



**DRAFT DEED
TE RŪNANGA-A-IWI-Ō-NGAPUHI
COMMERCIAL TRUST**

**[Drafting Note: Draft Trust Deed for Te Rūnanga-Ā-Iwi-Ō-Ngāpuhi
Commercial Trust in mark-up against the 16/11/2019 TRAION Deed.]**

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DEED amended as at

PARTIES

Mane Tahere, Richard Chester Fong Yip, Nicole Anderson, Mori Rapana, Brent Reihana, Te Rau Allen, Te Ringakaha Tia-Ward, Janelle Beazley, Tasha Hohaia (jointly *the Settlor*)

Ngāpuhi Corporate Trustee Limited (*the Trustee*)

INTRODUCTION

- A. The Settlor wishes to establish the Te Rūnanga-Ā-Iwi-O-Ngāpuhi Commercial Trust for the benefit of Ngāpuhi and charitable organisations referred to in this Deed to be the new Mandated iwi Organisation for Ngāpuhi.
- B. On signing this Deed the Settlor has paid \$10 to the Trustee to be held by the Trustee on the trusts, for the objectives and on and subject to the provisions of this Deed.
- C. This Deed sets out the functions and purposes, and provides for the control, governance and operation of the Trust.
- D. It is intended that this discretionary trust serving Ngāpuhi sits alongside the trust that exists for charitable purposes established on 6 March 1989 and named "Te Rūnanga-Ā-Iwi-O-Ngāpuhi" which was formerly the Mandated Iwi Organisation for Ngāpuhi.

TRUST TERMS

1. INTERPRETATION / WHAKAMĀRAMATANGA

Definitions

- 1.1 In this Deed, unless the context otherwise requires:

Act means Māori Fisheries Act 2004.

Adult Member means a Member of Ngāpuhi who is over the age of 18 years.

Adult Registered Members means Adult Members who are registered on the Members' Register and who can vote at General Meetings.

Alternate Board Member means the persons elected under clause 4.3A.

Aquaculture Agreement has the meaning given to it in section 186ZD of the Fisheries Act 1996.

Assets means Trust property of any kind, whether tangible, but excluding Settlement Quota and Ordinary Shares and Settlement Assets.

Asset Holding Company means a company established by or held by the Trust, in accordance with clause 3.4, and which for the time being would be a company which

meets the requirements for a company defined in the Act as an asset-holding company and includes any subsidiary of the asset-holding company.

Beneficiaries means:

- (a) all Members of Ngāpuhi;
- (b) Te Rūnanga-Ā-Iwi-O-Ngāpuhi; and
- (c) any Corporate Entity or Subsidiary,

Board Members means, for so long as there is a corporate Trustee of the Trust, those persons who are the directors of the Trustee of the Trust and includes the alternate Board Members.

Chairperson means any person appointed chair of the Trustee from time to time in accordance with clause 4.7.

Confidential Information means any information which the Trustee considers on reasonable grounds is of a commercially or otherwise sensitive nature and the release of which could be detrimental to the interests of Ngāpuhi.

Corporate Entity includes the Asset Holding Company and any Subsidiary of it, the Fishing Enterprise and any Subsidiary of it, and any other company or trust wholly owned or controlled directly or indirectly by the Trust.

Deed means this Deed and includes any amendments to this Deed made in accordance with this Deed.

Deepwater Quota has the meaning given to it in the Act.

Deputy Chairperson means any person appointed deputy chair of the Trustee from time to time in accordance with clause 4.7A.

Directors means directors of the Asset Holding Company and any Subsidiary of it, the Fishing Enterprise and any Subsidiary of it, and any other company and/or enterprise wholly owned or controlled directly or indirectly by the Trust.

Disputes Committee means the committee constituted from time to time in accordance with clause 11.¹

Fishing Enterprise means a fishing operation established by the Trust under clause 9.2 to utilise annual catch entitlement from its Settlement Quota.

Freshwater Quota has the meaning given to it in the Act.

General Meeting means an annual general meeting or a special general meeting convened and conducted in accordance with clause 8.

Harbour Quota has the meaning given to it in the Act.

¹ Drafting Note: Kaupapa 8 of Schedule 7 of the MFA requires that the constitutional document for a MIO must include a dispute resolution mechanism.

Income Share means an income share within the meaning of the Act that is allocated and transferred to the Asset Holding Company on behalf of Ngāpuhi by Te Ohu Kai Moana Trustee Limited and which is converted into an Ordinary Share upon the MFAA coming into effect.

Inshore Quota has the meaning given to it in the Act.

Iwi means Ngāpuhi.

Iwi Aquaculture Organisation has the meaning given to it in the Māori Commercial Aquaculture Claims Settlement Act 2004.

Joint Mandated Iwi Organisation means the Trust.

Major Transaction means:

- (a) The acquisition of, or an agreement to acquire, whether contingent or not, Assets by the Trust the value of which is more than 50% of the value of the Trust Fund before the acquisition; or
- (b) The disposition of, or an agreement to dispose of, whether contingent or not, Assets by the Trust the value of which is more than 50% of the value of the Trust Fund before the disposition; or
- (c) A transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities the value of which is more than 50% of the value of the Trust Fund before the transaction;
- (d) The disposition of, or an agreement to dispose of, whether contingent or not, Ordinary Shares or Settlement Quota by the Trust to Te Ohu Kai Moana Trustee Limited or an entity within the Te Ohu Kai Moana Group or another Mandated Iwi Organisation under the Act; or
- (e) A transaction or series of transactions, or an agreement to transact, whether contingent or not, with a person not entitled to hold Ordinary Shares or Settlement Quota under the Act, including an option, security, mortgage, or guarantee, that could result in:
 - (i) the sale of Ordinary Shares or Settlement Quota by the Trust; or
 - (ii) Ngāpuhi or the Trust being disentitled for a period of more than 5 years to:
 - (aa) the income from the Ordinary Shares; or
 - (bb) the income from the ACE arising from the Settlement Quota; or
 - (cc) the control or use of the ACE arising from the Settlement Quota,
- (f) Any transaction, not being a transaction involving Ordinary Shares or Settlement Quota, entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust Fund; or

but does not include:

- (f) Any transaction, not being a transaction involving Ordinary Shares or Settlement Quota, entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust Fund; or

- (g) Any acquisition or disposition of Assets or Ordinary Shares or Settlement Quota by the Trust from or to any company which is wholly owned by the Trust; or
- (h) Any exchange of Settlement Quota for Quota of the same market value that is carried out in accordance with the requirements of the Act and in compliance with any policy of the Trust on quota exchanges that is notified in the Trust's annual plan;

provided however that:

- (i) Nothing in clause (c) of this definition applies by reason only of the Trust giving, or entering into an agreement to give, a charge secured over assets of the Trust the value of which is more than 50% of the value of the Trust Fund for the purpose of securing the repayment of money or the performance of an obligation; and
- (j) For the purposes of this definition, the value of the Trust Fund must be calculated based on the value of the Assets of the Trust and all its Corporate Entities.

Mandated Iwi Organisation has the meaning given to it in the Act.

Member of Ngāpuhi means persons who affiliate to Ngāpuhi through descent from a primary ancestor of Ngāpuhi and affiliate to Marae or Hapū within Te Whare Tapu O Ngāpuhi or persons who are Whāngai.

Membership Committee means the committee appointed under clause 11.2.²

Members' Register means the register of Members of Ngāpuhi held and maintained by the Trust through Te Rūnanga-Ā-Iwi-O-Ngāpuhi , acting as the Trust's delegate and agent for that specific purpose only, in accordance with clause 6.³

MFAA means the Māori Fisheries Amendment Act 2024;

Ngāpuhi means the Iwi comprising every person who is descended from a primary ancestor of Ngāpuhi.

Ordinary Share means:

- (a) prior to the MFAA coming into effect, an Income Share within the meaning of the Act that is allocated and transferred to the Asset Holding Company on behalf of Ngāpuhi by Te Ohu Kai Moana Trustee Limited; and
- (b) on and from the MFAA coming into effect, an ordinary share within the meaning of the Act that is allocated and transferred to the Asset Holding Company on behalf of Ngāpuhi by Te Ohu Kai Moana Trustee Limited and all shares held by the Asset Holding Company that were Income Shares prior to their conversion to Ordinary Shares.⁴

Public Notice has the meaning in the Act.

² Drating Note: TRAION 2 must maintain the register and must also have a mechanism to resolve membership disputes (the Membership Committee).

³ Drating Note: Schedule 7 of the MFA requires a MIO to maintain a members' register.

⁴ MFAA change to type of share.

Private Notice has the meaning in the Act and, for the avoidance of doubt, includes a notice sent by email.

Quota means quota shares within the meaning of the Fisheries Act 1996.

Registered Member means any member of Ngāpuhi who is entered in the Members' Register.

Registration Form means the registration form for membership approved by the Trustees from time to time and made available on the website of Ngāpuhi and/or in the office of the Trustees;

Representative Organisation means the organisation referred to in Schedule 3 to this Deed.

Secretary means any person appointed under clause 4.7A to perform general secretarial and administrative functions for the Trust.

Settlement Assets has the same meaning as that term in the Māori Commercial Aquaculture Claims Settlement Act 2004.

Settlement Quota means the quota shares within the meaning of the Act that are allocated and transferred to the Asset Holding Company on behalf of the Trust by Te Ohu Kai Moana Trustee Limited.

Subsidiary means any subsidiary (as defined by section 5 of the Companies Act 1993) of a Corporate Entity and includes any person or persons (other than a Subsidiary as so defined) that is controlled by a Corporate Entity and includes a separate enterprise that is responsible to the Joint Mandated Iwi Organisation, as that term is used in section 32(3) of the Māori Commercial Aquaculture Claims Settlement Act 2004.

Takiwā means a representative group of Marae/Hapū and can also include individuals acting through their duly appointed Board Member. Takiwā are located within Te Whare o Puhi, Tāmaki Makaurau ki Te Rerenga Wairua and are named respectively:

- (a) Te Takiwā o Ngāpuhi ki Whangārei;
- (b) Te Rōpū Takiwā o Mangakāhia;
- (c) Ngāpuhi ki te Hauāuru;
- (d) Ngāpuhi Hokianga ki te Raki;
- (e) Ngā Ngaru o Hokianga;
- (f) Taiāmai ki te Marangai;
- (g) Te Rūnanga o Taumārere ki Rākaumangamanga;
- (h) Te Takiwā o Ngāti Hine;
- (i) Te Takiwā o Ngāpuhi ki te Tonga o Tāmaki Makaurau;
- (j) Ngāpuhi ki Waitemata.

Te Kāwai Taumata means the group of that name established under the Act.

Te Ohu Kai Moana Trustee Limited means the company of that name formed under the Act.

Te Rūnanga-Ā-Iwi-O-Ngāpuhi means the charitable trust with registration number CC39363 created under an original Trust Deed dated 6 March 1989 and subsequently amended.

Tikanga means the customary values and practices of Ngāpuhi.

Trust means the trusts governed by this Deed.

Trust Fund means all the assets and liabilities including income that are from time to time held by the Trustee on the trusts of this Deed whether or not received in the manner described in clause 3.4.

Trustee Code of Conduct means the code of conduct applicable to the Trustee set out in Part D of Schedule 1.

Trustee means the corporate trustee of the Trust as may be elected or appointed from time to time, under clause 4.1 of this Deed.,

Trusts Act means the Trusts Act 2019.

Voting Paper means a voting paper issued in accordance with Schedule 1 to this Deed and which shall record the membership number of the voter, or in the case of a voter without a registration number, shall have a duly completed Registration Form attached to and forming part of that Voting Paper.

Whāngai means those persons who do not affiliate to Ngāpuhi by descent from a primary ancestor of Ngāpuhi but who are adopted by a Member of Ngāpuhi pursuant to statute or in accordance with the Tikanga of Ngāpuhi.

Withdrawing Group means Ngāti Hine as it is referred to in section 19 of the Act.

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

Interpretation of Schedules

1.2 In the interpretation of each schedule to the Deed, unless the context otherwise requires:

- (a) terms or expressions have the meanings given to them by the Deed; and
- (b) a reference to a paragraph is a reference to a paragraph of that schedule.

Statutes

1.3 Reference to a statute or statutory provision in the Deed includes that statute or provision as amended, modified, re-enacted or replaced from time to time.

General References

1.4 References in the Deed to:

- (a) a person includes an individual, body corporate, an association of persons (whether corporate or not) and a trust (in each case, whether or not having separate legal personality);
- (b) one gender includes the other gender;
- (c) the singular includes the plural and vice versa;
- (d) clauses and sub-clauses are references to clauses and sub-clauses in this Deed; and
- (e) the Deed includes its Schedules.

Headings

1.5 Headings are for ease of reference only and must be ignored in interpreting this Deed.

Māori Fisheries Amendment Act 2024

1.6 References in this Deed to the date the MFAA comes into effect shall mean either 26 July 2026 or an earlier date set by Order in Council.

2. VARIATION OF TRUST DEED / TIKA TURE WHAKAREREKĒTANGA

Acknowledgement of Trust

2.1 The Trustee acknowledges and declares that it holds the Trust Fund upon the trusts, for the Beneficiaries and with the powers set out in this Deed. The name of the Trust governed by this Deed shall be "Te Rūnanga-Ā-Iwi-Ō-Ngāpuhi Commercial Trust".

3. KAUPAPA

Purposes

3.1 The purposes for which the Trust is established are to receive, hold, manage and administer the Trust Fund for the benefit of the Beneficiaries.

Principles

3.2 Subject to clause 3.1, the Trust shall:

- (a) Pursue the vision "Kia tū tika ai Te Whare Tapu o Ngāpuhi".
- (b) Drive the spiritual, cultural, social and economic growth of Ngāpuhi.
- (c) Be accountable to Ngāpuhi and be guided by the principles embodied in:
 - (i) The Articles of Te Tiriti o Waitangi;

- (ii) Kaitiakitanga; and
- (iii) Ahi Kā.
- (d) Exercise its powers in the spirit of consultation with and empowerment of the Whānau, Hapū and Marae of Ngāpuhi.
- (e) Make decisions consistent with the Tikanga of Ngāpuhi, sound policy advice, and proper meeting procedures.
- (f) Honour Te Tiriti o Waitangi 1840 and to act in accordance with the principles of the Declaration of Independence 1835, (He Wakaputanga o te Rangatiratanga o Niu Tirenī).
- (g) Be a repository of the collective knowledge and whakapapa of Ngāpuhi.
- (h) Be a representative of the collective interest of Ngāpuhi and a legal representative of Ngāpuhi in relation to that collective interest.

- (i) Receive and hold assets and administer them as kaitiaki of Ngāpuhi.
- (j) , Promote, safeguard and protect the interests of Ngāpuhi.⁵
- (k) Promote and foster unity, co-operation and trust among Ngāpuhi.
- (l) Recognise the fundamental importance of Whānau and work for their cultural, spiritual and physical safety.
- (m) Develop, promote and abide by the Tikanga and spiritual values of Ngāpuhi in all of its operations.
- (n) Promote and actively pursue co-operation between the Trust and the representatives of other Māori organisations within the rohe of Ngāpuhi.
- (o) Reaffirm and actively pursue appropriate diplomatic, political, cultural and economic relations with the representatives and peoples of other Hapū and Iwi.
- (p) Seek and establish diplomatic, political, cultural and economic relations with the representatives and peoples of Indigenous Nations overseas.
- (q) Maintain and promote constructive relationships with other groups and communities, including the Crown.
- (r) Debate, develop and ensure the implementation of policies that promote the political, cultural and economic advancement of all Ngāpuhi.
- (s) Appoint, monitor, oversee and hold accountable any officers, managers, and employees of the Trust who may be required to administer the Trust's policies, staff, or operational activities.

⁵ Drafting Note: We have simplified the wording of this clause.

- (t) Engage, monitor, oversee and hold accountable such other persons or institutions the Trust may direct to implement its policies from time to time.
- (u) Establish wānanga and work in conjunction with other educational institutions to further the development of Ngāpuhi in both a cultural and social sense.
- (v) Pursue the re-establishment of traditional dispute resolution processes based in the law and Tikanga of Ngāpuhi.
- (w) Develop and implement environmental policies to safeguard ngā Taonga Tuku Iho while giving effect to tangata whenua obligations through kaitiakitanga.
- (x) Present the work of the Trust to the Kaumātua/Kuia Hui convened by Te Rūnanga-Ā-Iwi-O-Ngāpuhi and to receive advice on it from them.
- (y) Assume the kaitiaki responsibility for tangible and intangible Ngāpuhi taonga as the Trustees consider appropriate from time to time.
- (z) Use its reasonable endeavours to establish a Wānanga to help Ngāpuhi reclaim and nurture the values, history and Tikanga of the Hapū and Iwi of Ngāpuhi.

3.3 In the event of any conflict between clauses 3.1 and 3.2, the provisions of clause 3.1 shall prevail.

Other purposes

3.4 Incidental to, and to give effect to the purposes in clause 3.1, the Trustee shall:

- (a) directly receive and hold, on behalf of Ngāpuhi on the trusts set out in clause 3.1, settlement assets allocated and grants made to Ngāpuhi by Te Ohu Kai Moana Trustee Limited, other than assets referred to in section 16(1)(c) of the Act, which other assets are to be transferred to an Asset Holding Company;
- (b) receive distributions from Te Pūtea Whakatupu Trustee Limited and Te Wai Māori Trustee Limited, as provided for under subparts 4 and 5 of Part 2 of the Act and to hold those distributions on the trusts set out in clause 3.1 for the Beneficiaries or on such other trusts as are required in order to ensure that a distribution to the Trust by either of those companies would be within the purposes for which those companies hold their funds and make those distributions;
- (c) if relevant, enter into agreements with other Mandated Iwi Organisations in relation to:
 - (i) claims under section 11 of the Act;
 - (ii) the allocation of -
 - (aa) harbour quota under section 143 of the Act; and
 - (bb) freshwater quota under section 148 of the Act;
- (d) establish separate companies to undertake fishing and fisheries-related activities, including, but not limited to, any activity related to the seafood

industry, including, for the avoidance of doubt, a Fishing Enterprise, and to hold the shares in those companies and any distributions or other benefits resulting from them on the trusts in clause 3.1;

- (e) establish one or more Asset Holding Companies that, in each case:
 - (i) is wholly owned by the Trust;
 - (ii) is separate to the companies referred to in clause 3.4(d);
 - (iii) performs the function and complies with the requirements set out in sections 16 to 18 of the Act; and
 - (iv) performs any other function, but not if doing so would be inconsistent with sections 16 to 18 of the Act,
- (f) and to hold the shares in those companies and any distributions or other benefits resulting from them on the trusts in clause 3.1;
- (g) perform the functions provided for, by or under the Act in respect of a Joint Mandated Iwi Organisation, in a manner consistent with the Act;
- (h) represent Ngāpuhi by voting at any meeting convened under:
 - (i) clause 1 or clause 6 of Schedule 8 to the Act, to appoint or remove a member or alternate member of Te Kāwai Taumata;
 - (ii) section 117 of the Act, implemented in accordance with clause 1 of Schedule 8 to the Act, to appoint a member of a committee of representatives;
 - (iii) act on behalf of Ngāpuhi in relation to aquaculture claims and settlement assets under the Māori Commercial Aquaculture Claims Settlement Act 2004, in respect of which the Trustees must act for the benefit of all members of the Iwi, irrespective of where those members reside, including:
 - (iv) directly receive and hold, on behalf of Ngāpuhi Settlement Assets allocated to Ngāpuhi by Te Ohu Kai Moana Trustee Limited in accordance with the Māori Commercial Aquaculture Claims Settlement Act 2004; and
 - (v) enter into agreements with other iwi aquaculture organisations in relation to the allocation of Settlement Assets;
 - (i) provide for the withdrawal of Ngāti Hine from the Trust as provided for in Schedule 3; and
 - (j) perform other functions provided for, by or under the Act or any other enactment or otherwise.

3.5 An iwi aquaculture organisation must not undertake commercial aquaculture activities (as that term is used in section 32(3) of the Māori Commercial Aquaculture Claims Settlement

Act 2004) except through a separate commercial enterprise that is responsible to the Trust.

Strategic governance⁶

3.6 The Trust must:

- (a) exercise strategic governance over its Asset Holding Companies, any Subsidiary of an Asset Holding Company, and any Fishing Enterprise; and
- (b) on and from the MFAA coming into effect, direct the exercise of the rights held by any of its Asset-Holding Companies or their Subsidiaries that they have as holders of Ordinary Shares; and
- (c) exercise strategic governance over the process to examine and approve annual plans that set out:
 - (i) the key strategies for the use and development of fisheries assets of Ngāpuhi;
 - (ii) the expected financial return on those assets; and
 - (iii) any programme to:
 - (aa) manage the sale of annual catch entitlements derived from the Settlement Quota held by the Trust's Asset Holding Companies or their Subsidiaries; and
 - (bb) reorganise the Settlement Quota held by Asset Holding Companies or their Subsidiaries, by buying and selling or exchanging Settlement Quota in accordance with the Act,
- (d) but not in such a manner as shall result in the Trust or any of the Trustee being deemed to be a Director of that or those companies under the Companies Act 1993, and nor shall clause 3.6 or any other provision of this Deed prevent the Trust or any Subsidiary of the Trust from entering into such arrangements with another company or trust as the Trustee shall consider necessary or desirable to efficiently and effectively administer, manage or hold its assets or operations, consistently with the purposes in clause 3.1.

Application of Income and Capital

3.7 To achieve the purposes of the Trust and subject to any other requirements in this Deed:

- (a) The Trustee may, at any time, after payment of, or provision for, all reasonable costs, charges and expenses in respect of the establishment, management and administration of the Trust, pay, apply or appropriate all or any of the income of the Trust for the purposes in clauses 3.1 and 3.4;
- (b) The Trustee may at any time pay, apply or appropriate all or any of the capital of the Trust for the purposes in clauses 3.1 and 3.4.

⁶ Drafting Note: MFAA change.

4. APPOINTMENT OF BOARD MEMBERS AND POWERS OF TRUSTEE, AND MANAGEMENT OF THE TRUST /NGĀ KAITIAKI TŪRANGA WHAKATĀNGA

Sole Corporate Trustee

4.1 The Trust will have a sole corporate Trustee. The Board Members of the Trustee on the date of authorisation of this Trust as the Mandated Iwi Organisation for Ngāpuhi are the duly appointed Board Members who were duly elected as Trustees of Te Rūnanga-Ā-Iwi-O-Ngāpuhi when Te Rūnanga-Ā-Iwi-O-Ngāpuhi was the Mandated Iwi Organisation for Ngāpuhi, immediately before the Trust became the Mandated Iwi Organisation. The Trustee must have at least 8 Board Members. Each Board Member must be appointed on behalf of only one Takiwā and must be elected by Adult Members of Ngāpuhi in accordance with Schedule 1;⁷

Cessation of office of Board Member

4.2 Any person shall cease to be a Board Member if he, she or it:

- (a) is required to retire from office in accordance with Schedule 1, provided that a Board Member is eligible for reappointment, and there shall be no restriction as to the number of times that a person is eligible for reappointment;
- (b) resigns as a Board Member by giving notice in writing to the Trust;
- (c) fails or neglects to attend three consecutive meetings of the Board Members without leave of absence, unless it appears to the other Board Members at their first meeting after the last of such absences that there is a proper reason for such non-attendance;
- (d) becomes of unsound mind, becomes a person in respect of whose affairs an order under the Protection of Personal and Property Rights Act 1988 is made, or otherwise becomes unfit or unable to act as a Board Member;
- (e) commits an act of bankruptcy or is an undischarged bankrupt;
- (f) ceases to qualify as an officer of a charitable entity under section 36B of the Charities Act 2005;
- (g) dies; or
- (h) for so long as Board Members are also trustees of Te Rūnanga-Ā-Iwi-O-Ngāpuhi, he or she has ceased to be a trustee of Te Rūnanga-Ā-Iwi-O-Ngāpuhi for any other reason.

4.3 The Board Member concerned shall cease to hold office:

- (a) in a case where clause 4.2(a) applies, on the date specified in Schedule 1;
- (b) in a case where clause 4.2(b) applies, from the date the notice of retirement shall have been delivered to the Trust;

⁷ Drafting Note: These board members need to be elected under this document. See Kaupapa 2 of Schedule 7 of MFA.

- (c) in the case where clause 4.2(c) applies, from the date of the first meeting of Board Members after that Board Member's third consecutive absence without leave;
- (d) in cases where clauses 4.2(d) to 4.2(f) apply, from the date on which the Trust was notified in writing of the relevant fact together with such evidence as the Board Members may reasonably require; and
- (e) in a case where clause 4.2(h) applies, on the date when the individual ceased to be a trustee of Te Rūnanga-Ā-Iwi-O-Ngāpuhi.

Should a vacancy reduce the number of Board Members below 7 and where no alternate Board Member is available to fill any of the relevant vacancies in accordance with Schedule 1, the vacancy shall be filled as soon as practicable by election in accordance with the terms of this Deed, and the remaining Board Members (which shall include any Board Member who shall cease to be a Board Member under clause 4.2(a)) shall continue to act until that vacancy has been filled.

Alternate Board Members

4.3A Each Board Member must have an alternate Board Member, each of which must be appointed on behalf of only one Takiwā and must be elected by Adult Members of Ngāpuhi in accordance with Schedule 1 and anything else required by the Trustee's constitution. An alternate Board Member, when acting as an alternate in place of a Board Member in the circumstances described in Schedule 1, have and may exercise and discharge all of the powers, rights, duties and privileges of that Board Member. An alternate Board Member will cease to hold office as an alternate Board Member in the circumstances set out in clause 4.2 at the date set out in clause 4.3 or when the Board Member that they are the alternate for ceases to be a Board Member.

Board Member skills and duties:

4.3B Each Board Member shall:

- (a) provide regular written reports to:
 - (i) the Takiwā on whose behalf he or she was elected on the operation and activities of the Trust; and
 - (ii) the Trust on the operation and activities of the Takiwā on whose behalf he or she was elected. These reports shall be co-signed by the relevant Takiwā chairperson;
- (b) attend all Trustee meetings unless otherwise excused and must:
 - (i) have a working knowledge of this Deed;
 - (ii) adhere to the Trust's procedures; and
 - (iii) be able to articulate responsible views in Trust discussions, including the views of the Takiwā on whose behalf he or she was elected;
- (c) plan for, attend, and actively participate in all Trustee development workshops;

- (d) have a basic understanding of the issues presented to the Trust at each meeting; be able to analyse and prioritise issues; and be willing and able to make informed decisions;
- (e) at all times apply the Tikanga and values of Ngāpuhi in his or her Trustee role; and
- (f) otherwise have the skills set out in Part C of Schedule 1.

Powers of Trustee

4.4 To achieve the purposes of the Trust:

- (a) the Trustee shall have in the administration, management and investment of the Trust Fund all the rights, powers and privileges of a natural person;
- (b) subject always to the trusts imposed by this Deed, the Trustee may deal with the Trust Fund as if the Trustee was the absolute owner of and beneficially entitled to the Trust Fund including, for the avoidance of doubt, but subject to complying with the applicable provisions of the Act and the Māori Commercial Aquaculture Claims Settlement Act 2004, the acquisition and disposition of Settlement Quota and Ordinary Shares and Settlement Assets;
- (c) accordingly, in addition to any specific powers vested in the Trustee by law, in dealing with the Trust Fund or acting as Trustee of the Trust, the Trustee may do any act or thing or procure the doing of any act or thing or enter into any obligation whatever, including, without limitation, exercising unrestricted powers to borrow and raise money, and to give securities and guarantees;
- (d) except as otherwise expressly provided by this Deed, the Trustee may exercise all the powers and discretions vested in the Trustee by this Deed in the absolute and uncontrolled discretion of the Trustee, at such time or times, upon such terms and conditions, and in such manner as the Trustee may decide;
- (e) if any dividend or distribution is received which in the opinion of the Trustee has been paid or made out of profits other than trading profits of the financial year in respect of which the dividend or distribution has been paid or made, the Trustee may decide how much of that dividend or distribution ought to be treated as capital and how much as income of the Trust Fund. Such decision shall be made by the Trustee after considering the nature of the profit used to pay or make the dividend or distribution, and the account to which the dividend or distribution has been debited in the books of the person making such payment or distribution. The Trustee shall not be liable to any person in respect of the payment of any moneys in accordance with any decision made by the Trustee under this clause 4.4;
- (f) the Trustee may at any time, after payment of or provision for all reasonable costs, charges and expenses of the Trustee in respect of the establishment, management and administration of the Trust, pay or apply all or any of the income of the Trust for the purpose or purposes contained in clause 3.1;
- (g) if any income of any financial year of the Trust shall not be paid or applied in accordance with clause 3.1 during or within six months from the end of that financial year the Trustee must accumulate that income, and any income so

accumulated must be added to and form part of the capital of the Trust Fund and is subject to the trusts and powers declared in this Deed in respect of the capital of the Trust Fund; and

- (h) the Trustee may at any time pay or apply all or any of the capital of the Trust for the purpose or purposes contained in clause 3.1.

4.5 **Management of the Trust - General:**

- (a) The Trustee shall have the absolute management and entire control of the Trust Fund.
- (b) The Trustee may from time to time generally or in a particular case, delegate any one or more of the powers of appointment, remuneration or dismissal, as the case may be, of officers or employees of the Trust (other than Board Members) to a person holding the position of Chief Executive of the Trust.
- (c) Any individual may be appointed as an officer or employee of the Trust but no Board Member may be appointed as an employee.
- (d) The Trustee may appoint an incorporated or unincorporated entity to provide services to the Trust. In any case where the entity directly or indirectly procures, causes, permits or otherwise howsoever makes a Board Member available to carry out management services, the appointment shall be of no effect and neither that entity nor that person shall have any authority on behalf of nor claim against the Trust, unless prior to that appointment the full terms and conditions of the proposed appointment shall have been disclosed in writing to all the Board Members, and the Board Members shall have voted unanimously (subject to clause 4.12) in support of that appointment on those terms.
- (e) The office of the Trust shall be at such place as the Trustee from time to time may notify by such means as the Trustee determines to the Members of Ngāpuhi and in any website, letterhead, formal written contract or printed publications of the Trust.

4.6 **Meetings of Board Members of the Trustee:**

- (a) The Trustee shall meet to conduct business at such intervals as the Board Members may decide, but not less frequently than seven times in each year. The Trustee may invite to such meeting whomever the Trustee may decide will assist with their deliberations.
- (b) Except as expressly provided otherwise by this Deed any matter requiring decision at a meeting of the Trustee shall be decided by a simple majority of the Board Members personally present and, other than the Chairperson, voting on the matter.
- (c) In the event of an equality of votes the Chairperson shall have the casting vote.
- (d) Except as expressly provided otherwise by this Deed a resolution in writing signed by all the Board Members shall be as valid and effectual as if it had been passed at a meeting of the Trustee duly convened and constituted. Any such resolution may consist of several like documents each signed by at least two Board Members. Any such document sent by a Board Member by facsimile or

such other electronic means as shall be determined by the Trustee from time to time shall be deemed to have been duly signed by that Board Member.

- (e) Any Board Member may at any time give notice convening a meeting of the Trustee. Such notice shall be given by letter posted to each Board Member at least 15 Working Days before the date of the proposed meeting. The notice shall state the time and place of the meeting and, in sufficient terms, the nature of the business to be transacted.
- (f) The quorum for a meeting of the Trustee shall be 6 Board Members who, for the time being, have been elected or otherwise hold office under clause 4.1.
- (g) The Trustee may act notwithstanding any vacancy in the Board Members, but if and so long as the number of Board Members holding office is less than the number fixed by clause 4.6(f), the continuing Board Members may act only for the purposes of increasing the number of Board Members to that number or calling a General Meeting pursuant to clause 8.
- (h) The contemporaneous linking together of the Board Members by telephone or other electronic means of communication shall constitute a meeting of the Trustee and the provisions of clause 4.6 as to meetings of the Trustee shall apply to such meetings provided the following conditions are met:
 - (i) each Board Member shall be entitled to notice of such a meeting and to be linked by electronic means for the purposes of the meeting;
 - (ii) each of the Board Members taking part in the meeting must be able to hear each of the other Board Members taking part during the whole of the meeting;
 - (iii) at the commencement and conclusion of the meeting the Chairperson must call upon each Board Member to acknowledge their attendance;
 - (iv) a Board Member may not withdraw from such a meeting unless that Board Member has previously obtained the express consent of the Chairperson of the meeting to do so; and
 - (v) a Board Member 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 Board Member has previously obtained the express consent of the Chairperson to withdraw from such a meeting.
- (i) Minutes of the proceedings of all meetings of the Trustee shall be recorded in a book to be kept for that purpose by the Secretary and shall be signed by the Chairperson of the meeting at which the minutes are confirmed. Every such minute purporting to be so signed shall be *prima facie* evidence of the matters recorded. A minute of the proceedings of any meeting by telephone or other electronic means of communication shall be sufficient evidence of the observance of all necessary formalities if the minute of the meeting signed by the Chairperson of the meeting shall contain a certificate to that effect.
- (j) Minutes of the proceedings of all meetings of the Trustee shall be kept at the office of the Trust, and available for inspection by Adult Registered Members of

Ngāpuhi during normal business hours, subject to such reasonable restrictions as the Trustee may impose from time to time (including but not limited to a restriction on Confidential Information), and in a manner consistent with the Privacy Act 1993.

4.7 Chairperson, Deputy Chairperson and Secretary:

- (a) The Board Members shall elect one Board Member to act as Chairperson for a 3 year term, provided such Board Member has been a Board Member for the previous 12 month period. The first Chairperson of the Trust shall be the person who is Chairperson of Te Rūnanga-Ā-Iwi-O-Ngāpuhi up to the date that it ceased to be the Mandated Iwi Organisation for Ngāpuhi and that person's term as Chairperson shall be deemed to have started when he or she was appointed Chairperson of Te Rūnanga-Ā-Iwi-O-Ngāpuhi. For the avoidance of doubt, term served as Chairperson of Te Rūnanga-Ā-Iwi-O-Ngāpuhi immediately before the recognition of the Trust as the new Mandated Iwi Organisation for Ngāpuhi shall count towards the required 12 month period, if necessary.
- (b) The process for nominating a Board Member for Chairperson is as follows:
 - (i) When the position of Chairperson is vacant or will soon be vacant, the Board Members shall agree a date for the meeting of Board Members to elect the Chairperson. Where possible, this will immediately precede the Annual General Meeting of the Trust.
 - (ii) The Secretary shall notify the Executive Committee of each Takiwā (as described in paragraph 5 of Schedule 1) of the date of that meeting at least 10 Working Days in advance.
 - (iii) In order to be nominated for the position of Chairperson, a Board Member must be nominated by the Executive Committee of their Takiwā and seconded by the Executive Committee of another Takiwā.
 - (iv) Written notification of nominations must be received by the Secretary at least 5 Working Days before the meeting of Board Members to elect the Chairperson.
 - (v) If no valid notifications are received, the Board Members shall themselves nominate and second candidates for the position of Chairperson.
- (c) The Board Members shall elect a Chairperson from the valid nominations.
- (d) There shall be no restriction as to the number of times that a person is eligible for reappointment as Chairperson.
- (e) The alternate Board Member elected on behalf of the Takiwā whose Board Member is Chairperson of the Trust shall, for so long as that Board Member is Chairperson, be an additional Board Member of Board Member who has been appointed as Chairperson is required to retire from office in accordance with Schedule 1, that Board Member shall cease to be the Chairperson. However, if that Board Member is immediately reappointed by their Takiwā in accordance with Schedule 1, he or she shall continue as Chairperson for the remainder of the three year term specified in clause 4.7(a).

- (f) The Chairperson of the Trust shall also be the Chairperson of Te Rūnanga-Ā-Iwi-O-Ngāpuhi.

4.7A **Election of Deputy Chairperson and Secretary**

- (g) The Board Members may also elect one Board Member to act as Deputy Chairperson either as the need arises or from year to year, provided such Board Member has been a Board Member for the previous 12 month period. In the absence of the Chairperson, the Deputy Chairperson shall have and may exercise all the powers of, and shall perform all the duties, of the Chairperson. The first Deputy Chairperson of the Trust shall be the person who was Deputy Chairperson of Te Rūnanga-Ā-Iwi-O-Ngāpuhi up to the date that Te Rūnanga-Ā-Iwi-O-Ngāpuhi ceased to be the Mandated Iwi Organisation for Ngāpuhi and that person's term as Deputy Chairperson shall be deemed to have started when he or she was appointed Chairperson of Te Rūnanga-Ā-Iwi-O-Ngāpuhi. For the avoidance of doubt, term served as Deputy Chairperson of Te Rūnanga-Ā-Iwi-O-Ngāpuhi immediately before the recognition of the Trust as the new Mandated Iwi Organisation for Ngāpuhi shall count towards the required 12 month period, if necessary.
- (h) The Deputy Chairperson of the Trust shall also be the Deputy Chairperson of Te Rūnanga-Ā-Iwi-O-Ngāpuhi.
- (i) The Trustees shall appoint a non-voting Secretary who may be honorary, or may be a full-time or part-time employee of the Trust. The first Secretary of the Trust shall be the person who was Secretary of Te Rūnanga-Ā-Iwi-O-Ngāpuhi up to the date that Te Rūnanga-Ā-Iwi-O-Ngāpuhi ceased to be the Mandated Iwi Organisation for Ngāpuhi. The Secretary of the Trust shall also be the Secretary of Te Rūnanga-Ā-Iwi-O-Ngāpuhi.

4.8 **Delegation of powers:**

- (a) The Trustee may delegate in writing to any committee of any Board Members, Board Members or an employee who is the chief executive of the Trust, such of the powers of the Trustee as the Trustee may decide, provided that:
 - (i) the Trustee may not delegate strategic governance; and
 - (ii) in the case of any entity appointed under clause 4.5(d) to make available a Board Member to discharge a chief executive's duties, the delegation shall be personal to the person provided by that entity in that capacity; and
 - (iii) any delegation must be compliant with relevant limits in section 67(2) of the Trusts Act.
- (b) Any person or committee acting under delegated power shall act in accordance with the terms of this Deed and, in the absence of proof to the contrary, shall also be presumed to be acting within the terms of the delegation;
- (c) The Trustee may revoke wholly or partly any delegation of the powers of the Trustee at any time;

- (d) Subject to any directions given by the Trustee, any person or committee to which any powers of the Trustee have been delegated may conduct that person's or the committee's affairs as that person or the committee may decide;
- (e) The Trustee must, in delegating the powers of the Trustee provide restrictions or rules by or within which such delegated powers are to be exercised in accordance with this clause and in each case must require the delegate to report to the Trustee on any action or decision taken as delegate.

4.9 Accounts and Audit:

- (a) The Trustee shall keep an account or accounts at such bank or banks as the Trustee may decide. Withdrawals and authorities shall be signed or endorsed, as the case may be, by such person or persons including, but not restricted to in all instances the Chairperson and chief executive of the Trust;
- (b) The Trustee shall cause true accounts for each financial year to be kept in such manner as the Trustee may decide of all receipts, credits, payments, assets and liabilities of the Trust Fund and all such other matters necessary for showing the true state and condition of the Trust. The accounts of the Trust shall be audited at least once in each year by a chartered accountant (not being a Board Member) appointed in that capacity by the Trustee; and
- (c) Nothing in clause 4.9 shall derogate from any other obligations of the Trustee in respect of accounts and audits.

Reliance on Advice

- 4.10 The Trustee, when exercising powers or performing duties as Trustee, may rely on reports, statements, 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 Trustee believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert in relation to matters which the Trustee believes on reasonable grounds to be within the person's professional or expert competence; or
 - (c) a committee of Board Members appointed and acting in accordance with clause 4.8.
- 4.11 Clause 4.10 applies provided that:
 - (a) in appointing the delegate, the Trustee complies with the general duty of care in section 29 of the Trusts Act;
 - (b) the Trustee keeps the arrangements under review; and
 - (c) if appropriate, the Trustee considers revising the appointment in some way.

Disclosure of Interest

4.12 Any Board Member 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 Board Member's interest to the other Board Members, and shall not take part in any deliberations or decision of the Board Members concerning any matter in which that Board Member is or may be interested other than as a Board Member of the Trust, and shall be disregarded for the purpose of forming a quorum for any such deliberation or decision.

Definition of Interested Board Member

4.13 A Board Member will be interested in a matter if the Board Member:

- (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 Te Rūnanga-Ā-Iwi-O-Ngāpuhi or a party that is wholly owned by the Trust or by Te Rūnanga-Ā-Iwi-O-Ngāpuhi or any Subsidiary of the Trust or Te Rūnanga-Ā-Iwi-O-Ngāpuhi;
- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the matter; or
- (e) is otherwise directly or indirectly interested in the matter.

Interests in common with Iwi, Takiwā, Hapū, Marae or Whānau

4.14 Notwithstanding clauses 4.12 and 4.13, no Board Member will be interested in a matter where that Board Member is a member of an Iwi, Takiwā, Hapū, Marae or Whānau and where his or her interest is not different in kind from the interests of other members of that Iwi, Takiwā, Hapū, Marae or Whānau.

Recording of Interest

4.15 A disclosure of interest by a Board Member shall be recorded in the minute book of the Trust. Immediately following his or her appointment as a Board Member, each Board Member must enter into the minute book and must disclose in writing to the other, the name of any iwi of which he or she is a member, and the Board Member must also, at any time after his or her appointment, enter into the Minute Book and disclose to the next meeting of the Trustee, any interest of which that Board Member becomes aware.

No private pecuniary profit

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

- (a) any Board Member may receive full reimbursement for all expenses properly incurred by that Trustee in connection with the affairs of the Trust;

- (b) the Trust may pay reasonable remuneration to any Board Member, officer or employee of the Trust in return for services actually rendered to the Trust (including the provision of services as Board Member);
- (c) any Board Member may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Board Member or by any entity of which that Board Member is a partner, member, employee or associate in connection with the affairs of the Trust;
- (d) any Board Member may retain any remuneration properly payable to that Board Member by any entity with which the Trust may be in any way concerned or involved for which that Board Member has acted in any capacity whatever, notwithstanding that that Board Member's connection with that entity is in any way attributable to that Board Member's connection with the Trust,

provided that:

- (e) before any such reimbursement paid to a Board Member may be regarded as properly incurred by that Board Member or any such remuneration paid to a Board Member may be regarded as reasonable or properly payable or any such charges may be regarded as usual, the amount of that reimbursement, remuneration or charge must have been approved as such by a resolution of Board Members and in the case of an appointment referred to in clause 4.5(d), the provisions of that clause have been complied with;
- (f) the Board Members must disclose in their annual report referred to in clause 8.2 next published after payment of that reimbursement, remuneration or charge, individual amounts received by each Board Member providing that, reimbursements must be aggregated for all Board Members; and
- (g) in the case of an appointment referred to in clause 4.5(d), the full written terms and conditions thereof have been made available for inspection at the office of the Trust, by any Adult Registered Member who makes written request for the same.

4.17 [Clause intentionally left blank]⁸

4.18 The Trustees shall require that a clause to the same effect as clause 4.12 of this Deed be included in the constitution of every Asset Holding Company or Fishing Enterprise or any subsidiary of any of them.

Appointment and removal of Custodian

4.19 The Trustee may at any time by deed appoint any appropriate entity to be the custodian of the Trust Fund, or any part of the Trust Fund, upon such terms as the Trustee may decide, or otherwise to act pursuant to the provisions of section 67 of the Trusts Act, and the Trustee may at any time by deed revoke any such appointment.

⁸ Drafting Note: Deleted on the basis this is a charitable requirement.

4.20 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.

4.21 [Clause intentionally left blank]

Board Member Code of Conduct

4.22 The stakeholders of the Trust have a right to expect the business of the Trust to be conducted with efficiency, fairness, impartiality and integrity. Governance of the Trust carries with it a particular obligation to the iwi interest. It requires standards of professional behaviour from the Trustee that promotes and maintains iwi confidence and trust in the work of the Trust.

4.23 Although no one set of rules can answer all ethical questions, the Board Member Code of Conduct provides Board Members with an ethical framework for their future decisions, actions and behaviour. In this regard, it explains the principles covering appropriate conduct in a variety of contexts and outlines the minimum standard of behaviour expected of a representative of the Trust.

4.24 To meet the expectations on the Trustee in the fulfilment of its duties, all Board Members need to follow the principles set out in the Board Member Code of Conduct when carrying out their role.

5. TE RŌPŪ KAUMĀTUA KUIA O TE WHARE TAPU O NGĀPUHI

Establishment of Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi

5.1 There shall be a single council of Ngāpuhi Kaumātua and Kuia comprising such Kaumātua and Kuia as established by Te Rūnanga-Ā-Iwi-O-Ngāpuhi. That council shall also serve the Trust.

5.2 The council shall be known as Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi.

Election of Kaumātua and Kuia to Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi

5.3 The Kaumātua and Kuia shall call such hui as may be necessary to identify the appropriate Kaumātua and Kuia to comprise Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi.

5.4 Vacancies on Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi shall be filled by Ngāpuhi Kaumātua and Kuia as deemed to be appropriate by the Rōpū itself.

Functions of Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi

5.5 The purpose of Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi is to advise Te Rūnanga-Ā-Iwi-O-Ngāpuhi and the Trustee on cultural and spiritual matters and maintain the mana of Ngāpuhi by ensuring that Te Rūnanga-Ā-Iwi-O-Ngāpuhi and the Trustee meet their obligations in those areas.

5.6 In order to receive this advice the Trustee shall meet with Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi at such times and in such places as the Trustee or Te Rōpū

Kaumātua Kuia o Te Whare Tapu o Ngāpuhi shall consider appropriate for the purpose of giving and receiving advice.

5.7 The Trust, and or the Trustee, shall never place the Rōpū and or its individual members in a position where they are required to advise on any other matter than that of cultural or spiritual issues for which they have the expertise.

Voting rights of Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi

5.8 Te Rōpū Kaumātua Kuia o Te Whare Tapu o Ngāpuhi, either individual or collectively, has no voting rights or powers in relation to the business of the Trust or the Trustee.

6. REGISTER OF MEMBERS OF NGĀPUHI

Members' Register of Ngāpuhi

6.1 The Trustees must:⁹

- (a) Have, and maintain in a current state, a register of Members of Ngāpuhi:
 - (i) that includes the name, date of birth, and contact details of every Member of Ngāpuhi who applies for registration;
 - (ii) that is available for inspection by Adult Registered Members of Ngāpuhi who can view their own registration details;
 - (iii) that is available for inspection by a parent, legal guardian or other person standing in the stead of a parent, who may view the registration details of any child, ward or other dependant under 18 years of age who was registered by such persons, whichever the case may be; and
 - (iv) that allocates a registration number to each Member of Ngāpuhi entered in that register; and
- (b) make ongoing efforts to register all Members of Ngāpuhi on the Members' Register.

6.1A Notwithstanding the retention of the obligations in 6.1(a) and (b) above, the Trustee may delegate the holding, maintenance and administration of the register of Members of Ngāpuhi to Te Rūnanga-Ā-Iwi-O-Ngāpuhi.

6.2 Unless clause 6.7 applies, the Trustee will continue to hold as Registered Members all those persons whose details are already entered on the Members' Register held by Te Rūnanga-Ā-Iwi-O-Ngāpuhi as at the time this Trust was established and the Trust approved as the new Mandated Iwi Organisation for Ngāpuhi.

6.3 An application to be entered in the Members' Register may be made by:

⁹ Drafting Note: Kaupapa 5 of Schedule 7 (Kaupapa applying to constitutional documents of MIOs) of the Māori Fisheries Act requires every MIO to maintain a register of members. TOKM has confirmed that in principle this could be delegated to Te Rūnanga-Ā-Iwi-O-Ngāpuhi but they are yet to approve the detail of the arrangement.

- (a) Adult Members of Ngāpuhi and Whāngai, on their own behalf or by their legal guardian;
- (b) other Members of Ngāpuhi, who are not Adult Members of the Iwi, by their parent or legal guardian on their behalf; and
- (c) other Members of Ngāpuhi by an Adult Member on their behalf who, in the opinion of the Membership Committee, stands in the stead of a parent of that person; and
- (d) in each case that application must be completed on the Registration Form.

6.4 Any Adult Member, at or at any time after the time of, application for registration as a Registered Member may request in writing that they wish to receive Private Notice of any General Meetings and/or Voting Papers relating to:

- (a) the election of Board Members;
- (b) any amendment to this Deed or the constitutional documents of any Asset Holding Company or Subsidiary of any Asset Holding Company;
- (c) the disposal of Ordinary Shares or Settlement Quota; or
- (d) the conversion of Quota into Settlement Quota.

Registration as a Member of Ngāpuhi

6.5 Subject to clauses 6.6 and 6.7, the Trustee must enter in the Members' Register any person:

- (a) by or on behalf of whom an application has been made (either in accordance with clause 6.3 and lodged with the office of the Trust or on a Voting Paper stating their name, date of birth and such details as are required by the Trustees to enable the Trustee to contact that person); and
- (b) who in the reasonable opinion of the Trustee affiliates to Ngāpuhi through descent from a primary ancestor of Ngāpuhi and affiliates to Marae or Hapū within Te Whare Tapu o Ngāpuhi, or who is a Whāngai.

6.6 The Trustee:

- (a) may require any person seeking registration as a Member of Ngāpuhi to provide evidence verifying his or her affiliation to Ngāpuhi through descent from a primary ancestor of Ngāpuhi or of any other matter referred to in clause 6.5 before that person's registration is entered in the Members' Register together with such other information as the Trustee's request, and
- (b) may require any person who is entered in the Members' Register to provide evidence verifying his or her affiliation to Ngāpuhi through descent from a primary ancestor of Ngāpuhi and any other matter referred to in clause 6.5.
- (c) may consult with the Membership Committee in relation to any application for registration, or continued registration as a Member of Ngāpuhi; and

- (d) without limiting the foregoing, may request the Membership Committee to:
 - (i) determine who is the primary ancestor, or are primary ancestors, of Ngāpuhi; and
 - (ii) determine the Marae or Hapū within Te Whare Tapu o Ngāpuhi, and
 - (iii) determine the Tikanga of Ngāpuhi by which Whāngai are to affiliate to Ngāpuhi.

Trustee may decline to register, or remove a person from the Members' Register

- 6.7 If the Trustee considers that any information about a person received under clause 6.5(a) or clause 6.6 is not accurate or complete, or that the existing information (on the establishment of the Trust) on the Members' Register is not accurate or complete such that in either case the person concerned does not meet the qualifications required by this Deed for entry of that person in the Members' Register, the Trustee may decline to register, or remove that person from the register, as the case may be.

Process when registration declined or removed

- 6.8 Where an application for registration is declined, or any decision is made by the Trustee to remove any person from the register, the person concerned may dispute that decision of the Trustee, and clause 11 shall apply.

Notice not necessary

- 6.9 It shall not be necessary for the Trust to provide Private Notice to Members of Ngāpuhi where the Trustee believes on reasonable grounds (and have evidence supporting that belief), that the Members' contact details are not current.

7. VOTING PROCEDURE

- 7.1 The Trustee must determine the procedures which shall govern the conduct of all voting and elections provided for in this Deed. Those procedures must comply with the provisions of Schedule 1 to this Deed.

8. GENERAL MEETINGS OF IWI AND REPORTING

Reporting Responsibilities¹⁰

- 8.1 Without derogating from its duties under any enactment or at law, the Trust has the reporting responsibilities in relation to:
 - (a) its own performance; and
 - (b) the performance of:
 - (i) the Asset Holding Company;

¹⁰ Drafting Note: These are all obligations of TRAIION 2 as a MIO.

- (ii) the Fishing Enterprise;
- (iii) any joint venture or other entity that conducts business using the Settlement Quota or Ordinary Shares;
- (iv) any Corporate Entity,

in accordance with the provisions of clause 8.

Trust to hold an Annual General Meeting

8.2 Each year, the Trust must hold a General Meeting at which it provides an opportunity for the Members of Ngāpuhi to consider:

- (a) **Annual Report:** the annual report for the previous financial year, made available not less than 20 Working Days before the meeting, that reports against the objectives set out in the annual plan for the previous year, including:
 - (i) information on the steps taken by the Trust to increase the number of Members of Ngāpuhi;
 - (ii) a comparison of the Trust's performance against the objectives set out in the annual plan, including:
 - (aa) changes in the value of the Trust's assets; and
 - (bb) profit distribution;
 - (iii) the annual audited financial report, prepared in accordance with generally accepted accounting practice, and accounting separately for settlement cash assets;
 - (iv) a report giving information of the sales and exchanges of Settlement Quota in the previous year, including:
 - (aa) the quantity of Settlement Quota held by the Asset Holding Company of the Trust at the beginning of that year;
 - (bb) the value of Settlement Quota sold or exchanged in that year;
 - (cc) the identity of the purchaser or other party to the exchange;
 - (dd) any transaction with Settlement Quota that has resulted in a registered interest by way of caveat or mortgage being placed over the quota;
 - (ee) the Settlement Quota interests that have been registered against the quota shares of the Trust; and
 - (ff) the value of Ordinary Shares sold, exchanged, or acquired;
 - (v) a report on the interactions of the Trust in fisheries matters:
 - (aa) with other entities within Ngāpuhi;

- (bb) with other Mandated Iwi Organisations; and / or
- (cc) with Te Ohu Kai Moana Trustee Limited; and
- (dd) on and from the MFAA coming into effect, with Aotearoa Fisheries Limited.¹¹
- (vi) any changes made under section 18 of the Act to constitutional documents of the Trust or those of its Asset Holding Companies or any Subsidiaries of the Asset Holding Companies; and

(b) **Annual Plan:** an annual plan for the next financial year that must include:

- (i) the objectives of the annual plan;
- (ii) the policy of the Trust in respect of:
 - (aa) the sales and exchanges of Settlement Quota; and
 - (bb) on and from the MFAA coming into effect, the acquisition of shares in Aotearoa Fisheries Limited,¹²
- (iii) any changes in that policy from the policy for the previous year; and
- (iv) any proposal to change the constitutional documents of any fishing company owned by the Trust; and

(c) **Asset Holding Company Annual Report:** in relation to every Asset Holding Company of the Trust or any Subsidiary of an Asset Holding Company that receives settlement assets, and in relation to any enterprise established by the Trust under clause 9.2 to conduct fishing operations utilising annual catch entitled from the Trust's Settlement Quota, to harvest, process or market fish, or be involved in any joint venture for those purposes, (each referred to in clause 9.2 as an "enterprise") an annual report on:

- (i) the performance of that enterprise;
- (ii) the investment of money of that enterprise; and
- (iii) the annual plan of that enterprise, including:
 - (aa) the key strategies for the use and development of Ngāpuhi's fisheries assets;
 - (bb) the expected financial return on those assets;
 - (cc) any programme to:
 - manage the sale of annual catch entitlements derived from the Settlement Quota; or

¹¹ Drafting Note: MFAA change.

¹² Drafting Note: MFAA change.

- reorganise the Settlement Quota held by that enterprise by buying or selling quota in accordance with the Act; and
- (d) any proposal to change the constitutional documents of any Asset Holding Company, or any of their Subsidiaries.

General Meetings of Members of Ngāpuhi

8.3 General Meetings of Members of Ngāpuhi

- (a) **Annual General Meeting:** Each General Meeting must be:
 - (i) in the case of the first General Meeting, held within 6 months from the end of the Financial year, and;
 - (ii) no more than 18 months apart.
- (b) **Special Meeting:** A General Meeting, called a Special Meeting, must be convened by the Trustee on the written request of:
 - (i) the Chairperson of the Trustee (or the deputy-Chairperson if the Chairperson is indisposed);
 - (ii) not less than 6 of the Board Members; or
 - (iii) not less than 5% of the Adult Registered Members of Ngāpuhi,

provided that no meeting may be convened to consider:

 - (iv) disposal of Ordinary Shares in accordance with section 70 of the Act;
 - (v) a request to Te Ohu Kai Moana Trustee Limited to treat Settlement Quota in accordance with section 159 of the Act;
 - (vi) disposal of Settlement Quota in accordance with section 162 of the Act; and
 - (vii) a request for rationalisation of Settlement Quota under section 172(3) of the Act,

unless the Trustee has resolved to:

 - (viii) seek approval of the Adult Members of the Iwi under section 70 of the Act;
 - (ix) obtain the approval of the Adult Members of the Iwi under section 159 of the Act;
 - (x) obtain the prior approval of the Adult Members of the Iwi under section 162 of the Act; or
 - (xi) obtain the prior approval of the Adult Members of the Iwi in accordance with section 172 of the Act,

as the case may be; and

- (xii) the request must state the objects for which the Special Meeting is required and be signed (including counterparts) by those requesting the Special Meeting; and
- (xiii) the Special Meeting must be held within 6 months from the date the request was received by the Secretary.

(c) **Notice of General Meeting:** Members of Ngāpuhi shall be given not less than 20 Working Days notice of a General Meeting (including, to avoid doubt, a meeting to consider the matters in clause 8.2, or any meeting at which any of the matters in paragraphs (iv) to (vii) of clause 8.3(b), or any ratification of, or changes to, this Deed in accordance with the requirements of sections 17 or 18 of the Act (as the case may be), are to be or are actually considered or voted on), in accordance with this Deed and otherwise in accordance with the requirements of the Act.

(d) **Quorum:** No business shall be transacted at a General Meeting unless a quorum is present. The quorum at a General Meeting:

- (i) where participation may be by electronic means (as determined by the Trustee under clause 8.9), is 6 or more of the Board Members and 50 Adult Registered Members of Ngāpuhi attending the relevant meeting by:
 - (aa) being physically present at the time and place appointed for the meeting; or
 - (bb) participating in the meeting by means of audio, audio visual or other electronic means; or
 - (cc) a combination of both of the methods described in (aa) and (bb); or
 - (dd) by any other method approved by the Trustee from time to time,
in each case, provided the requirements in clauses 8.9 and 8.10 are met;
- (ii) where participation may not be by electronic means (as determined by the Trustee under clause 8.9), is 6 or more of the Board Members and 50 Adult Registered Members of Ngāpuhi being physically present at the time and place appointed for the meeting.

(e) **Adjourned meeting:** If a quorum is not present within one hour of the time appointed for the start of a General Meeting:

- (i) the meeting is to stand adjourned until the same hour at the same place 20 Working Days following the adjournment of that meeting unless the Trustees otherwise determine; and

- (ii) Notwithstanding clause 8.3(d) the Board Members and Members of Ngāpuhi shall constitute a quorum.
- (f) **Chairperson:** The Chairperson or, failing him or her, the Deputy-Chairperson, will preside over and have control of every General Meeting. If there is no Chairperson or deputy-Chairperson present at the time appointed for holding a General Meeting, or if either of those persons is unwilling to preside over the meeting, the Board Members present will choose any of their number to substitute as Chairperson for that meeting.
- (g) **Resolution:** A resolution shall be passed at a General Meeting, as follows:
 - (i) except in the case of resolutions described in clause 8.3(g)(ii) and (iii), by more than 50% of those Adult Registered Members of Ngāpuhi who are entitled to vote and actually cast a vote in accordance with the voting procedures established in accordance with clause 7.1;
 - (ii) in the case of a resolution for:
 - (aa) ratification of, or any changes to, this Deed in accordance with the requirements of sections 17, and 18 as the case may be, of the Act;
 - (bb) disposal of Ordinary Shares in accordance with section 70 of the Act;
 - (cc) Quota to be treated as Settlement Quota in accordance with section 159 of the Act;
 - (dd) disposal of Settlement Quota in accordance with section 162 of the Act; and
 - (ee) a request for rationalisation of Settlement Quota under section 172 of the Act,
 - (iii) in the case of a resolution for:
 - (aa) transfer of authorisations or coastal permits that are settlement assets (except where the proposed transfer is to a company that is wholly owned by the iwi aquaculture organisation); and
 - (bb) a request that Te Ohu Kai Moana Trustee Limited transfer authorisations or coastal permits that are settlement assets (except where the proposed transfer is to a company that is wholly owned by the iwi aquaculture organisation),

by not less than 75% of those Members of Ngāpuhi who are entitled to vote and actually cast a vote in accordance with the voting procedures established in accordance with clause 7.1, but no such resolution shall be passed unless notice in respect of those resolutions has been given in accordance with the Māori Commercial Aquaculture Claims Settlement Act 2004;

- (iv) in the case of a resolution for the removal of the corporate Trustee and appointment of a replacement Trustee contemplated by clauses 8.11 and 8.12, by not less than 75% of those Members of Ngāpuhi who are entitled to vote and actually cast a vote in accordance with the voting procedures established in accordance with clause 7.1, but no such resolution shall be passed unless notice in respect of those resolutions has been given in accordance with the Act.¹³

Information must be made available in writing

- 8.4 Information referred to in clause 8.2 must be made available on request in writing by any Registered Member of Ngāpuhi.
- 8.5 Any Adult Registered Member of Ngāpuhi may request in writing a copy of the Deed, and a copy will be provided subject to such reasonable charges as the Trustee requires.
- 8.6 [Clause intentionally left blank]
- 8.7 [Clause intentionally left blank]

No derogation from purposes

- 8.8 Clause 7.1 shall not derogate from the provisions of clause 3.7.

Participation by electronic means

- 8.9 An Adult Registered Member may participate in a meeting by means of audio, audio visual or other electronic means if:
 - (a) the meeting does not involve resolutions described in clauses 8.3(g)(ii) or (iii); and
 - (b) the Trustee approves those means in respect of a particular meeting; and
 - (c) the Adult Registered Member complies with any conditions imposed by the Trustee in relation to such participation, including, for example, as to the identity, approval or authentication of the voter and the information communicated by electronic means.
- 8.10 Where Adult Registered Members are participating in such a meeting by means of audio, audio visual or other electronic means, each such Member shall be conclusively

¹³ Drafting Note: This needs to be inserted because the Trustee is a company. The election process just applies to its Board Members.

presumed to have been present and to have formed part of the quorum at all times during the meeting (unless leaving with the Chairperson's express consent), provided that:

- (a) each participant must be able to hear each of the other participants throughout the relevant meeting;
- (b) at the beginning of the relevant meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (c) a participant may not leave the relevant meeting by disconnecting without first obtaining the Chairperson's express consent.

Removal and Appointment of Trustee

- 8.11 A resolution to remove the Trustee as trustee of the Trust may only be made if it is subject to an insolvency event, it is no longer suitable to hold office because of its conduct or circumstances or other grounds for removal provided in the Trusts Act and may only be made in conjunction with the appointment of a replacement Trustee.
- 8.12 The persons who hold the power to remove and appoint the Trustee must exercise that power honestly and in good faith and for a proper purpose.

9. ASSET HOLDING COMPANY AND FISHING ENTERPRISE

Trust must hold an Asset Holding Company

- 9.1 The Trust must ensure that it has at least one Asset Holding Company and that, to the extent and for so long as required by the Act subject to the proviso in clause 8.3 and the provisions of clause 8.3(g)(ii) and clause 8.3(g)(iii), that Asset Holding Company is wholly owned by the Trust and performs the functions and complies with the requirements set out in sections 16 and 17 of the Act, which at the date of this Deed are that the Asset Holding Company:
 - (a) must be and remain wholly owned and controlled by the Trust;
 - (b) prior to the MFAA coming into effect, must not have as its Directors persons who are also Board Members elected in accordance with this Deed comprising more than 40 percent of the total number of directors (on and from the date that the MFAA comes into effect this restriction no longer applies);¹⁴
 - (c) must have constitutional documents that have been approved by 7 of the Board Members, as complying with the requirements of the Act;
 - (d) must have constitutional documents that have been ratified by a resolution passed by a majority of not less than 7 of the Board Members, whether or not present at the meeting at which that resolution is proposed;
 - (e) must receive and hold, on behalf of the Trust, for so long as they are to be retained, all Settlement Quota and Ordinary Shares allocated by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by Ngāpuhi under the Act;

¹⁴ Drafting Note: MFAA repeal of Kaupapa 10 of Sched 7.

- (f) must provide dividends solely to the Trust;
- (g) must not undertake fishing or hold a fishing permit;
- (h) must not enter into any transactions relating to or affecting the Ordinary Shares it holds unless the Trust has complied with its obligations under this Deed including without limitation clause 8.3, and sections 69 to 72 of the Act;
- (i) must not enter into any transactions relating to or affecting the Settlement Quota it holds unless the Trust has complied with its obligations under this Deed including without limitation clause 8.3, and sections 161 to 176 of the Act;
- (j) in its function of receiving and holding Settlement Quota and Ordinary Shares is bound by all the requirements specified for Mandated Iwi Organisations in relation to those matters in the Act;
- (k) may establish one or more Subsidiaries to be its Subsidiary Asset Holding Companies;
- (l) may transfer to that Subsidiary some or all of the assets received under clause 9.1(e);
- (m) must ensure that any Subsidiary established under clause 9.1(k):
 - (i) must be and remain wholly owned by the Asset Holding Company that established it;
 - (ii) prior to the MFAA coming into effect, must not have as its directors persons who are also Board Members elected in accordance with this Deed comprising more than 40 percent of the total number of directors (but on and from the date that the MFAA comes into effect this restriction no longer applies);¹⁵
 - (iii) must receive and hold, on behalf of the Asset Holding Company, Settlement Quota and Ordinary Shares transferred to it by the Asset Holding Company under clause 9.1(l);
 - (iv) must provide dividends solely (but indirectly) to the Trust;
 - (v) must not enter into any transactions relating to or affecting the Ordinary Shares it holds unless the Trust has complied with its obligation under sections 69 to 72 of the Act;
 - (vi) in its functions of receiving and holding Settlement Quota and Ordinary Shares is bound by all the requirements specified for Mandated Iwi Organisations in relation to those matters in the Act;
 - (vii) may establish one or more Subsidiaries to be its Subsidiary Asset Holding Companies which it shall ensure complies with the obligations imposed on it in this clause 9.1; and

¹⁵ Drafting Note: As above.

- (viii) must not undertake fishing or hold a fishing permit, but the Asset Holding Company and its Subsidiaries may undertake any other activity or hold any other assets.

Establishment of Fishing Enterprise

9.2 If the Trust wishes to establish 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 those purposes, it must establish an enterprise which is separate from, but responsible to, the Trust to undertake those operations, which must not be the Asset Holding Company or a Subsidiary that receives the Settlement Quota.

Requirements of constitution

9.3 The constitution of every Asset Holding Company or Fishing Enterprise or a subsidiary of any of them must require that company to:

- (a) hold its assets and all accretions to those assets whether of a capital or revenue nature for the benefit of Ngāpuhi in the furtherance of the purposes of the Trust, by the payment of dividends or other revenue or capital distributions directly or indirectly to the Trust;
- (b) present an annual plan and statement of corporate intent to the Trust;
- (c) report annually to the Trust; and
- (d) have its accounts audited.

Commercial Aquaculture Activities

9.4 If the Trust wishes to undertake commercial aquaculture activities (as that term is used in the Māori Commercial Aquaculture Claims Settlement Act 2004), it must establish an enterprise which is separate from, but responsible to, the Trust to undertake those activities, and which may be the Asset Holding Company that receives the Settlement Quota and Ordinary Shares.

10. MAJOR TRANSACTIONS

10.1 The Trust must not enter into a Major Transaction unless that Major Transaction:

- (a) has been approved by a majority of 75% of eligible voters at an Annual General Meeting or Special General Meeting for which notice has been properly given under clause 8.3(c); or
- (b) is contingent upon approval by a majority of 75% of eligible voters at an Annual General Meeting or Special General Meeting and the Major Transaction is subsequently approved by a majority of 75% of eligible voters at an Annual General Meeting or Special General Meeting for which notice has been properly given under clause 8.3(c); and
- (c) otherwise complies with the requirements of the Act.

- 10.2 The Trust must not enter into a Major Transaction that involves the mortgage or use as collateral of any Settlement Quota.
- 10.3 The Trust must not enter into a Major Transaction within the meaning of paragraph (d) of that definition involving Ordinary Shares or Settlement Quota within two years after the date on which the Ordinary Shares or the first transfer of Settlement Quota, as the case may be, were transferred to Te Rūnanga-Ā-Iwi-O-Ngāpuhi by Te Ohu Kai Moana Trustee Limited.
- 10.4 If approval is obtained in accordance with clause 10.1 for a Major Transaction within the meaning of that definition involving Ordinary Shares or Settlement Quota, the Trust must comply with the provisions of the Act regarding the offer and sale of the Ordinary Shares or Settlement Quota.
- 10.5 Approval may not be obtained for a Major Transaction within the meaning of paragraph (d) of that definition involving unspecified Settlement Quota unless the approval to sell unspecified Settlement Quota is given up to a specified limit that must not exceed 10% of the total value of the Settlement Quota held by the Trust.

Notice to Members of Ngāpuhi

- 10.6 At least 20 Working Days before any Annual General Meeting or Special General Meeting at which a resolution is proposed in accordance with clause 8.3(g), the Trust must give Public Notice of:
 - (a) the fact that the Trustee wants to enter a Major Transaction;
 - (b) the availability of Voting Papers for Members of Ngāpuhi unable to attend the Annual General Meeting or Special General Meeting and the date by which and address to which completed Voting Papers must be sent in order to be validly cast;
 - (c) the date, time and venue of the Annual General Meeting or Special General Meeting at which the resolution will be put before the Members of Ngāpuhi;
 - (d) the availability, on written request to the Trust, of full particulars (excluding any Confidential Information) regarding the Major Transaction; and
 - (e) any further information prescribed by Te Ohu Kai Moana Limited in accordance with the Act.

Ordinary Shares and Settlement Quota

- 10.7 If a resolution proposed in accordance with clause 8.3(g) relates to a Major Transaction within the meaning of paragraphs (d) or (e) of that definition involving Ordinary Shares, then the Trust must in addition to the matters requiring notice under clause 8.3(c):
 - (a) give Public Notice specifying the approximate proportion of the total value of the Ordinary Shares of the Trust that are affected by the Major Transaction; and
 - (b) give written notice, where required, to every Adult Registered Member of Ngāpuhi specifying the number of Ordinary Shares affected by the Major Transaction and a reasonable estimate of the net present value or likely sale price of such Ordinary Shares.

10.8 If a resolution proposed in accordance with clause 8.3(g) relates to a Major Transaction within the meaning of paragraphs (d) or (e) of that definition involving Settlement Quota, then the Trust must in addition to the matters requiring notice under clause 8.3(c):

- (a) give Public Notice specifying the approximate proportion of the total value of the Settlement Quota of the Trust that is affected by the Major Transaction provided however that:
 - (i) an approval to sell specified Settlement Quota or Settlement Quota approved for sale in accordance with a programme is notified in the Trust's annual plan may be valid for not more than 15 months from the date on which the approval is given; and
 - (ii) an approval to sell Settlement Quota generally up to a specified limit that must not exceed 10% of the total value of the Settlement Quota held by the Trust may be valid for not more than 12 months from the date on which the approval is given; and
- (b) give written notice, where required, to every Adult Registered Member of Ngāpuhi specifying the amount of Settlement Quota affected by the Major Transaction and a reasonable estimate of the likely market value of such Settlement Quota.

11. DISPUTES PROCEDURE

Disputes relating to matters arising under the Act

11.1 If any dispute shall arise between Members of Ngāpuhi and the Trust, other than a dispute provided for in the following provisions of clause 11, that dispute shall be determined in accordance with Part 5 of the Act. Notwithstanding the foregoing:

- (a) the provisions of this clause shall not derogate from the rights or obligations of the Trust or any Member of Ngāpuhi pursuant to the Trusts Act or any other Act or provision of law or equity; and
- (b) in particular, notwithstanding anything in this clause 11, any party to a dispute arising from a complaint may invoke the dispute resolution process set out in Part 5 of the Act (provided that the dispute falls within the provisions of section 180(1) of that Act).

Registration Disputes

11.2 If the Trustee shall take a decision under clause 6.7 to not register a person, or to remove a person from the register, it must:

- (a) refer the matter to a Membership Committee, appointed by the Trustee under this clause and comprising not less than three Ngāpuhi Kaumātua whom the Trustee considers are mature persons or elders knowledgeable in Ngāpuhi whakapapa and Tikanga;
- (b) consider the recommendation of the Membership Committee and any determination of the Membership Committee made pursuant to a request under clause 6.6(d); and

- (c) notify the person concerned of its decision, and, if requested by that person, of the principal reasons for that decision.

11.3 The determination of the Trustee on the registration of the person concerned shall be final and binding on that person and the Trust, subject to the provisions of section 180(1)(m) of the Act. If the person concerned disputes that decision of the Trustee, that person may exercise their rights under section 180(1)(m) of the Act.

11.4 When making a recommendation to the Trustee in relation to clause 11.2, the Membership Committee must apply the provisions of the Act relating to registration of Members of Ngāpuhi. The Membership Committee shall provide the person concerned, and any representative that person appoints the opportunity to attend a meeting of the Membership Committee and present their account of why they should be registered or remain, on the Members' Register, as the case may be. The Membership Committee shall have the discretion to take into account the Membership Committee Member's own knowledge and such other matters as the Membership Committee considers will assist it in making a determination. The Membership Committee must also inform the person concerned of those other matters and take into account any submissions or information provided by that person on those matters.

Other Disputes

11.5 In the event that a dispute arises in relation to any other aspect of the Trust, or the Corporate Entities, including, but not limited to, disputes on matters of tikanga, reo, kawa, whakapapa, and kōrero, then that dispute shall be referred in the first instance to the Trustee. All disputes referred to the Trustee in accordance with this clause 11 shall be submitted to the Trustee by notice in writing and the Trustee shall acknowledge receipt in writing within 10 Working Days of the date of receipt of the notice.

11.6 Any such dispute shall, in the first instance, be resolved in accordance with a complaints procedure adopted by the Trustee from time to time. If a dispute is not, in accordance with that complaints procedure, settled within 20 Working Days of the receipt by the Trustee of written notice of the dispute, it shall be referred to the Disputes Committee.

11.7 The following provisions apply to the Disputes Committee:

- (a) There shall not be a permanent Disputes Committee. The Disputes Committee shall be appointed by the Trustee 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 20 Working Day period referred to in clause 11.6.
- (b) A Disputes Committee shall comprise three persons, of whom at least one shall be an independent member and no more than two may be Board Members, who shall be appointed for their skills and expertise in dealing with the issues that are the subject of the relevant dispute.
- (c) The role of a Disputes Committee shall be to facilitate and make findings and decisions on the disputes referred to it. In the case of a review of an election, the Dispute Committee shall determine whether the successful candidate was duly elected or whether the election for the particular Representative Marae was void and should be conducted again.
- (d) In dealing with any dispute, a Disputes Committee shall, subject to meeting the requirements of natural justice and tikanga, have the sole discretion to call for

evidence and determine the manner in which a dispute before it should be dealt with.

- (e) The findings and decisions of a Disputes Committee shall be final.
- (f) A Disputes Committee shall give its findings and decision together with reasons in writing to the Trustee and any other party to the dispute. The Trustee shall ensure the person concerned is notified of the Dispute Committee's decision, and the principal reasons for that decision.

11.8 In the event that the actions or conduct of a Board Member become the subject of a dispute under this clause:

- (a) notwithstanding any investigation of the matter by a Disputes Committee, the Trustee may, in accordance with this Deed, resolve to suspend that Board Member; and
- (b) in the event that a Board Member is suspended, the relevant alternate Board Member shall attend Trustee meetings and exercise any powers and discretions under this Deed as if he or she is the Board Member until such time as the suspension is lifted and the Board Member is reinstated. If the Board Member is removed from office the relevant alternate Board Member shall replace the Board Member and be recorded as the Board Member for that Representative Marae the balance of the Board Member's term of office.

12. WINDING UP OF TRUST / WHAKAMUTUNGA

12.1 From the Distribution Date the Trustee will hold the Trust Fund (or what remains of it) for such of the Beneficiaries (if any), in such shares as the Trustee may determine in its absolute discretion, provided that:

- (a) any such vesting must comply with the Act; and
- (b) a resolution supporting the winding up proposal and the terms of it must be put and passed by a majority of 75% of Ngāpuhi eligible to vote, at a General Meeting in accordance with clause 8.3(g)(ii).

13. ALTERATION OF TERMS OF DEED / WHAKAREREKĒTANGA TURE

Changes to the Deed

13.1 The Trustee has power to amend, revoke or add to the provisions of the Deed (including the Distribution Date but subject to clause 13.6) in accordance with the following process:

- (a) Any adult member of the iwi (including a Board Member) may put forward in writing proposals for changes to this Deed for consideration by the Trustee and the Trustee shall consider that proposal where it is satisfied that, in accordance with clause 6.5, the person is a member of Ngāpuhi.
- (b) The Trustee shall consider any such proposal at the next meeting of the Trustee.

- (c) Where a majority of Board Members is satisfied that the proposal complies with clause 13.2 and is for the collective benefit of all Members of Ngāpuhi, the Trustee shall table that proposal at the next General Meeting.
- (d) An amendment is made if a resolution that the amendment is for the collective benefit of all Members of Ngāpuhi is put and passed at a General Meeting in accordance with clause 8.3(g)(ii)(aa).
- (e) An amendment shall come into effect from the date that the resolution is passed or from such other date as specified in the resolution.

13.2 Any proposal to change the Deed must satisfy the following criteria:

- (a) no amendment may be inconsistent with the Act; and
- (b) no amendment may be made earlier than two years after the date on which Te Rūnanga-Ā-Iwi-O-Ngāpuhi was recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for Ngāpuhi.¹⁶

Changes to constitutions of Corporate Entities

13.3 To the extent any proposal for the amendment of the constitutional documents of the Asset Holding Company or any Fishing Enterprise relates to a matter provided for in the Act, it:

- (a) must not be made earlier than two years after the date on which Te Rūnanga-Ā-Iwi-O-Ngāpuhi was recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for Ngāpuhi; and
- (b) must be consistent with the Act.

Changing the Distribution Date

13.4 The Trustee may change the Distribution Date to any earlier or later date as the Trustee may from time to time in its absolute discretion determine provided the change does not extend the period of time that may elapse between:

- (a) the date on which any income or capital of the Trust Fund (not being income or capital from a distribution or resettlement from any other trust) was originally settled on the trusts of this deed and the date on which it is finally distributed and vested absolutely in a Beneficiary; or
- (b) with respect to any of the income or capital of the Trust derived from a distribution or resettlement from any other trust, the date that income or capital was settled on that trust and the date on which that income or capital is finally distributed and vested absolutely in a Discretionary Beneficiary,

¹⁶ Drafting Note: TOKM has confirmed that this 2 year period does not start afresh.

beyond 125 years.

Notification to Members of Ngāpuhi

13.5 Any amendment or proposal under clauses 12, 13 or 14 must be notified to all registered Members of Ngāpuhi in its next communication to them.

14. RESETTLEMENT

14.1 The Trustee has power at any time or times by deed, to settle or resettle upon trust in any manner which in the opinion of the Trustee is for the advancement and benefit of the Members of Ngāpuhi, the whole or any portion or portions of the capital or income of the Trust Fund provided that:

- (a) any such settlement or resettle must comply with the Act;
- (b) the resettle is upon trust for the benefit of all Members of Ngāpuhi; and
- (c) the resettle may only be promoted if a resolution supporting it is put and passed at a General Meeting in accordance with clause 8.3(g).

15. TRUSTEE LIMITATION OF LIABILITY AND INDEMNITY

15.1 Limitation of liability of Trustee

- (a) The Trustee will be liable only for any loss suffered by the Trust Fund attributable to the Trustee's own dishonesty, wilful misconduct or gross negligence.
- (b) The Trustee will not be liable for any other loss attributable to any breach of trust by the Trustee.
- (c) The Trustee will not be liable for any loss attributable to any breach of trust by any co-Trustee and nor will any Trustee be bound to take, or be liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

15.2 Trustee's indemnity and reimbursement

- (a) The Trustee will be entitled to full and complete exoneration, indemnity and reimbursement from the Trust Fund for any and all liability and expense which that Trustee incurs in relation to the Trust (including in defending or prosecuting any proceedings in relation to the Trust) and which is not attributable to that Trustee's own dishonesty, wilful misconduct or gross negligence.
- (b) Board Members and alternate Board Members will be entitled to full and complete exoneration, indemnity and reimbursement for any and all liability and expense which that Board Member or alternate Board Member incurs in relation to the Trust (including in defending or prosecuting any proceedings in

relation to the Trust) on such terms as the Trustee determines, in accordance with and to the extent permitted by the Companies Act 1993 and any other relevant legislation and any such cost incurred by the Trustee is to be treated as a legitimate expense of the Trust, and may be paid directly from the Trust Fund or by way of reimbursement to the Trustee.

15.3 Trustee's liability insurance

- (a) The Trustee may take out trustee's liability insurance for such cover (including defence cover) and on such terms as the Trustee thinks fit.
- (b) The reasonable cost of premiums is to be treated as a legitimate expense of the Trust, and may be paid directly from the Trust Fund or by way of reimbursement to the Trustee.

15.4 Board Members and alternate Board Members may arrange director and officer liability insurance cover (including defence cover) on such terms as they think fit to the extent permitted by the Companies Act 1993 and the reasonable cost of the premiums incurred by the Trustee is to be treated as a legitimate expense of the Trust, and may be paid directly from the Trust Fund or by way of reimbursement to the Trustee.

EXECUTED as a deed :

SCHEDULE 1

PART A: ELECTION PROCESSES

Election Process to be defined by Trust

1. An Adult Registered Member may be elected as a Board Member in accordance with the following procedures or pursuant to any relevant rules made or amended by Te Ohu Kai Moana Trustee Limited under section 54 of the Act. However, in order to be eligible for election such member must meet the criteria set out in paragraphs 12 and 13.

Board Members of the Trustee

2. One Adult Registered Member of Ngāpuhi shall be elected on behalf of each Takiwā to represent the interests of all Ngāpuhi as a Board Member for a three year term.

Alternate Board Members

3. One Adult Registered Member of Ngāpuhi shall be elected on behalf of each Takiwā to represent the interests of all Ngāpuhi as alternate Board Member for that Board Member for a three year term, to act in the capacity of alternate to the Board Member elected on behalf of that Takiwā should for any reason that Board Member be unable to perform his or her duties as Board Member or if that Board Member ceases to hold office for any reason referred to in clause 4.2(b) to clause 4.2(l). The first alternate Board Members shall be the persons who held the office of Proxy Trustee of Te Rūnanga-Ā-Iwi-O-Ngāpuhi on the establishment of the Trust, acknowledging that each alternate Board Member has been elected by a Takiwā. The term of office (and number of terms served) of each of those alternate Board Members shall be deemed to have commenced when he or she was appointed as a Proxy Trustee of Te Rūnanga-Ā-Iwi-O-Ngāpuhi.

Officers to be Same Persons as Officers of Te Rūnanga-Ā-Iwi-O-Ngāpuhi

- 3A. The elected Board Members and alternate Board Members shall be the same persons who are the Trustees and Proxy Trustees of Te Rūnanga-Ā-Iwi-O-Ngāpuhi and shall serve the same terms. To be validly elected and maintain the role of Board Member or alternate Board Member an individual must also be a Trustee or Proxy Trustee for a particular Takiwā of Te Rūnanga-Ā-Iwi-O-Ngāpuhi.

Takiwā Executive Committee

4. Each Takiwā shall elect at a general meeting of that Takiwā an Executive Committee consisting of, as a minimum, a chairperson, secretary and treasurer.

Retirement by Rotation

5. Every year the Board Members, alternate Board Members and Executive Committee members elected on behalf of one Takiwā (as defined below) will retire from office on the date of the annual general meeting of the Takiwā that elected them, beginning with Takiwā Group One. The Takiwā Groups are:

(a) Group One:

(i) Te Takiwā o Ngāti Hine

(ii) Te Rōpū Takiwā o Mangakāhia

- (iii) Te Rūnanga o Taumārere ki Rākaumangamanga
- (iv) Te Takiwā o Ngāpuhi ki Whangārei
- (b) Group Two:
 - (i) Taiāmai ki te Marangai
 - (ii) Te Takiwā o Ngāpuhi ki te Tonga o Tāmaki Makaurau
 - (iii) Ngāpuhi ki Waitemata
- (c) Group Three:
 - (i) Ngāpuhi ki te Hauāuru
 - (ii) Ngāpuhi Hokianga ki te Raki
 - (iii) Ngā Ngaru o Hokianga

Appointment of Board Members, alternate Board Members and Executive Committee Members

- 6. All Adult Members of a Takiwā will be entitled to vote to elect Board Members, alternate Board Members and Executive Committee Members at the annual general meeting of a Takiwā at intervals of not more than three years.¹⁷ At an annual general meeting of a Takiwā at which the Board Member, alternate Board Member and Executive Committee members elected on behalf of that Takiwā retire under paragraph 5, the Takiwā must hold an election for the offices of Board Member, alternate Board Member and Executive Committee members in accordance with this Schedule.
- 7. If the office of Board Member becomes vacant under clauses 4.2(b) to 4.2(h) then:
 - (a) the alternate Board Member elected on behalf of the same Takiwā which elected the outgoing Board Member shall be automatically appointed as a Board Member from the date on which the outgoing Trustee ceased to hold office in accordance with clause 4.3;
 - (b) the relevant Takiwā shall hold a general meeting for the purposes of electing a replacement alternate Board Member in accordance with this Schedule as soon as practicable after the appointment under paragraph 7(a); and
 - (c) every person so appointed as Board Member or alternate Board Member under this paragraph 7 shall hold office as Board Member or alternate Board Member (as the case may be) for the residue of the term for which that person's predecessor would have held office.
- 7A. Any person shall cease to be an Executive Committee member if he or she:
 - (a) is required to retire from office in accordance with this Schedule, provided that an Executive Committee member is eligible for reappointment, and there shall be no restriction as to the number of times that a person is eligible for reappointment;

¹⁷ Drafting Note: as per TOKM concern.

- (b) resigns as an Executive Committee member by giving notice in writing to the Trust;
- (c) fails or neglects to attend three consecutive meetings of the Takiwā without notifying the Executive Committee or providing an apology;
- (d) becomes of unsound mind, becomes a person in respect of whose affairs an order under the Protection of Personal and Property Rights Act 1988 is made, or otherwise becomes unfit or unable to act as an Executive Committee member;
- (e) commits an act of bankruptcy;
- (f) ceases to qualify as an officer of a charitable entity under section 36B of the Charities Act 2005; or
- (g) dies.

7B. Where a person ceases to be an Executive Committee member in the circumstances outlined in paragraphs 7A(b) to (g) above, the relevant Takiwā shall hold a general meeting for the purposes of electing a replacement who shall hold office for the residue of the term for which that person's predecessor would have held office.

7C. Clauses 8.9 and 8.10 of the Deed regarding participation in meetings by electronic means and voting by electronic means apply to Takiwā meetings in the same way that they apply to Trust meetings.

Takiwā Annual General Meetings

8. Every year each Takiwā shall hold an annual general meeting on such date as its Executive Committee may determine, provided that:

- (a) the annual general meeting must be held on a date at least 20 Working Days prior to the date of the annual general meeting of the Trust, as notified by the Trust from time to time; and
- (b) in any year in which the Board Member, alternate Board Member and Executive Committee members elected on behalf of that Takiwā are due to retire in accordance with paragraph 5, the date of the annual general meeting must not be more than 3 years since the relevant Board Member, alternate Board Member and Executive Committee members were appointed.

Failure to Appoint a Board Member, alternate Board Member or Executive Committee

8A. If a Takiwā fails to hold its annual general meeting or otherwise fails to elect a new Board Member, alternate Board Member or Executive Committee as envisaged by the three year election cycle in paragraphs 5, 6 and 7:

- (a) the retiring Board Member, alternate Board Member or Executive Committee members (as the case may be) ceases to hold office from the last date on which the new Board Member, alternate Board Member or Executive Committee members should have been elected in accordance with paragraphs 5, 6 and 7;
- (b) the vacancy may be filled by the Takiwā subsequently holding a general meeting and electing the new Board Member, alternate Board Member or Executive

Committee members (as the case may be) in accordance with this Schedule; and

- (c) every person appointed as Board Member, alternate Board Member or Executive Committee member under paragraph 8A(b) shall hold office for the residue of the term that would have applied if they had been appointed as envisaged by paragraphs 5, 6 and 7.

8B. If an Executive Committee has no members for any reason, including because a Takiwā has failed to hold its annual general meeting or otherwise failed to elect new Executive Committee members, then the Takiwā may, by notice in writing to the Trust, request the Trust to call a general meeting of that Takiwā to elect new Executive Committee members. The Trust shall, as soon as reasonably practicable, call a general meeting of that Takiwā and will provide all reasonable support to assist the Takiwā to facilitate such general meeting to elect new Executive Committee members.

Notice of General Meetings

9. Each Takiwā will give notice to the Trust of any general meeting at which elections of a Board Member, alternate Board Member and Executive Committee members are to be held no later than 40 Working Days prior to the date of the meeting. Such notice must include:

- (a) the date and time of the meeting;
- (b) the venue for the meeting;
- (c) the agenda for the meeting;
- (d) whether participation may be by electronic means; and
- (e) the authorised methods of voting.

Notice of Elections and Call for Nominations

10. The Trust must, no later than 35 Working Days prior to the date of any general meeting of a Takiwā at which the election of a Board Member, alternate Board Member and Executive Committee members will be held, give notice of the meeting and election. Such notice must comprise:

- (a) a Public Notice that includes:
 - (i) which Takiwā is due to elect representatives;
 - (ii) the date, time, venue and agenda of the general meeting of the relevant Takiwā;
 - (iii) advice that a vote is to be taken to elect a Board Member or alternate Board Member on behalf of the relevant Takiwā and Executive Committee members of the relevant Takiwā;
 - (iv) advice that those entitled to vote are every Adult Member whose primary Takiwā is the subject of that election;
 - (v) notice whether participation at the meeting may be by electronic means and the authorised methods of voting;

- (vi) notice that nominations for the positions of Board Member or alternate Board Member on behalf of the relevant Takiwā and members Executive Committee members of the relevant Takiwā are sought;
- (vii) where the eligibility criteria for nominees and nominators may be viewed;
- (viii) subject to paragraph 14, advice that the names of candidates for the relevant positions will be publicly notified prior to the election; and
- (ix) advice that details of the nomination process, forms and other relevant information may be obtained by contacting the Trust by telephone (who will upon request post the forms and information free of charge) or viewing and/or downloading the information from the Trust's website.

(b) a Private Notice sent to every Adult Member who has requested such a notice from the Trust in writing, that gives:

- (i) the information referred to in paragraph 10(a);
- (ii) a copy of the Voting Paper; and
- (iii) the address and return date for the Voting Paper.

Eligibility Criteria for Nominators

11. Any Adult Registered Member may nominate a person for election as a Board Member, Alternate Board Member and Executive Committee member of any Takiwā in accordance with paragraph 12.

Nomination Criteria

12. All nominations for the office of Board Member or Alternate Board Member or for a position on the Executive Committee must be received by the Trust no later than 25 Working Days prior to the date of the Takiwā general meeting at which the election is to be held. A nomination may not be withdrawn after it has been received. The nomination must:

- (a) be completed on the template nomination form, duly signed by both the nominee and nominator;
- (b) contain the nominee's full name, address, Iwi registration number, contact number and the Takiwā for which the nominee is being nominated;
- (c) contain the nominator's full name, address, Iwi registration number and contact number;
- (d) be for a candidate active in their Takiwā;
- (e) be for a candidate who is an Adult Registered Member of Ngāpuhi or be accompanied by an accurate and complete Registration Form;
- (f) be accompanied by a brief statement containing:
 - (i) details of experience and objectives relevant to the position sought; and

- (ii) an explanation of the candidate's knowledge of Ngāpuhi traditions and Tikanga;
- (g) where the nomination is for the position of Board Member or alternate Board Member, include a declaration signed by the nominee that declares that the nominee:
 - (i) is not a person who is precluded from holding office as a Board Member on the basis of one or other of the matters specified in section 36B of the Charities Act 2005; and
 - (ii) has the skills referred to in paragraph 24.

Acceptance as Candidate

- 13. Upon receiving a nomination, the Trust shall check that the nomination complies with criteria referred to in paragraph 12, including confirming the nominee's active participation with the relevant Takiwā. Active participation means attendance at Takiwā meetings and/or proven commitment to the progression of Ngāpuhi at either a whānau, marae, hapu or Iwi level within the Takiwā. If the nomination complies with the criteria referred to in paragraph 12, the Trust shall accept the nominee as a candidate for the position or positions sought, provided that where the nomination is accompanied by an application for registration in accordance with paragraph 12(e) no such acceptance shall be made until the nominee has been accepted for registration under clause 6.5.

Notification of Acceptance

- 14. The Trust shall advise every nominee of their acceptance or rejection as a candidate one or two days (not necessarily Working Days) before Public Notice is given under clause 15 below. Where only one nomination for any position is accepted in accordance with paragraph 13, the Trust shall advise the relevant Takiwā that the sole candidate is elected by default and the Takiwā shall advise the candidate in accordance with paragraph 18. A candidate elected by default shall take office on and from the date of the general meeting at which the relevant election would have been held.

Notice of Candidates

- 15. Where more than one nominee is accepted as a candidate for any position, the Trust must, no later than 20 Working Days prior to the date of the relevant Takiwā general meeting at which the election is to be held, advertise by Public Notice:
 - (a) the names of the candidates and the position(s) sought; and
 - (b) where the information required by paragraphs 12(f) and 12(g) in relation to each candidate may be viewed.

Election Scrutineers

- 16. The Trust shall appoint 2 scrutineers for each election of Board Members, alternate Board Members and Executive Committee members. These scrutineers shall attend the general meeting of the Takiwā at which the election is to take place and shall be responsible for:
 - (a) providing Voting Papers for those Members voting in person and Registration Forms for those who wish to register at the time of voting;
 - (b) assisting in the voting procedure; and

- (c) collecting Voting Papers at the conclusion of the vote and conveying them to the returning officer for counting.

Election Results

- 17. A returning officer appointed by the Trust shall, in relation to each election of Board Members, alternate Board Members and Executive Committee members, be responsible for:
 - (a) validating, counting and tabulating of votes;
 - (b) advising in writing the relevant Takiwā of the outcome of the election; and
 - (c) advising in writing the Chairperson and Chief Executive of the Trust of the outcome of the election.

Advice to Candidates

- 18. All candidates shall be formally advised of the outcome of an election by their Takiwā. Successful candidates for positions as Board Member or alternate Board Member will be advised by the Chairperson of the Trust as to the induction process.

PART B: ALL VOTES

Eligible voters

- 19. All Adult Members shall be entitled to one vote on any resolution proposed at any General Meeting. At any general meeting of a Takiwā to elect Board Members, alternate Board Members and Executive Committee members any Adult Member shall be entitled to vote in respect of their primary Takiwā (as recorded on their Registration Form).

Method of Voting

- 20. All votes shall be cast according to this Schedule and shall be received:
 - (a) by personal vote (not proxy) at a General Meeting or, in the case of a Board Member, alternate Board Member and Executive Committee election, at the general meeting of the relevant Takiwā; or
 - (b) by signed postal ballot received by the Trust before 5pm on the day prior to the General Meeting or, in the case of a Board Member, alternate Board Member and Executive Committee election, on the day prior to the relevant general meeting of the relevant Takiwā; or
 - (c) by electronic means, provided:
 - (i) the General Meeting does not involve resolutions described in clauses 8.3(g)(ii) or (iii) of the Trust Deed; and
 - (ii) the Trustee (in conjunction with the relevant Executive Committee, where relevant) has approved using electronic means for voting at a particular meeting; and
 - (iii) the electronic vote is received by the Trust before 5pm on the day prior to the General Meeting of the Trust or, in the case of a Board Member, alternate Board Member and Executive Committee election, on the day prior to the relevant general meeting of the relevant Takiwā.

Notice of Voting and General Meeting

21. The procedure determined by the Board Members in respect of any vote (other than an election in accordance with Part A of this Schedule), must be publicly notified by the Trust not less than 20 Working Days before the date of the vote and, if the vote is to be at a General Meeting of Ngāpuhi, the notice procedures must, to ensure compliance with those specified in the Act, include:

(a) Public Notice that includes:

- (i) the date, time, venue and agenda of the General Meeting, the place where explanatory documents may be viewed or obtained, and any other information specified in the Act;
- (ii) advice that a vote is to be taken to ratify or amend the constitutional documents of the Trust (if applicable); and
- (iii) advice on the method by which the vote will be counted, and

(b) In the case of ratifying the constitutional documents of the Trust, a Private Notice sent to every Adult Member on the Members' Register, that gives:

- (i) the information in paragraph 21(a);
- (ii) a copy of the Voting Paper; and
- (iii) the address and return date for the Voting Paper.

(c) In the case of any General Meeting required by section 18 of the Act (which relates to changing a constitutional document), section 70 of the Act (which relates to the disposal of Ordinary shares) or by sections 159 or 162 of the Act (which relate to the conversion and disposal of settlement quota), a Private Notice sent to every Adult Member who has requested such a notice from the Trust in writing, that gives:

- (i) the information in paragraph 21(a);
- (ii) a copy of the Voting Paper; and
- (iii) the address and return date for the Voting Paper.

Valid votes

22. The conduct of a vote of Members of Ngāpuhi at every General Meeting or general meeting of a Takiwā must comply with the following provisions:

(a) In order for a vote to be validly cast, the person casting it must:

- (i) where the person is already a registered Member, record that person's membership number on the Voting Paper; or
- (ii) where the person is not registered at the time of the vote, also complete a Registration Form which shall be attached to and form part of the Voting Paper; and

- (b) No vote shall be finally counted unless the details provided on the Voting Paper and the Registration Form are correct and the affiliation of the voter to Ngāpuhi has been confirmed either:
 - (i) because that person is an Adult Registered Member at the time they cast their vote; or
 - (ii) if that person has applied at the time that their vote was cast, to become an Adult Registered Member, because their registration was accepted in accordance with clause 6.5,

except that a provisional result, disclosing the number of such persons and counting their votes for provisional purposes only may be declared at any time.

Secret Ballots

- 23. All Votes shall be conducted so as to ensure that:
 - (a) the manner in which a vote is cast shall be known to the returning officer or persons assisting the returning officer, but not to others;
 - (b) the returning officer and those persons shall undertake to keep that information confidential; and
 - (c) the Voting Papers are destroyed by the returning officer after the date of completion of the final count, plus a period of one month thereafter.

PART C: BOARD MEMBER SKILLS

- 24. A Board Member shall:
 - (a) have knowledge of Ngāpuhi traditions and Tikanga;
 - (b) have resources to attend to Ahi Kā;
 - (c) be active in their Takiwā;
 - (d) be able to communicate verbally and in writing;
 - (e) have the skills required to perform the requirements contained in clause 4.3B; and
 - (f) any other rangatira skills as determined by the Trust from time to time.

PART D: BOARD MEMBER CODE OF CONDUCT

General principles

- 25. Respect for people:
 - (a) Board Members are to treat members of the public and their colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations. In this regard, they should perform their roles in a professional and responsible manner.

- (b) They must also ensure that their decisions and actions are reasonable, fair and appropriate to the circumstances, based on a consideration of all the relevant facts, and supported by adequate documentation.

26. Integrity and iwi interest:

- (a) Board Members are to promote confidence in the integrity of the Trust and always act in the interests of the Trust and not in their private interest.
- (b) Board Members must protect the reputation of the Trust. They must not engage in activities in or outside of their role in the Trust which could bring the Trust into disrepute.

Responsive service

27. Board Members are to provide a relevant and responsive service to their stakeholders, providing all necessary and appropriate direction to the Trust to fulfil the Trust's strategic objectives.

28. They must provide information promptly and in an appropriate format that is easy for the recipient to understand, and make sure that the information is clear, accurate, current and complete.

Economy and efficiency

29. Board Members must keep up to date with advances and changes in their area of knowledge or expertise and look for ways to improve performance and achieve high standards of service by both the Board Members and the Trust. They must use their authority and available resources and information only for the purpose intended.

Guide to ethical decision making

30. To assist in fostering a climate of ethical awareness, conduct and decision-making of the Board Members, Board Members must consider, either by themselves or in consultation with others such as their peers or the Chairperson, the following five points:

- (a) Is the decision or conduct lawful?
- (b) Is the decision or conduct consistent with the Trust's strategic objectives and code of conduct?
- (c) What will be the outcomes be for the Board Members; colleagues; the Trust; and other parties?
- (d) Do these outcomes raise a conflict of interest or lead to private gain at Trust expense?
- (e) Can the decision or conduct be justified in terms of the iwi interest and would it withstand Marae/Hapu scrutiny?

Conflicts of interest

31. Conflicts of interest exist when it is likely that a Board Member could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their duty. Conflicts of interest that lead to biased decision making may constitute "something which may jeopardise the credibility of the rest of the Board Members" and therefore be grounds

for the termination of the individual Board Member in accordance with the termination policy of this Deed.

32. Without prejudice to anything in clause 4.12 to clause 4.15 of this Deed:

- (a) Some related interests that may give rise to a conflict of interest include but are not limited to:
 - (i) financial interests in a matter the Trust deals with or having friends or relatives with such an interest that the Board Member is aware of but has not declared;
 - (ii) personal beliefs or attitudes that influence the impartiality of advice given;
 - (iii) personal relationships with the people the Trust is dealing with or investigating that go beyond the level of a professional working relationship and which has not been declared;
 - (iv) employment that comprise the integrity of the Board Member and the Trust; and
 - (v) engaging in activities or making adverse comments that relate to the Trust's work;
- (b) An individual Board Member may often be the only person aware of the potential for conflict. It is therefore his or her responsibility to avoid any financial or other interest that could compromise the impartial performance of his or her role, and disclose any potential or actual conflicts of interest to the Chairperson.
- (c) If a Board Member is uncertain whether a conflict exists or may exist, he or she should declare that interest or potential interest to the other Board Members in accordance with clauses 4.12 to 4.15 of this Deed.

Acceptance of gifts or benefits

33. Without prejudice to anything in clause 4.16 to clause 4.18 of this Deed:

- (a) Board Members must not accept a gift or benefit that is intended to, or likely to, cause them to act in a biased manner in the course of their duties;
- (b) the Chairperson may approve the acceptance of token gifts or benefits under certain circumstances provided that there is no possibility that the recipient might be, or might appear to be, compromised in the process;
- (c) it is acknowledged that the receiving of gifts is particularly important in a tikanga Maori context where the refusal of a gift could cause significant offence to the party giving, this needs to be sensitively managed; and
- (d) Board Members will immediately advise the Chairperson if they believe they have been offered a bribe or if they have been offered or received a favour or benefit. Board Members dealing with or having access to sensitive investigations or commercially sensitive information should be particularly alert to inappropriate attempts to influence them.

Discrimination and harassment

34. Board Members must not harass or discriminate against their colleagues, employees, or members of the public on the grounds of:

- (a) Sex, which includes pregnancy and childbirth.
- (b) Marital status.
- (c) Religious belief.
- (d) Ethical belief.
- (e) Colour.
- (f) Race.
- (g) Ethnic or national origins.
- (h) Disability.
- (i) Age.
- (j) Political opinion.
- (k) Employment status.
- (l) Family status.
- (m) Sexual orientation.

35. The Chairperson will make sure that the Board Members operate in a manner free from all forms of harassment and discrimination.

Fairness and equity

36. Matters being considered by Board Members must be dealt with consistently, promptly and fairly. This involves dealing with matters in accordance with approved procedures, in a non-discriminatory manner, and in conformity with the principles of natural justice, and the values of the Board Members.

37. When using any discretionary powers, Board Members must ensure that they take all relevant facts into consideration, have regard to the particular merits of each case, and not take irrelevant matters or circumstances into consideration.

Public comment on the work of the Trust

38. Public comment by Board Members includes public speaking engagements, comments on radio and television or in letters to newspapers, and expressing views in books, journals or notices if it is expected that the comments will spread to the community at large.

39. Board Members, as individual members of the iwi, have the right to make public comment and enter into public debate on political and social issues. However, there are some circumstances in which this is inappropriate. For example, situations when the public comment, although made in a private capacity, may appear to be an official comment on behalf of the Trust. In such circumstances, Board Members must preface their remarks

with a comment that they are made in a private or and do not represent the official view of the Trust.

40. Board Members should follow the procedures established by the Trust for making public comment on the work of the Trust. As a general rule, they can disclose official information that is normally given to members of the public seeking that information, but should only disclose other official information or documents when:
 - (a) in the course of their duties;
 - (b) when proper authority has been given;
 - (c) required to, or authorised, do so by law; or
 - (d) when called to give evidence in court.
41. In these cases, comments made by Board Members should be confined to factual information and should not, as far as possible, express an opinion on Trust policy or practice unless required to do so by the circumstances of the particular situation (for example, when asked to do so in court).

Post engagement

42. Board Members must not use their position to obtain opportunities for future employment. They should not allow themselves or their role to be influenced by plans for, or offers of, employment. If they do, there is a conflict of interest and the integrity of the Board Member and the Trust is at risk.
43. Former Board Members must not use, or take advantage of, confidential information that may lead to gain or profit obtained in the course of their official duties until it has become publicly available.
44. All Board Members must be careful in their dealings with former Board Members of the Trust and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information.

Interpretation

45. In the event of any inconsistency between the provisions of this Board Member Code of Conduct and the provisions of the Deed, the provisions of the Deed shall prevail.

SCHEDULE 2

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SCHEDULE 3
PROCESS TO WITHDRAW

1. WITHDRAWING ORGANISATION TO REPRESENT THE WITHDRAWING GROUP

- 1.1 In order for the Withdrawing Group to withdraw from the Trust, an organisation which is representative of and has a mandate from that withdrawing group must follow the process and meet the criteria set out in this schedule.
- 1.2 The Withdrawing Group must have at least 5,000 registered members on its register before it can be considered by the Trustee of the Trust as the Representative Organisation for the Withdrawing Group.

2. PRELIMINARY PROCESS OF WITHDRAWAL

- 2.1 The Representative Organisation must carry out the following preliminary process before the Withdrawing Group can begin the formal process to withdraw from the Trust. The Representative Organisation must:
 - (a) hold at least 2 preliminary hui of its registered members to discuss the possibility of the Withdrawing Group withdrawing from the Trust;
 - (b) give at least 20 Working Days notice in the appropriate media in any area containing significant concentrations of members of the Withdrawing Group of the date, time, venue and agenda of each preliminary hui and where any relevant explanatory documents may be viewed or obtained;
 - (c) give at least 20 Working Days notice of each Preliminary Hui to the Trustees of the Trust in writing, to be made by facsimile or delivered to the offices of the Trust, and marked for the attention of the Chairperson and Chief Executive of the Trust;
 - (d) at each preliminary hui, allow the Trustee of the Trust the opportunity to inform the members of the Withdrawing Group of the likely effect of the withdrawal on Ngāpuhi and the Trust, and
 - (e) at each preliminary hui, the members of the Withdrawing Group who are present at the preliminary hui or who vote by postal ballot must resolve by a 75% majority that the withdrawal of the Withdrawing Group from the Trust is in the best interests of the members of the withdrawing group. In making such a decision, the members of the Withdrawing Group must consider the Tikanga of Ngāpuhi, especially "Kia tu tika ai Te Whare Tapu o Ngāpuhi".
- 2.2 At each Preliminary Hui, the Representative Organisation must provide its members with estimates of:
 - (a) the costs for the Representative Organisation of undertaking the withdrawal process set out in Schedule 3;
 - (b) the value of the assets that may be transferred to the Withdrawing Group if withdrawal from the Trust by the Representative Organisation is successful;

- (c) the compliance costs to establish and maintain a Mandated Iwi Organisation that complies with the Act if withdrawal from the Trust is successful; and
- (d) the annual returns from the Fisheries Assets that are likely to be transferred to the Withdrawing Group if withdrawal is successful.

2.3 The Representative Organisation must provide the Trust with the estimates required under paragraph 2.2 at least 20 Working Days prior to the first preliminary hui.

3. FORMAL PROCESS OF WITHDRAWAL

3.1 Subsequent to meeting the requirements of the preliminary process the Representative Organisation must complete the following formal process by:

- (a) the Representative Organisation holding at least two consultative hui open to all members of Ngāpuhi no later than 80 Working Days after the last preliminary hui;
- (b) giving at least 20 business days notice in the appropriate media in any area containing significant concentrations of members of the Withdrawing Group of the date, time, venue and agenda (including the text of any proposed resolutions) of the consultative hui and where any relevant explanatory documents may be viewed or obtained and any such notice must clearly state the Representative Organisation's intention to withdraw from the Trust;
- (c) giving at least 20 business days notice of each consultative hui to the Trustee of the Trust in writing, to be made by facsimile, personal delivery, or by post to the addressee at the facsimile number or address, and marked for the attention of the Chairperson and the Chief Executive of the Trust and any such notice must clearly state the Representative Organisation's intention to withdraw from the Trust;
- (d) prior to the first consultative hui, the Representative Organisation must notify Te Ohu Kai Moana Trustee Limited in writing of its intention to withdraw from the Trust; and
- (e) at each consultative hui, the members of the Withdrawing Group who are present at the consultative hui or who vote by postal ballot must resolve by a 75% majority that the withdrawal of the Withdrawing Group from the Trust is in the best interests of the members of the withdrawing group. In making such a decision, the members of the Withdrawing Group must consider the Tikanga of Ngāpuhi, especially "Kia tū tika ai Te Whare Tapu o Ngāpuhi".

4. TE RŪNANGA-Ā-IWI-O-NGĀPUHI PRESENTATION AT CONSULTATIVE HUI

4.1 At each consultative hui held in accordance with paragraph 3.1, the Trust must be given:

- (a) an opportunity to inform the members of the Withdrawing Group of the likely effect of withdrawal on Ngāpuhi and the Trust; and
- (b) an opportunity at each consultative hui for respected Kaumātua from Ngāpuhi to present and inform the members of the Withdrawing Group of the likely effect of withdrawal on Ngāpuhi Tikanga.

5. INFORMATION REQUIRED AT CONSULTATIVE HUI

5.1 At each consultative hui, the Representative Organisation must provide the members of the Withdrawing Group with the information provided at the preliminary hui in accordance with paragraph 2.1.

6. CRITERIA TO BE MET BY WITHDRAWING ORGANISATION

6.1 Prior to the transfer of any part of the Trust Fund under paragraph 8, the Representative Organisation must:

- (a) be recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for the Withdrawing Group;
- (b) have an asset holding company that complies with the Act;
- (c) [be established as a "charitable entity" in accordance with the law of New Zealand];¹⁸ and
- (d) have commenced the formal process to withdraw within 5 years of Te Rūnanga-Ā-Iwi-O-Ngāpuhi being recognised by Te Ohu Kai Moana Trustee Limited as a joint mandated iwi organisation.

7. COST OF WITHDRAWAL

7.1 Other than the cost of the transfer of assets from the Trust Fund, the reasonable costs of the process of withdrawal (including any associated costs, and any legal costs) are to be met by the Representative Organisation.

8. DIVISION OF SETTLEMENT ASSETS

8.1 Upon complying with paragraphs 1.1 to 6.1(d), the asset holding company of the Representative Organisation shall be entitled to receive:

- (a) a proportion of the Trust's Ordinary Shares, calculated in accordance with the following formula:

$$\frac{\text{Attributed Population} \\ (\text{as determined by clause 9 of this Schedule})}{\text{Notional Iwi Population for Ngāpuhi as specified} \\ \text{in column 2 of Schedule 3 of the Act}} \times \frac{\text{Relevant} \\ \text{settlement assets} \\ \text{held by Ngāpuhi}}$$

- (b) a proportion of the Settlement Quota held by the Trust (either as allocated to Te Rūnanga-Ā-Iwi-O-Ngāpuhi or acquired subsequently) from Te Ohu Kai Moana Trustee Limited, calculated:
 - (i) for Inshore Quota, and that parcel of Deepwater Quota that is allocated and transferred based on coastline claims, on the basis of the proportion of coastline agreed between the Representative Group and the Trustee which is attributable to the Withdrawing Group from the coastline claimed, if any, by the Trust;

¹⁸ Drafting Note: We are not sure whether this should be retained or not. Is this obligation on Ngāti Hine only because TRAION was a charity. If so it could be removed from this Trust Deed.

- (ii) for Deepwater Quota on the basis of the Formula set out in paragraph 8.1(a) for that parcel of Deepwater Quota that is allocated and transferred from Te Ohu Kai Moana Trustee Limited based on the notional population of Ngāpuhi;
- (iii) for Freshwater Quota in a manner consistent with section 148 of the Act;
- (iv) for Harbour Quota in manner consistent with section 143 of the Act; and
- (v) for all other Settlement Quota which is allocated and transferred based on the notional population on the basis of the Formula set out in paragraph 8.1(a);

- (c) a proportion of the total assets distributed to the Trust upon termination of any or all of Te Ohu Kai Moana Trust, Te Pūtea Whakatupu Trust and Te Wai Māori Trust, calculated in accordance with the Formula set out in paragraph 8.1(a);
- (d) a proportion of any surplus loans allocated and transferred to the Trust pursuant to section 43 of the Act, calculated in accordance with the Formula set out in paragraph 8.1(a); and
- (e) a proportion of any new quota shares allocated to the Trust in respect of new species introduced into the quota management system and transferred to Te Ohu Kaimoana Moana Trustee Limited, and calculated on the same basis as paragraph 8.1(b).

9. NOTIONAL IWİ POPULATION

- 9.1 The amount of notional iwi population to be attributed to the Withdrawing Group shall be determined by the relevant date from either the 2001 or 2006 census as notified by the Representative Organisation ("Attributed Population").
- 9.2 Should the Withdrawing Group not be listed as an iwi in the 2006 census then their attributed population shall be determined using the methodology set out in He Kāwai Amokura.

10. FULL AND FINAL TRANSFER

- 10.1 Subject to paragraph 10.2, the assets transferred from the Trust Fund to the Representative Organisation in accordance with this Schedule shall constitute a full and final settlement of any claim to the Trust Fund allocation which the Withdrawing Organisation may have against the Trust under section 20(3)(b) of the Act.
- 10.2 Paragraph 10.1 shall not apply with respect to settlement assets received by the Trust under section 21(2) of the Act after the date when the withdrawal is complete.

11. DISPUTE RESOLUTION

- 11.1 Any dispute arising in relation to this Schedule shall be determined in accordance with Part 5 of the Act.