

DATED this

day of

2011

TRUST DEED

FOR

NGATI WHATUA ORAKEI

(Post-Settlement Governance Entity (“PSGE”))

NGATI WHATUA ORAKEI TRUST DEED

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NGATI WHATUA ORAKEI TRUST DEED

Made for the purposes of
The Ngati Whatua Orakei Claims Settlement Act

1. DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

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

“Adult Members of Ngati Whatua Orakei” means those Members of Ngati Whatua Orakei identified on the Ngati Whatua Orakei Register as being eighteen (18) years and over;

“Annual Plan” means as the context requires, the annual plan of:

- (a) the Trust, which is prepared in accordance with Clause 21.2; and
- (b) any Subsidiary, which is prepared in accordance with Clause 23;

“Annual Report” means the annual report of the Ngati Whatua Orakei Group which is prepared in accordance with Clause 22.1;

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

“Balance Date” means 30th June or any other date that the Trustee by resolution adopts as the date up to which the Trust’s financial statements are to be made in each year;

“Board Member” means a director, trustee or member appointed to the board of a Subsidiary;

“Business Day” means any day in which registered banks are open for business in Auckland;

“Chairperson” means the chairperson from time to time of the Trust elected by the Elected Representatives in accordance with Rule 4 of the Third Schedule;

“Chief Executive Officer” means the Chief Executive Officer of the Trust appointed in accordance with Clause 5.1;

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

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

“Commercial Activities” means any activity carried out in pursuit of the Trust's Purposes which has as its principal objective the maximising of financial or economic returns to the Ngati Whatua Orakei Group and shall include without limitation the management and administration of all lands and Assets and commercial redress properties acquired in the settlement of the Ngati Whatua Orakei Claims;

“Commercial Subsidiary” means a Subsidiary established by the Trustee pursuant to clause 18 to undertake Commercial Activities;

“Community Development Activities” means any activity carried out in pursuit of the Trust's Purposes which has as its principal objective the cultural and social development of Ngati Whatua Orakei, and shall include without limitation:-

- (a) the fostering of all aspects of Ngati Whatua Orakei tikanga, reo, kawa and korero;
- (b) the provision of support and assistance to Members of Ngati Whatua Orakei in respect of education, housing, health care, age care and relief of those suffering from mental or physical sickness or disability;
- (c) the development and enhancement of community facilities and mechanisms for the benefit of Ngati Whatua Orakei;
- (d) the provision of funding to the Hapu for the cultural and social development of the Hapu
- (e) such other activities as set out in the Annual Plan from time to time;

“Community Development Subsidiary” mean a Subsidiary established by the Trustee pursuant to clause 18 to undertake Community Development Activities;

“Consolidated Financial Statements” means the consolidated financial statements of the Ngati Whatua Orakei Group prepared by the Trust in accordance with Clause 22.1

“Customary Rights” means rights according to tikanga o Ngati Whatua Orakei (Ngati Whatua Orakei customary values and practices), including the following rights:-

- (a) rights to occupy land, waters; and
- (b) rights in relation to the use of:-
 - (i) land; and/or
 - (ii) natural or physical resources;

“Deed of Settlement” means the Deed to be dated 5th November 2011 between the Trustee, the trustees of the Ngati Whatua Orakei Maori Trust Board and the Crown recording the settlement of the Ngati Whatua Orakei Claims;

“Deputy Chairperson” means the deputy chairperson from time to time of the Trust if one is elected in accordance with Rule 4 of the Third Schedule;

“Directors” means the directors of the Trustee;

“Disputes Committee” means the committee appointed from time to time pursuant to Rule 4.7 of the First Schedule

“Elected Representatives” means the representatives elected from time to time in accordance with the Second Schedule of this Trust Deed to represent Ngati Whatua Orakei and to act as the Directors and Shareholders for the time being of the Trustee while it is a limited liability company, or to otherwise act as the Trustees of the Trust if at any time the Trustee is not a limited liability company;

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

“Five (5) Year Plan” means, as the context requires, the five (5) year plan of:

- (a) the Trust prepared in accordance with Clause 21.1; or
- (b) any Subsidiary prepared in accordance with clause 23.1;

“Hapu” means the descendants of Tuperiri of Te Taou, Ngao Oho and Te Uringutu hapu of the Ngati Whatua iwi, commonly known as Ngati Whatua Orakei;

“Hapu land” has the same meaning as in Section 2 of the Orakei Act and then the Settlement Act from its commencement;

“Inalienable Land” means any land classified for the time being as inalienable land in accordance with Clause 27.2;

“Income Year” means any year or accounting period ending on the Balance Date;

“Major Transaction for the Group” means:-

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Assets the value of which is more than fifty (50) percent of the Assets of Ngati Whatua Orakei Group as a whole before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Assets the value of which is more than fifty (50) per cent of the value of the Assets of Ngati Whatua Orakei Group as a whole before disposition; or
- (c) a transaction that has or is likely to have the effect of the relevant entity acquiring rights or interests or incurring obligations or liabilities the value of which is more than fifty (50) percent of the value of the Assets of Ngati Whatua Orakei Group as a whole before the transaction;

but does not include:-

- (a) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of such Assets (whether the Assets are held by the Trust or any Subsidiary); or
- (b) any acquisition or disposition of Assets by the relevant entity from or to any Subsidiary or the Trust; and

“Major Transaction for a Subsidiary” means:-

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Assets the value of which is more than fifty (50) percent of the Assets of that Subsidiary before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Assets the value of which is more than fifty (50) per cent of the value of the Assets of that Subsidiary before disposition; or
- (c) a transaction that has or is likely to have the effect of that entity acquiring rights or interests or incurring obligations or liabilities the value of which is more than fifty (50) percent of the value of the Assets of that Subsidiary before the transaction;

but does not include:-

- (a) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of such Assets; or

(b) any acquisition or disposition of Assets by that Subsidiary from or to any other Subsidiary or the Trust; and

“Member of Ngati Whatua Orakei” means every individual referred to in the definition of Ngati Whatua Orakei;

“Member of Ngati Whatua Orakei Group” means any one of the entities referred to in the definition of Ngati Whatua Orakei Group;

“Ngati Whatua Orakei” means the members of the Hapu, being the descendents of their common ancestor Tuperiri;

“Ngati Whatua Orakei Claims” means the Ngati Whatua Orakei Historical Claims as defined in the Deed of Settlement or the Settlement Act;

“Ngati Whatua Orakei Group” means the Trust and any Subsidiaries;

“Ngati Whatua Orakei Register” means the register of Members of Ngati Whatua Orakei that is to be maintained by the Trustee in accordance with the First Schedule of this Trust Deed;

“Ngati Whatua Orakei Taumata” means the council of elders of Ngati Whatua Orakei established in accordance with Clause 4.1;

“Orakei Act” means Orakei Act 1991;

“Protected Land” means any land classified for the time being as Protected Land in accordance with Clause 27.4;

“Provisional Vote” means a vote cast pursuant to Rule 7.3(b) of the Second Schedule or Rule 7.3(b) of the Fourth Schedule as the case may be;

“Putea” means all real and personal property (other than the Hapu land) vested in or owned by the Ngati Whatua Orakei Maori Trust Board as continued under the Orakei Act 1991 before the commencement of the Settlement Act;

“Register of Lands” means the Register to be maintained pursuant to Clause 27.6;

“Related Person” means a person specified in paragraph (i) to (iv) of section CW42(5)(b) of the Income Tax Act 2007;

“Settlement Act” means the Ngāti Whātua Ōrākei Claims Settlement Act being an Act or Acts of Parliament that may be passed so as to give effect to the Deed of Settlement and the premises contained therein;

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

“Settlement Property” means those properties defined as Settlement Properties in the Deed of Settlement or Settlement Act;

“Shareholders” means the shareholders of the Trustee who hold shares on trust for the Members of Ngati Whatua Orakei;

“Special Resolution” means a resolution that requires the approval of not less than seventy-five (75) per cent of the Adult Members of Ngati Whatua Orakei who validly cast a vote in accordance with the process set out in the Fourth Schedule;

“Special Resolution of Elected Representatives” means a resolution that requires the approval of not less than seventy-five (75) per cent of the Elected Representatives present at a duly convened meeting of the Trustee held in accordance with the Rules in the Third Schedule provided that in every event no less than six (6) Elected Representatives must have voted in favour of the Special Resolution;

“Statements of Intent” means the statements of intent prepared by any of the Subsidiaries in accordance with Clause 23;

“Subsidiaries” means any entity or trust that is:-

- (a) wholly owned;
- (b) controlled directly; or
- (c) controlled indirectly,

by the Trust, and includes any entity that is a subsidiary of an entity or trust that is a Subsidiary of the Trust. For the avoidance of doubt, Subsidiary includes all Commercial Subsidiaries and Community Development Subsidiaries;

“Trust” mean the trust established by this Trust Deed;

“Trust Deed” means this Trust Deed and includes the recitals and the Schedules to this Trust Deed and any variations made in accordance with its terms;

“Trustee” means Ngati Whatua Orakei Trustee Limited or any other person or persons substituted as Trustee from time to time by due amendment to the provisions of the Trust Deed in accordance with its provisions and if the trustee is not an incorporated body, the Elected Representatives;

“Trustee Act” means the Trustee Act 1956 and any amendments or legislation passed in substitution thereto;

“Trust’s Assets” means all Assets received or otherwise owned or acquired from time to time by the Trust, including without limitation all lands referred to in the Orakei Act, all Assets formerly held by the Ngati Whatua Orakei Maori Trust Board as continued under the Orakei Act, all Assets received pursuant to the Deed of Settlement and the Settlement Act, all Assets formerly held by the Ngati Whatua Orakei Maori Trust Board as incorporated under the Charitable Trusts Act 1957 and any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trust;

“Trust’s Purposes” means the purposes of the Trust as set out in Clause 2.3;

“Whakapapa Committee” means the committee appointed in accordance with Rule 4 of the First Schedule;

“Whangai” means those persons who are adopted by a Member of Ngati Whatua Orakei in accordance with the tikanga of Ngati Whatua Orakei.

1.2 Interpretation

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

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include the other gender;
- (c) references to persons include corporations and unincorporated bodies of persons, governments or other public bodies or agencies whether or not having a separate legal personality;
- (d) references to a statute shall be deemed to be references to that statute as amended, re-enacted or substituted from time to time;
- (e) references to a Clause, recital or a schedule shall be to a Clause, recital or a schedule to this Trust Deed;
- (f) the schedules to this Trust Deed shall form part of this Trust Deed;
- (g) headings appear as a matter of convenience only and shall not affect the interpretation of this Trust Deed;
- (h) references to a company are references to a company incorporated pursuant to the Companies act 1993;
- (i) references to Trustees of the Trust will, where the Trustees are incorporated as a trust board (or otherwise constitute a separate legal entity), be construed as reference to that separate person.

2. CONSTITUTION, STATUS AND OBJECTS OF THE TRUST

2.1 Trust constituted and named

The Trust shall be governed and administered by and in accordance with the Trustee Act and this Trust Deed. The Trustee acknowledges that it holds the Trust's Assets upon the trusts and with the powers set out in this Trust Deed. The name of the Trust is **NGATI WHATUA ORAKEI TRUST**.

2.2 Status and objects of Trust

The Trust has the authority to represent Ngati Whatua Orakei in all matters. Subject to the Trustee Act and this Trust Deed the Trustee may do all such things it considers necessary or desirable in its sole discretion to perform or otherwise carry out the Trust's Purposes.

2.3 Purposes of the Trust

The purpose of the Trust is to receive, administer, manage, protect and govern the Trust's Assets on trust for the cultural, commercial and social development of Ngati Whatua Orakei for and on behalf of and for the benefit of the Members of Ngati Whatua Orakei.

2.4 Incidental purposes

Incidental to, and to give effect to the Trust's Purposes the Trust will:

- (a) carry on all of the functions and have all of the powers pursuant to the provisions of the Orakei Act formerly held by the Ngati Whatua Orakei Maori Trust Board; For the avoidance of any doubt this does not include any powers referred to in the Maori Trusts Boards Act 1955;
- (b) be vested in and hold all of the Assets and properties and assume the liabilities of the Ngati Whatua Orakei Maori Trust Board a body carried on pursuant to the Orakei Act ;
- (c) be vested in and hold all of the Assets and properties and assume the liabilities of the Ngati Whatua Orakei Maori Trust Board a body incorporated pursuant to the provisions of the Charitable Trust Act 1957;
- (d) be the repository of the collective rangatiratanga of Ngati Whatua Orakei;
- (e) be the representative of the collective interest of Ngati Whatua Orakei and the legal representative of Ngati Whatua Orakei in relation to that collective interest;
- (f) receive and hold Assets transferred by the Crown in settlement of:

- i. all matters settled pursuant to the provisions of the Orakei Act;
- ii. all matters settled by the Deed of Settlement;
- iii. all matters settled by the Settlement Act;

and exercise rights and powers for Ngati Whatua Orakei in respect of the Tamaki Makaurau Collective Deed referred to in the Settlement Act;

- (g) acquire, hold and dispose of Assets of the Trust and administer those Assets and liabilities of the Trust as kaitiaki of Ngati Whatua Orakei;
- (h) constitute the body through which Ngati Whatua Orakei:
 - i. will confirm the enduring tribal structure which properly represents its rangatiratanga;
 - ii. will through itself and its Subsidiaries and such other persons as it considers appropriate, manage its affairs, business, assets and liabilities;
 - iii. may distribute benefits or dividends directly or indirectly to Members of Ngati Whatua Orakei;
 - iv. will or may exercise Customary Rights;
- (i) hold, conserve, administer and develop the Hapu land as a perpetual estate and turangawaewae for the members of Ngati Whatua Orakei;
- (j) hold, conserve, administer, develop, acquire and dispose of Putea and other Assets;
- (k) provide services and amenities in relation to the said Hapu land and the said Putea and other Assets;
- (l) receive, manage and administer assets on trust for the relief of poverty, the advancement of education or religion or any other object or purpose that is beneficial to Ngati Whatua Orakei and shall include without limitation:-
 - i. the promotion amongst Ngati Whatua Orakei of the educational, spiritual, economic, social and cultural advancement or well-being of Ngati Whatua Orakei and the Members of Ngati Whatua Orakei;
 - ii. the maintenance and establishment of places of cultural or spiritual significance to Ngati Whatua Orakei;
- (m) hold some lands for the benefit of Ngati Whatua Orakei and the public of Auckland by way of reserves and other places of public amenity;
- (n) promote amongst Ngati Whatua Orakei the educational, spiritual, economic, social and cultural advancement or well-being of Ngati Whatua Orakei and its whanau;

- (o) promote amongst Ngati Whatua Orakei the physical and mental health and well-being of the aged or those suffering from mental or physical sickness or disability;
- (p) carry on any other purpose that is considered by the Trustee from time to time to be beneficial to Ngati Whatua Orakei.

2.5 Powers

The Trustee has all the powers and privileges of a natural person including, without limitation, the power to purchase, accept, hold, transfer, lease and sell property, and to sue and be sued. It shall have all such powers and authorities as may be necessary or desirable to enable it to perform such powers and advance the Trust's Purposes.

2.6 Resettlement

The Trustee has the power to settle or resettlement any or all of the Trust's Assets upon trust in any manner in which in the opinion of the Trustee is for the advancement or benefit of the Members of Ngati Whatua Orakei provided that the purposes of that resettled trust is within the purposes including incidental purposes in this Trust and such resettlement is approved:-

- (a) If the Assets are being resettled on a trust that is a Subsidiary by a Special Resolution of Elected Representatives; or
- (b) If the Assets are being resettled on a trust that is not a Subsidiary, by a Special Resolution.

2.7 Restriction on Major Transactions

Notwithstanding Clause 2.2 the Trust and any other Member of the Ngati Whatua Orakei Group must not enter into a Major Transaction for the Group unless that transaction:-

- (a) is approved by way of Special Resolution; or
- (b) is contingent upon approval by way of Special Resolution; and
- (c) notice is given to the Adult Members of Ngati Whatua Orakei in accordance with Rule 5.1 of the Fourth Schedule.

Notwithstanding Clause 2.2 any Subsidiary must not enter into a Major Transaction for a Subsidiary unless that transaction is:-

- (d) approved by way of Special Resolution of Elected Representatives; or

- (e) contingent upon approval by way of Special Resolution of Elected Representatives.

3. ELECTION, POWERS AND MEETINGS OF TRUSTEE AND ELECTED REPRESENTATIVES

3.1 Trustee

Subject to the provisions of Clause 3.6 the Trustee shall be Ngati Whatua Orakei Trustee Limited a limited liability company incorporated pursuant to the provisions of the Companies Act 1993 which acknowledges that it holds the Trust's Assets upon the trusts and with the powers sets set out in this Trust Deed.

3.2 Constitution of Trustee

The constitution of the Trustee must include, but shall not be limited to, the following:-

- (a) that its sole purpose is to act as trustee for the Trust;
- (b) that it must comply with the powers and duties set out in this Trust Deed;
- (c) that the Shareholders and Directors will be the Elected Representatives for the time being;
- (d) that the Shareholders must also be its Directors.

3.3 Trustee Meetings

The Trustee shall ensure that all meetings of its officers shall be run in accordance with this Trust Deed including its Schedules. If there is any conflict between this Trust Deed and its Schedules and the Trustee's constitution then the provisions of this Trust Deed including its Schedules shall apply.

3.4 Elected Representatives

Save for the transitional period outlined in Clauses 4.2 and 4.3 of the Second Schedule, there shall be nine (9) Elected Representatives. The Elected Representatives from time to time of the Trust shall be elected to office in accordance with the Rules set out in the Second Schedule. The Elected Representatives from time to time shall be elected to office as Shareholders and Directors for the Trustee in accordance with the rules set out in the Second Schedule. As Shareholders each Elected Representative shall hold shares in the Trustee on trust for the Members of Ngati Whatua Orakei and must transfer his or her shares in accordance with Clause 3.5 in the event that he or

she ceases to be an Elected Representative. The Elected Representatives shall control and supervise the business and affairs of the Trustee as they think fit.

3.5 Incumbent Shareholders and Directors

In the event that an Elected Representative ceases to hold office in accordance with the Second Schedule, the incumbent Elected Representative shall transfer his or her share or shares in the Trustee to the new Elected Representative and shall resign as Director, as soon as practicable. In the event that no new Elected Representative is appointed, the incumbent Elected Representative shall transfer his or her shares to the Chairperson, who shall hold them on trust until a substituted Elected Representative is appointed, and then transfer such share or shares to the substituted Elected Representative.

3.6 Removal of Trustee as trustee

If at any time, the Members of Ngati Whatua Orakei vote by Special Resolution of Members to remove Ngati Whatua Orakei Trustee Limited as trustee of the Trust without appointing a substituted Trustee or trustees then the Elected Representatives shall be deemed the trustees of the Trust and shall have all the powers and duties of the trustee as set out in this Trust Deed.

3.7 Trustee to control Trust affairs

Subject to any requirements imposed by the Trustee Act, this Trust Deed, the Deed of Settlement, the Settlement Act the Trustee shall control and supervise the business and affairs of the Trust in such manner as it sees fit.

3.8 Nominee

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

- (a) The Trust's Assets or any part of it may be vested in the nominee as if the nominee were sole trustee;
- (b) The management of the Trust's Assets and the exercise of all powers and discretions exercisable by the Trustee under this Trust Deed shall remain vested in the Trustee as fully and effectively as if there were no nominee;
- (c) The sole function of the nominee shall be to hold and deal with the trust property, invest its funds and dispose of the assets in accordance with any direction in writing by the Trustee for which purpose the nominee shall execute all such documents and perform all such acts as the Elected Representatives in writing direct;
- (d) The nominee shall not be liable for acting on any such direction provided that if the nominee is of the opinion that any such direction

conflicts with the trusts or the law or exposes the nominee to any liability or is otherwise objectionable, the nominee may apply to the Court for directions and any order giving any such directions shall bind both the nominee and the Trustee;

- (e) The nominee shall not be liable for any act or default on the part of any of the Trustee;
- (f) All actions and proceedings touching or concerning the Trust Fund may be brought or defended in the name of the nominee at the written direction of the Trustee and the nominee shall not be liable for the costs;
- (g) No person dealing with the nominee shall be concerned to enquire as to the concurrence or otherwise of the Trustee or be affected by notice of the fact that the Elected Representatives have not concurred.

3.9 Ability to register or incorporate under Acts of Parliament

The Trustee shall have the power to register or incorporate the Trust pursuant to any legislation it believes to be appropriate and to make such amendments to this Trust Deed as may be necessary or desirable in order to effect such registration or incorporation upon obtaining a Special Resolution to seek such registration or incorporation.

3.10 Proceedings of Elected Representatives and Trustee

Except as otherwise provided in the Trust Deed the proceedings and other affairs of the Elected Representatives shall be conducted in accordance with the Rules set out in the Third Schedule

4. APPOINTMENT OF NGATI WHATUA ORAKEI TAUMATA

4.1 Appointment of Ngati Whatua Orakei Taumata

The Trust shall establish a council of elders of Ngati Whatua Orakei to be known as Ngati Whatua Orakei Taumata.

4.2 Appointment of Chair and Deputy

At the first meeting of the Ngati Whatua Orakei Taumata following the appointment of its members Ngati Whatua Orakei Taumata shall appoint one of their number to be chairperson and (at their discretion) one to be deputy chairperson.

4.3 Considerations in appointing Ngati Whatua Orakei Taumata

Appointees to Ngati Whatua Orakei Taumata shall be Members of Ngati Whatua Orakei who are of good standing and who are knowledgeable of Ngati Whatua Orakei tikanga, reo, kawa, karakia and korero, and preferably over the age of 60.

4.4 Ngati Whatua Orakei Taumata to protect Mana

Ngati Whatua Orakei Taumata shall be responsible for advising on matters to do with protecting the mana of Ngati Whatua Orakei and facilitating the resolution of any questions that may arise.

4.5 Ngati Whatua Orakei Taumata to advise on tikanga, etc.

In addition to advising the Trustee to do with the protecting of the mana of Ngati Whatua Orakei, Taumata shall advise the Trust on matters involving Ngati Whatua Orakei tikanga, reo, kawa, karakia and korero.

4.6 Quorum

The quorum for any meetings of Ngati Whatua Orakei Taumata shall be not less than ten duly appointed kaumatua and kuia.

4.7 Proceedings of Meetings

The Rules in the Third Schedule as to notice of meetings of the Elected Representatives shall apply equally to notice of meetings of Ngati Whatua Orakei Taumata. Otherwise Ngati Whatua Orakei Taumata shall regulate its proceedings as it sees fit.

4.8 The Trustee shall determine from time to time the remuneration payable to any members of the Ngati Whatua Orakei Taumata.

4.9 For the avoidance of any doubt, the provisions of this Clause 4 and the proceedings of Ngati Whatua Orakei Taumata do not include any matters to be considered or dealt under the provisions contained in the First Schedule.

4.10 Nothing in this Trust Deed shall be deemed or construed so as to make the seeking or following of advice obtained from the Ngati Whatua Orakei Taumata binding upon the Trustee.

5. CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES

5.1 Trustee to appoint Chief Executive Officer

The Trustee shall appoint a Chief Executive Officer to manage the day to day administration of the Trust and carry out the strategic intent of the Trust including without limitation the implementation of the Trust's planning, reporting and monitoring obligations under this Trust Deed.

5.2 Delegations to Chief Executive Officer

The Chief Executive Officer shall be responsible for the employment of all other employees of the Trust and shall exercise such other powers and discretions as are delegated to him or her by the Trustee from time to time.

5.3 Representatives not to be Chief Executive Officer or other Employee

An Elected Representative may not hold the position of Chief Executive Officer or otherwise be an employee of the Trust or any Subsidiary. A member of Ngati Whatua Orakei Taumata may not hold the position of Chief Executive Officer.

6. GENERAL MEETINGS

6.1 Trust to hold Annual General Meetings

The Trustee shall, no later than five (5) calendar months after the end of each Income Year, and in any event no more than fifteen (15) months after the date of the last Annual General Meeting of the Trust, hold a general meeting for the Members of Ngati Whatua Orakei, to be called an Annual General Meeting of the Trust. The first Annual General Meeting shall be held not later than five (5) calendar months after the end of the Income Year following the Settlement Date. The Trustee shall at each Annual General Meeting:-

- (a) report on the operation of the Ngati Whatua Orakei Group during the preceding Income Year;
- (b) present the Annual Report and duly audited Consolidated Financial Statements in respect of that preceding Income Year;
- (c) present the Annual Plan for the current Income Year;
- (d) announce the names of all newly appointed Elected Representative;
- (e) approve the appointment of the auditor for the current Income Year;
- (f) seek an ordinary resolution of the Adult Members of Ngati Whatua Orakei approving the Elected Representatives' remuneration;
- (g) undertake all other notified business; and
- (h) at the discretion of the Chairperson, undertake any other general business raised at that meeting.

6.2 Approval of Elected Representatives' remuneration

No remuneration will be paid to an Elected Representative in his or her capacity as an Elected Representative unless that remuneration has been

authorized by an ordinary resolution of the Adult Members of Ngati Whatua Orakei present at the Annual General Meeting. Each such resolution will express the remuneration to be paid to the Elected Representatives as a monetary sum per annum or per meeting attended payable either to all Elected Representatives taken together or to any person who from time to time holds office as an Elected Representative. This clause does not apply to any remuneration paid to any Elected Representative in his or her capacity as a Board Member and that remuneration shall be determined by the Trust pursuant to Clause 18.8. From the date of this Trust Deed until the first Annual General Meeting the remuneration to be paid to each Elected Representative shall be \$ _____ per Meeting attended.

6.3 Notice of general meeting

The Trustee shall give not less than twenty-one (21) days' notice of the holding of the Annual General Meeting, such notice to be posted to all Adult Members of Ngati Whatua Orakei at the last address shown for each such Adult Member of Ngati Whatua Orakei on the Ngati Whatua Orakei Register. Notice of the meeting shall also be shown prominently on the Trust's website (or its equivalent technology) and inserted prominently in appropriate major metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members of Ngati Whatua Orakei reside. All such notices shall contain:-

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

6.4 Notice of special meetings

In addition to the Annual General Meeting of the Trust, the Trustee shall convene a Special General Meeting of the Trust on the requisition of:-

- (a) the Chairperson and Deputy Chairperson for the time being of the Trust; or
- (b) any five (5) Elected Representatives or
- (c) ten (10) per cent of Adult Members of Ngati Whatua Orakei.

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

6.5 Annual General Meeting not limited to notified business

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

6.6 Special Meeting limited to notified business

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

6.7 Invalidation

The accidental omission to give notice to, or a failure to receive notice of an Annual or Special General Meeting by a Member of Ngati Whatua Orakei does not invalidate the proceedings at that meeting.

6.8 Deficiency of notice

Subject to Clause 6.6, a deficiency or irregularity in a notice of any Annual or Special General Meeting will not invalidate anything done at the meeting if the deficiency or irregularity is not material.

6.9 Quorum

The quorum required for any Annual General Meeting shall be fifty (50) Adult Members of Ngati Whatua Orakei present in person and for a Special General Meeting of the Trust shall be one hundred (100) Adult Members of Ngati Whatua Orakei present in person. All present must complete and sign a Record of Attendance.

6.10 Chairing of meetings

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

6.11 Voting

To the extent that a vote is sought or required at any Annual General Meeting or Special General Meeting not being in respect of a Special Resolution to which the Fourth Schedule otherwise applies, every Adult Member of Ngati Whatua Orakei present shall have one (1) vote. Any Adult Member of Ngati Whatua Orakei may be present in person or by proxy and a proxy is entitled to

attend, be heard and vote as if he or she were that Adult Member provided that:-

- (i) a proxy must be appointed by notice in writing signed by the appointor and the notice must state the appointment is for a particular meeting or a specified term; and
- (ii) no proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Chairperson before the start of the meeting; and
- (iii) a proxy may only vote on resolutions noted in the agenda for the meeting and may not vote on any matter arising under general business.

Voting may be by voice or on a show of hands. The chairperson of the meeting may also demand a poll on a resolution either before or after any vote. However, except as provided in Clauses 6.1(f) and 6.2, the Trust shall not be bound by a resolution passed at any Annual or Special General Meeting, but will only be required to give consideration to any such resolution in administering the Trust's Assets and carrying out the Trust's Purposes. Nothing in this Clause 6.11 detracts from the obligation of the Trustee to comply with any Special Resolution passed in accordance with the Fourth Schedule, or detracts from the requirement for Special Resolutions to be passed in accordance with the Fourth Schedule.

6.12 Adjourned meetings

If within one (1) hour of the time appointed for an Annual or Special General Meeting, a quorum is not present, the meeting will stand adjourned to be reconvened seven (7) days after the date of the meeting. On that later day, the meeting will be held again at the same time and in the same place as the adjourned meeting. If a quorum is not present within one (1) hour from the time appointed for that adjourned meeting, the Adult Members of Ngati Whatua Orakei present will constitute a quorum.

6.13 Unruly meetings

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

6.14 Minutes

The Trustee shall keep a proper record in a minute book of all decisions taken and business transacted at every Annual General Meeting and Special General Meeting.

6.15 Minutes to be evidence of proceedings

Any minute of the proceedings at an Annual General Meeting or a Special General Meeting which is purported to be signed by the chairperson at that meeting shall be evidence of those proceedings.

6.16 Minutes to be evidence of proper conduct

Where minutes of an Annual General Meeting or a Special General Meeting have been made in accordance with this Clause then, until the contrary is proven, the meeting shall be deemed to have been properly convened and its proceedings to have been conducted properly.

7. DISCLOSURE OF INTERESTS

7.1 Definition of Interested Elected Representative

An Elected Representative will be interested in a matter if the Elected Representative:-

- (a) is a party to, or will derive a material financial benefit from that matter;
- (b) has a material financial interest in another party to the matter;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from, the matter, not being a party that is wholly-owned, or in the case of a trust controlled, by the Trust or any Subsidiary;
- (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.

7.2 Interests in common with other Members

Notwithstanding Clause 7.1 no Elected Representative will be interested in a matter where his or her interest is not different in kind from the interests of other Members of Ngati Whatua Orakei;

7.3 Disclosure of interest to other Elected Representative

An Elected Representative must forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, disclose to his or her co-Elected Representatives at a meeting of the Elected Representatives:-

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

7.4 Recording of Interest

A disclosure of interest by an Elected Representative shall be recorded in the minute book of the Trust

8. DEALINGS WITH "INTERESTED" ELECTED REPRESENTATIVES

- 8.1** An interested Elected Representative shall not take part in any deliberation or vote in respect of any matter in which that Elected Representative is interested, nor shall the Elected Representative be counted for the purposes of forming a quorum in any meeting to consider such a matter.
- 8.2** Where there are no disinterested Elected Representatives then the matter shall be referred to a Special General Meeting held in accordance with the provisions of the Fourth Schedule and any determination shall be made by way of Special Resolution.

9. PROHIBITION OF BENEFIT OR ADVANTAGE

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

10. REMUNERATION AND EXPENSES

10.1 No private pecuniary profit

No private pecuniary profit may be made by any person involved in the Trust. However, each Elected Representative and the Trustee shall be entitled:-

- (a) in each Income Year, to remuneration for its or his or her services as Trustee or as an Elected Representative as may be reasonable having regard to its or his or her duties and responsibilities (including duties and responsibilities as a Board Member so long as that remuneration

has been properly authorized pursuant to Clause 6.2 or determined pursuant to Clauses 18.8 as the case may be;

- (b) to be reimbursed for fair and reasonable expenditure incurred by it or him or her on behalf of the Trust or any Subsidiary subject in every case to approval by the Trustee;
- (c) if any Elected Representative is engaged in a profession or business, to charge fees for work done by that Elected Representative or that Elected Representative's firm (whether or not the work is of a professional or business nature) on the same basis as if that Elected Representative was not one of the Elected Representatives but contracted to carry out the work on their behalf.

10.2 Disclosure of Elected Representative remuneration etc

The Trustee shall, in accordance with Clause 10.1, show the amount of any remuneration paid to or fees charged by, any Elected Representative or any Elected Representative's firm and the amount of any premiums paid out of the Trust's Assets for any for any Elected Representative indemnity insurance separately in the financial statements including any payments made pursuant to Clause 12.1.

10.3 Elected Representatives may rely on advice

The Trustee and Elected Representatives may, when exercising their powers or performing their duties as Trustee and/or Elected Representative, 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 or any Board Member or employee of any Subsidiary whom the Trustee and/or Elected Representatives believe 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 and/or Elected Representatives believe on reasonable grounds to be within the person's professional or expert competence; and
- c. any other Elected Representative or member of a committee upon which an Elected Representative did not serve at the relevant time and in relation to matters that are within that other Elected Representative or committee member's designated authority. However, this shall only apply to the extent that the Elected Representatives act in good faith, after reasonable enquiry when the need for an enquiry is indicated by the circumstances, and without knowledge that would cause such acceptance to be unwarranted.

10.4 Elected Representatives may obtain opinion

If the Elected Representatives are in doubt over any matter relating to the management and administration of the Trust's Assets, or over the exercise of any power, they may obtain and act upon the opinion of a Barrister or Solicitor of the High Court of New Zealand of at least seven (7) years' standing. This right to obtain and act upon an opinion, however, will not restrict any right on the part of the Trustee to apply to the High Court of New Zealand for directions.

11. LIABILITY OF ELECTED REPRESENTATIVES

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

12. INDEMNITY INSURANCE

12.1 Indemnity and Insurance for Elected Representatives, Officers and Employees

Any Elected Representative, officer or employee of the Trust or any Subsidiary may be indemnified or have their insurance costs met out of the Trust's Assets against any liability which he or she incurs in defending any civil or criminal proceedings issued because of his or her actions in relation to the Trust or any Subsidiary, where those proceedings do not arise out of any failure by the Elected Representative officer or employee and he or she was acting in good faith in a manner that he or she believed to be in the best interests of the Ngati Whatua Orakei Group with the object of fulfilling the Trust's Purposes or otherwise was not acting in a manner which would render that Elected Representative liable under the provisions of clause 11.

12.2 Insurance costs to be just and equitable

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

12.3 Indemnity and insurance re specific trusts

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

12.4 Record of decisions

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

13. NGATI WHATUA ORAKEI NOT TO BE BROUGHT INTO DISREPUTE

13.1 Elected Representatives and Trustee not to bring into disrepute

No Elected Representative shall act in a manner which brings or is likely to bring any member of the Ngati Whatua Orakei Group into disrepute.

13.2 Board Members not to bring into disrepute

The Trust shall also require that any Board Members do not act in a manner which brings or is likely to bring the Trust or any Subsidiary into disrepute.

13.3 Elected Representatives may be censured or removed

Any Elected Representative that acts in a manner that brings or is likely to bring into disrepute the Trust or any Subsidiary, may, by a resolution passed by a majority of not less than seventy-five (75) per cent of the other Elected Representatives, be formally censured or removed from office.

13.4 Censure or removal to be notified

The censure or removal of an Elected Representative in accordance with this Clause shall, together with reasons, be reported to the Members of the Ngati Whatua Orakei at the next Annual General Meeting of the Trust following such censure or removal.

13.5 Effect of Removal

An Elected Representative removed from office in accordance with Clause 13.3 shall cease to hold office as an Elected Representative forthwith and shall not be entitled to be re-elected as an Elected Representative for a period of not less than three (3) years following his or her removal.

13.6 Replacement of Removed Elected Representative

The removal of an Elected Representative in accordance with Clause 13.3 shall give rise to a casual vacancy which shall be filled in accordance with Rule 4.7 of the Second Schedule.

14. GIFTS OR DONATIONS

14.1 Trust for Inherited Charitable Purposes

The Trustee shall execute a declaration of trust declaring that it shall stand possessed of the undistributed charitable income referred to in Section [insert] of the Settlement Act and Clause [insert] of the Deed of Settlement upon trust for charitable purposes. Henceforth any income derived by the Trust from any Assets to which the declaration relates shall be applied for such purposes as may be specified in the declaration of trust; and, for the purposes of the Income Tax Act 2007, any such income shall be deemed to be income derived by the Trustee in trust for charitable purposes. Such assets to which the declaration relates may be re-settled into one or more of the Community Development Subsidiaries for charitable purposes in the manner provided in Clauses 2.6 and 18.3.

14.2 Trust may accept specific trusts

Notwithstanding any other provision in this Trust Deed, the Trustee may accept, hold or otherwise deal with any property upon trust for the Trust's Purposes or for any specific purpose whether or not that specific purpose comes within the Trust's Purposes. Such a trust may include any trust for the benefit of the Members of Ngati Whatua Orakei. Any property held by the Trustee pursuant to this Clause shall be dealt with in accordance with the terms of the trust and shall not constitute part of the Trust's Assets.

14.3 Specific trusts to be separate

If the Trustee accepts a trust for any charitable purpose or specific purpose as outlined in Clause 14.1 and 14.2 above it must keep the property subject to such trust and any income derived from it separate from the Trust's Assets, and administer that property and income as a separate specific trust in terms of the trust under which it was accepted.

14.4 Use of specific trust assets

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

14.5 Expenses of specific trust

Each separate specific trust shall bear its own administration expenses plus a fair proportion (determined by the Trustee) of the administration expenses applicable to the Trust.

15. RECEIPTS FOR PAYMENTS

- 15.1** The receipt of the Trustee signed by any person or persons authorised to give receipts on behalf of the Trustee, shall be a complete discharge from the Trustee for that payment.

16. AMENDMENTS TO TRUST DEED

16.1 Special Resolution required

Subject to Clauses 16.2, 16.3 and 16.4 all amendments to the Trust Deed shall only be made with the approval of a Special Resolution passed in accordance with the Fourth Schedule.

16.2 Limitations Amendment

No amendment shall be made to the Trust Deed which:

- (a) is inconsistent with the Settlement Act;
- (b) changes the Trust's Purposes so that the Trustee is no longer required to act for the benefit of the Members of Ngati Whatua Orakei;
- (c) changes this Clause 16.2;
- (d) changes the restrictions in Clause 2.7(a), 8, 9 or 10;
- (e) changes Clauses 17; or
- (f) changes the requirement for a Special Resolution (as defined from time to time) in Clause 16.1.

16.3 Amendments due to mistake or change in legislation

Notwithstanding Clause 16.1, any amendment to this Trust Deed may be made without a Special Resolution provided the amendment is made to:-

- (a) correct a minor mistake in the Trust Deed, provided the correction will not materially change the effect of the relevant provision or provisions of the Trust Deed; or
- (b) give effect to an amendment made to legislation referred to in this Trust Deed, provided the amendment will not materially change the effect of the relevant provision or provisions of the Trust Deed –

and is authorized by a majority of the Elected Representatives (including initial Elected Representatives).

16.4 Consideration of proposal

Every Adult Member of Ngati Whatua Orakei may put forward for consideration by the Trustee proposals for amendments to the Trust Deed. Any proposal which is consistent with the Trusts Purposes put forward under this Clause 16.4 must be in writing and addressed to the Chairperson at the registered office of the Trust. Any proposal put forward under this Clause 16.4 must be considered by the Trustee.

17. WINDING UP

17.1 Perpetuities

Unless stated otherwise in the Settlement Act, the perpetuity period for the Trust is the period that commences on the date of this Trust Deed and ends eighty (80) years less one (1) day after that date of this Trust Deed, that period being within the perpetuities period permitted by section 6 of the Perpetuities Act 1964 and the perpetuities period applicable to the Trust is hereby specified accordingly.

17.2 Voluntary winding-up

Subject to Clause 17.1:-

- (a) the Trust shall only be wound up or dissolved if a Special Resolution in which no less than 500 Adult Members of Ngati Whatua Orakei have voted in favour, resolved that it has become impossible, impracticable, or inexpedient to carry out the Trust's Purposes and the Trust should be wound up.
- (b) on the winding up or dissolution of the Trust, the Trustee must give or transfer all the Trusts Assets after payment of costs, debts and liabilities to one or more organisations or bodies within New Zealand having similar objects to the Trust (being objects beneficial to the Ngati Whatua Orakei community) as the Adult Members of Ngati Whatua Orakei by Special Resolution, shall decide.

18. ESTABLISHMENT OF WHAI RAWA AND WHAI MAIA SUBSIDIARIES

18.1 Establishment of Subsidiaries

In receiving, controlling, and supervising the use of the Trust's Assets on behalf of Ngati Whatua Orakei, whether pursuant to the Deed of Settlement, the Settlement Act, the Orakei Act or otherwise, the Trustee may establish and oversee the operations of Subsidiaries.

18.2 Commercial Subsidiaries

The Trustee may maintain and/or establish a Commercial Subsidiary, or Commercial Subsidiaries, the objectives and purposes of which will be to receive and/or manage those of the Trust's Assets that are of a commercial nature, which such companies shall manage on a prudent, commercial and profitable basis. In doing so any Commercial Subsidiary shall conduct or otherwise undertake Commercial Activities of the Ngati Whatua Orakei Group, either itself or through any subsidiary or subsidiaries established for that purpose, on behalf of and for the benefit of the Members of Ngati Whatua Orakei in the furtherance of the Trust's Purposes.

The Commercial Subsidiaries may have objectives and purposes which relate to Community Development Activities either in whole or part and in such case those Commercial Subsidiaries shall manage the Trust's Assets on a prudent and efficient basis using commercial controls and disciplines on behalf of and for the benefit of the Members of Ngati Whatua Orakei and in furtherance of Trust's Purposes.

The Commercial Subsidiaries may buy, sell or otherwise dispose of all or part of their Assets or undertakings as resolved from time to time subject in the applicable cases to the necessary approvals required for a Major Transaction.

18.3 Community Development Subsidiaries

The Trustee may maintain and/or establish a Community Development Subsidiary or Community Development Subsidiaries, the objective and sole purpose which will be to use and administer on behalf of the Trust such of the Trust Assets and/or income as may be transferred or allocated to it/them for the purposes of conducting or otherwise undertaking Community Development Activities of the Ngati Whatua Orakei Group, either itself or through any Subsidiary or other entity established for that purpose, on behalf of and for the benefit of Members of Ngati Whatua Orakei in the furtherance of the Trust's Purposes.

Any one or more Community Development Subsidiaries may be for charitable purposes. Any change to the charitable nature, if this has been obtained, of any Community Development Subsidiary must be undertaken by special resolution of Elected Representatives.

The Community Development Subsidiaries may buy, sell or otherwise dispose of all or part of their Assets or undertakings as resolved from time to time subject in the applicable cases to the necessary approvals required for a Major Transaction.

18.4 Control of Commercial and Community Development Subsidiaries

In respect of any Commercial Subsidiary and Community Development Subsidiary:

- (a) if and while it is a company, will be wholly owned and controlled directly or controlled indirectly by the Trustee; or
- (b) if and when it is a trust the Trustee shall have and retain the power to appoint and remove the trustees of such trust(s)

18.5 Subsidiary trusts

Any Subsidiary that is established as a trust must have an appointor who must be the Trustee or another Subsidiary.

18.6 Trustee to monitor

In giving effect to the Trust's Purposes the Trustee shall be responsible for monitoring and otherwise overseeing the activities of the Subsidiaries. The Trustee shall also exercise its ownership or other interests in the Subsidiaries in such a way as to promote the performance by the Subsidiaries of their respective objectives and purposes as set out in this Trust Deed and each Subsidiary's constitutional documents.

18.7 Assets held for Ngati Whatua

All Assets held and income derived by any member of the Ngati Whatua Orakei Group, including without limitation any Subsidiaries shall be held and derived for and on behalf of the Trust Purposes.

18.8 Directors responsible for governance

For the avoidance of doubt, and except as expressly provided by this Trust Deed, all Subsidiaries shall be governed by their respective boards and the role of the Trustee in respect of the Subsidiaries shall be limited to the exercise of the rights conferred on the Trustee as shareholder, or (as applicable) appointor, and/or beneficiary of the relevant entity or trust.

18.9 Remuneration of Board Members

The Trustee shall determine or approve the remuneration payable to any Board Member.

18.10 No influence in determining remuneration

No Elected Representative receiving any remuneration referred to in Clause 18.10 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall any such Elected Representatives in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

19. APPOINTMENT OF DIRECTORS AND TRUSTEES

19.1 Appointment and removal of directors and trustees

The Board Members of any Subsidiaries owned and/or controlled by the Trust shall be appointed and removed by the Trustee. Each Subsidiary shall appoint and remove Board Members of Subsidiaries owned and/or controlled by that Subsidiary. No employee of the Ngati Whatua Orakei Group may be a Board Member of any Subsidiary.

19.2 Board Members of Community Development Subsidiaries

A majority of the Board Members of any Community Development Subsidiary must be Members of Ngati Whatua Orakei. Such Board Members need not be Elected Representatives.

19.3 Appointments with regard to skills and expertise

Board Members shall only be appointed if that person has the particular skills and expertise that are required of a member of the board to which the appointment relates and bearing in mind the activities that the particular Subsidiary undertakes or is likely to undertake in the future and the mix of skills and expertise that is required on the relevant board of that Subsidiary.

19.4 Rotation of Board Members

One-third ($1/3^{\text{rd}}$) of the Board Members of each Subsidiary or if their number is not a multiple of three (3) then the number nearest to one-third ($1/3^{\text{rd}}$), shall retire from office as at the date chosen for the Annual General Meeting of that Subsidiary. The Board Members to retire shall be those who have been longest in office since their last appointment. However, in the case of Board Members who were last appointed on the same day, those to retire will be determined by agreement between those Board Members or, if agreement cannot be reached, by lot. Retiring Board Members will be eligible for reappointment.

20. APPLICATION OF INCOME

20.1 Commercial Subsidiaries to remit funds to the Trust

Each Commercial Subsidiary shall in each Income Year remit to the Trust so much of the surplus income derived by such Commercial Subsidiary on behalf of the Trust as is agreed between such respective Commercial Subsidiary and the Trustee having regard to:-

- (a) the objectives and purpose of that Commercial Subsidiary and the desirability of retaining and reinvesting income to meet that objective and purpose;

- (b) the projected operating requirements of that Commercial Subsidiary and its Subsidiaries as set out in their Annual Plans and Five Year Plans; and
- (c) the responsibilities and duties of the Board Members of that Commercial Subsidiary, including compliance with the requirements of the Companies Act 1993 where relevant.

20.2 Trust to make payments to any Community Development Subsidiary

The Trustee shall in each Income Year pay such portion of the Trust's income as it may determine to any Community Development Subsidiary. The Community Development Subsidiary shall apply all such income received by it towards the fulfilment of its objective and purpose

20.3 Trustee may apply income as they see fit

Except as required by Clause 20.2, and subject to any other requirements in this Trust Deed, the Trustee may provide for the payment, application or appropriation, or decide to pay, apply or appropriate as much of the available income (including any funds remitted from any Commercial Subsidiaries in any Income Year as the Trustee in its sole discretion thinks fit for or towards the Trust's Purposes.

20.4 Payments out of income

The Trustee may in making any decisions about the application of income in any Income Year, decide to have set aside, deducted from, or paid out of income such amounts as the Trustee in its discretion from time to time thinks fit, including:-

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

20.5 Matters to consider in application of income

In making any decision as to the application of the income in any Income Year, the Trustee shall, in exercising its discretion endeavour to act fairly in considering the present and future needs and interest of all Members of Ngati Whatua Orakei.

21. PLANS

21.1 Trustee to prepare Five (5) Year Plans

The Trustee shall produce within twelve (12) months following the execution of this Trust Deed and update not less than every two (2) years, a Five (5) Year Plan. Such a plan shall set out the longer-term vision of the Trust in respect of the matters referred to in Clause 21.2(a) to (h) and shall include a statement by the Trustee of the commercial, management and distribution policies that the Trustee intends to follow in respect of the Trust's Assets.

21.2 Trustee to prepare Annual Plans

The Trustee shall produce no later than one (1) month before the commencement of each Income Year an Annual Plan which specifies in respect of that Income Year the following information:-

- (a) the strategic vision of the Trust for the Ngati Whatua Orakei Group;
- (b) the nature and scope of the activities proposed by the Trust for the Ngati Whatua Orakei Group in the performance of the Trust's Purposes;
- (c) the ratio of capital to total Assets;
- (d) the performance targets and measurements by which performance of the Ngati Whatua Orakei Group may be judged;
- (e) the manner in which it is proposed that projected income will be dealt with;
- (f) any proposals for the ongoing management of the Trust's Assets having regard to the interests of all Members of Ngati Whatua Orakei;
- (g) a provision that measured over all of the Ngati Whatua Orakei Group not less than fifty (50) percent of the net profit from operations after tax plus depreciation will be retained or reinvested rather than distributed outside the Ngati Whatua Orakei Group. For the purposes of this sub-clause net profit from operations excludes unrealized profits in property, Subsidiaries or associates; and
- (h) such other prudential requirements as the Trust deems appropriate.

21.3 Restriction on borrowings

In every event the Trustee shall not make any decisions and shall procure that the Board Members of the Subsidiaries shall not make any decisions which would enable the Ngati Whatua Orakei Group to borrow:-

- (a) principal exceeding thirty (30) per centum of the value of the Protected Lands and the other land holdings of the Trust. For the purposes of calculation under this sub-clause the Hapu Lands and the Inalienable Lands shall not be included as part of the “other land holdings of the Trust”;
- (b) at any time after the 1st October 2011, instalment payments of principal and interest per annum exceeding fifty (50) per cent of the earnings before interest and tax (EBIT) derived from the Protected Lands, Inalienable Lands and the other land holdings in the Trust (apart from the Hapu lands). For the purposes of this sub-clause “earnings” do not include earnings or income arising from re-valuation of any of the Assets of the Ngati Whatua Orakei Group. For the purposes of this sub-clause any items described as earnings that have been accrued but not received in cash within twelve (12) months are excluded from calculations of earnings.

22. ANNUAL REPORTS, ACCOUNTS AND AUDITOR

22.1 Preparation of Annual Report

The Trustee must, within six (6) months after the end of each Income Year, cause to be prepared an Annual Report on the affairs of the Ngati Whatua Orakei Group covering the accounting period ending at the end of that Income Year which includes a comparison of performance against Annual Plan, and Consolidated Financial Statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of the Ngati Whatua Orakei Group for that Income Year. The financial statements shall include as a separate item details of any remuneration or fees paid to any Elected Representative or any Elected Representative’s firm including without limitation any such payment to any Elected Representative as a Board Member and details of any premiums paid in respect of the Elected Representative and Board Member indemnity insurance, or the total premium for a global policy in that regard for Elected Representatives, Board Members, officers and employees.

22.2 Audit of financial statements

The Trustee must also ensure that the Consolidated Financial Statements for each Income Year are audited by a chartered accountant in public practice prior to the date for giving notice of the Annual General Meeting of the Trust for the Income Year immediately following the Income Year to which the financial statements relate.

22.3 Appointment of auditor

The auditor shall be appointed by the Trustee prior to the end of the Income Year to which the audit relates and, where possible, the fee of the auditor shall

also be fixed at that time. No Elected Representative or employee of the Ngati Whatua Orakei Group (including any firm of which such a person is a member or employee) may be appointed as the auditor.

23. PLANS AND REPORTS OF SUBSIDIARIES

23.1 Subsidiaries to prepare Plans

The Trust shall ensure that each Subsidiary will:-

- (a) no later than six (6) months following the later of the Settlement Date or the creation of such entity prepare a Five (5) Year Plan, which shall be updated no less than every two (2) years, and which sets out its medium-term vision and the specific steps that it proposes to take during that period to fulfil its objectives;
- (b) no later than two (2) months following the completion of the Five (5) Year Plan referred to in Paragraph (a) of this Clause, and thereafter no later than two (2) months before the commencement of each Income Year, prepare an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its Five (5) Year Plan objectives.
- (c) in addition to any normal reporting requirements, within two (2) calendar months after the completion of the first, second and third quarter of each Income Year, send to the Trustee reports on its operations and financial position together with an unaudited summary of financial results as at the end of that period (such reports to be in such form as the Trustee may require from time to time).

23.2 Trustee approval required

Prior to being implemented all Five (5) Year Plans and Annual Plans must be approved by the Trustee. Such approval shall be given in light of the Trust's overall plans and policies in respect of the Trust's Assets and the Ngati Whatua Orakei Group, and having regard to the specific roles of any Subsidiaries as set out in Clause 18. However, nothing in this Clause shall allow the Trust to give directions beyond approving or not approving any plan or otherwise exercising its powers as shareholder, appointor or beneficiary, with the intention that the Board Members shall otherwise retain full discretion in respect of the implementation of the plans.

23.3 Reports by a Subsidiary that is a company to comply with Companies Act 1993

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

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

but excluding the information required by Section 211(1)(g) of the Companies Act 1993 where the Trustee so decides pursuant to Clause 23.6

23.4 Other Subsidiaries to meet Companies Act standard

All reports by any Subsidiary that is not a company shall be provided to the same standard, including as to form and content as is required under Clause 23.3, as if the Subsidiary were a company.

23.5 Report to include comparison against plans

In addition to the matters set out in Clause 23.3, the Trustee shall procure that all reports by any Subsidiary include a comparison of their performance against both their respective Annual Plans for that Income Year and their medium and longer-term planning objectives (as set out in the Five (5) Year Plans).

23.6 Protection of Sensitive Information

For the avoidance of doubt, nothing in this Clause 23 limits or affects the rights of the Trustee, as shareholder in any Subsidiary that is a company, to agree pursuant to Section 211(3) of the Companies Act 1993 not to include information in the annual report of any Subsidiary where the Trustee considers on reasonable grounds that the information is commercially or otherwise sensitive.

23.7 Previously Approved Plans

Pending approval of any Five (5) Year Plan or Annual Plan by the Trustee, any Subsidiary may continue to implement any Five (5) Year Plan and Annual Plan previously approved by the Trustee.

24. DISCLOSURE OF PLANS, REPORTS AND MINUTES

- 24.1** The Trustee shall hold at its offices and make available for inspection by any Member of Ngati Whatua Orakei during normal business hours on any Business Day in respect of the Trust (but for the avoidance of doubt not of the Subsidiaries):

- (a) the Annual Report for each of the preceding three (3) Income Years;
- (b) the Consolidated Financial Statements for the preceding three (3) Income Years;
- (c) the Annual Plan;
- (d) the Five (5) Year Plan;
- (e) the minute book kept in accordance with Clause 6.14 of all decisions taken and business transacted at every Annual General Meeting and Special General Meeting;
- (f) this Trust Deed and any amendments;
- (g) the constitutional documents of Subsidiaries that are trusts.

Any Member of Ngati Whatua Orakei shall be entitled to obtain copies of this information. However the Trustee shall also be entitled to recover at its discretion all reasonable copying or postage costs (if any).

25. NO DISCLOSURE OF SENSITIVE INFORMATION

- 25.1** For the avoidance of doubt, but subject to the Trustee's reporting obligations in Clauses 22.1, 24.1(a), 24.1(b), 24.1(f), 6.1(a) and 6.1(b), the Trustee may at its sole discretion limit disclosure of any information about the activities or proposed activities of the Trust and the Ngati Whatua Orakei Group which the Trustee considers on reasonable grounds to be commercially or otherwise sensitive.

26. ARCHIVING OF RECORDS

26.1 Records to be held for seven (7) years

All minutes and other records of any proceedings of the Trust and any Subsidiary shall be held by the Trust and those Subsidiaries for a period of seven (7) years.

27. CLASSIFICATION OF LANDS HELD BY TRUST

27.1 Cultural land holdings vested by statute

Hapu land (as that term is defined in the Orakei Act and the Settlement Act) shall be dealt with as provided in the Settlement Act. Cultural Land Holdings described as the Pourewa Creek site in the Settlement Act and the Deed of Settlement shall be held as provided in the Settlement Act.

27.2 Definition of Inalienable Land

The land set out in the Fifth Schedule under the heading “Inalienable Land” shall be protected from alienation as set out in Clause 27.3 below. This is certain land at Orakei which is not within the definition of Papakainga in the Orakei Act/Settlement Act.

27.3 Protection of Inalienable Land

- (a) Subject to (b) to (e) herein the Trustee shall not, and shall procure that no member of the Ngati Whatua Orakei Group does sell, lease, mortgage, charge, or otherwise dispose of any Inalienable Land.
- (b) The Trustee may grant easements in gross or otherwise over any part of the Inalienable Lands and may enter into any arrangements, including by way of disposition with any local authority which is required as a condition of any development of the Inalienable Land.
- (c) The Trustee may exchange any part of the Inalienable Land with neighbouring land so as to effect such boundary adjustments as the Trust considers expedient and the land so obtained shall itself henceforth have the status of Inalienable Land.
- (d) The Trustee may:
 - (i) use the Inalienable Land for housing or other non commercial purposes; or
 - (ii) subdivide the Inalienable Land for housing purposes; or
 - (iii) lease the Inalienable Land for any purposes, including commercial purposes to any person or body whether or not connected with Ngati Whatua Orakei to assist in the generation of income which may be applied for the Trust’s Purposes on the terms it thinks fit.
- (e) However, at any time, no more than one-fifth of the Inalienable Land may be leased by the Trustee under subclause 27.3 (d)(iii).

27.4 Definition of Protected Land

The land set out in the Sixth Schedule under the heading “Protected Land” shall be protected from alienation as set out in Clause 27.5 below. This land is situate at what was the former Auckland Central Railyards.

27.5 Protection of Protected Land

- (a) Subject to (b) and (c) herein, except by way of property exchange, easement, or lease for a fixed term the Trustee may not, and shall

procure that no member of the Ngati Whatua Orakei Group does sell, dispose or mortgage the Protected Land without a Special Resolution of the Adult Members of Ngati Whatua Orakei conducted as provided in the Fourth Schedule herein approving of such sale or disposition or mortgage or determining that any such Protected Land shall no longer be Protected Land;

- (b) The Protected Land may bear mortgage(s) not having in total (a) principal sum(s) exceeding thirty (30) percent of the value of such land as established by valuation by a Registered Valuer;
- (c) Any transaction solely within the Ngati Whatua Group is not covered by the provisions of (a).

27.6 Register of Lands

The Trustee shall maintain a Register of Lands setting out the following details with regard to all land held by or on behalf of the Trust:-

- (a) address (if applicable);
- (b) legal description;
- (c) whether the land is Hapu land as defined in the Orakei Act, cultural land holdings as referred to in Clause 27.1 above Inalienable Land as referred to in Clause 27.2 or Protected Land as defined in Clause 27.4 above.

27.7 Winding-Up or Dissolution

Nothing in this Clause 27 shall prevent the Trustee from gifting or transferring Inalienable Land and Protected Land on the winding-up or dissolution of the Trust.

28. DISPUTE RESOLUTION

28.1 Disputes

Subject to Clause 28.5, in the event that a dispute arises in connection with the tikanga, reo, kawa, karakia and korero of Ngati Whatua Orakei then that dispute shall be referred in the first instance to the Trustee.

28.2 Notice of Dispute

All disputes referred to the Trustee in accordance with Clause 28.1 shall be submitted to the Trustee by notice in writing and the Trustee shall acknowledge receipt in writing within ten (10) working days of the date of receipt of the notice.

28.3 Reference to Ngati Whatua Orakei Taumata

Within thirty (30) days of the receipt by the Trustee of written notice of the dispute in accordance with Clause 28.2 then that shall be referred to the Ngati Whatua Orakei Taumata established pursuant to Clause 4.1.

28.4 Notification of Outcome

Ngati Whatua Orakei Taumata shall give its findings and recommendations, together with the reasons therefore, in writing to both parties. However, those findings and recommendations are not binding upon the Trustee.

28.5 Resolution of membership and/or whakapapa disputes

All matters (including any disputes) as to membership of Ngati Whatua Orakei and whakapapa shall be dealt with as provided in Rule 4 of the First Schedule and not dealt with under this Clause 28.

29. REVIEW OF TRUST DEED

- 29.1** Within five (5) years of the Settlement Date the Trustee shall undertake a review of this Trust Deed and its operation with a view to reporting to the next Annual General Meeting of the Trust after the completion of the review on the effectiveness of the arrangements set out in this Trust Deed. Such report shall include recommendations as to the alterations (if any) that should be made to this Trust Deed.

FIRST SCHEDULE

MEMBERSHIP OF NGATI WHATUA ORAKEI AND NGATI WHATUA ORAKEI REGISTER

1. TRUST TO KEEP REGISTER**1.1 Trust to maintain Register**

The Trustee shall continue and maintain, or cause to be continued and maintained, the Ngati Whatua Orakei Register which is a register of the

Members of Ngati Whatua Orakei. The Ngati Whatua Orakei Register shall commence by taking over and adopting the register of Members of Ngati Whatua Orakei presently continued and maintained by the Ngati Whatua Orakei Maori Trust Board under the provisions of the Orakei Act.

1.2 Register to comply with this Schedule

The Ngati Whatua Orakei Register shall be confirmed and maintained in accordance with the rules and procedures set out in this Schedule.

2. CONTENTS OF REGISTER

2.1 Register to contain Members' details

The Ngati Whatua Orakei Register shall record in it the full names, dates of birth and postal addresses of the Members of Ngati Whatua Orakei and any other details as determined by the Trustee from time to time. If a Member of Ngati Whatua Orakei wishes to be contacted by electronic or digital means, the Ngati Whatua Orakei Register may also record the electronic and/or digital address of that Member of Ngati Whatua Orakei.

2.2 Member Registration Number

The Trustee shall allocate a member identification number to each Adult Member of Ngati Whatua Orakei on the Register. The Trustee will immediately after allocation, notify the relevant Adult Member of Ngati Whatua Orakei of his or her beneficiary identification number.

3. APPLICATIONS FOR REGISTRATION

3.1 Form of applications

All applications for registration as a Member of Ngati Whatua Orakei must be made in writing to the Trustee and signed by the applicant or if the applicant is under the age of eighteen (18) years by their parent, guardian or grandparent. The application must contain:

- (a) the full name, date of birth and postal address of the applicant;
- (b) such evidence as the Trustee may from time to time require as to that applicant's status as a Member of Ngati Whatua Orakei including details of the whakapapa (genealogical) connection of the applicant to Ngati Whatua Orakei;
- (c) such further information as the Trustee may specify in any application form they authorize.

4. DECISIONS AS TO MEMBERSHIP

4.1 Whakapapa Committee to be established

The Trustee shall establish a Whakapapa Committee to make decisions on all applications made pursuant to Rule 3.1 of this Schedule by any person for the recording in the Ngati Whatua Orakei Register of that person's membership of Ngati Whatua Orakei.

4.2 Composition of Whakapapa Committee

The Whakapapa Committee shall comprise three (3) Adult Members of Ngati Whatua Orakei, appointed and removed by the Trustee from time to time, with the expertise and knowledge of Ngati Whatua Orakei whakapapa necessary to make determinations regarding membership applications. Elected Representatives with the required expertise and knowledge of Ngati Whatua Orakei whakapapa may be appointed to the Whakapapa Committee.

4.3 Consideration of applications

All applications for membership pursuant to Rule 3.1 of this Schedule together with any supporting evidence shall be forwarded by the Trustee to the Whakapapa Committee.

4.4 Decisions to be made on applications

Upon receipt of an application for membership in accordance with Rule 3.1 of this Schedule the Whakapapa Committee shall consider the application and shall make a decision as to whether the application should be accepted as to the applicant's status as a Member of Ngati Whatua Orakei.

4.5 Successful applications to be notified and registered

In the event that the Whakapapa Committee decides that the application should be accepted then such decision shall be notified in writing to the Trustee, which shall in turn notify the applicant and enter the applicant's name and other relevant details in the appropriate part of the Ngati Whatua Orakei Register.

4.6 Notification of unsuccessful applicants

In the event that the Whakapapa Committee decides to decline the application then such decision shall be conveyed in writing to the Trustee together with the reasons for the decision. The Trustee shall then notify the applicant in writing of the decision together with the reasons for the decision.

4.7 Unsuccessful applicant may re-apply

Any applicant whose application has been declined may at any time seek to have his or her application reconsidered by the Whakapapa Committee

provided that such application for reconsideration may only be made on the basis of new evidence (being evidence that was not submitted or considered as part of the initial or, if more than one, any previous application) as to the applicant's status as a Member of Ngati Whatua Orakei.

4.8 Unsuccessful applicant may appeal to Disputes Committee

- (a) An unsuccessful applicant may appeal to a Disputes Committee. A Disputes Committee shall comprise three (3) members who shall be appointed by the Trustee as follows:
 - i. Two (2) Adult Members of Ngati Whatua Orakei appointed for their skills and expertise in dealing with the issues that are the subject of the relevant dispute, provided that such members cannot also be Elected Representatives or employees of the Trust.
 - ii. One independent member (being a person who is not a Member of Ngati Whatua Orakei) nominated by the President from time to time of the New Zealand Law Society or his or her nominee, such member being a barrister or solicitor with seven (7) or more years experience to act as the chair of the Dispute Committee; and
- (b) The role of a Disputes Committee shall be to facilitate and make findings and decision on the dispute referred to it.
- (c) In dealing with any dispute a Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the manner in which a dispute before it should be dealt with. The findings and decisions of a Disputes Committee shall be final and binding on the parties.

5. MAINTENANCE OF REGISTER

5.1 Trustee to establish policies

The Trustee shall take such steps and institute such policies as are necessary to ensure that the Ngati Whatua Orakei Register is maintained in a condition that is as up-to-date, accurate and complete as possible in recording the Members of Ngati Whatua Orakei, including taking steps to ensure that, upon the receipt of appropriate evidence, the names of any deceased Members of Ngati Whatua Orakei are removed from the Register.

5.2 Assistance in identifying membership

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

5.3 Responsibility of Members of Ngati Whatua Orakei

Notwithstanding Rules 5.1 and 5.2 of this Schedule it shall be the responsibility of each person who is a Member of Ngati Whatua Orakei (or in the case of those persons under eighteen (18) years, the parent or guardian of that person) to ensure that his or her name is included in the Ngati Whatua Orakei Register and that his or her full postal address for the time being is provided and updated.

5.4 Consequences of registration

Registration of any person in the Ngati Whatua Orakei Register as a Member of Ngati Whatua Orakei shall be conclusive evidence of that person's status as a Member of Ngati Whatua Orakei.

6. NGATI WHATUA ORAKEI REGISTER

6.1 Information from roll of Members of Ngati Whatua Orakei

The Trustee shall include on the Ngati Whatua Orakei Register the full names, dates of birth and postal addresses of every Member of Ngati Whatua Orakei whose name and other details are, immediately before the Settlement Date, on the roll of Members of Ngati Whatua Orakei maintained by the Ngati Whatua Orakei Maori Trust Board pursuant to Section 11 of the Orakei Act, and will describe on that register whether those members are members by virtue of their whakapapa, Whangai or legal adoption. Any Member of Ngati Whatua Orakei who disagrees with their description as Whangai or legally adopted may appeal the matter to a Disputes Committee constituted and having all of the powers set out in Rule 4.8. No children who are the issue of Whangai can apply to become registered as a Member of Ngati Whatua Orakei following the Settlement Date unless they descend from the common ancestor Tuperiri.

6.2 Register available for inspection

Subject to Rule 3.1 of this Schedule and any policies that may be adopted from time to time by the Trustee for the protection of private information, the Trustee shall ensure that the list of all names and dates of birth from the Ngati Whatua Orakei Register is available to be inspected during business hours by all Adult Members of Ngati Whatua Orakei whose names appear on the Register at a place designated from time to time by the Trustee.

SECOND SCHEDULE

ELECTIONS OF ELECTED REPRESENTATIVES

1. PROCEDURE

1.1 This Schedule to apply

The Elected Representatives shall be elected to office in accordance with the rules and procedures set out in this Schedule.

1.2 Deficiency in election

Notwithstanding anything contrary in this Trust Deed, no decision of the Trustee shall be invalid by reason only that there was a deficiency in the election process as set out in this Schedule.

2. ELIGIBILITY FOR APPOINTMENT

2.1 Elected Representatives to be registered as an Adult Member of Ngati Whatua Orakei

To be elected, an Elected Representative must:-

- (a) as at the closing date for nominations in the relevant election, be recorded in the Ngati Whatua Orakei Register as an Adult Member of Ngati Whatua Orakei;
- (b) fulfil the eligibility requirements for being an officer of a charitable entity under the Charities Act 2005;
- (c) not have been removed from the office of Elected Representative in accordance with Clauses 13.3 and 13.5 within the last three (3) years;
- (d) have prior to the closing date for nominations in the relevant election first completed an introduction course of not less than two (2) days' duration as approved by the Trustee. The Trustee may nominate existing courses offered by the Institute of Directors, or other training providers, to form all or part of the introduction course. The fees of such a course will be paid by the Trust but the person attending will

not be paid for their attendance. The introduction course is for the purpose of enhancing the cultural, commercial and professional skills needed for the proper operation of the Trust.

2.2 Elected Representatives not to be Chief Executive Officer, or other Employee

An Elected Representative shall not hold the position of Chief Executive Officer nor shall an Elected Representative be any other employee of the Ngati Whatua Orakei Group

3. EXISTING ELECTED REPRESENTATIVES TO HOLD OFFICE

- 3.1** Until elections of Elected Representatives are held in accordance with this Schedule the initial Elected Representatives of the Trust shall be those persons holding office as members of the Board of the Ngati Whatua Orakei Maori Trust Board in accordance with the Orakei Act and Maori Trust Boards Act 1955 immediately before the Trust is established.

4. TERM OF OFFICE

4.1 Term of office

The Elected Representatives from time to time shall hold office until such time as their position comes up for re-election in accordance with this rule provided that no Elected Representative shall hold office for longer than four (4) years without facing re-election, other than the initial Elected Representatives as provided below.

4.2 Retirement and rotation of initial Elected Representatives

The initial Elected Representatives shall retire from office with elections having been held for their respective positions as Elected Representative as follows:-

- (a) As at the date of the Annual General Meeting of the Trust in the first Income Year following the Settlement Date, six (6) of the initial Elected Representatives shall retire and be replaced by five (5) Elected Representatives;
- (b) As at the date of the Annual General Meeting of the Trust in the third Income Year following the Settlement Date, a further five (5) of the initial Elected Representatives, excluding those Elected Representatives elected in place of the Elected Representatives who retired in accordance with Paragraph (a) above, shall retire and be replaced by four (4) Elected Representatives;

4.3 Order of retirement of initial Elected Representatives

The order of retirement of the initial Elected Representatives under Rule 4.2 of this Schedule shall be determined by agreement failing which the determination shall be made by lot.

4.4 Term following retirement of initial Elected Representatives

Following the retirement of the initial Elected Representatives in accordance with Rule 4.2 of this Schedule, each Elected Representative shall hold office until the conclusion of the Annual General Meeting of the Trust in the fourth Income Year following his or her election.

4.5 Continuation of Elected Representative where no replacement appointed

Notwithstanding Rule 4.4 of this Schedule, but subject to Rule 15 of this Schedule, if an election is not completed within the timeframe prescribed for such elections (including because of a review of the election of an Elected Representative under Rule 13 of this Schedule), then the retiring Elected Representative shall continue to hold office until the election is completed and he or she has either been re-elected or a replacement Elected Representative elected. This shall not affect the term of the Elected Representative that is eventually elected, which term shall still expire on at the conclusion of the Annual General Meeting of the Trust in the fourth Income Year following the Annual General Meeting at which the Elected Representative would have been appointed had the election been held within the prescribed timeframe.

4.6 Eligibility of retiring Elected Representatives

Retiring Elected Representatives shall be eligible for reappointment.

4.7 Casual vacancies

Should any casual vacancy arise as a result of an Elected Representative ceasing to hold office prior to the expiry of the Elected Representative's term of office then that vacancy shall be filled by the next highest polled nominee who shall be appointed for the balance of the term of the Elected Representative that nominee replaces. The Trustee shall have the discretion not to make such appointment if the casual vacancy occurs less than three (3) months before the original Elected Representative's term was due to expire. If there is more than one next highest polled nominee by virtue of a tied vote, then the Trustee shall select one of them by lot and appoint that successful person to the casual vacancy.

4.8 Term of casual appointments

In the case of an Elected Representative elected pursuant to Rule 4.7 of this Schedule, the Elected Representative thereby appointed shall hold office for

the balance of the term of office of the Elected Representative that he or she has replaced.

5. TIMING OF ELECTIONS

- 5.1** The elections for Elected Representatives in any given Income Year must, except in the case of elections to fill casual vacancies under Rule 4.7 of this Schedule or to the extent that any review under Rule 13 of this Schedule has been sought in respect of an election, be concluded by the time of the Annual General Meeting of the Trust in that Income Year.

6. MAKING OF NOMINATIONS

6.1 Calling for nominations

The Trustee shall give notice calling for nominations for those Elected Representative positions for which elections are required at least three (3) months before the Annual General Meeting of the Trust for that Income Year, and in any event in sufficient time for the election to be concluded in accordance with Rule 5 of this Schedule. Such notice shall specify the method of making nominations, and the latest date by which nominations must be made and lodged with the Trustee or such other person as the notice directs.

6.2 Timing for nominations

All nominations must be lodged with the Trustee no later than twenty-one (21) days following the date upon which the notice calling for nominations is first given.

6.3 Form of notice

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

- (a) by post to each Adult Member of Ngati Whatua Orakei entitled to vote at the election of Elected Representatives; and
- (b) by newspaper advertisement published on at least two (2) separate days and inserted prominently in any major metropolitan newspapers and/or any provincial newspaper circulating in regions where the Trustee considers that a significant number of Members of Ngati Whatua Orakei reside; and
- (c) by any other means as the Trustee may determine.

6.4 Inclusion of invitation to register

Any such notice shall also invite applications from qualified persons for inclusion of their names in the Ngati Whatua Orakei Register, and shall set out

the date upon which applications to register must be received in order that the applicant is entitled to vote.

6.5 Nomination to be in writing

The nomination of a candidate for election as an Elected Representative shall be in writing signed by not less than five (5) Adult Members of Ngati Whatua Orakei. The nomination shall also include a photograph of the candidate as well as a statement as to eligibility and candidacy to be an Elected Representative.

6.6 Consent of nominee

The consent of each candidate to his or her nomination shall be endorsed on the nomination paper, provided that a candidate may at any time, by notice to the Trustee, withdraw his or her nomination.

7. HOLDING OF ELECTIONS

7.1 Mode of Voting at Elections

Subject to Rule 7.3 of this Schedule, voting at all elections shall be by way of secret ballot. Voting forms must be delivered to the Chief Returning Officer by post.

7.2 No election where one nominee

In the event that only one (1) nomination is received in respect of the appointment of an Elected Representative then no election shall be necessary and the person nominated shall be deemed to have been duly appointed.

7.3 Eligibility to vote

Those eligible to vote on the election of an Elected Representative are:-

- (a) All Adult Members of Ngati Whatua Orakei recorded as registered on the Ngati Whatua Orakei Register; and
- (b) Subject to Rule 10.4(b) of this Schedule any other Member of Ngati Whatua Orakei who is eighteen (18) years of age or over and has, on or before the closing date for that election, provided to the Chief Returning Officer an application for registration as a Member of Ngati Whatua Orakei which complies with Rule 3.1 of the First Schedule accompanied by evidence of that Member's eligibility to be registered as a Member of Ngati Whatua Orakei

Each eligible Member of Ngati Whatua Orakei may only cast one (1) vote in an election

7.4 Date by which Members to be registered

The date by which an Adult Member of Ngati Whatua Orakei must be recorded on the Ngati Whatua Orakei Register so as to be eligible to vote in the election of an Elected Representative shall be the date upon which nominations for appointment as an Elected Representative closes.

8. NOTICE OF ELECTIONS

8.1 Notice to be given

Immediately after the closing date for nominations, the Trustee shall, where an election is required fix a closing date for the election (being the last day upon which a vote may be validly cast in the election) and votes shall be counted within a week of the closing date.

8.2 Period of Notice

The Trustee shall give not less than twenty-eight (28) days' notice of the closing date for the elections and the method by which votes may be cast as set out in Rule 7.1 of this Schedule.

8.3 Method of Giving Notice

Notice under Rule 8.2 of this Schedule shall be given by:-

- (a) posting notice to each Adult Member of Ngati Whatua Orakei and to any other Member of Ngati Whatua Orakei who is eighteen (18) years of age or over who has made a written request for a notice;
- (b) inserting a prominent advertisement on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members of Ngati Whatua Orakei reside.

8.4 General Content of Notices

Every notice given in accordance with Rule 8.3(a) and (b) of this Schedule shall contain:-

- (a) a list of the candidates for election as Elected Representatives;
- (b) the method by which votes may be cast as set out in Rule 7.1 of this Schedule.

8.5 Additional Content of Postal Notice

Each notice given in accordance with Rule 8.3(a) of this Schedule shall also contain:-

- (a) a voting form that complies with Rule 9.1 of this Schedule;
- (b) details of the procedures to be followed in making a vote by post, including the date by which the voting form must be received by the Chief Returning Officer; and
- (c) a statement that voting forms must be posted.

8.6 Additional Information in Other Notices

Each notice given in accordance with Rule 8.3 of this Schedule shall also give details about how voting forms may be obtained.

9. POSTAL VOTING

9.1 Other details to accompany vote

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

9.2 Timing of Postal Votes

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

10. APPOINTMENT OF CHIEF RETURNING OFFICER

10.1 Appointment of Chief Returning Officer

For the purposes of elections the Trustee shall appoint as required a Chief Returning Officer (who shall not be an Elected Representative or an employee of the Ngati Whatua Orakei Group) for which the election is being held, and who shall be a person of standing within the community. The Chief Returning Officer shall be responsible for co-ordinating Elected Representative elections and may appoint such other persons as he or she considers necessary to assist with the task provided that such persons shall also not be Elected Representatives or employees of the Ngati Whatua Orakei Group.

10.2 Chief Returning Officer to receive voting forms

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

10.3 Only one vote to be cast

The Chief Returning Officer shall:-

- (a) Ensure that appropriate measures are in place to ensure that only one (1) vote is cast by each Adult Member of Ngati Whatua Orakei who is eligible to vote and votes in the relevant election; and
- (b) Where any Provisional Vote is cast pursuant to Rule 7.4(b) of this Schedule, before counting that Provisional Vote consult with the Whakapapa Committee to ensure that the person casting the vote is eligible to be registered as an Adult Member of Ngati Whatua Orakei.

10.4 Recording of votes

A record shall be kept for not less than twelve (12) months by the Chief Returning Officer of all votes received and to which candidate the votes relate.

11. COUNTING OF VOTES

11.1 All votes to be counted

Upon the expiry of the date for the receipt of postal votes, the Chief Returning Officer shall record and count all votes validly cast. Each candidate may nominate a scrutineer who may be present at the counting.

11.2 Certification and notifying election result

Once the votes have been counted and the result of the election determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the election and communicate the result of the election to the Trustee. The Trustee shall thereafter advise the candidates of the result and give notice of the same at the next Annual General Meeting of the Trust in accordance with Clause 6.1(d).

11.3 Provisional Votes

Where, in respect of any election, one or more Provisional Votes has been cast:-

- (a) If the validity or otherwise of the Provisional Votes may affect the outcome of the election the Chief Returning Officer must not certify the result of the election until the validity of the Provisional Votes has been confirmed pursuant to Rule 10.3(b) of this Schedule and any valid Provisional Vote has been counted; or

- (b) If the validity or otherwise of the Provisional Votes will not affect the result of the election the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional Votes has not been confirmed pursuant to Rule 10.3(b) of this Schedule and the Provisional Votes have not been counted;
- (c) The Provisional Votes shall be counted so that the votes for each candidate is recorded. Among other things this is necessary for the filling of any subsequent casual vacancies in Elected Representatives.

12. RETENTION OF ELECTION RECORDS

12.1 Compiling and sealing voting records

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

12.2 Retention and disposal of packets

Subject to Rule 14.1(b) of this Schedule the sealed packets from the Chief Returning Officer shall be safely kept unopened by the Trustee for a period of nine (9) months from the closing date for making votes in the election to which the packet relates. At the expiry of that nine (9) months period the packets shall be destroyed unopened.

13. REVIEW OF ELECTION RESULTS

13.1 Candidates may seek review

Any candidate may, within fourteen (14) days after the certification of the election result and the giving of notice by the Trustee in respect of that election, seek a review of that election.

13.2 Appointment of Electoral Review Officer

For the purposes of carrying out a review in respect of any election the Trust shall ensure that an Electoral Review Officer is appointed. The Election Review Officer shall be the person nominated to that role by the President for the time being of the New Zealand Law Society.

13.3 Electoral Review Officer to conduct reviews

All reviews shall be carried out by the Electoral Review Officer.

13.4 Form of request for review

All applications for a review shall be submitted to the Trustee and:-

- (a) shall be in writing;
- (b) shall set out the grounds for the review, which grounds shall be set out with sufficient particularity to enable the Electoral Review Officer to ascertain precisely the basis upon which the review is being sought; and
- (c) shall be accompanied by any evidence that the applicant for review has to substantiate the grounds given in the application.

13.5 Service of application on other candidates

The application for review and any accompanying evidence shall also be served upon all other candidates in the election to which the review relates, either at the same time, or as close thereto as is possible, as the review application is lodged with the Trustee.

13.6 Costs

Upon making an application for review the applicant shall also lodge with the Trustee the sum of ONE THOUSAND DOLLARS (\$1,000.00) in lieu of the costs of undertaking the review. That sum shall be held by the Trustee pending the outcome of the review application. If the application is successful then the \$1,000.00 shall be refunded to the applicant, otherwise it shall be used to off-set the costs of the review.

14. CONDUCT OF REVIEW

14.1 Notification of Electoral Review Officer

Upon the receipt of an application for review the Trustee shall notify the Electoral Review Officer and provide to him or her:-

- (a) a copy of the application and any accompanying evidence; and
- (b) the sealed packet of voting forms and other voting documents received from the Chief Returning Officer for that election.

14.2 Electoral Review Officer to exercise wide powers

Subject to compliance by the Electoral Review Officer with the rules of natural justice the Electoral Review Officer shall have the power to inquire into and decide upon any matter relating to a review in such manner as he or she thinks fit and may in particular seek such further evidence or reports as he

or she deems necessary including any reports or evidence from the Chief Returning Officer for the relevant election.

14.3 Electoral Review Officer to be guided by substantial merits

In reaching his or her conclusion on any review the Electoral Review Officer shall be guided by the substantial merits of the application without regard to legal forms or technicalities, including any technical defect in complying with the requirements of this Trust Deed, the intention being that no election shall be declared invalid by reason of such technical defect if the Electoral Review Officer is satisfied that the election was so conducted as to be substantially in compliance with the requirements of this Trust Deed and that such defect did not materially affect the result of the election.

14.4 Certification of result of review

At the conclusion of the Electoral Review Officer's consideration of the review, he or she shall determine whether the successful candidate, or any other candidate, was duly elected, or whether the election was void and should be conducted again, and shall forthwith certify his or her decision with reasons to the Trustee. The Trustee shall then give notice of the result of the review and advise the candidates of the outcome.

14.5 Decision to be final

All decisions of the Electoral Review Officer shall be final and there shall be no other rights of review or appeal granted by the Trustee.

15. TERMINATION OF OFFICE OF ELECTED REPRESENTATIVES

15.1 Notwithstanding the forgoing Rules of this Schedule, an Elected Representative shall cease to hold office if he or she:-

- (a) at any time ceases to fulfil the eligibility requirements for being an officer of a charitable entity under the Charities Act 2005;
- (b) retires from office by giving written notice to the Trust;
- (c) completes his or her term of office and is not re-elected;
- (d) refuses to act;
- (e) is absent without leave from three (3) consecutive ordinary meetings of the Elected Representatives (including Directors and Shareholders' meetings of the Trustee without good reason or without the permission of the Chairperson);
- (f) becomes physically or mentally incapacitated to the extent that he or she is unable to perform the duties of an Elected Representative;

- (g) becomes bankrupt or makes any composition or arrangements with his or her creditors;
- (h) is convicted of an indictable offence; or
- (i) is removed from the office of Elected Representative in accordance with Clause 13.3.

16. RECORD OF CHANGES OF ELECTED REPRESENTATIVES

- 16.1** Upon the notification of every appointment, retirement, re-appointment or termination of office of any Elected Representative the Trustee will ensure that an entry is made in the minute book of the Trust to that effect.

THIRD SCHEDULE

PROCEEDINGS OF ELECTED REPRESENTATIVES

1. ELECTED REPRESENTATIVES TO REGULATE MEETINGS

- 1.1** The Elected Representatives shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Any five (5) Elected Representatives may at any time by notice in writing to the Trustee summon a meeting of the Elected Representatives and the Trustee shall take such steps as are necessary to convene such meeting. Unless otherwise specified in that notice, while the Trustee remains Ngati Whatua Orakei Trustee Limited, each such meeting shall constitute a meeting of the directors and a meeting of the shareholders of the Trustee

2. NOTICE OF MEETING

2.1 Notice of Elected Representatives

Written notice of every meeting shall be either hand-delivered, posted or sent by facsimile or by electronic form to each Elected Representative at least seven (7) days before the date of the meeting. However, it shall not be necessary to give notice of a meeting of Elected Representatives to any Elected Representatives for the time being absent from New Zealand unless

that Elected Representative has provided details of where he or she may be contacted while overseas. No notice shall be required for adjourned meetings except to those Elected Representatives who were not present when the meeting was adjourned.

2.2 Content of notice

Every notice of a meeting shall state the place, day and time of the meeting, and the subject-matter of the meeting and while the Trustee remains a limited liability company whether the meeting is of Directors or Shareholders or both.

2.3 Waiver of notice

The requirement for notice of a meeting may be waived if all the Elected Representatives who are at the time entitled to receive notice of the meeting give their written consent to such a waiver.

2.4 Meeting limited to notified business

No business shall be transacted at any meeting of Elected Representatives other than the business expressly referred to in the notice calling the meeting.

2.5 Deficiency of notice

Subject to Rule 2.4 of this Schedule, no deficiency or irregularity in a notice of any meeting of Elected Representatives shall invalidate such meeting or the proceedings at such meeting.

3. QUORUM

3.1 Five (5) Elected Representatives shall constitute a quorum at meetings of the Elected Representatives and, while the Trustee remains a limited liability company, shall be a quorum for meetings of Directors and/or Shareholders of the Trustee.

4. CHAIRPERSON AND DEPUTY CHAIRPERSON

4.1 Elected Representatives to elect

At the first meeting of the Elected Representatives following an election the Elected Representatives shall appoint one of their number to be Chairperson and (at their discretion) one to be Deputy Chairperson. The Chairperson and the Deputy Chairperson must have served at least one (1) term of three (3) years as an Elected Representative. While the Trustee remains a limited liability company the Chairperson and Deputy Chairperson shall be Chairperson and Deputy Chairperson respectively of the Trustee.

4.2 Voting on election

Where there is more than one candidate for Chairperson (or as the case may be Deputy Chairperson) then a vote will be taken and the person receiving the most votes in favour of his or her appointment will become Chairperson (or Deputy Chairperson). If a tie, the Chairperson shall then be chosen by lot between the tied candidates.

4.3 Termination of office

The Chairperson (or Deputy Chairperson) will cease to hold office in the event that he or she resigns from that office, ceases to be an Elected Representative or is removed from office by the Elected Representatives passing a resolution of no confidence in him or her. In the event that the Chairperson (or Deputy Chairperson) ceases to hold that office then a further election shall be held for the position. Otherwise the term of such office shall be until the first meeting of the Elected Representatives following the next election of Elected Representatives.

5. PROCEEDINGS AT MEETINGS

5.1 Decisions by majority vote

Unless stated otherwise in this Trust Deed, questions arising at any meeting of Elected Representatives shall be decided by a majority of votes. In the case of an equality of votes, the Chairperson shall have a second or casting vote.

5.2 Chairperson

The Chairperson shall take the chair at all the meetings of the Elected Representatives and while the Trustee is a limited liability company all Meetings of directors and shareholders of the Trustee. If the Chairperson is not present then the Deputy Chairperson, if there is one, shall take the Chair. If there is no Deputy Chairperson or the Deputy Chairperson is also not present then the Elected Representatives present shall elect one (1) of their number to be Chairperson of the meeting.

5.3 Vacancies

The Elected Representatives may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the quorum fixed by these rules, the continuing Elected Representatives may act only for the purpose of advising of the vacancy and taking the steps necessary to procure the election of new Elected Representatives to fill any vacancy or vacancies, and for no other purpose

5.4 Defects of appointment

All acts done by any meeting of the Elected Representatives or of any committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such Elected Representatives or person

co-opted to any committee, or that they were disqualified, be valid as if every such person had been duly appointed and was qualified to act.

5.5 Unruly meetings

If any meetings of Elected Representatives becomes so unruly or disorderly that in the opinion of the Chairperson of the meeting, the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the Chairperson becomes unduly protracted the Chairperson may put a motion to adjourn the meeting and ask for a vote to be taken of the Elected Representatives to be conducted. If the majority of Elected Representatives present pass a motion to adjourn the meeting then the meeting shall be adjourned and the Chairperson may direct that any uncompleted item of business of which notice was given and shall be adjourned to another time, date and place (no later than twenty-one (21) days following the adjourned meeting) for all incomplete and uncompleted business to be addressed by the Elected Representatives.

6. DELEGATION OF ELECTED REPRESENTATIVES

6.1 Elected Representatives may delegate

The Elected Representatives may from time to time as they think expedient for carrying out any of the Trusts Purposes delegate any one or more of their roles under this Trust Deed to a committee, Elected Representative, employee or other person. However, the committee, Elected Representative, employee or other person who has had a role delegated to it must refer any final decision, determination, or recommendation to the Elected Representatives for final determination before implementing that decision, determination or recommendation.

6.2 Elected Representatives to remain responsible

Notwithstanding the delegation by the Elected Representatives of any of their powers under Rule 6.1 of this Schedule, the Elected Representatives shall remain responsible for the exercise of that power by the delegate as if the Elected Representatives had exercised the power themselves, unless the Elected Representatives:-

- (a) believed on reasonable grounds when making the delegation that the delegate would exercise the power in accordance with the provisions of this Trust Deed and the duties owed by the Elected Representatives in the exercise of their office under this Trust Deed; and
- (b) have monitored, by means of reasonable methods that they have followed, the exercise of the power by the delegate.

6.3 Regulation of procedure by committees

Subject to these rules and the provisions of this Trust Deed, any committee established by the Elected Representatives may co-opt any person to be a member of that committee and otherwise regulate its procedure as it sees fit provided that the committee must notify the Elected Representative of all persons co-opted to the committee.

7. RESOLUTIONS

- 7.1** A written resolution signed by all the Elected Representatives or by all the members of a committee shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Elected Representatives or of that committee (as the case may be). Such a resolution may comprise several duplicated documents, each signed by one or more of the Elected Representatives or members of the committee (as the case may be).

8. MINUTES

8.1 Minutes to be kept

The Elected Representatives shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Elected Representatives and while the Trustee remains a limited liability company at every meeting of Directors and Shareholders.

8.2 Minutes to be evidence of proceedings

Any minute of the proceedings at a meeting which is purported to be signed by the chairperson of that meeting which are approved and confirmed at the next meeting of the Elected Representatives, shall be evidence of those proceedings.

8.3 Minutes to be evidence of proper conduct

Where minutes of the proceedings at a meeting of the Elected Representatives have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

9. TELECONFERENCE MEETINGS

- 9.1** For the purpose of these Rules a teleconference meeting (which includes any analogous more advanced technology) between a number of Elected Representatives who constitute a quorum shall be deemed to constitute a meeting of the Elected Representatives. All the provisions in these Rules relating to meetings shall apply to teleconference meetings so long as the following conditions are met:

- (a) all of the Elected Representatives (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a teleconference meeting and to be linked for the purposes of such a meeting. Notice of a teleconference meeting may be given on the telephone;
- (b) throughout the teleconference meeting each participant must be able to hear each of the other participants taking part;
- (c) at the beginning of the teleconference meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (d) a participant may not leave the teleconference meeting by disconnecting his or her telephone or other means of communication without first obtaining the Chairperson's express consent. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the teleconference meeting unless he or she leaves the meeting with the Chairperson's express consent;
- (e) a minute of the proceedings at the teleconference meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the Chairperson of that meeting pursuant to Clause 8.2.

10. CUSTODY AND USE OF COMMON SEAL

10.1 Use and custody of seal

The Trustee shall have custody of the common seal, and from time to time by resolution, may adopt any seal it thinks fit. The common seal must not be affixed to any document unless the Trustee by Directors resolution authorise its use on that document. When a document is to be sealed on the authority of the Trustee the seal must be affixed to the document in the presence of three (3) Elected Representatives, one of whom must be either the Chairperson or Deputy Chairperson, who must sign the document.

10.2 Authority for transaction sufficient

No document entered into under the common seal shall be invalid only by virtue of the Trustee not giving its prior authority to affix the seal as long as the affixing of the seal was made pursuant to a resolution of the Trustee authorising the transaction or transactions concerned or as long as the affixing of the seal is subsequently ratified by the Trustee.

10.3 When Trustee is a company

When the Trustee is a limited liability company incorporated pursuant to the Companies Act 1993, the Trustee may execute documents pursuant to the provisions of the Constitution of the Trustee or as otherwise permitted by the Companies Act 1993, rather than using the provisions set out in subclauses 10.1 and 10.2 above.

11. FORMS OF CONTRACTS

11.1 Contracts by deed

Any contract which, if made between private persons, must be by deed, shall, if made by the Trustee, be in writing under the seal of the Trustee.

11.2 When Trustee is a company

When the Trustee is a limited liability company incorporated pursuant to the Companies Act 1993, the Trustee may execute documents pursuant to the provisions of the Constitution of the Trustee or as otherwise permitted by the Companies Act 1993, rather than using the provisions set out in subclause 11.1 above.

FOURTH SCHEDULE

PROCEDURE FOR PASSING SPECIAL RESOLUTION

1. THIS SCHEDULE TO APPLY

1.1 A Special Resolution to:

- (a) approve a Major Transaction in accordance with Clause 2.5; or
- (b) approve a re-settlement of assets under Clause 2.6(b); or
- (c) amend this Trust Deed in accordance with Clause 16; or
- (d) wind up the Trust in accordance with Clause 17; or
- (e) make determinations about Protected Land in accordance with Clause 27,

shall only be passed as set out in this Schedule.

2. POSTAL VOTING AND SPECIAL GENERAL MEETING

- 2.1** Voting on a Special Resolution shall be by ballot, either by placing voting forms in a ballot box in person at the Special General Meeting held for the purpose of considering the Special Resolution, or by post.

3. VOTING

- 3.1** In order for a Special Resolution to be passed it must receive the approval of not less than seventy-five (75) percent of those Adult Members of Ngati Whatua Orakei who validly cast a vote in favour of the proposed Special Resolution in accordance with this Schedule.

4. SPECIAL GENERAL MEETING REQUIRED

- 4.1** A Special General Meeting of the Trust must be called for the purposes of considering one or more Special Resolutions. No other business may be transacted at such Special General Meeting.

5. NOTICE

5.1 Notice of special general meeting

The Trustee shall give not less than twenty-eight (28) days' notice of the date, time and place of the Special General Meeting called for the purposes of considering any Special Resolution (to the intent that notice of the postal vote and the Special General Meeting shall be given in the same notice).

5.2 Method of giving notice

Notice of a Special General Meeting called for the purposes of considering a Special Resolution shall be:

- (a) in writing and posted to all Adult Members of Ngati Whatua Orakei at the last address shown for each such Adult Member of Ngati Whatua Orakei on the Ngati Whatua Orakei Register and to any other Member of Ngati Whatua Orakei eighteen (18) years and over who has made a written request for a notice;
- (b) Advertised prominently in any major metropolitan newspaper circulating in New Zealand and in any provincial newspapers circulating in regions where the Trust consider that a significant number of Members of Ngati Whatua Orakei reside;

and may be advertised by electronic or digital means including on the Trust's website.

5.3 Content of notice to members

All notices given in accordance with Rule 5.2(a) of this Schedule shall contain:

- (a) the date, time and place of the special general meeting called for the purposes of considering the Special Resolution;
- (b) details of the proposed Special Resolution;
- (c) details of the reasons for the proposed Special Resolutions and the effect that the Special Resolution will have;
- (d) details of the procedure to be followed in making a postal vote, including the date postal voting closes;
- (e) a statement that postal votes may either be delivered to the Chief Returning Officer at the Special General Meeting, or posted; and
- (f) a voting form.

5.4 Content of advertisement

All advertisements published in accordance with Rule 5.2(b) of this Schedule shall contain the matters referred to in Rule 5.3(a) and (b) of this Schedule together with details of how and where any further information can be obtained.

6. POSTAL VOTING

6.1 Other details to accompany vote

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

6.2 Timing of Postal Votes

Votes must be cast no later than the closing date for voting. Votes otherwise validly cast are valid and able to be counted if they are received by the Chief Returning Officer no later than 3 days after the closing date, but only if the envelope containing the voting form is date stamped on or before the date for voting closes.

7. APPOINTMENT OF CHIEF RETURNING OFFICER

7.1 Appointment of Chief Returning Officer

For the purposes of the Special Resolution, the Trust shall appoint a Chief Returning Officer who shall not be an Elected Representative or employee of the Ngati Whatua Orakei Group, and who shall be a person of standing within the community.

7.2 Chief Returning Officer to receive voting forms

Voting forms must be addressed to the Chief Returning Officer.

7.3 Eligibility to vote

Those eligible to vote on a Special Resolution are:

- (a) Those Adult Members of Ngati Whatua Orakei identified on the Ngati Whatua Orakei Register on the closing date for voting; and
- (b) Subject to Rule 7.5(b) of this Schedule, any other Member of Ngati Whatua Orakei who is eighteen (18) years and over and has on or before the closing date for voting, provided to the Chief Returning Officer an application for registration as a Member of Ngati Whatua Orakei which complies with Rule 3.1 of the First Schedule accompanied by evidence of that Member's eligibility to be included in the Ngati Whatua Orakei Register.

7.4 Only one vote to be cast

The Chief Returning Officer shall:

- (a) Ensure that appropriate measures are in place to ensure that only one vote is cast by each Adult Member of Ngati Whatua Orakei who is eligible to vote on the Special Resolution; and
- (b) Where any Provisional Vote is cast pursuant to Rule 7.3(b) of this Schedule, before counting that Provisional Vote consult with the Whakapapa Committee to ensure that the person casting the vote is eligible to be registered on the Ngati Whatua Orakei Register.

7.5 Recording of votes

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

8. COUNTING OF VOTES

8.1 All votes to be counted

Upon the expiry of the date for the receipt of votes, the Chief Returning Officer shall record and count all votes validly cast.

8.2 Certification and notifying result

Once all votes have been counted and the result of the Special Resolution determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the Special Resolution and communicate the result to the Trustee within fourteen (14) days of the closing date.

8.3 Provisional votes

Where, in respect of any Special Resolution, one or more Provisional Votes has been cast:

- (a) If the validity or otherwise of the Provisional Votes may affect the outcome of the Special Resolution, the Chief Returning Officer must not certify the result of the Special Resolution until the validity of the Provisional Votes has been confirmed pursuant to Rule 7.5(b) of this Schedule and any valid Provisional Vote has been counted; or
- (b) If the validity or otherwise of the Provisional Votes will not affect the result of the Special Resolution, the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional Votes has not been confirmed pursuant to Rule 7.5(b) of this Schedule and the Provisional Votes have not been counted.

9. PROCEEDINGS AT SPECIAL GENERAL MEETING

- 9.1** Except as otherwise set out in this Schedule the provisions of Clause 6 shall apply to the holding of any Special General Meeting called for the purposes of considering a Special Resolution and the meeting shall be conducted accordingly.

FIFTH SCHEDULE

INALIENABLE LAND

116 Kupe	Fl 2 DP 98289 Lot 123 DP 47255	C.T. NA53C/454	.0710
118 Kupe	Fl 1 DP 98289 Lot 123 DP 47255	C.T. NA53C/453	.0710
120 Kupe	Lot 106 DP 37688	C.T. NA50B/1277	.1557
1 Takitumu	Lot 106 DP 37688	C.T. NA50B/1277	above
1A Takitumu	Lot 106 DP 37688	C.T. NA50B/1277	above
1B Takitumu	Lot 106 DP 37688	C.T. NA50B/1277	above
122 Kupe	Lot 107 DP 37688	C.T. NA50B/1278	.1726
124 Kupe	Lot 107 DP 37688	C.T. NA50B/1278	above
126 Kupe	Lot 107 DP 37688	C.T. NA50B/1278	above
128 Kupe	Lot 108 DP 37688	C.T. NA50B/1279	.1116
130 Kupe	Lot 108 DP 37688	C.T. NA50B/1279	above
132 Kupe	Lot 109 DP 37688	C.T. NA50B/1280	.2115
134 Kupe	Lot 109 DP 37688	C.T. NA50B/1280	above
136 Kupe	Lot 109 DP 37688	C.T. NA50B/1280	above
138 Kupe	Lot 109 DP 37688	C.T. NA50B/1280	above
140 Kupe	Lot 110 DP 37688	C.T. NA50B/1281	.1642
142 Kupe	Lot 110 DP 37688	C.T. NA50B/1281	above
144 Kupe	Lot 110 DP 37688	C.T. NA50B/1281	above
146 Kupe	Lot 111 DP 37688	C.T. NA50B/1282	.2023
148 Kupe	Lot 111 DP 37688	C.T. NA50B/1282	above
150 Kupe	Lot 111 DP 37688	C.T. NA50B/1282	above
152 Kupe	Lot 111 DP 37688	C.T. NA50B/1282	above
154 Kupe	Lot 112 DP 44628	C.T. NA50B/1283	.1958
156 Kupe	Lot 112 DP 44628	C.T. NA50B/1283	above
158 Kupe	Lot 112 DP 44628	C.T. NA50B/1283	above
160 Kupe	Lot 112 DP 44628	C.T. NA50B/1283	above
162 Kupe	Lot 113 DP 44628	C.T. NA50B/1259	.1965
164 Kupe	Lot 113 DP 44628	C.T. NA50B/1259	above
166 Kupe	Lot 113 DP 44628	C.T. NA50B/1259	above
168 Kupe	Lot 113 DP 44628	C.T. NA50B/1259	above
25 Takitumu	Lot 2 DP 119609	C.T. NA68D/272	.0521
23 Takitumu	Lot 3 DP 119609	C.T. NA68D/273	.0507
17 Takitumu	Lot 91 DP 37685	C.T. NA50B/1276	.0809
20 Takitumu	Lot 1 DP 125853 and 1/5 th share in Lot 4 DP 125853 (.0408)	C.T. NA73B/968	.0361
14 Takitumu	Lot 3 DP 125853 and 1/5 th share in Lot 4 DP 125853 (.0408)	C.T. NA73B/970	.1594
14A Takitumu	Lot 3 DP 125853 and 1/5 th share in		

	Lot 4	DP 125853 (.0408)	C.T. NA73B/970	above
16 Takitumu	Lot 3 Lot 4	DP 125853 and 1/5 th share in DP 125853 (.0408)	C.T. NA73B/970	above
107 Kupe	Lot 208	DP 48825	C.T. NA13A/717	.1444
109 Kupe	Lot 208	DP 48825	C.T. NA13A/717	above
111 Kupe	Lot 208	DP 48825	C.T. NA13A/717	above
113 Kupe	Lot 207	DP 48825	C.T. NA13A/716	.1667
1 Te Arawa	Lot 207	DP 48825	C.T. NA13A/716	above
3 Te Arawa	Lot 207	DP 48825	C.T. NA13A/716	above
5 Te Arawa	Lot 207	DP 48825	C.T. NA13A/716	above
125 Kupe	Lot 222A	DP 49124	C.T. NA51D/234	.0701
127 Kupe	Lot 222B	DP 49124	C.T. NA51D/235	.0645
129 Kupe	Lot 221	DP 49124	C.T. NA51D/233	.1819
131 Kupe	Lot 221	DP 49124	C.T. NA51D/233	above
133 Kupe	Lot 221	DP 49124	C.T. NA51D/233	above
135 Kupe	Lot 221	DP 49124	C.T. NA51D/233	above
137 Kupe	Lot 220A	DP 49124	C.T. NA51D/231	.0567
139 Kupe	Lot 220B	DP 49124	C.T. NA51D/232	.0559
141 Kupe	Lot 219A	DP 49124	C.T. NA51D/229	.0561
143 Kupe	Lot 219B	DP 49124	C.T. NA51D/230	.0567
145 Kupe	Lot 218	DP 44628	C.T. NA51D/228	.1743
147 Kupe	Lot 218	DP 44628	C.T. NA51D/228	above
149 Kupe	Lot 218	DP 44628	C.T. NA51D/228	above
151 Kupe	Lot 218	DP 44628	C.T. NA51D/228	above
153 Kupe	Lot 217	DP 44628	C.T. NA51D/227	.1743
155 Kupe	Lot 217	DP 44628	C.T. NA51D/227	above
157 Kupe	Lot 217	DP 44628	C.T. NA51D/227	above
159 Kupe	Lot 217	DP 44628	C.T. NA51D/227	above
161 Kupe	Lot 216	DP 44628	C.T. NA22C/289	.1743
163 Kupe	Lot 216	DP 44628	C.T. NA22C/289	above
165 Kupe	Lot 216	DP 44628	C.T. NA22C/289	above
167 Kupe	Lot 216	DP 44628	C.T. NA22C/289	above
169 Kupe	Lot 215	DP 37688	C.T. NA22C/288	.1457
171 Kupe	Lot 215	DP 37688	C.T. NA22C/288	above
173 Kupe	Lot 215	DP 37688	C.T. NA22C/288	above
175 Kupe	Lot 215	DP 37688	C.T. NA22C/288	above
177 Kupe	Lot 214	DP 37688	C.T. NA22C/287	.1691
179 Kupe	Lot 214	DP 37688	C.T. NA22C/287	above
181 Kupe	Lot 214	DP 37688	C.T. NA22C/287	above
183 Kupe	Lot 214	DP 37688	C.T. NA22C/287	above
185 Kupe	Fl 4 DP 95756 ¼ share of .1690 Lot 213 DP 37688		C.T. NA51C/1291	.1690
187 Kupe	Fl 3 DP 95756 ¼ share of .1690 Lot 213 DP 37688		C.T. NA51C/1290	above
189 Kupe	Fl 2 DP 95756 ¼ share of .1690 Lot 213 DP 37688		C.T. NA51C/1289	above
191 Kupe	Fl 1 DP 95756 ¼ share of .1690 Lot 213 DP 37688		C.T. NA51C/1288	above

193 Kupe	Lot 212 DP 37688 and Lot 1 DP 205259	C.T. 557120	.1489
195 Kupe	Lot 212 DP 37688 and Lot 1 DP 205259	C.T. 557120	above
197 Kupe	Lot 212 DP 37688 and Lot 1 DP 205259	C.T. 557120	above
199 Kupe	Lot 212 DP 37688 and Lot 1 DP 205259	C.T. 557120	above
6 Te Arawa	Lot 227 DP 49124	C.T. NA51D/236	.0794
8 Te Arawa	Lot 228A DP 49124	C.T. NA51D/237	.0731
10 Te Arawa	Lot 228B DP 49124	C.T. NA51D/238	.0680
12 Te Arawa	Lot 229 DP 37687	C.T. NA51D/226	.0817
14 Te Arawa	Lot 230 DP 49124	C.T. NA51D/239	.0822
16 Te Arawa	Lot 231 DP 49124	C.T. NA51D/240	.0814
18 Te Arawa	Lot 232 DP 49124	C.T. NA51D/241	.0817
20 Te Arawa	Lot 233 DP 49124	C.T. NA51D/242	.0822
24 Te Arawa	Lot 235 DP 49124	C.T. NA51D/243	.0812
51 Te Arawa	Lot 253 DP 37687	C.T. 22C/1050	.0817
96 Rukutai	Lot 260B DP 46756	C.T. 22C/1061	.0690
98 Rukutai	Lot 260A DP 46756	C.T. 22C/1060	.0731
100 Rukutai	Lot 261 DP 46756	C.T. 22C/1062	.0812
103 Rukutai	Lot 346 DP 37687	C.T. 43B/81	.0910
105 Rukutai	Lot 345 DP 37687	C.T. 43B/80	.0895
107 Rukutai	Lot 344 DP 37687	C.T. 43B/79	.1424
109 Rukutai	Lot 344 DP 37687	C.T. 43B/79	above
115 Rukutai	Lot 342 DP 45558	C.T. 43A/1135	.1530
117 Rukutai	Lot 342 DP 45558	C.T. 43A/1135	above
106 Rukutai	Lot 264 DP 37687	C.T. 22C/1052	.0913
23A Takitumu	Lot 1 DP 119609	C.T. 68D/271	.0944

SIXTH SCHEDULE**PROTECTED LAND**

CT	AREA	LEGAL DESCRIPTION	OTHER NOTES
105492	5457m ²	Lot 1 DP 326057	
105493	14m ²	Lot 2 DP 326057	
119131	4815m ² but various datum levels	Lot 4 DP 329178	
191838	7437m ² but various datum levels	Lot 2 DP 346753	
191839	Area shown in DP346753	Lot 3 DP 346753	
191840	Area shown in DP346753	Lot 5 DP 346753	
88513	2.1535ha.	Lot 9 DP 322192	
NA109B/199			(part cancelled)
NA109B/200	1.1111ha.	Lot 23 DP 177231	(part cancelled)
NA109B/201	4685m ²	Lot 28 DP 177231	(part cancelled)
NA112D/468	7054m ²	Lot 12 DP 181805	
NA112D/469	3691m ²	Lot 13 DP 181805	
NA112D/470	2498m ²	Lot 14 DP 181805	
NA112D/471	1643m ²	Lot 17 DP 181805	
NA112D/472	18m ²	Lot 29 DP 181805	
NA112D/473	540m ²	Lot 30 DP 181805	
NA112D/474	105m ²	Lot 31 DP 181805	
NA113B/383	1009m ²	Lot 9 DP 182061	
NA113B/384	5670m ²	Lot 10 DP 182061	

NA119A/148	4967m ²	Lot 27 DP 189212	
NA119A/159	3457m ² or 3956m ² depending on datum level	Lot 43 DP 189214	
NA119A/160	2572m ²	Lot 55 DP 189214	
NA119A/161	1.7182ha. or 1.9164ha. depending on datum level	Lot 46 DP 189214	
NA119C/775	1.0292ha. or 3.0995ha. depending on datum level	Lot 25 DP 189961	
NA119A/163	49m ²	Lot 18 DP 189216	
NA119A/164	67m ²	Lot 19 DP 189216	
NA119A/166	5838m ²	Lot 21 DP 189216	
NA119A/167	933m ²	Lot 32 DP 189216	
119A/168	1.0845ha. or 1.1446ha. depending on datum level	Lot 50 DP 189217	
NA124A/341		Lot 1 DP 194759	
NA124A/342	3727m ²	Lot 2 DP 194759	
NA124A/343	3588m ²	Lot 3 DP 194759	
NA124A/344	3072m ²	Lot 1 DP 194760	
112579	2134m ²	Lot 40 DP 189213	
112580	Lot 41 1272m ² at one datum level and 1615m ² Lot 42 1368m ² at one datum level and 1778m ²	Lot 41-42 DP 189213	(part cancelled)
119129	2450m ² at various datum levels	Lot 1 DP 329178	

SIGNED as a deed on this day of November 2011.

SIGNED for and on behalf of **NGĀTI WHĀTUA ŌRĀKEI** by

Ngāti Whātua o Ōrākei Maori Trust Board
by the affixing of its common seal
in the presence of two Trust Board Members
and the Secretary who sign below

.....

Trust Board Member

.....

Trust Board Member

.....

Secretary

SIGNED for and on behalf
of **NGĀTI WHĀTUA ŌRĀKEI TRUSTEE LIMITED**
by two or more Directors

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