause 25.2*:

- (a) the Trust established by this Deed may be terminated or dissolved if the Adult Registered Members of Ngāti Paoa have, by Special Resolution, resolved to do so; and
- (b) on the termination or dissolution of this Trust under this clause, the Trust's Assets after the payment of costs, debts and liabilities shall be paid to another trust or entity that has been established for the benefit of the present and future Members of Ngāti Paoa as long as such payment does not offend against the rule against perpetuities to the extent such rule applies to this Trust.

## **28. PERPETUITIES AND VESTING DAY**

- 28.1** The Vesting Day for the Trust is the day that is eighty years less one (1) day after the date of this Deed, that date being within the perpetuities period permitted by section 6 of the Perpetuities Act 1964 and the perpetuities period applicable to the Trust is hereby specified accordingly. On the Vesting Day, the Trustees shall hold the remaining capital and income of the Trust's Assets on trust for the Members of Ngāti Paoa then living as tenants in common in equal shares.
- 28.2** If the Settlement Act provides that the rule against perpetuities, and the other rules of law regulated by the Perpetuities Act 1964, are not to apply to the Trust, *clause 28(1)* shall be void.

## **29. ARCHIVING OF RECORDS**

- 29.1 Records to be held for seven years**

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

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

Notwithstanding *clauses 29.1* and *29.2* the Trustees and any of the Subsidiaries within the Ngāti Paoa Group may hold on to any records for a period exceeding seven (7) years if in their discretion such records contain information that is commercially or otherwise sensitive or is still required by the Trust or the Subsidiary to which the information relates.

## **30. DISPUTE RESOLUTION**

- 30.1 Disputes**

In the event that a dispute arises between:

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

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

### **30.2 Notice of Dispute**

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

### **30.3 Reference of Dispute**

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

### **30.4 Disputes Committee to be appointed as required**

There shall not be a permanent Disputes Committee. Disputes Committees shall be appointed on a case by case basis, having regard to the precise subject matter of the dispute in question, and only after the expiry of the 30 day period referred to in *clause 30.3*.

### **30.5 Appointment and composition of Disputes Committee**

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

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

### **30.6 Role of Disputes Committee**

The role of a Disputes Committee shall be to facilitate and make findings and decisions on the disputes referred to it.

### **30.7 Deliberations of Disputes Committee**

In dealing with any dispute a Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the manner in which a dispute before it should be dealt with. The findings and decisions of a Disputes Committee shall be final and binding on the parties.

**30.8 Disputes Committee May convene hui**

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

**30.9 Hui to meet notice requirements**

Any general meeting called by a Disputes Committee in order to try to settle any disputes shall be called in accordance with the requirements as to notice and meeting procedure that apply in respect of general meetings of Ngāti Paoa as set out in this Deed.

**30.10 Notification of Outcome**

A Disputes Committee shall give its findings and decision, together with the reasons therefore, in writing to the Trustees and any other party to the dispute.

**31. REVIEW OF TRUST DEED**

**31.1 Review of trust deed**

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

**31.2 Deed review process**

In conducting this review the Trustees shall engage and consult with Ngāti Paoa in order to seek the views of Ngāti Paoa on the terms and operation of this Deed and, in particular, the arrangements relating to the election of Trustees and all other aspects of the representation of Ngāti Paoa by the Trust and shall have regard to the tikanga of Ngāti Paoa.

**31.3 Review to be independently facilitated**

The process of engagement and consultation required by *clause 31.2* shall be undertaken by an independent facilitator appointed by the Trustees. The role of independent facilitator shall be to:

- (a) liaise with the Trustees in the preparation of any discussion materials to be distributed to Ngāti Paoa;
- (b) facilitate any hui;
- (c) receive, compile and review any written submissions received from Ngāti Paoa; and
- (d) make recommendations to the Trustees as to the amendments that should be made to the Deed as a consequence of the information received from the process of engagement and consultation.

**31.4 Outcome of review**

Following the completion of the review and consideration by the Trustees of the report made by the independent facilitator in accordance with *clause 31.3*, the

Trustees shall recommend amendments (if any) to this Deed and seek the approval of those amendments by Special Resolution in accordance with the Fourth Schedule.

## 32. FISHERIES SETTLEMENT ASSETS

### 32.1 Definitions

For the purposes of this *clause* 32:

**"Annual Catch Entitlement"** has the meaning given to it in section 2(1) of the Fisheries Act 1996;

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

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

**"Asset Holding Company"** means:

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

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

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

**"Fishing Enterprise"** means:

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

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

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

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

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

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

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

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

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

### **32.2 Maori Fisheries Act 2004**

Pursuant to the Legislation, Fisheries Settlement Assets of Ngāti Paoa are beneficially held and managed by the Pare Hauraki Fishing Trust. These assets are held by the Pare Hauraki Fishing Trust as part of the collective fisheries assets of the Hauraki Iwi. The Legislation contemplates and the Pare Hauraki Fishing Trust Deed provides, for Ngāti Paoa to withdraw its Fisheries Settlement Assets and transfer these assets to its own Mandated Iwi Organisation. In the event that Ngāti Paoa chooses to withdraw it is intended that the Trust will become the Mandated Iwi Organisation for Ngāti Paoa.

### **32.3 Withdrawal from the Pare Hauraki Fishing Trust**

If Ngāti Paoa chooses to withdraw from the Pare Hauraki Fishing Trust in accordance with the provisions of the Maori Fisheries Act 2004 upon completion of the withdrawing process (and if necessary once this process has commenced) the provisions of this *clause 32* shall apply.

### **32.4 Mandated Iwi Organisation**

The Trust shall act as the Mandated Iwi Organisation and Iwi Aquaculture Organisation for Ngāti Paoa for the purposes of the Legislation.

### **32.5 Asset Holding Company**

The Trust shall have an Asset Holding Company, which shall hold on behalf of the Trust, the Fisheries Settlement Assets. The Asset Holding Company will be a Subsidiary and will in addition to this clause comply with the provisions of this Deed as they relate to Subsidiaries.

### **32.6 Strategic Governance**

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

### **32.7 Subsidiaries of Asset Holding Company**

The Asset Holding Company may establish one or more subsidiaries to be a subsidiary Asset Holding Company and transfer to that subsidiary some or all of the Fisheries Settlement Assets the Asset Holding Company receives. Any such subsidiary must be wholly owned and controlled by the Asset Holding Company and provide any dividends solely to the Asset Holding Company.

### **32.8 Fishing Enterprise**

If the Trust wishes to have its own fishing operation, utilising Annual Catch Entitlement from its Settlement Quota to harvest, process, or market fish, or to be involved in a joint venture for these purposes, the Trust must establish a Fishing Enterprise separate from, but responsible to the Trust to undertake these operations. The Fishing Enterprise must be a separate entity from any Asset Holding Company.

### **32.9 Directors and Trustees of Fishing Enterprise and Asset Holding Company**

No more than 40% of the directors or trustees of any Fishing Enterprise or Asset Holding Company can be the Trustees then in office.

### **32.10 Disposal of Fisheries Settlement Assets**

Any proposal in relation to the disposal of Income Shares pursuant to section 70 of the Maori Fisheries Act 2004 or in relation to the disposal of Settlement Quota pursuant to sections 159, 162, or 172 of the Maori Fisheries Act 2004 or in relation to the disposal of authorisations or coastal permits pursuant to section 50 of the Maori Commercial Aquaculture Claims Settlement Act 2004, may only proceed if a Special Resolution has been passed in accordance with the Fourth Schedule.

### **32.11 Undertaking Commercial Aquaculture Activities**

The Trust must not undertake Commercial Aquaculture Activities except through a separate enterprise that is responsible to the Trust.

### **32.12 Annual General Meeting**

At the annual general meeting the trustees will present any proposed amendments to the constitution of any Asset Holding Company.

### **32.13 Annual Report of the Trust**

Any annual report prepared by the Trust must include:

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



- (c) a report on any changes to the Trust Deed or the constitution of any Asset Holding Company.

### **32.14 Annual Plan of the Trust**

Any annual plan prepared by the Trust must include:

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

### **32.15 Annual Report of Asset Holding Company**

Any annual report of any Asset Holding Company must include:

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

### **32.16 Dispute Resolution**

If a dispute arises as defined in section 180(1)(m) of the Maori Fisheries Act 2004 or as defined in section 52(7) of the Maori Commercial Aquaculture Claims Settlement Act 2004 the dispute will be determined in accordance with the Legislation. For the purposes of the Legislation, the disputes procedure contained in *clause 30* shall be deemed to constitute the process for resolving the dispute that is required pursuant to section 181(1) of the Maori Fisheries Act 2004 and that is required pursuant to section 53 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

### **32.17 Amendments to provisions required by the Maori Fisheries Act 2004**

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

### **32.18 Resettlement**

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

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

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

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

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**FIRST SCHEDULE  
NGĀTI PAOA MEMBERSHIP REGISTER**

**1. TRUST TO KEEP REGISTER**

**1.1 Trust to maintain register**

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

**1.2 Register to comply with this Schedule**

The Ngāti Paoa Register shall be maintained in accordance with the rules and procedures set out in this Schedule.

**2. CONTENTS OF REGISTER**

**2.1 Register to contain Members' details**

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

**2.2 Beneficiary Registration Number**

The Trustees will allocate a beneficiary identification number to each Adult Registered Member of Ngāti Paoa on the Register. The Trustees will, immediately after allocation, notify the relevant Adult Registered Member of Ngāti Paoa of his or her beneficiary identification number.

**3. APPLICATIONS FOR REGISTRATION**

**3.1 Form of applications**

All applications for registration as a Member of Ngāti Paoa must be made in writing to the Trustees in the application form approved from time to time by the Trustees. The application must contain:

- (a) the full name, date of birth and postal address of the applicant;
- (b) the whakapapa (genealogical connections) through which the applicant claims affiliation to Ngāti Paoa; and
- (c) such evidence as the Trustees may from time to time require as to that applicant's status as a Member of Ngāti Paoa.

**3.2 Applications to be made by**

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

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

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

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

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

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

##### **4.2 Composition of Membership Validation Committee**

The Membership Validation Committee shall comprise not less than three (3) and not more than five (5) Adult Registered Members of Ngāti Paoa, appointed by the Trustees from time to time, with the expertise and knowledge of Ngāti Paoa whakapapa necessary to make determinations regarding membership applications. Trustees with the required expertise and knowledge of Ngāti Paoa whakapapa may be appointed to the Membership Validation Committee.

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

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

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

Upon receipt of an application for membership in accordance with *rule 3.1* of this Schedule the Membership Validation Committee shall consider the application and shall make a decision as to whether or not the applicant should be registered as a Member of Ngāti Paoa.

##### **4.5 Successful applicants to be notified and registered**

In the event that the Membership Validation Committee decides that the application should be accepted then such decision shall be notified in writing to the Trustees, which shall in turn notify the applicant and enter the applicant's name and other relevant details (including beneficiary identification number in accordance with *rule 2.2* of this Schedule) in the appropriate part of the Ngāti Paoa Register.

##### **4.6 Notification to unsuccessful applicants**

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

##### **4.7 Unsuccessful applicant may reapply**

Any applicant whose application has been declined may at any time seek to have his or her application reconsidered by the Membership Validation Committee provided that such application for reconsideration may only be made on the basis of new evidence (being evidence that was not submitted or considered as part of the initial

or, if more than one (1), any previous application) as to the applicant's status as a Member of Ngāti Paoa.

## **5. MAINTENANCE OF REGISTER**

### **5.1 Trustees to establish policies**

The Trustees shall take such steps and institute such policies as are necessary to ensure that the Ngāti Paoa Register is maintained in a condition that is as up to date, accurate and complete as possible in recording Members of Ngāti Paoa.

### **5.2 Assistance in identifying membership**

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

### **5.3 Responsibility of Members of Ngāti Paoa**

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

### **5.4 Consequences of registration**

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

## **SECOND SCHEDULE ELECTIONS OF TRUSTEES**

### **1. PROCEDURE**

#### **1.1 This Schedule to apply**

The Trustees shall be appointed in accordance with the rules and procedures set out in this Schedule.

### **2. ELIGIBILITY FOR APPOINTMENT**

#### **2.1 Nominee to be registered**

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

#### **2.2 Trustees Roles**

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

#### **2.3 Trustees may be directors or trustees**

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

#### **2.4 Number of Trustees to be Limited**

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

### **3. ELECTION OF TRUSTEES**

#### **3.1. Election of Trustees**

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

#### **3.2. Candidates**

The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees. Trustees must represent the interests of all Members of Ngāti Paoa irrespective of whanau affiliations. If there is an equal number of votes for the last available position, then the successful candidate will be decided by the drawing of lots.

### **4. TERM OF OFFICE**

#### **4.1 Term of office**

Subject to *rule 4.2* and *rule 4.3* of this Schedule the Trustees from time to time shall hold office for a term of three (3) years.

#### **4.2 Retirement of initial Trustees and Election of Establishment Trustees**

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

#### **4.3 Retirement of Establishment Trustees**

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

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

#### **4.4 Review of Trustee Election process**

If because of a review of the election of a Trustee's replacement under *rule 13* of this Schedule the appointment of that Trustee's replacement has not been completed as at the expiry of the Trustee's term, then that Trustee shall continue to hold office by virtue of his or her previous appointment until the review process is completed. For the purposes of calculating the term of the replacement Trustee, that replacement Trustee shall, once he or she takes office, be deemed to have taken office on the date upon which the term of office of the previous Trustee expired, being the date of the relevant annual general meeting.

#### **4.5 Eligibility of retiring Trustees**

Retiring Trustees shall be eligible for re-election.

#### **4.6 Casual vacancies**

Should:

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

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

#### **4.7 Term of casual appointments**

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

(a) In the case of a Trustee appointed pursuant to *rule 4.6(a)* of this Schedule, for the same term as that Trustee would have been appointed had he or she been appointed, immediately following the retirement of the previous Trustee, under *rule 4.3* of this Schedule; or

(b) In the case of a Trustee appointed pursuant to *rule 4.6(b)* of this Schedule, for the balance of the term of office of the Trustee that he or she has replaced.

### **5. TIMING OF ELECTIONS**

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

### **6. MAKING OF NOMINATIONS**

#### **6.1 Calling for nominations**

The Trustees shall give notice calling for nominations for those Trustee positions for which elections are required at least 3 months before the annual general meeting of the Trust for that Income Year, and in any event in sufficient time for the election to be concluded in accordance with *rule 5* of this Schedule. Such notice shall specify the method of making nominations, the requirement in *rule 2.1* of this Schedule in terms of Trustee eligibility and the latest date by which nominations must be made and lodged with the Trustees or such other person as the notice directs.

#### **6.2 Timing for nominations**

All nominations must be lodged with the Trustees no later than 21 days following the date upon which the notice calling for nominations is first given.

#### **6.3 Form of notice**

All notices given under this rule shall be given by:

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



- (b) inserting a prominent advertisement on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngāti Paoa reside; and
- (c) such other means as the Trustees may determine.

#### **6.4 Inclusion of invitation to register**

Any such notice shall also invite applications from qualified persons for inclusion of their names in the Ngāti Paoa Register, and shall set out the date upon which a registration must be received for the applicant, if successful, to be eligible to vote in the notified election, being the same date as that fixed as the latest date for making and lodging nominations.

#### **6.5 Nomination to be in writing**

The nomination of a candidate for election as a Trustee shall be in writing signed by not less than three (3) Adult Registered Members.

#### **6.6 Consent of nominee**

The consent of each candidate to his or her nomination shall be endorsed on the nomination paper, provided that a candidate may at any time, by notice to the Trustees, withdraw his or her nomination.

#### **6.7 Eligibility for nomination**

Notwithstanding the foregoing rules of this Schedule, an Adult Registered Member of Ngāti Paoa shall not be eligible for nomination as a candidate for election as a Trustee if he or she:

- (a) is or has ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);
- (b) is bankrupt or has made any composition or arrangement with his or her creditors;
- (c) has been convicted of an indictable offence (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004); or
- (d) is subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 or is subject to a care and protection order under the Protection of Personal and Property Rights Act 1988;
- (e) has within the last three (3) years been removed from the office of Trustee in accordance with *clause 21.3*.

### **7. HOLDING OF ELECTIONS**

#### **7.1 Mode of Voting at Elections**

Subject to *rule 7.3* of this Schedule, voting at all elections shall be by way of secret ballot. Voting forms may be delivered to the Chief Returning Officer by post or by electronic form where available. The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees. Where there is an equal number of votes for the last trustee position the decision as to the successful candidate shall be made by the drawing of lots.

## **7.2 No elections where nominees equal vacancies**

In the event that the total number of nominations of Trustees is less than or equal to the total number of vacancies, no election shall be necessary and the person or persons nominated shall be deemed to have been duly appointed.

## **7.3 Adult Members to vote in elections**

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

- (a) each such Adult Member of Ngāti Paoa will only be eligible to cast one vote in an election listing their preferred Trustees up to the number of Trustee positions to be filled in an election; and
- (b) each such Adult Member of Ngāti Paoa must, at the last day of voting, either be recorded in the Ngāti Paoa Register as an Adult Registered Member of Ngāti Paoa or have completed and sent with their voting form an application form for registration which complies with *rule 3.1* of the First Schedule.

## **8. NOTICE OF ELECTIONS**

### **8.1 Notice to be given**

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

### **8.2 Period of notice**

The Trust shall give not less than 28 days notice of the closing date for the elections and the method by which votes may be cast as set out in *rule 7.1* of this Schedule.

### **8.3 Method of giving notice**

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

- (a) post (including by electronic form where available) to all Adult Registered Members of Ngāti Paoa at the last address shown for such Adult Registered Member of Ngāti Paoa on the Ngāti Paoa Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the last known physical address;
- (b) inserting a prominent advertisement on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngāti Paoa reside;
- (c) such other means as the Trustees may determine.

#### **8.4 General content of notices**

Every notice given in accordance with *rule 8.3(a) and (b)* of this Schedule shall contain:

- (a) a list of the nominees for election as Trustees; and
- (b) the mode by which votes may be cast as set out in *rule 7.1* of this Schedule.

#### **8.5 Additional content of notice**

Each notice given in accordance with *rule 8.3(a)* of this Schedule shall also contain:

- (a) a voting form that complies with *rule 9.1* of this Schedule; and
- (b) details of the procedure to be followed in making a vote by post or by electronic form, including the date by which the voting form must be received by the Chief Returning Officer.

#### **8.6 Additional information in other notices**

Each notice given in accordance with *rule 8.3(b) and (c)* of this Schedule shall also give details about how voting forms may be obtained.

### **9. POSTAL VOTING**

#### **9.1 Other details to accompany vote**

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

#### **9.2 Timing of postal votes**

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

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

#### **10.1 Appointment of Chief Returning Officer**

For the purposes of elections the Trustees shall appoint as required a Chief Returning Officer who shall not be a Trustee or employee of the Trust. The Trustees shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the provisions of this Deed setting out the powers and duties of the Chief Returning Officer. The Chief Returning Officer shall be responsible for co-ordinating Trustee elections.

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

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

### **10.3 Only one vote to be cast**

The Chief Returning Officer shall ensure that appropriate measures are in place to ensure that only one vote is cast by each Adult Registered Member of Ngāti Paoa.

### **10.4 Provisional votes**

Where an Adult Member of Ngāti Paoa is not also an Adult Registered Member of Ngāti Paoa and has voted in accordance with rule 7.3(b) of this Schedule:

- (a) such vote is provisional until such time as the application form for registration as an Adult Registered Member of Ngāti Paoa is approved by the Membership Validation Committee as set out in the First Schedule; and
- (b) where the application form for registration as an Adult Registered Member of Ngāti Paoa is declined in accordance with the First Schedule, the said vote will be invalidated.

### **10.5 Recording of votes**

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

## **11. COUNTING OF VOTES**

### **11.1 All votes to be counted**

Upon the expiry of the date for the receipt of postal votes, the Chief Returning Officer shall record and count all votes validly cast.

### **11.2 Certification and notifying election result**

Once all votes have been counted and the result of the election determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the election and communicate the result of the election to the Trustees. The Trustees shall thereafter advise the candidates of the result and give notice of the same at the annual general meeting of the Trust in accordance with *clause 13.1(d)*. The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees.

### **11.3 Provisional Votes**

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

- (a) if the validity or otherwise of the Provisional Votes may affect the outcome of the election, the Chief Returning Officer may not certify the result of the election until the validity of the Provisional Votes has been confirmed pursuant to *rule 10.4(a)* of this Schedule and any valid Provisional Vote has been counted;
- (b) if the validity or otherwise of the Provisional Votes will not affect the result of the election, the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional Votes has not been confirmed pursuant to *rule 10.4(a)* of this Schedule and the Provisional Votes have not been counted.

## **12. RETENTION OF ELECTION RECORDS**

### **12.1 Compiling and sealing voting records**

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

### **12.2 Retention and disposal of packets**

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

## **13. REVIEW OF ELECTION RESULTS**

### **13.1 Candidates may seek review**

Any candidate may, within 14 days after the certification of the election result and the giving of notice by the Trust in respect of that election, seek a review of that election.

### **13.2 Appointment of Electoral Review Officer**

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

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

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

### **13.4 Form of request for review**

All applications for a review shall be submitted to the Trustees and:

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

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

The application for review and any accompanying evidence shall also be served by the candidate referred to in *rule 13.1* of this Schedule upon all other candidates in the

election to which the review relates, either at the same time, or as close thereto as is possible, as the review application is lodged with the Trustees.

### **13.6 Costs**

Upon making an application for review the applicant shall also lodge with the Trustees the sum of \$500 in lieu of the costs of undertaking the review. That sum shall be held by the Trustees pending the outcome of the review application. If the application is successful, then the \$500 shall be refunded to the applicant, otherwise it shall be used to off-set the costs of the review.

## **14. CONDUCT OF REVIEW**

### **14.1 Notification of Electoral Review Officer**

Upon the receipt of an application for review the Trustees shall notify the Electoral Review Officer and provide to him or her:

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

### **14.2 Electoral Review Officer to exercise wide powers**

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

### **14.3 Electoral Review Officer to be guided by substantial merits**

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

### **14.4 Certification of result of review**

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

### **14.5 Decision to be final**

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

## **15. TERMINATION OF OFFICE OF TRUSTEES**

### **15.1 Termination of office of Trustees**

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

- (a) retires from office by giving written notice to the Trustees or dies;
- (b) completes his or her term of office and is not reappointed;
- (c) refuses to act;
- (d) is absent without leave from three (3) consecutive ordinary meetings of the Trustees without good reason or without the permission of the Chairperson;
- (e) is convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993;
- (f) is bankrupt or makes any composition or arrangement with his or her creditors;
- (g) is convicted of an indictable offence; or
- (h) becomes subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 or becomes subject to a care and protection order under the Protection of Personal and Property Rights Act 1988; or
- (i) is removed from the office of Trustee in accordance with *clause 21.3*.

## **16. RECORD OF CHANGES OF TRUSTEES**

### **16.1 Record of changes of Trustees**

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

## **THIRD SCHEDULE PROCEEDINGS OF TRUSTEE MEETINGS**

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

- 1.1** The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Any five (5) Trustees may at any time by notice in writing to the Trustees summon a meeting of the Trustees and the Trustees shall take such steps as are necessary to convene such meeting.

### **2. NOTICE OF MEETING**

#### **2.1 Notice to Trustees**

Written notice of every meeting shall be either hand-delivered, posted or sent by facsimile or by electronic form to each Trustee at least seven (7) days before the date of the meeting. However, it shall not be necessary to give notice of a meeting of Trustees to any Trustee for the time being absent from New Zealand unless that Trustee has provided details of where he or she may be contacted while overseas. No notice shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned.

#### **2.2 Content of notice**

Every notice of a meeting shall state the place, day and time of the meeting, and the agenda of the meeting.

#### **2.3 Waiver of notice**

The requirement for notice of a meeting may be waived if all the Trustees who are at the time entitled to receive notice of the meeting give their written consent to such a waiver prior to or at the meeting.

#### **2.4 Meeting limited to notified business**

Subject to *rule 2.3* of this Schedule, no business shall be transacted at any meeting of Trustees other than the business expressly referred to in the notice calling the meeting.

#### **2.5 Deficiency of notice**

Subject to *rule 2.4* of this Schedule, no deficiency in the giving of notice for any meeting of Trustees shall otherwise invalidate such meeting or the proceedings at such meeting.

### **3. QUORUM**

- 3.1** Five (5) Trustees then in office shall constitute a quorum at meetings of the Trustees.



#### **4. CHAIRPERSON AND DEPUTY CHAIRPERSON**

##### **4.1 Trustees to appoint**

At the first meeting of the Trustees following an election, the Trustees shall appoint one (1) of their number to be Chairperson, and (at their discretion) one to be Deputy Chairperson.

##### **4.2 Voting on appointment**

Where there is more than one candidate for Chairperson (or as the case may be Deputy Chairperson) then a vote will be taken and the person receiving the most votes in favour of his or her appointment will become Chairperson (or Deputy Chairperson).

##### **4.3 Termination of office**

The Chairperson (or Deputy Chairperson) will cease to hold office after an election of Trustees, in the event that he or she resigns from that office, ceases to be a Trustee or is removed from office by the Trustees passing a resolution of no confidence in him or her. In the event that the Chairperson (or Deputy Chairperson) ceases to hold that office then a further appointment in accordance with *rule 4.1* of this Schedule shall be held for the position.

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

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

Unless stated otherwise in this Deed, questions arising at any meeting of Trustees shall be decided by a majority of votes of Trustees present at a validly called meeting. In the case of an equality of votes, the Chairperson shall have a second or casting vote.

##### **5.2 Chairperson**

The Chairperson shall take the chair at all meetings of the Trustees. If the Chairperson is not present then the Deputy Chairperson, if there is one, shall take the chair. If there is no Deputy Chairperson or the Deputy Chairperson is also not present then the Trustees present shall elect one (1) of their number to be chairperson of the meeting.

##### **5.3 Vacancies**

The Trustees may act notwithstanding any vacancy or vacancies in their body, but if and so long as their number is reduced below the quorum fixed by these rules, the continuing Trustees may act only for the purpose of advising of the vacancy or vacancies and taking the steps necessary to procure the election of new Trustees to fill any vacancy or vacancies, and for no other purpose.

##### **5.4 Defects of appointment**

All acts done by any meeting of the Trustees or of any committee appointed under *rule 6.1* of this Schedule shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such Trustee or person co-opted to any

committee, or that they were disqualified, be valid as if every such person had been duly appointed and was qualified to act.

### **5.5 Unruly meetings**

If any meeting of Trustees becomes so unruly or disorderly that, in the opinion of the chairperson of the meeting, the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the chairperson becomes unduly protracted, the chairperson may, and without giving any reason, adjourn the meeting or may direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote without discussion.

## **6. APPOINTMENT OF COMMITTEES BY TRUSTEES**

### **6.1 Trustees may appoint committees**

The Trustees may from time to time as they think expedient appoint one (1) or more Trustees to be a committee for making any inquiry on such terms as the Trustees may by resolution direct, but such terms to include as a minimum a requirement that the committee act in accordance with *rules 6.2 and 6.3* of this schedule, and any committee so appointed may co-opt, for the purposes of consultation and advice, persons who are not Trustees, provided that a Trustee shall chair any such committee.

### **6.2 Committees to report to Trustees**

All committees appointed under *rule 6.1* of this Schedule shall report to the Trustees in respect of their activities and such reports shall, unless a direction is made to the contrary by the Trustees:

- (a) be provided on a monthly basis; and
- (b) contain details of the activities of the committee since the last such report.

### **6.3 Regulation of procedure by committees**

Subject to these rules and the provisions of this Deed, any committee established by the Trustees may co-opt any person to be a member of that committee and otherwise regulate its procedure as it sees fit provided that the committee must notify the Trustees of all persons co-opted to the committee.

## **7. WRITTEN RESOLUTIONS**

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

## **8. MINUTES**

### **8.1 Minutes to be kept**

The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.

### **8.2 Minutes to be evidence of proceedings**

Any minute of the proceedings at a meeting which is purported to be signed by the chairperson of that meeting shall be evidence of those proceedings.

### **8.3 Minutes to be evidence of proper conduct**

Where minutes of the proceedings at a meeting of the Trustees have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

## **9. TELECONFERENCE MEETINGS**

**9.1** For the purposes of these rules a teleconference meeting between a number of Trustees or committee members who constitute a quorum shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to teleconference meetings so long as the following conditions are met:

- (a) all of the Trustees or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a teleconference meeting and to be linked for the purposes of such a meeting. Notice of a teleconference meeting may be given on the telephone;
- (b) throughout the teleconference meeting each participant must be able to hear each of the other participants taking part;
- (c) at the beginning of the teleconference meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (d) a participant may not leave the teleconference meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's express consent;
- (e) a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the teleconference meeting unless he or she leaves the meeting with the chairperson's express consent; and
- (f) a minute of the proceedings at a teleconference meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting.

**FOURTH SCHEDULE  
PROCEDURE FOR PASSING SPECIAL RESOLUTION**

**1. THIS SCHEDULE TO APPLY**

**1.1** A Special Resolution to:

- (a) approve a Major Transaction in accordance with *clause 2.5*; or
- (b) amend this Deed in accordance with *clause 25*; or
- (c) approve a resettlement in accordance with *clause 26*; or
- (d) terminate the Trust in accordance with *clause 27*;

shall only be passed as set out in this Schedule.

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

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

**3 VOTING**

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

**4. SPECIAL GENERAL MEETING REQUIRED**

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

**5. NOTICE**

**5.1 Notice of special general meeting**

The Trustees shall give not less than twenty-one (21) days notice of the date, time and place of the special general meeting called for the purposes of considering any Special Resolution (to the intent that notice of the postal vote and the special general meeting shall be given in the same notice).

## **5.2 Method of giving notice**

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

- (a) post (including by electronic form where available) to all Adult Registered Members of Ngāti Paoa at the last address shown for each such Adult Registered Member of Ngāti Paoa on the Ngāti Paoa Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the last known physical address; and
- (b) inserting a prominent advertisement on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Ngāti Paoa reside;
- (c) such other means as the Trustees may determine.

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

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

- (a) the date, time and place of the special general meeting called for the purposes of considering the Special Resolution;
- (b) details of the proposed Special Resolution;
- (c) details of the reasons for the proposed Special Resolution and the effect that the Special Resolution will have;
- (d) details of the procedure to be followed in making a postal vote or a vote by electronic means where available, including the date voting closes;
- (e) a statement that postal votes may either be delivered to the Chief Returning Officer at the special general meeting, or posted or by electronic means; and
- (f) a voting form. The voting form can be sent via postal voting and electronic means. If the voting form is sent via electronic means the voting form must also contain sufficient information to verify the voter and the voting documents issued to that voter pursuant to *rule 6.1* of this Schedule.

## **5.4 Content of advertisement**

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

## **6. POSTAL VOTING**

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

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

## **6.2 Timing of Postal Votes**

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

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

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

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

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

For the purposes of the Special Resolution, the Trustees shall appoint a Chief Returning Officer who shall not be a Trustee or employee of the Trust. The Trustees shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the powers and duties of the Chief Returning Officer as set out in this Deed, including, to avoid doubt, *rules 7.2 to 8.3* of this Schedule.

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

Voting forms must be addressed to the Chief Returning Officer.

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

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

### **7.4 Eligibility to Vote**

Those eligible to vote on a special resolution are:

- (a) those Adult Members of Ngāti Paoa recorded in the Ngāti Paoa Register as an Adult Registered Member of Ngāti Paoa on the closing day for voting; and
- (b) subject to rule 7.5(b) of this Schedule, any other Adult Member of Ngāti Paoa who has on or before the closing date for voting provided to the Chief Returning Officer an application form for registration which complies with *rule 3.1 of the First Schedule*.

### **7.5 Only one vote to be cast**

The Chief Returning Officer must:

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

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

**7.6 Recording of votes**

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

**8. COUNTING OF VOTES**

**8.1 All votes to be counted**

Upon the expiry of the date for the receipt of votes, the Chief Returning Officer shall record and count all votes validly cast.

**8.2 Certification and notifying result**

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

**8.3 Provisional Votes**

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

- (a) if the validity or otherwise of the Provisional Votes may affect the outcome of the Special Resolution, the Chief Returning Officer may not certify the result of the Special Resolution until the validity of the Provisional Votes has been confirmed pursuant to *rule 7.5(b)* of this Schedule and any valid Provisional Vote has been counted; or
- (b) if the validity or otherwise of the Provisional Votes will not affect the result of the Special Resolution, the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional votes has not been confirmed pursuant to *rule 7.5(b)* of this Schedule and the Provisional Votes have not been counted.

**9. PROCEEDINGS AT SPECIAL GENERAL MEETING**

- 9.1** Except as otherwise set out in this Schedule, the provisions of *clause 13* of the Deed shall apply to the holding of any special general meeting called for the purposes of considering a Special Resolution and the meeting shall be conducted accordingly.

EXHIBIT NOTE

This is the annexure marked "Exhibit F" referred to in the affidavit of David Ian Roebeck and sworn at Auckland this 31st day of August 2018 before me:



Signature .....  
Solicitor of the High Court / Registrar / Deputy Registrar

Miria Andrews  
Chairperson  
Ngāti Paoa Trust Board  
P O Box 272 1788  
Papakura 2244

Cc Gary Thompson  
Chairperson  
Ngāti Paoa Iwi Trust

18 July 2014

Tēnā koe Miria,

**Re: Ngāti Paoa Representation**

I write to formally respond to the concerns raised through your correspondence in March 2014 and the meeting held with you in April 2014 regarding Council's recognition of Ngāti Paoa Iwi Trust as the representative body of Ngāti Paoa.

In response we offer the following statement of position.

1. The matters relating to the mandate and representation of Ngati Paoa are primarily a matter for Ngāti Paoa to resolve and the Council does not have a role or mandate to determine or resolve tribal representation.
2. Auckland Council recognises Ngati Paoa's customary rights and interests within the council's boundaries, and council values its relationship with the tribe. Council hopes to continue to build on its relationship with Ngāti Paoa and work together for the mutual benefit of all.
3. I believe council has acted in good faith, and on the face of the meetings held with representatives of the Ngati Paoa Iwi Trust in October 2013 and with the documentation provided have accepted that entity as the mandated body to deal with the day to day operations on behalf of Ngati Paoa and work with Auckland Council.
4. Therefore, Council, including its CCOs will continue to recognise the Ngati Paoa Iwi Trust as the mandated body.

We remain open to discussions and any changes that may occur as Ngāti Paoa to resolve the matters you have raised.

Naku noa na

**Grant Taylor**  
Governance Director  
Auckland Council



EXHIBIT NOTE

This is the annexure marked "Exhibit G" referred to in the affidavit of David Ian Roebeck and sworn at Auckland this 31st day of August 2018 before me:

Signature .....  
Solicitor of the High Court / Registrar / Deputy Registrar

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2015-404-1610  
[2016] NZHC 2458**

IN THE MATTER of the Trustee Act 1956  
AND  
IN THE MATTER of an application for removal of Trustees  
and for other directions  
BETWEEN DANELLA PATSY ROEBECK  
Plaintiff  
AND THE NGATI PAOA TRUST BOARD  
Defendant

Hearing: 19 May 2016

Appearances: H K Gladwell for Plaintiff  
No appearance for Defendant

Judgment: 14 October 2016

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**JUDGMENT OF WOODHOUSE J**

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*This judgment was delivered by me on 14 October 2016 at 4:14 p.m.  
pursuant to r 11.5 of the High Court Rules 1985.*

*Registrar/Deputy Registrar*

.....

Solicitors:  
Mr H K Gladwell, Insight Legal, Warkworth

[1] The defendant, the Ngāti Paoa Trust Board (the Board), was incorporated under the Charitable Trusts Act 1957 in December 2004. This followed establishment of the Ngāti Paoa Trust (the Trust) by deed made in or about November 2004 (the deed). Stated in broad terms, the charitable purposes of the Trust are to advance the interests of Ngāti Paoa.

[2] The duties and powers of the Board are governed by a charter as well as by the deed. Section 22(1) of the deed requires the trustees to have a charter. The charter is the Charter of The Ngāti Paoa Trust (the Charter).

[3] The plaintiff, Mrs Roebeck, is a member of Ngāti Paoa. As such she has rights as specified in the deed and in the Charter. Mrs Roebeck contends that the Board has failed to meet obligations it has under the deed and the Charter, and that the Trust is not being governed as required. There are three broad contentions:

- (a) The deed requires the trustees at all times to maintain a register of all adult members of Ngāti Paoa and make ongoing efforts to add members to the register, but the Board has failed to do these things.
- (b) For the purpose of maintaining an up to date register, the Charter stipulates procedures for verifying membership of Ngāti Paoa at a properly constituted meeting of trustees, but that cannot occur because there is no properly constituted board.
- (c) The Board is not properly constituted because the number of properly elected trustees is now three rather than ten as required and elections of trustees have not been held as required.

[4] Mrs Roebeck seeks orders to rectify these matters. The Board has been served, but has taken no steps.

[5] Because the Trust has been incorporated under the Charitable Trusts Act, Mrs Roebeck is entitled to bring this proceeding against the Board notwithstanding that

her complaints, to a considerable extent, are that there have been defaults by the trustees.

[6] There is evidence from Mrs Roebeck in support of her claim, which I have reviewed in conjunction with the terms of the deed and the Charter. I have also received written and oral submissions from Mr Gladwell, for Mrs Roebeck. I am satisfied that most of the orders sought by Mrs Roebeck should be made, but with modifications.

### **The register of members and verification of membership of Ngāti Paoa**

[7] Section 13 of the deed provides:

#### **13. Trustees to maintain register of Ngāti Paoa**

- (1) The Trustees must, at all times, maintain a register of the adult members of Ngāti Paoa.
- (2) The Trustees must—
  - (a) include in the register the contact details and date of birth of each adult member; and
  - (b) make ongoing efforts to add members to the register; and
  - (c) keep the information in the register current.
- (3) The Trustees may not refuse to include any bona fide adult member of Ngāti Paoa in the register.
- (4) The Trustees have the right to require a member of Ngāti Paoa to be included in the register as a co-requisite to that member's right under section 17(1).
- (5) The Trustees may, in addition to the requirement described in subsection (1), maintain a register of all members of Ngāti Paoa.

Section 17(1), referred to in s 13(4) above, provides for election of trustees. The election process is discussed more fully below.

[8] Section 22(5) of the deed provides:

The charter –

- (a) must contain –

- (i) a definition and a description of Ngāti Paoa; and
  - (ii) the procedures of Ngāti Paoa for verifying eligibility for membership of Ngāti Paoa; and
  - (iii) the vision of Ngāti Paoa; and
  - (iv) the dispute-resolution procedures of Ngāti Paoa; and
- (b) may contain –
- (i) a section setting out the role of tikanga and the governance of the trust; and
  - (ii) any other matters that Ngāti Paoa thinks fit.

[9] Part C of the Charter sets out the procedures for verifying membership of Ngāti Paoa. A person seeking membership is required to make an application for registration as a member. On receipt of an application, the trustees are required to convene a meeting to consider the application for membership. There are detailed provisions in that regard. A person who is determined to be eligible for membership must then be entered on the register.

[10] Mrs Roebeck’s evidence establishes that, as she put it, there is no “robust whakapapa verified” register but, because of other problems, the process stipulated in the deed and the Charter for getting a properly verified register of members cannot be implemented. In other words, there is a catch 22.

[11] A failure to maintain an up to date properly verified register is in breach of s 13 of the deed. But essential provisions for verifying eligibility for membership, under part C of the Charter, cannot be implemented because there is no properly constituted board, for reasons I come to. An election of trustees carried out in the prescribed way would overcome this difficulty, but a properly conducted election requires, amongst other things, an up to date register compiled in accordance with the verification procedure.

[12] Mrs Roebeck sought to resolve this catch 22 in a practical way by proposing that a verification committee be established. Under s 68(1) of the Trustee Act 1956 the Court is empowered to “make such order in the premises as the circumstances of the case may require”. This wide power is subject to two express limitations, but

neither applies. Mrs Roebeck has proposed seven persons, including herself, to be the members of the validation committee. The Board has chosen not to contest Mrs Roebeck's application. Mrs Roebeck's evidence also establishes that there is pressing need to get a properly constituted and operative board.

[13] In the circumstances I am satisfied that it is appropriate to make a direction that the members of the validation committee be those proposed by Mrs Roebeck, including herself, but that the three remaining trustees (as referred to below) should also be members of this committee. The verification procedure contemplates a meeting of trustees, and under s 16(1) of the deed that means ten natural persons. These orders will effectively produce that result, through the validation committee, to deal with the deadlock that would otherwise remain.

### **Elections**

[14] Section 16(1) of the deed requires ten trustees. Ten trustees were appointed following an election in June 2011, but for two reasons there has been no properly constituted board for a considerable period of time.

[15] The first reason is that there are now only three trustees. Four of the remaining seven trustees resigned (one in 2012 and three in 2013) and three others were removed, apparently by other trustees for failure to attend meetings. Four replacement trustees were appointed by the remaining trustees. Under s 19 of the deed there is power "to fill any vacant office of Trustee by invitation". However, under s 19(2), the original vacancy must be filled by appointment in accordance with s 17(1) "as soon as reasonably practicable after the occurrence of the vacancy". That has not occurred and three years or more have passed since vacancies occurred.

[16] The second reason there is no properly constituted board is that new elections should have been held in 2015. This is because s 17(2) of the deed provides that no trustee may hold office for more than four years without that trustee's position being subject to a further election.

[17] On the evidence before me, there is clear need for properly conducted elections to take place without delay. For reasons already discussed, that will first

require a proper updating of the register of members following verification. The Board has responsibility for conducting the election. Because there is no properly constituted board, I consider that it is necessary and appropriate to appoint the seven members of the validation committee, together with the remaining three trustees, to implement and oversee the new election process.

### **Other orders sought**

[18] Mrs Roebeck sought an order that the existing trustees be removed from office. No trustee has been named as a defendant and no trustee has been personally served. In these circumstances Mr Gladwell accepted that this order could not be made.

### **The formal orders**

[19] For the reasons recorded above, I make the following orders:

- (a) A committee of ten persons is appointed, to be called “the validation committee”. The members of the validation committee are the following persons provided each gives his or her consent:
  - (i) The three remaining trustees from the election conducted in June 2011, namely: Miria Andrews, Lorna Dixon-Rikihana and George Kahi.
  - (ii) The following persons: Danella Patsy Roebeck, Harry Poara Williams, Charlie Takahoangakingwai Peters, Howard Hauaru Rawiri, Tania Rawiri, Cora Kaiwaki Nahu and Percy Te Awaroa Thompson.
- (b) If any of the persons named in the preceding order (a) does not consent to be a member of the validation committee, those who do consent may co-opt further members. The validation committee shall not exceed ten persons.

- (c) The validation committee at its first meeting shall adopt a set of standing orders for the conduct of their meetings and decision making which standing orders should be consistent, as far as reasonably possible, with the provisions of schedule 1 to the Deed of Trust establishing the Ngāti Paoa Trust (the deed).
- (d) The validation committee is empowered to, and shall, in accordance with s 13(2)(b) of the deed, “make ongoing efforts to add members to the register”, referred to in s 13(1) of the deed, of the adult members of Ngāti Paoa.
- (e) The validation committee is empowered to, and shall, determine eligibility for membership of Ngāti Paoa, and inclusion in the register of members, in accordance with the verification procedures specified in part C of the charter of the Ngāti Paoa Trust (the Charter), subject to such modifications as may reasonably be required having regard to the fact that the verification procedures are to be implemented and followed by the validation committee rather than the trustees of the Trust.
- (f) Upon the validation committee being satisfied that all reasonable and proper steps have been taken to compile an up to date register of members, the validation committee is empowered to, and shall, forthwith commence the procedures stipulated in the deed and the Charter for an election of ten trustees and shall complete the election process and formal appointment of new trustees in accordance with the relevant provisions of the deed modified to the extent necessary having regard to the terms of these orders.
- (g) The powers and duties of the validation committee shall cease upon appointment of the new trustees.
- (h) Notwithstanding the preceding orders, the validation committee may, for the purpose of implementing any matter contemplated by the

preceding orders, or for any other purpose generally consistent with the purposes of the preceding orders, convene a hui-a-iwi. The process in that regard shall be governed, so far as applicable, by the provisions of s 48 of the deed.

[20] Leave is reserved to Mrs Roebeck, and to the validation committee, to apply for variation of these orders.

### **Costs**

[21] Mrs Roebeck sought costs. She is entitled to costs to be assessed on a 2B basis, together with reasonable disbursements. Mrs Roebeck is to submit a memorandum itemising the costs and disbursements sought. The claim for costs and disbursements is to be assessed by the Registrar.

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Woodhouse J



# Ngati Paoa Trust Board

P.O. Box 204 144  
Highbrook  
Auckland 2161

## EXHIBIT NOTE

This is the annexure marked "Exhibit H" referred to in the affidavit of David Ian Roebeck and sworn at Auckland this 31st day of August 2018 before me:

3<sup>rd</sup> July 2017  
Auckland Council  
Level 15, 135 Albert St  
Auckland

Signature .....  
Solicitor of the High Court / Registrar / Deputy Registrar

Attn : Stephen Town – Chief Executive

Dear Stephen

We thought it best to provide you with a little background into why we have asked for this meeting with the Auckland Council.

The Ngati Paoa Trust Board was confirmed by the Maori Land Court in 2004 as the sole governance entity for the people of Ngati Paoa.

This court action resulted because there were 2 entities claiming to have the right to represent Ngati Paoa as the governing body, The Ngati Paoa Whanau Trust and the Ngati Paoa trust board.

It was determined by the court that the sole governing body for Ngati Paoa was the Ngati Paoa Trust Board.

In 2011, the Ngati Paoa Trust Board was given the mandate by the Ngati Paoa iwi and ratified by the crown, to negotiate our comprehensive settlement claims with crown.

Two negotiators were appointed, Hauauru Rawiri and Glen Tupuhi, who was later replaced by Morehu Wilson.

In 2013 the Ngati Paoa Trust Board held elections to establish its PSGE ( post settlement governance entity ) with 2 initial trustees, Gary Thompson and Bryce Herron, who were the Chairman and accountant of the Ngati Paoa Trust Board at that time.

Both have since resigned those positions.

The Ngati Paoa Trustees term of office expired in 2015, with no audited financial reports being presented or an election to elect new trustees being held.

In 2015 Danella Roebeck and others applied to the High Court for directions and presentation of evidence to support the application.

In 2016 the High Court appointed a committee and empowered them to create a whakapapa verified database and to elect 10 new trustees to the Ngati Paoa Trust Board.

On March 11<sup>th</sup>, 2017 this election was held and the trustees were duly elected.

The results, minutes and election process were forwarded to the OTS who responded that they look forward to initialing the deed of settlement with the Ngati Paoa Trust Board.

So in essence, the Ngati Paoa Trust Board is the governing body for Ngati Paoa, and it is in this capacity that we are meeting with you today.

Now we go back to 2012, when the Auckland Council applied for resource consent to expand the Stoney Ridge quarry on Waiheke Island.

An objection was lodged by Lucy Tukua, on behalf of the Ngati Paoa Trust Board, of which she was a trustee at that time.

The resource consent application was declined based on the Ngati Paoa Trust Board objections

Lucy Tukua resigned as a trustee from the NPTB in September 2012.

In 2013 an agreement was reached between Auckland Council and The Ngati Paoa Iwi Trust that the Ngati Paoa Trust Board objection would be removed and a monetary settlement would occur which was a lump sum and an annual payment to the Ngati Paoa Iwi Trust.

At this stage we need to reiterate that the Ngati Paoa Iwi Trust is a post settlement entity and therefore has no jurisdiction over pre settlement matters, as that is the role of the Ngati Paoa Trust Board until settlement has been achieved.

That agreement was signed for by Lucy Tukua, who was no longer a trustee, and Morehu Wilson , who was never a trustee.

The monetary settlement was then paid by Auckland Council to the Ngati Paoa Iwi Trust account, who did not have our authority to remove our objection or receive payment for removing our objection.

We as trustees of the Ngati Paoa Trust Board feel humiliated by this underhand act of deception as we believe wahi tapu is just that, and we the Ngati Paoa do not use it for monetary gain.

We are therefore asking the Auckland Council to rectify this act of misappropriation by having the Ngati Paoa Iwi Trust return the lump sum and subsequent annual payments already paid by the council as the PSGE does not have the authority to receive such a settlement.

Until our settlement claims are finalised we would expect all correspondence relating to Ngati Paoa to be directed to this board.

Regards

Harry Williams – ( Chair )

Danella Roebeck – ( Trustee )

# Ngati Paoa Trust Board

P.O. Box 204 144  
Highbrook  
Auckland 2161

## EXHIBIT NOTE

This is the annexure marked "Exhibit I" referred to in the affidavit of David Ian Roebeck and sworn at Auckland this 31st day of August 2018 before me:

Signature .....  
Solicitor of the High Court / Registrar / Deputy Registrar

9<sup>th</sup> July 2018

## Open Letter

[ Sent by email to : ]

### Auckland Council

Stephen Town – [stephen.town@aucklandcouncil.govt.nz](mailto:stephen.town@aucklandcouncil.govt.nz)

David Wren – [david.wren@aucklandcouncil.govt.nz](mailto:david.wren@aucklandcouncil.govt.nz)

Phil Wilson – [phil.wilson@aucklandcouncil.govt.nz](mailto:phil.wilson@aucklandcouncil.govt.nz)

Fennel Mason – [fennel.mason@aucklandcouncil.govt.nz](mailto:fennel.mason@aucklandcouncil.govt.nz)

Helgard Wagener – [Helgard.Wagener@aucklandcouncil.govt.nz](mailto:Helgard.Wagener@aucklandcouncil.govt.nz)

Veena Krishna – [Veena.Krishna@aucklandcouncil.govt.nz](mailto:Veena.Krishna@aucklandcouncil.govt.nz)

Brad Allen – [Brad.Allen@aucklandcouncil.govt.nz](mailto:Brad.Allen@aucklandcouncil.govt.nz)

John Hutton – [john.hutton@aucklandcouncil.govt.nz](mailto:john.hutton@aucklandcouncil.govt.nz)

### Developer

Tony Mair - [tonymair@me.com](mailto:tonymair@me.com)

Mark Schmack – [mark@orakeimarine.co.nz](mailto:mark@orakeimarine.co.nz)

Sarah – [sarah@kpmarina.co.nz](mailto:sarah@kpmarina.co.nz)

[ cc by email to : ]

### Local Board

Cath Handley – [cath.handley@aucklandcouncil.govt.nz](mailto:cath.handley@aucklandcouncil.govt.nz)

Shirin Brown – [Shirin.Brown@aucklandcouncil.govt.nz](mailto:Shirin.Brown@aucklandcouncil.govt.nz)

Bob Upchurch – [bob.upchurch@aucklandcouncil.govt.nz](mailto:bob.upchurch@aucklandcouncil.govt.nz)

John Meeuwesen – [John.Meeuwesen@aucklandcouncil.govt.nz](mailto:John.Meeuwesen@aucklandcouncil.govt.nz)

Paul Walden – [Paul.Walden@aucklandcouncil.govt.nz](mailto:Paul.Walden@aucklandcouncil.govt.nz)

### Government

Andrew Little – [A.little@ministers.govt.nz](mailto:A.little@ministers.govt.nz)

James Shaw – James [shaw@greens.org.nz](mailto:shaw@greens.org.nz)

Marama Davidson – Marama. [davidson@greens.org.nz](mailto:davidson@greens.org.nz)

Eugenie Sage – [E.sage@ministers.govt.nz](mailto:E.sage@ministers.govt.nz)

Te Puni Kokeri – [tpk.tamaki-makaurau@tpk.govt.nz](mailto:tpk.tamaki-makaurau@tpk.govt.nz)

Kia ora

1. I am writing to you on behalf of the Board of Trustees of the Ngati Paoa Trust Board.
2. The Ngati Paoa Trust Board is the sole and exclusive mandated representative of Ngati Paoa, including all persons who whakapapa to Ngati Paoa.

3. Ngati Paoa Trust Board's exclusive mandate to represent Ngati Paoa in respect of all matters relating to Ngati Paoa, including, to represent Ngati Paoa in relation to RMA matters that may be relevant to Ngati Paoa has been confirmed by (among others):

- 3.1. Ngati Paoa Trust Board Trust Deed;
- 3.2. Court Order by the New Zealand Maori Land Court;
- 3.3. Court Order by the High Court of New Zealand; and
- 3.4. The New Zealand Government.

#### **Knowledge of Mandate**

4. Auckland Council is and has been aware of the Ngati Paoa Trust Board's exclusive mandate and authority to represent Ngati Paoa.
5. This position had been communicated to Auckland Council on several occasions, including but not limited to the CEO of Auckland Council, who had been advised of this position in a meeting with representatives of the Ngati Paoa Trust Board, and by letter to the CEO of Auckland Council.

#### **Kennedy Point Marina**

6. It has only very recently come to the attention of the Ngati Paoa Trust Board that Auckland Council has approved a resource consent application for Kennedy Point Boat Harbour Limited ("**KPBHL**"), a private company.
7. The consent was approved without notice to the Ngati Paoa Trust Board as the mandated representative of Ngati Paoa who are the mana whenua of Waiheke Island.
8. We have recently become aware that KPBHL allegedly consulted with the Ngati Paoa Iwi Trust, who are a separate entity to the Ngati Paoa Trust Board, and who are more commonly known as a Post Settlement Governance Entity ("**PSGE**").
9. The Ngati Paoa Iwi Trust, as PSGE do not currently hold a mandate to represent Ngati Paoa.
10. We have become aware that Auckland Council's website incorrectly directs enquiries in relation to Waiheke Island regarding "mana whenua for your area" to the Ngati Paoa Iwi Trust, despite being aware that the correct mandated representative for Ngati Paoa is the Ngati Paoa Trust Board.

11. It is our understanding that there was a recent Environment Court case where KPBHL put on evidence from Ngati Paoa Iwi Trust in support of its resource consent application, and on the basis that the Ngati Paoa Iwi Trust is the current mandated representative for the mana whenua of Waiheke Island, Ngati Paoa. We are of the view that this position is misleading and plainly wrong. We are also of the view that this position is a serious breach of Ngati Paoa Trust Board's mandate to represent Ngati Paoa (including in respect of RMA matters), and various court orders to this effect.
12. It is our view that the actions of KPBHL and/or Auckland Council may also constitute a breach of their duty of care owed to Ngati Paoa and/or the Ngati Paoa Trust Board (as mandated representative of Ngati Paoa), and may also constitute serious and material breaches of other laws.

### **Foreshore and Seabed**

13. Ngati Paoa Trust Board is also in the process of preparing to enter into negotiations with Government in respect of Ngati Paoa's customary rights to the foreshore and seabed surrounding Waiheke Island, including but not limited to, pursuant to the Marine and Coastal Area Act.

### **Request and Demand**

14. Ngati Paoa Trust Board views the conduct of the KPBHL and Auckland Council in this matter seriously, and reserves all of its rights as against KPBHL and/or Auckland Council, as well as any rights that it may have in respect of the Environment Court matter and the representations made in that matter in respect of the position of Ngati Paoa.
15. As a result of the matters set out above the Ngati Paoa Trust Board request and demands that:
- 15.1. Auckland Council refrain from issuing the resource consent to KPBHL for the marina and that Auckland Council confirms that it has not issued the resource consent to KPBHL;
- 15.2. In circumstances where the resource consent has been issued to KPBHL that Auckland Council withdraw, revoke or otherwise cause the resource consent to be put on hold immediately;
- 15.3. Auckland Council agrees not to issue the marina resource consent to KPBHL until KPBHL and Auckland Council has met and consulted with Ngati Paoa Trust Board, and

Ngati Paoa Trust Board has provided its support for the marina and resource application in writing;

15.4. KPBHL agrees not to undertake any further steps in respect of obtaining the resource consent for the marina and/or undertake any further steps to implement the marina development at Kennedy Point Bay until KPBHL and Auckland Council has met and consulted with Ngati Paoa Trust Board, and Ngati Paoa Trust Board has provided its support for the marina and resource application in writing;

15.5. KPBHL and Auckland Council provide Ngati Paoa Trust Board with copies of all documents relevant to the marina and resource consent for the marina to enable Ngati Paoa Trust Board to assess the marina and resource consent application for the marina from a cultural values, cultural effects, Ngati Paoa perspective and as the mandated representative of the mana whenua of Waiheke Island. These documents to be provided to Ngati Paoa Trust Board by Monday, 30 July 2018;

15.6. KPBHL and Auckland Council to have a first meeting with Ngati Paoa Trust Board and to begin consultation with Ngati Paoa Trust Board in respect of the proposed marina and resource consent application for the marina by Friday, 31 August 2018;

16. Ngati Paoa Trust Board requests that KPBHL and Auckland Council provide their response in writing and confirmation to the requests/demand above by 5pm, Friday 13 July 2018.

17. In circumstances where KPBHL and/or Auckland Council do not agree to the matters set out in paragraph 14 above, Ngati Paoa Trust Board may take further action without further notice.

18. Please direct all correspondence in relation to this matter and / or for the attention of the Ngati Paoa Trust Board or for the authorised representative of Ngati Paoa ( who are the Ngati Paoa Trust Board only )

Nga mihi

Harry Williams

Dave Roebeck

Chair – NPTB

Principal Officer - NPTB

NPTB@ngatipaoatrustboard.co.nz

Ngati Paoa Trust Board

P.O. Box 204 144

Highbrook 2161

Attn : Phil Wilson – Governance

27<sup>th</sup> August, 2018

Kia Ora Phil

Thank you for taking the time to meet with me as representative for the Ngati Paoa Trust Board (NPTB) on Tuesday, 7 August 2018 and again on Tuesday, 21 August 2018.

The purpose of this letter is to follow up on the matters we discussed.

1. On Monday 9 July 2018, the Ngati Paoa Trust Board ("**NPTB**") sent Auckland City Council ("**Auckland Council**") a letter by email outlining NPTB's serious concerns regarding Auckland Council's position to (among other things):

1.1. Recognise, advertise and promote a non-mandated entity as the mandated entity for Ngati Paoa. This has occurred in circumstances where Auckland Council has been aware that NPTB is the mandated authority for Ngati Paoa, having previously been advised of this position in meetings between Auckland Council's CEO and representatives of the NPTB. Auckland Council is and has also been aware of the judgment of the Maori Land Court which expressly and clearly confirms NPTB's mandate in respect of, among other things, Resource Management matters as they relate to to Ngati Paoa.

1.2. Fail, neglect or refuse to recognise the correct mandated entity for Ngati Paoa, being the NPTB, as the mandated authority for Ngati Paoa in respect of consents, developments and/or other matters affecting or relevant to Ngati Paoa. This has also occurred in circumstances where Auckland Council has been aware that NPTB is the mandated authority for Ngati Paoa, having previously been advised of this position in meetings between Auckland Council's CEO and representatives of the NPTB. Auckland Council is and has also been aware of the judgment of the Maori Land Court which expressly and clearly confirms NPTB's mandate in respect of, among other things, Resource Management matters as they relate to to Ngati Paoa.

Signature .....

Solicitor of the High Court / Registrar / Deputy Registrar

2. Auckland Council's conduct has also had the effect of the NPTB being excluded from important matters relevant to Ngati Paoa and also potentially having the effect of substantially misleading and misrepresenting to, among others, the Environment Court in relation to Ngati Paoa's position on certain proposed developments and projects for consent.
3. Despite the very clear, serious and strong concerns and breaches by Auckland Council communicated in our correspondence of 9 July 2018, to date, almost two months after sending the correspondence, Auckland Council has failed and neglected to provide a response to those matters.
4. At our meeting of 21 August you advised the following matters:
  - 4.1. In relation to the Maori Land Court judgment which confirms NPTB's mandate in respect of, among other things, Resource Management matters as they relate to Ngati Paoa, you confirmed that:
    - 4.1.1. Auckland Council is aware of the judgment of the Maori Land Court;
    - 4.1.2. Auckland Council is not and does not hold it out to be above the Maori Land Court and that Auckland Council would (in the absence of any subsequent Court order to the contrary) have to accept and respect the position as regards NPTB's mandate (including in relation to NPTB's mandate in respect of RMA matters);
  - 4.2. In relation to NPTB's mandate and Auckland Council's failure to respect and acknowledge NPTB's mandate, you confirmed that:
    - 4.2.1. the decision to incorrectly acknowledge and promote the mandate of the non-mandated entity (the Ngati Paoa Iwi Trust ("**NPIT**") was a decision that was made by your predecessor;
    - 4.2.2. that decision may have been incorrect and is now being reviewed and revisited in light of the matters which the NPTB has again raised with Auckland Council;
    - 4.2.3. Auckland Council is not aware of and has not previously been advised of any subsequent Court order or judgment (including any subsequent Order of the Maori Land Court) that overrules the mandate of NPTB and/or that provides a separate mandate to the NPIT;



5. You also advised that Auckland Council is concerned that if it has recognised and promoted the wrong mandated entity in respect of Ngati Paoa and is required now to recognise the proper mandated authority, NPTB, as to what effect this will have on consents and/or developments which have already been undertaken or commenced in reliance on and/or agreement with the non-mandated entity. Auckland Council's specific concerns relate to consents and developments such as the Stoneyridge Quarry, and the more recent consent provided for the proposed marina at Kennedy Point Bay on Waiheke Island.
6. You have advised that Auckland Council will provide a formal response to NPTB by **Thursday 30 August 2018**, and hopes to engage with NPTB in a conciliatory and productive manner to try and resolve these issues, and to repair the substantial offence, injury and damage that has been caused to NPTB's mana and mandate as a result of Auckland Council's actions.
7. Auckland Council is also aware that since its correspondence of 9 July 2018, the Crown has again reaffirmed NPTB's mandate for the people of Ngati Paoa; and that the NPTB's Chairperson, Harry Williams has been appointed the interim negotiator for Ngati Paoa Treaty settlements negotiations with the Crown.
8. NPTB remains of the position that the position at law and in reality is very plain and clear - that the NPTB is the sole and exclusive current mandated authority for Ngati Paoa.
9. We look forward to receiving your correspondence by 30 August 2018, and to hopefully working with Auckland Council in a constructive and productive manner to ensure that there is no further breach, injury and/or damage to NPTB's mana and mandate, and that the past breaches are addressed in an efficient, effective and complete manner as soon as possible.

Regards

Dave Roebeck – Principal officer

Ngati Paoa Trust Board