

Date [            ] 202X

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**DEED OF TRUST OF *TE KOROWAI O NGĀTI MUTUNGA O  
WHAREKAURI* TRUST**

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**[NGĀTI MUTUNGA O WHAREKAURI PSGE] TRUST DEED**

Executed as a deed on the                      day of *[month]*                      [20XX]

**BACKGROUND**

- A.** The iwi of Ngāti Mutunga o Wharekauri has had long-standing grievances arising from the actions and omissions of the Crown since 1840 contrary to the He Whakaputanga 1835 and te Tiriti o Waitangi 1840. These grievances have prejudicially affected past and present generations of Ngāti Mutunga o Wharekauri.
  - B.** These grievances of Ngāti Mutunga o Wharekauri were heard by the Waitangi Tribunal between 1994 and 1996. The Waitangi Tribunal issued its report on the grievances of Ngāti Mutunga o Wharekauri in 2001, in which the Waitangi Tribunal recognised the need for a settlement between the Crown and Ngāti Mutunga o Wharekauri.
  - C.** Pursuant to a Deed of Settlement between the Crown and Maori dated 23 September 1992 and the enactment of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, various fisheries settlement assets were transferred to the Treaty of Waitangi Fisheries Commission for management and subsequent allocation to iwi ultimately for the benefit of all Māori.
  - D.** In 2004, Ngāti Mutunga o Wharekauri Iwi Trust was approved as the mandated iwi organisation of Ngāti Mutunga o Wharekauri in relation to fisheries settlement assets for Ngāti Mutunga o Wharekauri.
  - E.** In 2014, Ngāti Mutunga o Wharekauri gave Ngāti Mutunga o Wharekauri Iwi Trust a mandate to negotiate a deed of settlement with the Crown.
  - F.** Settlement negotiations between representatives of Ngāti Mutunga o Wharekauri and the Crown took place between 2016 and 2025.
  - G.** By deed of settlement, Ngāti Mutunga o Wharekauri and the Crown will agree the terms of the settlement of the historical Treaty of Waitangi claims of Ngāti Mutunga o Wharekauri.
  - H.** As part of the comprehensive Ngāti Mutunga o Wharekauri settlement it is necessary for a Ngāti Mutunga o Wharekauri post-settlement governance entity to be established to implement the terms of the settlement, and receive and manage the settlement redress, on behalf and for the benefit of Ngāti Mutunga o Wharekauri. Crown policy is that settlement assets will not be transferred to organisations with charitable status such as the existing Ngāti Mutunga o Wharekauri Iwi Trust. The terms of the Ngāti Mutunga o Wharekauri settlement therefore require a restructuring of the existing Treaty settlement arrangements of the Iwi that will involve the eventual dissolution of the existing Ngāti Mutunga o Wharekauri Iwi Trust and its replacement with a new post-settlement governance entity that complies with the terms of the settlement while preserving and strengthening the general functions and capability of the existing Trust.
  - I.** In 2025, the Ngāti Mutunga o Wharekauri Iwi Trust convened consultation and
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ratification hui to support the establishment of a new Trust to act as the post-settlement governance entity. Through this process, the uri of Ngāti Mutunga o Wharekauri supported by a majority of [insert percentage] as part of the process of ratification to establish a trust called Te Korowai o Ngati Mutunga o Wharekauri Trust to act as the post-settlement governance entity, and that the trustee of this Trust will hold property jointly upon the trusts set out in this Deed, and for this purpose has determined to hold the sum of \$10 as the initial trust fund for the Trust.

- J.** The initial directors (known as Initial Representatives) of Ngāti Mutunga o Wharekauri Iwi Trustee Ltd, the trustee of the Te Korowai o Ngati Mutunga o Wharekauri Trust, will be the existing trustees of the Ngāti Mutunga o Wharekauri Iwi Trust, the entity mandated to negotiate the Ngāti Mutunga o Wharekauri Treaty settlement. This is to provide for continuity and transparency of representation until the First Election of Elected Representatives is held in accordance with this Trust Deed.
- K.** Te Korowai o Ngati Mutunga o Wharekauri Trust will:
- (a) be the post-settlement governance entity for the purpose of the settlement of the historical Treaty of Waitangi claims of Ngāti Mutunga o Wharekauri that is contained in the Deed of Settlement and any related arrangements;
  - (b) in so doing, act on behalf of and in the beneficial interests of Ngāti Mutunga o Wharekauri to advance the cultural, social, environmental and economic aspirations of Ngāti Mutunga o Wharekauri; and
  - (c) act as the voice and representative body for Ngāti Mutunga o Wharekauri.

## INTRODUCTION

This Trust Deed sets out the purposes and powers, and provides for the governance, control and operation, of Te Korowai o Ngati Mutunga o Wharekauri Trust.

## TERMS OF TRUST

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Defined Terms

In this Trust Deed, unless the context otherwise requires:

**“Adult Member”** means a Member of Ngāti Mutunga o Wharekauri who is 18 years of age or over;

**“Adult Registered Member”** means a Member identified on the Register as being 18 years of age or over;

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

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- (a) the Trust, which is prepared in accordance with *rule 1.1 of Schedule 5*; or
- (b) a Trust Entity, which is prepared in accordance with *rule 3.1(d) of Schedule 6*;

**“Annual Report”** means the annual report of the *Te Korowai o Ngati Mutunga o Wharekauri* Group which is prepared in accordance with *rule 2.1 of Schedule 5*;

**“Asset-Holding Company”** has the meaning given to it in the Māori Fisheries Act 2004.

**“Aquaculture Assets”** means any assets received by the Trust in its capacity as an Iwi Aquaculture Organisation under the Māori Commercial Aquaculture Claims Settlement Act 2004.

**“Basic Trust Information”** means the basic trust information specified in section 51(3) of the Trusts Act 2019;

**“Business Day”** means a day of the week other than:

- (a) Saturday and Sunday;
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, King’s Birthday, Te Rā Aro ki a Matariki / Matariki Observance Day and Labour Day;
- (c) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
- (d) a day in the period commencing with 25 December in any year and ending with 4 January in the following year (both days inclusive); and
- (e) Chatham Islands Anniversary Day;

**“Chairperson”** means the chairperson from time to time appointed by the Directors in accordance with *rule 4 of Schedule 3*;

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

- (a) the person appointed from time to time as chief returning officer for the purposes of elections of Elected Representative in accordance with *rule 10.1 of Schedule 2*; or
- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with *rule 7.1 of Schedule 4*;

**“Commercial Activities”** means any activity carried out in pursuit of the Trust

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Kaupapa that has as its principal objective the generation of sustainable financial or economic returns including without limitation the management and administration of the Trust Assets;

**“Consolidated Financial Statements”** means the consolidated financial statements of the *Te Korowai o Ngāti Mutunga o Wharekauri* Group prepared by the Trustee in accordance with *clause 2.1 of Schedule 5*;

**“Core Documents”** means the documents specified in section 45 of the Trusts Act 2019;

**“Customary Rights”** means rights according to tikanga o Ngāti Mutunga o Wharekauri (Ngāti Mutunga o Wharekauri customary values and practices) including:

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

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

**“Deed of Settlement”** means the deed that will be entered into between Ngāti Mutunga o Wharekauri and the Crown recording the settlement of the Ngāti Mutunga o Wharekauri Claims;

**“Default Duty”** has the same meaning as provided in section 9 of the Trusts Act 2019;

**“Deputy Chairperson”** means the deputy chairperson from time to time if one is appointed in accordance with *rule 4 of Schedule 3*;

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

- (a) birth; or
- (b) legal adoption; or
- (c) Māori customary adoption in accordance with Ngāti Mutunga o Wharekauri tikanga;

**“Directors”** means the Initial Representatives or Elected Representatives acting as the directors of the Trustee;

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**“Disputes Committee”** means a committee formed in accordance with *clauses 26.4 and 26.5*;

**“Distribution Day”** has the meaning set out in *clause 24*;

**“Elected Representatives”** means:

- (a) during the Establishment Period, the Initial Representatives; and
- (b) otherwise, the Elected Representatives elected from time to time in accordance with *Schedule 2* to represent Ngāti Mutunga o Wharekauri and to act as the Directors and Shareholders for the time being of the Trustee;

**“Establishment Period”** means the period of appointment of the Initial Representatives being the period from the date of this Trust Deed until the date following the Settlement Date on which Elected Representatives are first appointed or elected in accordance with the procedures set out in *Schedule 2*;

**“Electoral Review Officer”** means the person appointed to act as electoral review officer in accordance with *rule 13.2 of Schedule 2*;

**“First Election”** means the first election of Elected Representatives held in accordance with *Schedule 2*, which must be held prior to the first annual general meeting following Settlement Date;

**“Fisheries Assets”** means any assets, including Settlement Quota and Income Shares received by the Trust or the Ngāti Mutunga o Wharekauri Iwi Trust in their capacity as a Mandated Iwi Organisation under the Māori Fisheries Act 2004;

**“Fishing Enterprise”** means a fishing operation established in accordance with *Schedule 7* to utilise the annual catch entitlement from any Settlement Quota;

**“Five Year Strategic Plan”** means as the context requires:

- (a) the strategic plan of the Trust prepared in accordance with *clause 1.2 of Schedule 5*; or
  - (b) the strategic plan of a Trust Entity which is prepared in accordance with *clause 3.1(c) of Schedule 6*;
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**“Income Shares”** has the meaning given to it by the Māori Fisheries Act 2004;

**“Income Year”** means any year or accounting period beginning 1 July of one calendar year and ending 30 June of the following calendar year or any other 12 month period that the Trustee by resolution adopts;

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

**“Iwi Aquaculture Organisation”** has the meaning given to it in the Māori Commercial Aquaculture Claims Settlement Act 2004;

**“Kaunihera Kaumātua”** means the committee consisting of Kaumātua appointed under *clause 5.1*;

**“Major Transaction”** in relation to any member of the *Te Korowai o Ngati Mutunga o Wharekauri* Group means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Property by that member the value of which is more than 25% the value of the Trust Assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Property by that member the value of which is more than 25% the value of the Trust Assets before disposition; or
- (c) a transaction that has or is likely to have the effect of that member acquiring rights or interests or incurring obligations or liabilities the value of which is more than 25% the value of the Trust Assets 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 the Trust Assets (whether the Assets are held by the Trust or any other member of the *Te Korowai o Ngati Mutunga o Wharekauri* Group); or
  - (b) any acquisition of Property by a member of the *Te Korowai o Ngati Mutunga o Wharekauri* Group from any other member of *Te Korowai o Ngati Mutunga o Wharekauri* Group; or
  - (c) any disposition of Property by a member of the *Te Korowai o Ngati Mutunga o Wharekauri* Group to any other member of the *Te Korowai o Ngati Mutunga o Wharekauri* Group
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*o Wharekauri Group;*

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

For the purposes of paragraphs (a) to (c) of this definition, the value of the Trust Assets shall be calculated based on the value of the assets of the *Te Korowai o Ngāti Mutunga o Wharekauri Group*;

**“Mandated Iwi Organisation”** has the meaning given to it by the Māori Fisheries Act 2004;

**“Mandatory Duty”** has the same meaning as provided in section 9 of the Trusts Act 2019;

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

**“Ngāti Mutunga o Wharekauri”** means:

- (a) the collective group composed of individuals who are descended from one or more of Ngāti Mutunga o Wharekauri Ancestors; and
  - (b) every whānau, hapu or group to the extent that it is composed of those individuals referred to in (a) above, including:
    - (i) Ngāti Mutunga including:
      - a. Ngāti Tupawhenua
      - b. Ngāti Aurutu
      - c. Ngāti Kura
    - (ii) Kekerewai;
    - (iii) Ngāti Haumia;
    - (iv) Ngāti Tama; and
  - (c) every individual referred to in (a) above.
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**“Ngāti Mutunga o Wharekauri Ancestor”** means an individual who exercised Customary Rights by virtue of being descended from:

- (a) Mutunga, Hinetuhi, Hineweo, Haumia, Whata, Rakaeiora, or Tamaariki; or
- (b) a recognised ancestor of a any of the groups referred to in paragraph (b) of the definition of Ngāti Mutunga o Wharekauri; and

who exercised customary rights predominantly in relation to the Ngāti Mutunga o Wharekauri Area of Interest at any time after 1 November 1842;

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

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

**“Ngāti Mutunga o Wharekauri Organisation”** means an entity or trust that:

- (a) represents, or has as its beneficiaries, all or some of the Members of Ngāti Mutunga o Wharekauri; and
- (b) does not represent, or have as a member, any person who is not a Member of Ngāti Mutunga o Wharekauri; and

for the avoidance of doubt, includes a Trust Entity.

**“Te Korowai o Ngati Mutunga o Wharekauri Group”** means the Trust and any Trust Entities (if any);

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

**“Provisional Vote”** means a vote cast pursuant to *rule 10.4* and *11.5* of *Schedule 2* or *rule 8.3* of *Schedule 4*, as the case may be;

**“Register”** means the register of Members of Ngāti Mutunga o Wharekauri that is to be maintained by the Trustee in accordance with *Schedule 1*;

**“Registrar”** means the Registrar appointed under *rule 1.4* of *Schedule 1*;

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**“Resident Candidate”** means a candidate for election to the office of Elected Representative in accordance with *Schedule 2* of this Deed who is ordinarily resident in the Ngāti Mutunga o Wharekauri Area of Interest for at least 50% or more of the time in any Income Year, as at the date of their declaration under *rule 6.5 of Schedule 2* and in each Income Year for the relevant term of an Elected Representative if they are elected;

**“Resident in the Ngāti Mutunga o Wharekauri Area of Interest”** means ordinarily resident in the Ngāti Mutunga o Wharekauri Area of Interest for at least 50% or more of the time in any Income Year, as at the date of their declaration under *rule 6.5 of Schedule 2* and in each Income Year for the relevant term of an Elected Representative if they are elected;

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

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

**“Settlement Quota”** has the meaning given to it by the Māori Fisheries Act 2004;

**“Shareholders”** means the Initial Representatives or Elected Representatives acting as the shareholders of the Trustee who hold shares on trust for the Members;

**“Special Resolution”** means a resolution that has been passed with the approval of not less than 75% of the Adult Registered Members of Ngāti Mutunga o Wharekauri who validly cast a vote in accordance with the process set out in *Schedule 4*;

**“Special Resolution of Directors”** means a resolution that requires the approval of not less than seventy-five (75) per cent of the Directors present at a duly convened meeting of the Trustee held in accordance with the rules in *Schedule 3*;

**“Statement of Intent”** means the statements of intent prepared by a Trust Entity in accordance with *rule 3.1(a) of Schedule 6*;

**“Trust”** means the trust created by this Deed which is to be called the *Te Korowai o Ngati Mutunga o Wharekauri* Trust;

**“Trustee”** means Ngāti Mutunga o Wharekauri 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;

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**“Trusts Act”** means the Trusts Act 2019;

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

**“Trust Entity”** means:

(a) a wholly owned or controlled company, trust or other entity established by the Trust for the purpose of receiving, holding and managing for so long as it is to be retained, any Trust Property;

(b) a wholly owned or controlled company, trust or other entity established by the Trust for any other purpose;

(c) an Asset Holding Company;

(d) a Fishing Enterprise; and

(e) includes any subsidiary of a Trust Entity established by the Trust;

**“Trust Information”** has the same meaning as provided in section 49 of the Trusts Act 2019;

**“Trust Kaupapa”** means the purpose of the Trust set out in *clause 2.3*;

**“Trust Management”** means the individual person appointed in accordance with *clause 6.1*;

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

**“Voting Paper”** means ballot papers prepared and sent to Adult Registered Members and Adult Members who make a written request for the purposes of electing Elected Representatives in accordance with *Schedule 2* of this Deed or for the purpose of voting on a Special Resolution in accordance with the process set out in *Schedule 4* of this Deed;

**“Whakapapa Committee”** means the committee appointed from time to time in accordance with *rule 4 of Schedule 1*.

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## **1.2 Interpretation:**

In this Trust Deed, unless the context otherwise requires:

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

### **2.1 Trust Established:**

The Trustee acknowledges that it holds the Trust Assets upon the trusts and with the powers set out in this Trust Deed. The name of the Trust is *Te Korowai o Ngati Mutunga o Wharekauri* Trust.

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### **2.2 Trust Governance and Administration:**

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

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### **2.3 Trust Kaupapa:**

The purpose for which the Trust is established is to receive, manage, hold and administer the Trust Assets on behalf of and for the benefit of the present and future Members of Ngāti Mutunga o Wharekauri in accordance with this Trust Deed. Without limiting in any way the generality of the foregoing, the Trustee may:

- (a) act as the voice and representative body for Ngāti Mutunga o Wharekauri;
- (b) implement the terms of the settlement of the historical Treaty of Waitangi claims of Ngāti Mutunga o Wharekauri contained in the Deed of Settlement and the Settlement Act;
- (c) act as the Mandated Iwi Organisation and Iwi Aquaculture Organisation for Ngāti Mutunga o Wharekauri;
- (d) promote the social, cultural, spiritual, educational, environmental and economic advancement and well-being of Ngāti Mutunga o Wharekauri and its Members;
- (e) promote the health and wellbeing of Ngāti Mutunga o Wharekauri and its Members;
- (f) provide for the ongoing maintenance and establishment of places of cultural or spiritual significance to Ngāti Mutunga o Wharekauri and its Members, including marae;
- (g) promote and advance the social and economic development of Ngāti Mutunga o Wharekauri and its Members, including the promotion of business, commercial or vocational training;
- (h) ensure that any Commercial Activities are appropriately structured to serve the Trust Kaupapa; and
- (i) take any other action that is considered by the Trustee from time to time to be beneficial to Ngāti Mutunga o Wharekauri and its Members.

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### **2.4 Trustee representative:**

The Trustee shall be the representative for Ngāti Mutunga o Wharekauri in all matters relating to this Trust Deed.

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**2.5 Guiding principles:**

In furthering the Trust Kaupapa and discharging any obligation under this Trust Deed, the Trustee will be guided by the principles embodied in:

- (a) Tino Rangatiratanga;
  - (b) Tikanga;
  - (c) Kaitiakitanga;
  - (d) te Tiriti o Waitangi; and
  - (e) the Trust Kaupapa.
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**2.6 Fisheries Assets:**

Ngāti Mutunga o Wharekauri's Fisheries Assets shall be held and managed in accordance with this Trust Deed, including the rules in *Schedule 7*.

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**2.7 Aquaculture Assets:**

Ngāti Mutunga o Wharekauri's Aquaculture Assets, if any, shall be held and managed in accordance with this Trust Deed, including the rules in *Schedule 7*.

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**2.8 Trust Entities:**

In receiving, controlling, and supervising the use of the Trust Assets on behalf of Te Korowai o Ngati Mutunga o Wharekauri Group, whether pursuant to the Deed of Settlement, the Settlement Act or otherwise, the Trustee may establish and oversee the operations of any Trust Entities and, from time to time, disestablish any Trust Entity in accordance with *Schedule 6* and any other relevant provisions of this Trust Deed.

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**2.9 Trust Planning and Reporting:**

The Trustee shall prepare an Annual Plan, a Five Year Strategic Plan and an Annual Report in accordance with *Schedule 5* and any other relevant provisions of this Trust Deed.

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**3. APPOINTMENT, POWERS AND MEETINGS OF TRUSTEE AND ELECTED REPRESENTATIVES**

**3.1 Trustee**

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The Trustee shall be Ngāti Mutunga o Wharekauri Iwi 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.

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### 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 Directors and Shareholders will be the Elected Representatives for the time being elected in accordance with this Trust Deed;
  - (d) that the Shareholders must also be the Directors of the Trustee.
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### 3.3 Trustee Meetings

All meetings of the Directors of the Trustee shall be run in accordance with this Trust Deed. If there is any conflict between this Trust Deed and the Trustee's constitution then the provisions of this Trust Deed shall apply, other than where the Act prevails.

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### 3.4 Elected Representatives

(a) Pending the First Election, the Initial Representatives shall be (full legal names to be inserted)

- (i) Monique Croon;
- (ii) Deena Whitiri;
- (iii) Melodie Eruera-Fraser;
- (iv) Megan Lanauze-King;
- (v) John Preece;
- (vi) Di Grennell; and
- (vii) Paula Page.

(b) During the Establishment Period, the Trustee will, among other functions:

- (i) Organise and manage the First Election (including, where necessary, contracting out the running of such election to an independent third party), which must be held prior to the first annual general meeting following the Settlement Date and in accordance with the procedure set out in *Schedule 2*;
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- (ii) Receive and manage any funds or assets transferred to the Trust, including receiving funds from the Crown in the event that the Crown transfers any funds to the Trust before the Settlement Date;
  - (iii) Work with the Crown and other relevant parties to advance the implementation of the settlement of the historical Treaty of Waitangi claims of Ngāti Mutunga o Wharekauri; in connection with the management of any funds or assets to be transferred to the Trust, take steps as reasonably required to establish or incorporate appropriate Trust Entities to serve the needs Ngāti Mutunga o Wharekauri; and
  - (iv) Maintain records and information that will facilitate the preparation by the Trustee of the first Annual Plan, Five Year Strategic Plan and Annual Report.
- (c) Following the First Election, there shall be seven (7) Elected Representatives elected from time to time to act as Directors and Shareholders of the Trustee in accordance with *clause 3* and the rules set out in *Schedule 2*, at least four (4) of whom must be Resident Candidates.
- (d) As Shareholders of the Trustee, each Elected Representative shall hold shares in the Trustee on trust for the Members of Ngāti Mutunga o Wharekauri and must transfer his or her shares in accordance with *clause 3.5* in the event that he or she ceases to be a Director.

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### **3.5 Incumbent Shareholders and Directors**

In the event that an Elected Representative ceases to be a Director or Shareholder in accordance with *Schedule 2*, the incumbent Elected Representative shall transfer his or her share in the Trustee in accordance with the provisions of the constitution of the Trustee.

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### **3.6 Extent of Trustee's discretion to manage Trust affairs**

Subject to any requirements imposed by this Trust Deed, the Deed of Settlement, the Settlement Act and in accordance with law, the Trustee shall control and supervise the business and affairs of the Trust in such a manner as it, in its sole discretion and acting through its Directors, sees fit.

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### **3.7 Powers of Trust:**

- (b) The Trustee has the following general powers:
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- (i) all the powers necessary to manage the Trust Assets including, in relation to the Trust Assets, all the powers of an absolute owner of the property;
    - (ii) all the powers necessary to carry out the Trust, including powers incidental to those in paragraph (i).
  - (c) The powers of the Trustee include (unless contrary to the terms of this Trust Deed) those set out in sections 57–79 of the Trusts Act 2019, and the Trustee may exercise those powers in accordance with the terms of this Trust. Without limiting in any way the generality of the foregoing, the Trustee shall have the power:
    - (i) to receive or accept, or to make any disposition of, any real property, including any interest of any type in real property (whether corporeal or incorporeal hereditament);
    - (ii) to receive or accept, or to make any disposition of, any personal property (whether chattels, choses in action, intellectual property, and otherwise howsoever), including any interest of any type in personal property;
    - (iii) to receive or grant any security, including any mortgage, pledge, charge, security interest, or otherwise howsoever, in relation to all, or any part of, the Property;
    - (iv) to contract, to grant a release, to grant a power of attorney, to appoint an agent, a receiver, or a stakeholder, to settle property on, or declare, a trust;
    - (v) to issue or take any debt or equity security;
    - (vi) to borrow or to lend money;
    - (vii) to manage the Trust's affairs, activities, assets and liabilities and otherwise further the Trust Kaupapa through the Trust Entities and such other persons, entities, enterprises or arrangements as the Trustee considers appropriate;
    - (viii) employ or contract any employee or contractor, to manage or assist in the day to day management and administration of the Trust;
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- (ix) employ or contract any financial advisor, lawyer, accountant or other professional person and obtain any advice, opinion or information from them;
  - (x) to distribute benefits, directly or indirectly, to Members of Ngāti Mutunga o Wharekauri, irrespective of where they reside, to any Ngāti Mutunga o Wharekauri Organisation; or to any Trust Entity as, when and in such manner as the Trustee may decide; and
  - (xi) generally to do all such other lawful acts and things that are incidental or conducive to fulfilling the Trust Kaupapa.
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### **3.8 Restriction on Major Transactions:**

Notwithstanding *clause 3.7*, the Trustee:

- (a) must not enter into a Major Transaction; and
  - (b) must ensure that any Trust Entities are established on terms which provide that such Trust Entities must not enter into a Major Transaction;
  - (c) unless that Major Transaction:
    - (i) is approved by way of Special Resolution in accordance with *Schedule 4*; or
    - (ii) is contingent upon approval by way of Special Resolution in accordance with *Schedule 4*.
- 

### **3.9 Remuneration of Directors**

The Trustee may pay the Directors remuneration, provided that such remuneration must:

- (a) be authorised by a resolution of Adult Registered Members in accordance with *clause 10.2*. In recommending Director remuneration levels, the Trustee must first seek independent professional advice in that regard; but
  - (b) in respect of the Initial Representatives in *clause 3.1*, who will be appointed before the first annual general meeting, be set by the Trustee for the
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Establishment Period, on the basis of independent professional advice.

This clause, as well as *clause 10.2*, expressly modify the Default Duties in sections 36 and 37 of the Trusts Act 2019.

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### **3.10 Directors' Expenses**

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

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### **3.11 Proceedings of Directors of the Trustee**

Except as otherwise provided in this Deed, the proceedings and other affairs of the Directors of the Trustee shall be conducted in accordance with the rules set out in *Schedule 3*.

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## **4. DUTIES OF TRUSTEE**

### **4.1 Guiding Principles**

In exercising the powers and functions under this Deed, the Trustee (including the Directors in their role as directors of the Trustee) must:

- (a) have regard to the context of the Trust and the Trust Kaupapa; and
- (b) comply with its duties under the Trusts Act 2019, including without limitation the Mandatory Duties, Default Duties and other statutory duties.

### **4.2 Mandatory Duties**

The Trustee (including the Directors in their role as directors of the Trustee) is required to comply with the Mandatory Duties. For the avoidance of doubt, the Trustee (including the Directors in their role as directors of the Trustee), must:

- (a) know the terms of this Deed;
  - (b) act in accordance with this Deed;
  - (c) act honestly and in good faith;
  - (d) hold or deal with the Trust Assets and otherwise act for the benefit of the Members of Ngāti Mutunga o Wharekauri, in accordance with this Trust Deed
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and the Trust Kaupapa; and

- (e) exercise its powers for a proper purpose.

### 4.3 Default Duties

Except where otherwise specified in this Deed, the Trustee (including the Directors in their role as directors of the Trustee) must comply with the Default Duties. For the avoidance of doubt and except where otherwise specified in this Trust Deed, the Trustee (including the Directors in their role as directors of the Trustee), must:

- (a) when administering the Trust (other than when exercising a discretion to distribute any of the Trust Assets to Members of Ngāti Mutunga o Wharekauri), exercise the care and skill that is reasonable in the circumstances, having regard, in particular:
- (i) to any special knowledge or experience that the Trustee has or holds themselves out as having;
  - (ii) however, a Trustee who has, or holds themselves out as having, special knowledge or experience, or who acts in the course of a business or profession, shall not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act 2019 this *clause 4.3(a)* is to be regarded as a modification of section 29 of that Act;
- (b) when exercising any power to invest the Trust Assets, the Trustee (must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard, in particular:
- (i) to any special knowledge or experience that the Trustee has or that the Trustee holds themselves out as having;
  - (ii) however, a Trustee has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, shall not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act 2019 *this clause 4.3(b)* is to be regarded as a modification of section 30 of that Act;
- (c) not exercise a power of a Trustee directly or indirectly for the Trustee's own benefit;
- (d) consider actively and regularly whether the Trustee should be exercising 1 or more of the Trustee's powers;
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- (e) avoid a conflict of interest between the interests of the Trustee and the interests of the Members of Ngāti Mutunga o Wharekauri;
- (f) act impartially in relation to the Members of Ngāti Mutunga o Wharekauri, and must not be unfairly partial to one Member of Ngāti Mutunga o Wharekauri or a group of Members to the detriment of others;
- (g) except as provided for in *clauses 3.6 and 10.2*, not make a profit from their trusteeship or acting as Director of the Trustee; and
- (h) except as provided for in *clauses 3.6 and 10.2*, not take any reward for acting as Trustee or as Director of the Trustee.

#### **4.4 Duty not to fetter discretion excluded**

The Trustee (including the Directors in their role as directors of the Trustee) does not have a duty to avoid binding or committing itself or a future Trustee to a future exercise or non-exercise of discretion. For the purposes of sections 5(4) and 5(5) of the Trusts Act 2019 this *clause 4.4* is to be regarded as an exclusion of section 33 of that Act.

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## **5. KAUNIHHERA KAUMĀTUA**

### **5.1 Appointment of Kaunihhera Kaumātua:**

The Trustee or Registrar may from time to time seek advice from a Kaunihhera Kaumātua, established on the following terms:

- (a) The Kaunihhera Kaumātua is a committee consisting of kaumātua appointed by an ordinary resolution of the Adult Registered Members present in person at the annual general meeting of the Trust. Kaumātua will be eligible to be for appointment by ordinary resolution of the Adult Registered Members either at the Trustee's initiative or on application by the relevant kaumātua.
  - (b) Those entitled to be appointed as members of the Kaunihhera Kaumātua are mature persons or elders who possess knowledge on matters of tikanga, reo, kawa, kōrero and whakapapa of Ngāti Mutunga o Wharekauri and are generally acknowledged as kaumātua by Adult Registered Members present in person at the annual general meeting of the Trust.
  - (c) The quorum of the Kaunihhera Kaumātua shall be at least five kaumātua.
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- (d) Subject to the provisions of this Deed, the Kaunihera Kaumātua shall adopt such rules, meeting procedures and processes as it may from time to time agree, provided that the Kaunihera Kaumātua must meet at least once in any Income Year.
  - (e) Kaumātua who are Adult Registered Members residing outside the Ngāti Mutunga o Wharekauri Area of Interest may be appointed to the Kaunihera Kaumātua. Any kaumātua appointed to the Kaunihera Kaumātua residing outside the Ngāti Mutunga o Wharekauri Area of Interest shall attend meetings of the Kaunihera Kaumātua by telephone or electronic means, unless the Trustee agrees otherwise.
  - (f) The Trustee shall, in its sole discretion, provide reasonable operational and financial support where requested by the Kaunihera Kaumātua.
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## **5.2 Role of Kaunihera Kaumātua:**

- (a) The Kaunihera Kaumātua shall provide advice to the Trustee and the Registrar on tikanga, reo, kawa, kōrero and whakapapa of Ngāti Mutunga o Wharekauri and such other matters as the Trustee or Registrar may require from time to time and, when requested, shall make written recommendations to the Trustee or Registrar.
  - (b) Any advice or recommendation that the Kaunihera Kaumātua provides to the Trustee or Registrar is not binding. However, where any decision by the Trustee or Registrar is contrary to or inconsistent with the advice or recommendation of the Kaunihera Kaumātua, the reasons for the decision shall be recorded in the minutes of the relevant Meeting and notified to the Kaunihera Kaumātua. This clause does not apply to members of the Kaunihera Kaumātua when formally acting as members of the Whakapapa Committee.
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## **6. TRUST MANAGEMENT, TRUST SECRETARY AND OTHER EMPLOYEES**

### **6.1 Trustee to appoint Trust Management:**

The Trustee may (on such terms as the Trustee determines) appoint Trust Management to manage the day to day administration of the Trust including without limitation the implementation of the Trustee's planning, reporting and monitoring obligations under this Deed.

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**6.2 Delegations to Trust Management:**

The Trustee shall ensure that Trust Management is appointed on terms which require that the Trust Management 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.

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**6.3 Director Role:**

A Director may not hold the position of Trust Management nor be an employee of, or a contractor to, any entity or trust in the PSGE Group.

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**6.4 Trustee to appoint Trust Secretary:**

The Trustee may (on such terms as the Trustee determines) appoint a Trust Secretary to manage the day to day administration of meetings of the Trust, including without limitation the keeping of minutes of the Trust under this Deed.

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**7. APPLICATION OF INCOME AND CAPITAL**

**7.1 Trustee may apply income and capital:**

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

- (a) at any time, provide for the payment, application or appropriation, or decide to pay, apply or appropriate as much of the available income in any Income Year to or for the benefit of Members of Ngāti Mutunga o Wharekauri;
- (b) use or apply any capital of the Trust Assets to or for the benefit of Members of Ngāti Mutunga o Wharekauri for the Trust Kaupapa without first using or applying the whole or any portion of the income of the Trust Assets for that year; or
- (c) set aside reserves or accumulations for future use or application by the Trustee,

as the Trustee in its sole discretion think fit for or towards the Trust Kaupapa.

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**7.2 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 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; or
  - (b) as a reserve to meet fluctuations of income in future years and other contingencies.
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**7.3 Matters to consider in applying income:**

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

- (a) determine how much of the income should cease to be income and be added to and form part of the capital of the Trust Assets, provided that the Trustee may not in the Income Year convert the entire income of the Trust into capital; and
  - (b) endeavour to act fairly in considering the needs and interests of present and future Members of Ngāti Mutunga o Wharekauri.
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**7.4 Accumulation in six months where income not applied:**

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

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

### **8.1 Documents to be available for inspection:**

The Trustee shall, subject to *clause 9* of this Trust Deed, the requirements of the Privacy Act 2020, any rules made by Te Ohu Kai Moana Trustee Limited and such other reasonable restrictions as the Trustee may impose, hold at its offices, or hold electronically and make available for inspection by any Member of Ngāti Mutunga o Wharekauri during normal business hours on any Business Day:

- (a) the Annual Report for each of the preceding three (3) Income Years;
- (b) the Consolidated Financial Statements for the preceding three (3) Income Years;
- (c) the Annual Plan;
- (d) the Five Year Strategic Plan;
- (e) the Statements of Intent;
- (f) the minute book kept in accordance with *clause 10.14* of all decisions taken and business transacted at every annual general meeting and special general meeting;
- (g) the Register;
- (h) this Deed and any amendment to this Deed; and
- (i) the current constitution or trust deed of any Trust Entity.

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### **8.2 Costs of copying:**

Any Member of Ngāti Mutunga o Wharekauri shall be entitled to obtain copies of the information referred to in *clause 8.1*. However, the Trustee shall also be entitled to recover at its discretion all reasonable copying or postage costs (if any).

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## **9. NON DISCLOSURE OF SENSITIVE INFORMATION**

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**9.1 Trust Information**

The Trustee must, in compliance with sections 51-52 of the Trusts Act 2019 and with regard to the factors in section 53 of that Act, determine whether the presumption to notify Basic Trust Information or provide Trust Information on request does not apply.

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**9.2** For the avoidance of doubt, but subject to the Trustee's reporting and review obligations in *clauses 8.1(a), 8.1(b), 8.1(f), 9.1, 10.1(a), 10.1(b)* and *rule 2.1 of Schedule 5*, the Trustee may, at its sole discretion and having regard to the factors in section 53 of the Trusts Act 2019, limit disclosure of:

- (a) the Basic Trust Information; or
- (b) any Trust Information,

including information about the activities or proposed activities of the Trustee and the *Te Korowai o Ngati Mutunga o Wharekauri* Group, which the Trustee considers on reasonable grounds to be commercially or otherwise sensitive.

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## 10. GENERAL MEETINGS

### 10.1 Trustee to hold annual general meeting:

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

- (a) report on the operations of the *Te Korowai o Ngati Mutunga o Wharekauri* Group during the preceding Income Year;
  - (b) present the Annual Report and duly audited Consolidated Financial Statements;
  - (c) present the proposed Annual Plan;
  - (d) announce the names of all newly appointed Elected Representatives;
  - (e) approve the appointment of the auditor for the next Income Year;
  - (f) seek an ordinary resolution of the Adult Registered Members approving the Elected Representatives' remuneration in their capacity as Directors of the Trustee;
  - (g) seek an ordinary resolution of the Adult Registered Members recognising the appointment of members of the Kaunihera Kaumātua;
  - (h) undertake all other notified business; and
  - (i) at the discretion of the chairperson of the meeting, undertake any other general business raised at that meeting.
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**10.2 Approval of Directors' remuneration and appointment of auditor:**

- (a) No remuneration will be paid to a Director of the Trustee unless that remuneration has been authorised by a resolution of the Adult Registered Members present at the annual general meeting. Each such resolution will express the remuneration to be paid to the Director of the Trustee as a monetary sum per annum payable either to all Directors of the Trustee taken together or to any person who from time to time holds office as a Director of the trustee. This clause does not apply to any remuneration paid to any Director in his or her capacity as a director or trustee of a Trust Entity and that remuneration shall be determined by the Trustee pursuant to *rule 1 of Schedule 6*.
- (b) The appointment of the auditor for the next Income Year must be authorised by a resolution of the Adult Registered Members present at the annual general meeting.

**10.3 Notice of general meeting:**

The Trustee shall give not less than 21 days' notice of the holding of the annual general meeting and such notice shall be given by:

- (a) private notice by post (including by electronic form where available) to all Adult Registered Members at the last address shown for such Adult Registered Member on the Ngāti Mutunga o Wharekauri Register. If notice sent to an electronic address fails, and the Trustee is aware of the failure, then the notice must be sent to the last known physical address and, in that event, the 21 day notice period shall be deemed to have been given on the date of the failed electronic communication;
  - (b) public notice by:
    - (i) advertising by electronic or digital means including on the Trust's website and social media;
    - (ii) inserting a prominent advertisement on at least two (2) separate days in the Chatham Islands Community Focus Trust newsletter (so long as it exists), in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members of Ngāti Mutunga o Wharekauri reside; and
    - (iii) such other means as the Trustee may determine; and
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(c) all notices shall contain:

- (i) the date, time and place of the meeting, including any electronic connection details or how such details may be obtained;
  - (ii) an agenda of matters to be discussed at the meeting;
  - (iii) details of where copies of any information to be laid before the meeting may be inspected; and
  - (iv) any other information specified by or under the Māori Fisheries Act 2004.
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**10.4 Notice of special general meetings:**

In addition to the annual general meeting of the Trust, the Trustee shall:

(a) convene a special general meeting of the Trust for the Members of Ngāti Mutunga o Wharekauri at the written request of:

- (i) the Chairperson and Deputy Chairperson for the time being of the Trustee; or
- (ii) the majority of Directors of the Trustee then in office; or
- (iii) 5% of the Adult Registered Members; and

(b) 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 Trustee setting out the purposes for which the meeting has been requisitioned and the specific agenda items proposed for such a meeting; and

(c) the Trustee shall not be required to give notice calling the meeting until such a statement with agenda items has been received.

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**10.5 Annual general meeting not limited to notified business:**

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

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**10.6 Special meeting limited to notified business:**

No business shall be transacted at any special general meeting other than the

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business expressly referred to in the notice calling that meeting.

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**10.7 Invalidation:**

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

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**10.8 Deficiency of notice:**

Subject to *clause 10.6*, a deficiency or irregularity in a notice of any special or general meeting will not invalidate anything done at the meeting if the deficiency or irregularity is not material.

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**10.9 Quorum:**

The quorum required for any annual or special general meeting of the Trust shall be 25 Adult Registered Members present in person, and three (3) or more Elected Representatives present in person. For the avoidance of doubt, if an Elected Representative is an Adult Registered Member he or she is entitled to vote at any annual or special general meeting.

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**10.10 Chairing of meetings:**

The Chairperson for the time being of the Trustee 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.

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**10.11 Voting:**

To the extent that a vote is sought or required at any annual or special general meeting:

- (a) every Adult Registered Member present in person or by electronic means shall have one (1) vote;
  - (b) all resolutions except Special Resolutions require the approval of not less than a majority of the Adult Registered Members who validly cast a vote;
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- (c) voting may be by voice or on a show of hands or such other equivalent electronic means;
  
  - (d) the chairperson of the meeting may also demand a poll on a resolution either before or after any vote, which among other things, requires the Adult Registered Members to verify their eligibility by a process directed by the chairperson of the meeting;
  
  - (e) the latest version of the Register will be present at any annual or special general meetings; and
  
  - (f) except as provided in *clauses 3.9, 10.1(e)-(g), 10.2, 21.1, 22 and 23* and where Special Resolutions have been passed in accordance with *Schedule 4* the Trustee 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 Assets and carrying out the Trust Kaupapa.
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**10.12 Adjourned meetings:**

If after one (1) hour of the time appointed for an annual or special general meeting, a quorum is not present:

- (a) the meeting will stand adjourned to be re-convened seven (7) days after the date of the meeting;
  - (b) on that later day, the meeting will be held again at the same time and in the same place as the adjourned meeting; and
  - (c) if a quorum is not present after one hour from the time appointed for that adjourned meeting, the Adult Registered Members present will constitute a quorum.
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**10.13 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, without giving any reason:

- (a) adjourn the meeting; or
  - (b) direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote by a poll, without further discussion; and
  - (c) the meeting will be considered closed.
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**10.14 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.

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**10.15 Minutes to be evidence of proceedings:**

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

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**10.16 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.

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**11. DISCLOSURE OF INTERESTS**

**11.1 Definition of interested:**

A Director of the Trustee will be “interested” in a matter if the Director:

- (a) is “interested” as defined under the Companies Act 1993, and includes transactions to which the Director of the Trustee is a party;
  - (b) is a party to, or will derive a material financial benefit from, that matter;
  - (c) has a material financial interest in another party to the matter;
  - (d) 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 a Trust Entity;
  - (e) is the parent, child, spouse, de facto or civil union partner of another party to, or person who will or may derive a material financial benefit from, the matter; or
  - (f) is otherwise directly or indirectly interested in the matter.
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**11.2 Disclosure of interest to other Directors:**

As soon as a Director of the Trustee becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Trustee or with the Trust, then unless the Act provides otherwise or all entitled persons have agreed to or concur in the Company entering into the transaction, that Director must cause to be entered in the interests’ register of the Trustee, and disclose to the other Directors:

- (a) the nature and monetary value of his or her interest (if the monetary value of the interest is able to be quantified); or
  - (b) the nature and extent of his or her interest (if the monetary value of the
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interest cannot be quantified).

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**11.3 General disclosure in certain cases will suffice:**

For the purposes of clause 11.2, a general notice entered in the interests' register of the Trustee and disclosed to the other Directors of the Trustee to the effect that a Director:

- (a) is a shareholder, director, officer, or trustee of another named company or other person; and
- (b) is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that other company or person,

will be a sufficient disclosure of that interest in relation to such transactions.

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**11.4 Recording of Interest:**

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

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**11.5 All Directors are interested:**

Subject to *clause 11.6*, where all the Directors of the Trustee are interested in a transaction or proposed transaction, the Company must not enter into the transaction unless that transaction is approved by Special Resolution of Directors, or is contingent upon approval by Special Resolution of Directors.

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**11.6 Interests in common with Adult Members of Ngāti Mutunga o Wharekauri:**

For the purposes of *clauses 11.5* and *12.1*, a Director of the Trustee is not interested in a matter where his or her interest is not different in kind from the interests of the other Adult Members.

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**12. DEALINGS WITH "INTERESTED" DIRECTORS**

**12.1** Subject to *clause 11.6*, an interested Director of the Trustee shall not:

- (a) take part in any deliberation or vote in respect of any matter in which that Director
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of the Trustee is interested; or

(b) be counted for the purposes of forming a quorum in any meeting to consider such a matter,

but may:

(c) attend a meeting of the Directors of the Trustee at which a matter relating to the transaction arises (except the interested Director must remove himself or herself from the meeting while the other Directors are discussing a matter relating to the transaction);

(d) sign a document relating to the transaction on behalf of the Trustee; and

(e) do anything else as a Director of the Trustee in relation to the transaction, as if he or she were not interested in the transaction

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### **13. DISCLOSURE OF REMUNERATION AND INSURANCE**

**13.1** The Trustee shall, in accordance with *rule 2.1 of Schedule 5*, show the amount of any remuneration paid to any Director or their firm and the amount of any premiums paid out of the Trust Assets for any Trustee or Director indemnity insurance separately in the financial statements including any payments made pursuant to *clause 16*.

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## **14. ADVICE TO TRUSTEE**

### **14.1 Trustee may rely on advice:**

The Trustee (including the Directors in their role as directors of the Trustee) may, when exercising powers or performing duties, rely on reports, statements and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

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

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### **14.2 Special Trust Advisers**

In accordance with section 74 of the Trusts Act 2019, the Trustee may, by a resolution passed by a majority of the Directors of the Trustee, appoint a special trust adviser to advise the Trustee on any matter relating to the Trust.

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## **15. LIABILITY OF TRUSTEE**

- 15.1** The Trustee (and the Directors in their role as directors of the Trustee) shall only be liable for losses attributable to its dishonesty, wilful misconduct, gross negligence, or commission or omission of an act which it knows or should have known to be a breach of this Deed.
-

## **16. INDEMNITY AND INSURANCE**

### **16.1 Indemnity and insurance for Trustee and Directors:**

The Trustee (and the Directors in their role as directors of the Trustee) will be indemnified and entitled to have its insurance costs met out of the Trust Assets against any costs or liability which it or they incur in defending any civil or criminal proceedings issued because of their actions in relation to the Trust, where:

- (a) those proceedings do not arise out of any dishonesty, wilful misconduct, gross negligence, or commission or omission of an act which commission or omission it knows or should have known to be a breach of this Deed by the Trustee, Director of the Trustee, officer or employee; and
- (b) it was acting in good faith in a manner that it believed to be in the best interests of the Trust with the object of fulfilling the Trust Kaupapa.

For the avoidance of doubt, the Trustee is entitled and empowered to indemnify the Directors of the Trustee, its officers and its employees and those of any Trust Entities and to purchase insurance cover for those persons to the extent permitted by law.

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### **16.2 Indemnity and insurance costs to be just and equitable:**

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

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### **16.3 Indemnity and insurance for specific trusts:**

If any assets are held by the Trustee on any separate specific trust, then:

- (a) in respect of proceedings brought in relation to that separate specific trust the Trustee (and the Directors in their role as directors of the Trustee) may only be indemnified or have its insurance costs met out of those Assets; and
  - (b) in respect of proceedings brought in relation to that separate specific trust, to the extent the Trustee indemnifies the Directors of the Trustee, its officers and its employees and those of its Trust Entities and/or covers the insurance costs for those persons to the extent permitted by law, those persons may only be indemnified or have their insurance costs met out of those Assets.
- 

### **16.4 Record of decisions:**

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All decisions made under this *clause 16* to give or approve indemnities or meet or approve any insurance costs shall be recorded in the minutes of the meeting of the Directors of the Trustee 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.

---

**17. TE KOROWAI O NGATI MUTUNGA O WHAREKAURI NOT TO BE BROUGHT INTO DISREPUTE**

**17.1 Directors and Trustee not to bring into disrepute:**

No Director of the Trustee shall act, or cause the Trustee to act, in a manner which brings or is likely to bring Ngāti Mutunga o Wharekauri, the Trust or any Trust Entity into disrepute. Examples of actions (or omissions) include:

- (a) refusing to act when they should;
  - (b) sustained absence as Director of the Trustee without permission or reasonable excuse;
  - (c) conviction of a serious dishonesty offence or an offence punishable by two (2) or more years of imprisonment; or
  - (d) bankruptcy or being subject to a compulsory treatment order.
- 

**17.2 Directors or trustees of Trust Entities not to bring into disrepute:**

The Trustee shall also ensure that Trust Entities are established on terms which provide that the directors or trustees of any such Trust Entity are not to act in a manner which brings or is likely to bring Ngāti Mutunga o Wharekauri, the Trust or any member of the *Te Korowai o Ngati Mutunga o Wharekauri* Group into disrepute.

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**17.3 Director may be censured or removed:**

Any Director of the Trustee that acts in a manner that brings or is likely to bring into disrepute Ngāti Mutunga o Wharekauri, the Trust or any Trust Entity may:

(a) upon the receipt by the Trustee of independent external advice in respect of the nature and seriousness of the conduct; and

(b) followed by a Special Resolution of Directors,

be formally censured or removed from office as a Director and as a Shareholder of the Trustee.

---

**17.4 Censure or removal to be notified:**

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

---

**17.5 Effect of Removal:**

A Director of the Trustee removed from office in accordance with *clause 17.3* shall cease to be an a Director and a Shareholder of the Trustee 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.

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**17.6 Replacement of Removed Elected Representatives:**

The removal of a Director of the Trustee in accordance with *clause 17.3* shall give rise to a vacancy which shall be filled in accordance with *rule 16 of Schedule 2*.

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**18. GIFTS OR DONATIONS**

**18.1 Trustee may accept specific trusts:**

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

---

**18.2 Specific trusts to be separate:**

If the Trustee accepts a trust for any specific purpose as outlined in *clause 18.1* above they must keep the property subject to such trust and any income derived from it separate from the Trust Assets, and administer that property and income as a separate specific trust in terms of the trust under which it was accepted.

---

**18.3 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 Assets to make good any deficit, loss, damage or breach of trust relating to any specific trust.

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**19. RECEIPTS FOR PAYMENTS**

**19.1** The receipt of payments by 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.

---

**20. CUSTODIAN TRUSTEE**

**20.1** The Trustee may appoint or incorporate a Custodian Trustee in respect of all or any part of the Trust Assets, and on any such appointment or incorporation, sections 67 – 69 of the Trusts Act 2019 and the following provisions shall have effect:

- (a) The Trustee shall require the Custodian Trustee to sign this Deed agreeing to be bound by its terms;
  - (b) The Trust Assets or part of the Trust Assets may be vested in the Custodian Trustee as if the Custodian Trustee were sole trustee of the Trust;
  - (c) The Custodian Trustee holds the title so vested in him or her or it on trust for the Trustee;
  - (d) The management of the Trust Assets and the exercise of all powers and discretions exercisable by the Trustee under this Deed shall remain vested in the Trustee as fully and effectively as if there were no Custodian Trustee;
-

- (e) The sole function of the Custodian Trustee shall be to hold certain Trust Assets property, invest its funds and dispose of the assets in accordance with any direction in writing by the Trustee for which purpose the Custodian Trustee shall execute all such documents and perform all such acts as the Trustee in writing direct and is liable to the Trustee for failing to do so;
- (f) The Custodian Trustee shall not be liable for acting on any such direction or any failure of the Trustee provided that if the Custodian Trustee is of the opinion that any such direction conflicts with the trusts or the law or exposes the Custodian Trustee to any liability or is otherwise objectionable the Custodian Trustee may apply to the Court for directions and any order giving any such directions shall bind both the Custodian Trustee and the Trustee provided the Trustee are made parties to the proceeding;
- (g) The Custodian Trustee shall not be liable for any failure on the part of any of the Trustee to fulfil any of the Mandatory Duties or Default Duties (as applicable) or the Trustee's duties under section 68 of the Trusts Act 2019, provided the Custodian Trustee is not knowingly a participant in any dishonest, willful or grossly negligent breach of trust by the Trustee;
- (h) All actions and proceedings touching or concerning the Trust Assets may be brought or defended in the name of the Custodian Trustee at the written direction of the Trustee and, as between the Trustee and the Custodian Trustee, the Custodian Trustee shall not be liable for the costs and the Trustee shall indemnify the Custodian Trustee for such proceedings; and
- (i) No person dealing with the Custodian Trustee shall be concerned to enquire as to the concurrence or otherwise of the Trustee or be affected by notice of the fact that the Trustee have not concurred.

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## **21. AMENDMENTS TO DEED**

### **21.1 Special Resolution required:**

Subject to *clause 21.2* and *clause 21.3*, all amendments to this Trust Deed shall only be made with the approval of a Special Resolution passed in accordance with *Schedule 4*.

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### **21.2 Limitations on Amendment:**

No amendment shall be made to this Trust Deed which:

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- (a) changes the Trust Kaupapa so that the Trustee or trustees as the case may be are no longer required to act for the collective benefit of the present and future Members of Ngāti Mutunga o Wharekauri;
  - (b) changes this *clause 21.2*;
  - (c) changes *clause 23*;
  - (d) changes the finally agreed definition of Member of Ngāti Mutunga o Wharekauri, Ngāti Mutunga o Wharekauri Ancestor, Ngāti Mutunga o Wharekauri Area of Interest, or Ngāti Mutunga o Wharekauri Claims after settlement legislation has been passed;
  - (e) changes the requirement for a Special Resolution (as defined from time to time) in *clause 21.1*;
  - (f) changes the membership and beneficiary of the Trust; and
  - (g) changes *rule 3.1 of Schedule 4* relating to the voting threshold of 75% of the Adult Registered Members who validly cast a vote in favour of the proposed Special Resolution.
- 

### **21.3 Amendment to make definitions consistent with Deed of Settlement and Settlement Act**

Notwithstanding any other provision in this Trust Deed to the contrary, this Trust Deed must be amended by the Trustee to make the definition of Member of Ngāti Mutunga o Wharekauri, Ngāti Mutunga o Wharekauri, Ngāti Mutunga o Wharekauri Ancestor or Ngāti Mutunga o Wharekauri Claims the same as that set out in the final Deed of Settlement and the Settlement Act. If this Trust Deed is amended due to operation of this sub-clause a Special Resolution passed in accordance with *Schedule 4* is not required and the amendment may be made with the approval of a resolution passed by a majority of Directors of the Trustee.

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### **21.4 Consideration of proposals**

Every Adult Registered Member may put forward for consideration by the Trustee proposals for amendments to this Trust Deed and in that respect:

- (a) any proposal put forward under this *clause 21.4* must be in writing and addressed to the Chairperson at the registered office of the Trust;
-

- (b) any proposal put forward under this *clause 21.4* must be considered by the Trustee at its next available meeting;
  
  - (c) if the proposal for an amendment to this Deed complies with *clause 21.2*, the Trustee must at the next annual general meeting discuss the proposal for amendment and seek a vote at the annual general meeting on whether to seek the approval of those amendments by Special Resolution in accordance with *Schedule 4*.
- 

### **21.5 Proposals to be discarded**

Where a proposal for amendments to this Trust Deed does not comply with *clause 21.2*, the Trustee may discard the proposal and the Trustee will not be required to discuss it at the next annual general meeting.

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## **22. RESETTLEMENT**

**22.1** The Trustee has the power to settle or resettle any or all of the Trust Assets upon trust in any manner in which, in the opinion of the Trustee is for the advancement or benefit of the present and future Members of Ngāti Mutunga o Wharekauri, provided that:

- (a) if the Assets are being resettled on a trust that is a Trust Entity, by a Special Resolution of Directors; or
  
- (b) if the Assets are being resettled on a trust that is not a Trust Entity, by a Special Resolution.

**22.2** Any resettlement of Settlement Quota or Income Shares must comply with the Māori Fisheries Act 2004.

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

**23.1** Subject to *clause 21.2*:

- (a) the Trust established by this Trust Deed may be terminated or dissolved if the Adult Registered Members have, by Special Resolution, resolved to do so; and
  - (b) on the termination or dissolution of this Trust under this clause, the Trust Assets after the payment of costs, debts and liabilities shall be paid to another trust or entity that has been established for the benefit of the present and future Members of Ngāti Mutunga o Wharekauri as long as such payment does not override the application of *clause 24*.
- 

### **24. MAXIMUM DURATION OF A TRUST AND DISTRIBUTION DAY**

**24.1** The Distribution Day for the Trust is the day that is one hundred and twenty five years after the date of this Trust Deed, that date being the maximum duration of a trust under the Trusts Act 2019. On the Distribution Day, the Trustee shall hold the remaining capital and income of the Trust Assets on trust for the Members of Ngāti Mutunga o Wharekauri then living as tenants in common in equal shares.

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**24.2** If the Settlement Act provides that the limit on the duration of a trust in any rule of law or under the provisions of any act, including section 16 of the Trusts Act 2019, are not to apply to the Trust, *clause 24(1)* shall be void.

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## **25. KEEPING OF CORE DOCUMENTS**

### **25.1 Trustee to keep Core Documents:**

The Trustee must ensure that the Core Documents are held for the duration of the Trust in accordance with sections 45–48 of the Trusts Act 2019.

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## **26. DISPUTE RESOLUTION**

### **26.1 Disputes:**

In the event that a dispute relating to the affairs of the Trust arises between:

- (a) any Members of Ngāti Mutunga o Wharekauri; or
- (b) the Trustee and any Members of Ngāti Mutunga o Wharekauri

regarding the activities of the Trust then that dispute shall be referred to the Trustee.

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### **26.2 Notice of Dispute:**

All disputes referred to the Trustee in accordance with *clause 26.1* shall be submitted to the Trustee by notice in writing and the Trustee shall acknowledge receipt in writing within 20 Business Days of the date of receipt of the notice.

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### **26.3 Reference of Dispute:**

If a dispute is not settled within 40 Business Days of the receipt by the Trustee of written notice of the dispute in accordance with *clause 26.2* then it shall be referred to a Disputes Committee constituted in accordance with *clause 26.4* and *26.5*.

---

### **26.4 Disputes Committee to be appointed as required:**

There shall not be a permanent Disputes Committee. A Disputes Committee shall be appointed on a case by case basis, having regard to the precise subject matter of the dispute in question, and only after the expiry of the 40 Business Day period referred to in *clause 26.3*.

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**26.5 Appointment and composition of Disputes Committee:**

A Disputes Committee may be convened from time to time and shall comprise three members who shall be appointed by the Trustee as follows:

- (a) one (1) independent non-Ngāti Mutunga o Wharekauri member to act as the chair of the Disputes Committee, appointed for their skills and expertise in dispute resolution; and
  - (b) two (2) Adult Registered Members 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.
- 

**26.6 Role of Disputes Committee:**

The role of a Disputes Committee shall be to facilitate resolution of the dispute, and where it deems necessary, make findings and decisions on the disputes referred to it.

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**26.7 Deliberations of Disputes Committee:**

In facilitating the resolution of any dispute:

- (a) 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;
  - (b) a Disputes Committee may convene a hui with the parties or take any other steps it considers appropriate in order to discuss or resolve the matters that are in dispute; and
  - (c) the findings and decisions of a Disputes Committee shall be final and binding on the parties.
- 

**26.8 Notification of Outcome**

A Disputes Committee shall give its findings and decision, together with the reasons therefore, in writing to the Trustee and any other party to the dispute. The findings and decision of a Disputes Committee may, if the Trustee considers it appropriate, also be reported back to Members of Ngāti Mutunga o Wharekauri at the next annual general meeting.

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## **26.9 Exclusion of alternative dispute resolution provisions**

Sections 142–147 of the Trusts Act 2019, relating to alternative dispute resolution, are hereby expressly excluded.

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## **26.12 Māori Fisheries Act Disputes**

If the Trust is the Mandated Iwi Organisation for Ngāti Mutunga o Wharekauri, Part 5 of the Māori Fisheries Act 2004 shall also apply in relation to any disputes under the Māori Fisheries Act 2004.

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## **27. REVIEW OF TRUST DEED**

### **27.1 Review of trust deed**

The Trustee shall, within seven (7) years or earlier of the Settlement Date, initiate a review of the terms and operation of this Trust Deed and, in particular, shall review the arrangements relating to the election of Elected Representatives and all other aspects of the representation of Ngāti Mutunga o Wharekauri by the Trust.

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### **27.2 Deed review process**

In conducting this review the Trustee shall engage and consult with Ngāti Mutunga o Wharekauri in order to seek the views of Ngāti Mutunga o Wharekauri on the terms and operation of this Deed and, in particular, the arrangements relating to the election of Elected Representatives and all other aspects of the representation of Ngāti Mutunga o Wharekauri by the Trust and shall have regard to the tikanga of Ngāti Mutunga o Wharekauri.

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**27.3 Review to be independently facilitated**

The process of engagement and consultation required by *clause 27.2* shall be undertaken by an independent facilitator appointed by the Trustee. The role of the independent facilitator shall be to:

- (a) liaise with the Trustee in the preparation of any discussion materials to be distributed to Members of Ngāti Mutunga o Wharekauri;
  - (b) facilitate any hui;
  - (c) receive, compile and review any written submissions received from Members of Ngāti Mutunga o Wharekauri; and
  - (d) make recommendations to the Trustee as to the amendments that should be made to this Trust Deed as a consequence of the information received from the process of engagement and consultation.
- 

**27.4 Outcome of review**

Following the completion of the review and consideration by the Trustee of the report made by the independent facilitator in accordance with *clause 27.3*, the Trustee may recommend amendments (if any) to this Trust Deed and seek the approval of those amendments by Special Resolution in accordance with *Schedule 4*.

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**DATED this [ ] day of [ ] [20 ]**

**SIGNED for Ngāti Mutunga o Wharekauri Trustee Limited in its capacity as trustee of Te Korowai o Ngati Mutunga o Wharekauri Trust:**

**Name:** \_\_\_\_\_

**Occupation:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**SIGNED for Ngāti Mutunga o Wharekauri Trustee Limited in its capacity as trustee of Te Korowai o Ngati Mutunga o Wharekauri Trust:**

**Name:** \_\_\_\_\_

---

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED for Ngāti Mutunga o Wharekauri Trustee Limited** in its capacity as trustee of Te Korowai o Ngati Mutunga o Wharekauri Trust:

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED for Ngāti Mutunga o Wharekauri Trustee Limited** in its capacity as trustee of Te Korowai o Ngati Mutunga o Wharekauri Trust:

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED for Ngāti Mutunga o Wharekauri Trustee Limited** in its capacity as trustee of Te Korowai o Ngati Mutunga o Wharekauri Trust:

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

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**SIGNED for Ngāti Mutunga o Wharekauri Trustee Limited** in its capacity as trustee of Te Korowai o Ngati Mutunga o Wharekauri Trust:

**Name:** \_\_\_\_\_

**Occupation:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**SIGNED for Ngāti Mutunga o Wharekauri Trustee Limited** in its capacity as trustee of Te Korowai o Ngati Mutunga o Wharekauri Trust:

**Name:** \_\_\_\_\_

**Occupation:** \_\_\_\_\_

**Address:** \_\_\_\_\_

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## **SCHEDULE 1 – NGĀTI MUTUNGA O WHAREKAURI MEMBERSHIP REGISTER**

### **1. TRUST TO KEEP REGISTER**

#### **1.1 Trust to maintain register:**

The Trustee shall administer and maintain the Register, which is a register of Members of Ngāti Mutunga o Wharekauri and shall make such additions and corrections to the Register as may from time to time be necessary. As at the date of this Trust Deed, the Register shall include all persons who are registered as members of Ngāti Mutunga o Wharekauri on any registers maintained by the Ngāti Mutunga o Wharekauri Iwi Trust.

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#### **1.2 Register to comply with this Schedule:**

The Register shall be maintained by the Trust Management or their delegate at the Registered Office of the Trust in accordance with the rules and procedures set out in this Schedule.

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#### **1.3 Increasing Register:**

The Trustee shall take active steps to increase the number of Members of Ngāti Mutunga o Wharekauri on the Register with the aim, so far as reasonably possible, ultimately to have all Members of Ngāti Mutunga o Wharekauri registered on the Register.

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#### **1.4 Appointment of Registrar:**

For the purposes of approving applications for registration on the Register in accordance with this Trust Deed, the Trustee shall, by resolution on a recommendation from Trust Management after consultation with the Kaunihera Kaumātua, appoint a Registrar who:

- (a) must be an Adult Registered Member;
  - (b) may be a member of the Kaunihera Kaumātua;
  - (c) must not be an Elected Representative;
  - (d) must have an understanding and knowledge of Ngāti Mutunga o Wharekauri whakapapa and tikanga;
  - (e) may be appointed for such term at such remuneration and upon such conditions as the Trustee may from time to time prescribe; and
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(f) may be removed from the office of Registrar by resolution of the Trustee.

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## **2. CONTENTS OF REGISTER**

### **2.1 Register to contain Members' details:**

The Ngāti Mutunga o Wharekauri Register shall record in it the full names, dates of birth, postal addresses and email addresses of Members of Ngāti Mutunga o Wharekauri and such other information as the Trustee may determine from time to time.

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### **2.2 Beneficiary Registration Number:**

The Trustee will allocate a beneficiary identification number to each Adult Registered Member on the Register, in accordance with the requirements of the Privacy Act 2020. The Trustee will, immediately after allocation, notify the relevant Adult Registered Member of his or her beneficiary identification number.

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### **3. APPLICATIONS FOR REGISTRATION**

#### **3.1 Form of application:**

All applications for registration as a Member of Ngāti Mutunga o Wharekauri must be made to the Trustee in the registration form approved from time to time by the Trustee. The registration form must contain:

- (a) the full name, date of birth, postal address, email address and phone contact of the applicant;
- (b) where known, the whakapapa through which the applicant claims affiliation to Ngāti Mutunga o Wharekauri;
- (c) such evidence as the Trustee may from time to time require as to that applicant's status as a Member of Ngāti Mutunga o Wharekauri; and
- (d) whether they wish to receive private notices and voting papers for elections of Elected Representatives and for resolutions regarding amendments to this Trust Deed:
  - (i) by electronic means; or
  - (ii) by post;
- (e) whether they wish to receive private notices for other matters requiring approval by way of Special Resolution;
- (f) a description of the purpose for collecting the Member of Ngāti Mutunga o Wharekauri's information, how it may be used and how the Member of Ngāti Mutunga o Wharekauri can access, and request correction of, information collected through the form in accordance with the Privacy Act 2020; and
- (g) such other information as the Trustee may determine from time to time.

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#### **3.2 Applications to be made by:**

An application for registration as a Member of Ngāti Mutunga o Wharekauri may be made by:

- (a) Members of Ngāti Mutunga o Wharekauri who are 18 years of age or older;
  - (b) other Members of Ngāti Mutunga o Wharekauri who are under the age of 18 years, by their parent or legal guardian on their behalf.
-

#### **4. DECISIONS AS TO MEMBERSHIP**

##### **4.1 Registrar to be appointed:**

The role of the Registrar shall be to receive, assess and approve or decline applications made pursuant to *rule 3.1* of this Schedule for registration as a Member of Ngāti Mutunga o Wharekauri, subject to the endorsement of the Trustee.

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##### **4.2 Establishment and composition of Whakapapa Committee:**

- (a) The Trustee shall, from time to time as required, appoint by resolution a Whakapapa Committee comprising three (3) members of Ngāti Mutunga o Wharekauri, who may be members of the Kaunihera Kaumātua or other Members of Ngāti Mutunga o Wharekauri with the expertise and knowledge of Ngāti Mutunga o Wharekauri whakapapa necessary to make determinations regarding membership appeals.
  - (b) Directors of the Trustee with the required expertise and knowledge of Ngāti Mutunga o Wharekauri whakapapa may be appointed to the Whakapapa Committee.
  - (c) The role of the Whakapapa Committee shall be to hear any appeals which may arise pursuant to *rule 4.7* of this Schedule relating to an application for registration as a Member of Ngāti Mutunga o Wharekauri.
- 

##### **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, Trust Management or their delegate as the case may be, to the Registrar, who will be responsible for:

- (a) assessing applications for membership from Members of Ngāti Mutunga o Wharekauri applying to be registered as Members of Ngāti Mutunga o Wharekauri; and
  - (b) approving the registration of Members of Ngāti Mutunga o Wharekauri and the entering of approved Members of Ngāti Mutunga o Wharekauri on the Register, subject to the endorsement of the Trustee.
-

**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 Registrar shall consider the application and shall make a decision as to whether or not the applicant should be registered as a Member of Ngāti Mutunga o Wharekauri. The Registrar may consult with the Kaunihera Kaumātua in relation to any application for registration as a Member of Ngāti Mutunga o Wharekauri.

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**4.5 Successful applicants to be notified and registered:**

In the event that the Registrar decides that the application should be accepted then such decision shall be notified in writing to the Trustee, which shall endorse the decision at the next meeting of the Directors of the Trustee. Following endorsement, the Trustee shall in turn notify the applicant and enter the applicant's name and other relevant details in the appropriate part of the Register.

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**4.6 Notification to unsuccessful applicants:**

In the event that the Registrar 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 given for the decision.

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**4.7 Unsuccessful applicant may appeal or reapply:**

Any applicant whose application has been declined:

- (a) may within 20 business days of notification by the Trustee to the applicant of any decision to decline the applicant's application, the applicant may appeal the decision by notice in writing submitted to the Trustee; or
  - (b) may at any time seek to have his or her application reconsidered by the Registrar provided that such application for reconsideration may only be made on the basis of new evidence (being evidence that was not submitted or considered as part of the initial or, if more than one (1), any previous application) as to the applicant's status as a Member of Ngāti Mutunga o Wharekauri.
- 

**4.8 Appeal of decision:**

- (a) Any correctly notified appeal shall be heard within 40 business days of receipt of
-

the appeal by a Whakapapa Committee duly appointed by the Trustee. The Whakapapa Committee shall, subject to meeting the requirements of natural justice and having due regard to tikanga, have the sole discretion to call for evidence and determine the manner in which the appeal before it should be dealt with, including whether to accept or decline the application for registration as a Member of Ngāti Mutunga o Wharekauri.

- (b) In meeting the requirements of natural justice, the Whakapapa Committee shall provide the applicant with the opportunity to attend a meeting with the Whakapapa Committee for the purpose of presenting a detailed account of the matter in dispute, including any evidence in support of their registration as a Member of Ngāti Mutunga o Wharekauri.
  - (c) The Whakapapa Committee shall give its findings and decision, together with the reasons therefore, in writing to all parties and to the Trustee.
  - (d) The decision of the Whakapapa Committee is final and binding on all parties, including the Trustee.
- 

#### **4.9 Trust Management to report to Trustee:**

On a monthly basis, the Trust Management shall provide a report to the Trustee detailing:

- (a) applications for registration as a Member of Ngāti Mutunga o Wharekauri received in the preceding month;
  - (b) applications for registration as a Member of Ngāti Mutunga o Wharekauri approved by the Registrar in the preceding month for endorsement by the Trustee at the next ordinary meeting of the Trustee; and
  - (c) applications for registration as a Member of Ngāti Mutunga o Wharekauri declined by the Registrar in the preceding month.
-

## **5. MAINTENANCE OF REGISTER**

### **5.1 Trustee to establish policies:**

The Trustee shall take such steps and institute such policies as are necessary to protect the privacy of Members and ensure that the Register is maintained in a condition that is as up to date, accurate and complete as possible in recording Members of Ngāti Mutunga o Wharekauri.

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### **5.2 Assistance in identifying membership:**

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

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### **5.3 Responsibility of Members of Ngāti Mutunga o Wharekauri:**

Notwithstanding *rule 1.1* of this Schedule:

- (a) it shall be the responsibility of each person who is a Member of Ngāti Mutunga o Wharekauri (or in the case of those persons under 18 years of age, the parent or guardian of that person) to ensure that his or her name is included in the Register;
  - (b) it shall be the responsibility of each person who is a Member of Ngāti Mutunga o Wharekauri (or in the case of those persons under 18 years of age, the parent or guardian of that person) to ensure that his or her full postal address and other contact details for the time being is provided and updated; and
  - (c) any Member of Ngāti Mutunga o Wharekauri may choose to terminate their registration of membership of the Te Korowai o Ngati Mutunga o Wharekauri Trust, by notifying the Trustee in writing.
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### **5.4 Consequences of registration:**

Registration of any person on the Register as a Member of Ngāti Mutunga o Wharekauri shall be conclusive evidence of that person's status as a Member of Ngāti Mutunga o Wharekauri.

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**5.5 Protection of information:**

The Trustee, the Registrar, the Whakapapa Committee and all Trust staff shall ensure that:

- (a) the sacredness of whakapapa as he taonga tapu is acknowledged and respected;  
and
  - (b) and the requirements of the Privacy Act 2020 are met with regard to the storage, disclosure and use of information, and all written or oral information in relation to applications for registrations shall be treated in the strictest confidence subject to the express terms of this Trust Deed.
-

## SCHEDULE 2 - ELECTIONS OF ELECTED REPRESENTATIVES

### 1. PROCEDURE

#### 1.1 Application of this Schedule:

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

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### 2. ELIGIBILITY FOR APPOINTMENT

#### 2.1 Nominee to be registered:

To be elected as a Director and a Shareholder of the Trustee, an Elected Representative must, as at the closing date for nominations, be recorded in the Ngāti Mutunga o Wharekauri Register as an Adult Registered Member and be eligible in accordance with *rule 2.4* of this Schedule.

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#### 2.2 Elected Representative roles:

An Elected Representative may not hold the position of Trust Management nor be an employee of any Trust Entity.

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#### 2.3 Elected Representatives may be directors or trustees:

Subject to *rule 1.2* of Schedule 6, an Elected Representative may be a director or a trustee of a Trust Entity.

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#### 2.4 Eligibility criteria:

Notwithstanding the other rules of this Schedule, an Adult Registered Member is not eligible for nomination as a candidate for election as an Elected Representative if he or she:

- (a) does not meet the requirements of *rules 2.1 and 2.2* of this Schedule;
  - (b) is or has ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the
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Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);

- (c) is bankrupt or has made any composition or arrangement with his or her creditors;
  - (d) has been convicted of an offence punishable by two (2) or more years of imprisonment (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);
  - (e) is subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 or is subject to a personal or property order under the Protection of Personal and Property Rights Act 1988;
  - (f) is or has ever been disqualified from being a director of a company registered under the Companies Act 1955 or the Companies Act 1993;
  - (g) is or has ever been removed as a trustee of a trust by order of a Court on the grounds on breach of trust, lack of competence or failure to carry out the duties of a trustee satisfactorily; or
  - (h) has within the last three (3) years been removed from the office of Elected Representative in accordance with *clause 17.3*.
- 

### **3. ELECTION OF ELECTED REPRESENTATIVES**

#### **3.1. Number of Elected Representatives:**

There shall be seven (7) Elected Representatives holding office as Directors and as Shareholders of the Trustee, provided however that the Trustee may from time to time have less than seven (7) Elected Representatives as Directors and as Shareholders in the event of the early cessation of office of a Director and Shareholder and pending the appointment of a replacement Elected Representative.

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#### **3.2. Election of Elected Representatives:**

The Adult Registered Members listed in the Register shall be entitled to elect the Elected Representatives and cast a vote for one nominee in respect of each Elected Representative position that is vacant in accordance with the rules for elections as set out in this Schedule.

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**3.3.** In each election:

- (a) four (4) Elected Representative positions will be filled by the four (4) highest polling Resident Candidates in the election, who will be elected as Elected Representatives; and
- (b) the remaining three (3) Elected Representative positions will be filled by the candidates who receive the highest number of valid votes for the relevant vacancies, other than the four (4) highest polling Resident Candidates. For the avoidance of doubt, the remaining three (3) Elected Representative positions will be filled regardless of the place of residence of the candidates.

**3.4.** The elections for the Elected Representatives shall be concluded by the time of the annual general meeting of the trust in that Income Year.

**3.5.** Elected Representatives acting as Directors and as Shareholders of the Trustee must represent the interests of all Members of Ngāti Mutunga o Wharekauri irrespective of whānau affiliations.

**3.6. First Election**

The Initial Representatives must ensure that the First Election is held prior to the first annual general meeting following the Settlement Date.

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**4. TERM OF OFFICE**

**4.1 Term of office:**

Subject to *rule 4.2* of this Schedule the Elected Representatives from time to time shall hold office for a term of three (3) years.

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**4.2 Retirement of Initial Representatives:**

The Initial Representatives shall retire from office as Directors and as Shareholders of the Trustee at the end of the Establishment Period upon elections having been held for the appointment of Elected Representatives in accordance with the provisions of this Schedule prior to the first annual general meeting following the Settlement Date.

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**4.3 Term following retirement of Initial Representatives:**

Following the retirement of the Initial Representatives as Directors and Shareholders in accordance with *rule 4.2* of this Schedule, each Elected Representative shall hold office as a Directors and as a Shareholder of the Trustee until the conclusion of the annual general meeting of the Trust in the third Income Year following his or her appointment.

However, if because of a review of the election of an Elected Representative's replacement under *rule 13* of this Schedule the appointment of that Elected Representative's replacement has not been completed as at the expiry of the Elected Representative's term, then that Elected Representative shall continue to hold office as a Director and as a Shareholder of the Trustee by virtue of his or her previous appointment until the review process is completed. For the purposes of calculating the term of the replacement Elected Representative as Director and as Shareholder of the Trustee, that replacement Elected Representative shall, once he or she takes office, be deemed to have taken office on the date upon which the term of office of the previous Elected Representative expired, being the date of the relevant annual general meeting.

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**4.4 Eligibility of retiring Elected Representatives:**

Retiring Elected Representatives shall be eligible for re-election as Directors and Shareholders of the Trustee.

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**5. TIMING OF ELECTIONS**

- 5.1** The elections for Elected Representatives in any given Income Year must, except 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.
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**6. MAKING OF NOMINATIONS**

**6.1 Calling for nominations:**

At least three (3) months before the annual general meeting of the Trust for the relevant Income Year and in any event in sufficient time for the election to be concluded in accordance with *rule 5* of this Schedule, the Trustee or the Chief Returning Officer acting on its behalf, shall provide written notice of:

- (a) the pending expiration of the term of office of Elected Representatives as Directors and as Shareholders of the Trustee;
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- (b) the date at which the election of Elected Representatives will be held; and
  - (c) specify the method of making nominations, the requirement in *rule 2.1* and *2.4* of this Schedule in terms of eligibility and the latest date by which nominations must be made and lodged with the Chief Returning Officer or such other person as the notice directs.
- 

**6.2 Timing for nominations:**

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

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**6.3 Form of notice:**

All notices given by the Trustee or the Chief Returning Officer under this rule shall be given in writing by:

- (a) private notice by post (including by electronic form where available) to all Adult Registered Members at the last address shown for such Adult Registered Member on the Register. If notice sent to an electronic address fails, and the Trustee is aware of the failure, then the notice must be sent to the last known physical address;
  - (b) public notice by:
    - (i) advertising by electronic or digital means including on the Trust's website and social media;
    - (ii) inserting a prominent advertisement on at least two (2) separate days in the Chatham Islands Community Focus Trust newsletter (so long as it exists), in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members reside; and
    - (iii) such other means as the Trustee may determine.
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**6.4 Inclusion of invitation to register:**

Any such notice shall also invite applications from qualified persons for inclusion of their names in the Ngāti Mutunga o Wharekauri Register, and shall set out the date upon which a registration must be received for the applicant, if successful, to be eligible to vote in the notified election, being the same date as that fixed as the latest date for making and lodging nominations.

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**6.5 Nomination to be in writing:**

The nomination of a candidate for election as an Elected Representatives shall:

- (a) be in writing;
- (b) signed by three (3) Adult Registered Members;
- (c) include the nominee's full name, address and contact number;
- (d) include a curriculum vitae and/or brief summary of the skills and experience the candidate believes are relevant to support their election of no more than 4 pages. The Trustee shall make such information available to Members during the course of the election process; and
- (e) include a declaration signed by the nominee for election as an Elected Representatives that declares:
  - (i) that the nominee is not a person who is precluded from holding office as Director and as Shareholder of the Trustee on the basis of one or other of the matters specified in *rule 2.4* of this Schedule;
  - (ii) whether the nominee is Resident in the Ngāti Mutunga o Wharekauri Area of Interest as at the date of their declaration and will be for the relevant term of an Elected Representative if they are elected;
  - (iii) that, if elected, the nominee agrees to be bound by the terms of this Deed and any other relevant obligations; and
  - (iv) authorises the Trustee to make enquiry of relevant persons, authorities and records to confirm any aspect of the nominee's declaration.

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**6.6 Withdrawal of nomination:**

A nominee may withdraw their nomination at any time prior to election by notice in writing to the Trust by the nominee.

If the Trustee receives notice of the withdrawal of a nomination after public notice of the nominees has been given and voting papers have been sent to Adult Registered Members under *rule 8.1* of this Schedule:

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- (a) If the notice of withdrawal of nomination is received 20 Business Days before the date at which voting is to close, the Trustee will promptly give public notice of the withdrawal of the nominee and the nominees who remain for election; and
  - (b) the number of remaining nominees for election from the nominations received from Adult Registered Members under *rule 6.5* of this Schedule is less than or equal to the number of Elected Representative positions remaining open for election, then the provisions in *rule 7.2* of this Schedule shall apply with any necessary modifications.
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## **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 by post or electronic form. Voting papers may be delivered to the Chief Returning Officer by post or by electronic form where available. In each election:

- (c) four (4) Elected Representatives positions will be filled by the four (4) highest polling Resident Candidates in the election, who will be elected as Elected Representatives to act as Directors and Shareholders of the Trustee; and
  - (d) the remaining three (3) Elected Representatives positions to act as Directors and Shareholders of the Trustee will be filled by the candidates who receive the highest number of valid votes for the relevant vacancies, other than the four (4) highest polling Resident Candidates. For the avoidance of doubt, the remaining three (3) Elected Representatives positions will be filled regardless of the place of residence of the candidates.
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### **7.2 No elections where nominees equal vacancies:**

In the event that the total number of nominations of Elected Representatives is less than or equal to the total number of vacancies, no election shall be necessary and the person or persons nominated shall be deemed to have been duly appointed.

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### **7.3 Adult Members to vote in elections:**

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

- (a) each such Adult Member will only be eligible to cast one vote in an election listing up to seven (7) preferred Elected Representatives in an election; and
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- (b) each such Adult Member must, at the latest date for making and lodging nominations, either be recorded in the Register as an Adult Registered Member or have completed and sent with their voting paper an application form for registration which complies with *rule 3.1 of Schedule 1*.
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## **8. NOTICE OF ELECTIONS**

### **8.1 Notice to be given:**

Following the closing date for nominations, the Trustee shall, where an election is required due to the number of candidates exceeding the number of vacant positions, give private notice in writing to all Adult Registered Members and public notice intended for all Adult Members of:

- (a) the purpose of the election;
  - (b) the date at which the election will be held, including the opening and closing date for the election (being the last day upon which a vote may be validly cast in the election);
  - (c) the number of Elected Representative positions to act as Directors and as Shareholders of the Trustee that are open for election and a list of the names of the nominees;
  - (d) which of the nominees are Resident Candidates;
  - (e) the date by which completed voting papers are to be received by the Chief Returning Officer;
  - (f) the means by which votes may be cast in the election;
  - (g) where further voting papers and any other information that may reasonably inform Adult Registered Members about the election may be viewed or obtained;
  - (h) a copy of the nomination form and candidate statement or curriculum vitae provided by each nominee in accordance with *rule 6.5* of this Schedule; and
  - (i) a voting paper.
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**8.2 Period of notice:**

The Trustee shall give not less than 28 days' notice of the closing date for the elections and the method by which votes may be cast as set out in *rule 8.1* of this Schedule.

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**8.3 Method of giving notice:**

Notice under *rule 8.1* of this Schedule shall be given by:

- (a) for all information set out in *rule 8.1* of this Schedule, private notice by post (including by electronic form where available) to all Adult Registered Members at the last address shown for such Adult Registered Members on the Ngāti Mutunga o Wharekauri Register. If notice sent to an electronic address fails, and the Trustee is aware of the failure, then the notice must be sent to the last known physical address;
  - (b) for the information set out in *rule 8.1(a)-(f)* of this Schedule, public notice by:
    - (i) advertising by electronic or digital means including on the Trust's website and social media;
    - (ii) inserting a prominent advertisement on at least two (2) separate days in the Chatham Islands Community Focus Trust newsletter (so long as it exists) or other relevant Chatham Islands newsletter, in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members of Ngāti Mutunga o Wharekauri reside; and
    - (iii) such other means as the Trustee may determine.
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**9. POSTAL AND ELECTRONIC VOTING**

**9.1 Other details to accompany vote:**

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

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**9.2 Timing and exercise of vote:**

Votes by Adult Registered Members must be:

- (a) validly cast on a voting paper;
  - (b) received by the Chief Returning Officer on or before the closing date for the election;
  - (c) where cast by post, received by the Chief Returning Officer no later than five (5) Business Days after the closing date for the election but only if the envelope containing the voting paper is date stamped on or before the closing date for the election;
  - (d) where cast by electronic means, received by the Chief Returning Officer before any notified date by which votes by electronic means are to be cast.
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**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, a nominee, an employee of the Trust or an Adult Registered Member. The Trustee shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the provisions of this Deed setting out the powers and duties of the Chief Returning Officer. The Chief Returning Officer shall be responsible for co-ordinating Elected Representative elections and receiving and counting all Voting Papers cast in an election held under this Schedule.

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**10.2 Chief Returning Officer to receive voting papers:**

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

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

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

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**10.4 Provisional Votes:**

Where an Adult Member of Ngāti Mutunga o Wharekauri is not also an Adult Registered Member and has voted in accordance with rule 7.3(b) of this Schedule:

- (a) such vote is provisional until such time as the application form for registration as an Adult Registered Member is approved by the Registrar or Whakapapa Committee as the case may be as set out in *Schedule 1*; and
  - (b) where the application form for registration as an Adult Registered Member is declined in accordance with *Schedule 1*, the said vote will be invalidated.
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**10.5 Recording of votes:**

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

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**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.

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**11.2 Certification of election result:**

Once all votes have been counted and the result of the election determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the election. In each election that is held:

- (a) Four (4) Elected Representative positions will be filled by the four (4) highest polling Resident Candidates in the election, who will be elected as Elected Representatives to act as Directors and as Shareholders of the Trustee.
  - (b) The remaining three (3) Elected Representative positions to act as Directors and as Shareholders of the Trustee will be filled by the candidates who receive the highest number of valid votes for the relevant vacancies, other than the four (4) highest polling Resident Candidates. For the avoidance of doubt, the remaining three (3) Elected Representative positions to act as Directors and as Shareholders of the Trustee will be filled regardless of the place of residence of the candidates.
  - (c) If there are fewer than four (4) Resident Candidates in the election, then the
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Resident Candidates will be deemed elected to act as Directors and as Shareholders of the Trustee and the remaining Elected Representative positions may be filled by the remaining candidates, up to a total of seven (7) Elected Representative positions, who receive the highest number of valid votes for the Elected Representative vacancies regardless of their place of residence.

- (d) If there are an equal number of votes for any last available Elected Representative position in an election, the successful nominee will be decided by the drawing of lots by the Chief Returning Officer.

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**11.3 Notification of election result:**

The Chief Returning Officer shall make, and forward to the Trustee within 10 Business Days of the date of the election, a declaration in writing certifying:

- (a) the number of voting papers received;
- (b) the number of voting papers rejected as informal;
- (c) the number of valid votes received by each nominee in respect of the Elected Representative positions to act as Directors and as Shareholders of the Trustee, for which nominations were made by Adult Registered Members;
- (d) where applicable, the results of any drawing of lots conducted by the Chief Returning Officer under rule 11.2(d) of this Schedule; and
- (e) the names of the duly elected Elected Representatives to act as Directors and as Shareholders of the Trustee.

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**11.4** Upon receipt by the Trustee of the declaration certifying the results of the election under *rule 11.3* of this Schedule, the Trustee shall:

- (a) advise the nominees in writing of the result; and
- (b) give public notice of the result within 10 Business Days of the date of the declaration, by:
- (i) advertising by electronic or digital means including on the Trust's website and social media;
- (ii) inserting a prominent advertisement on at least two (2) separate days in the
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Chatham Islands Community Focus Trust newsletter (so long as it exists), in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members of Ngāti Mutunga o Wharekauri reside; and

(iii) such other means as the Trustee may determine; and

- (c) announce the result at the annual general meeting of the Trust in that Income Year.

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### **11.5 Provisional Votes:**

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

- (a) if the validity or otherwise of the Provisional Votes may affect the outcome of the election, the Chief Returning Officer may not certify the result of the election until the validity of the Provisional Votes has been confirmed pursuant to *rule 10.4(a)* of this Schedule and any valid Provisional Vote has been counted;
- (b) if the validity or otherwise of the Provisional Votes will not affect the result of the election, the Chief Returning Officer may certify the result notwithstanding that the validity of the Provisional Votes has not been confirmed pursuant to *rule 10.4(a)* of this Schedule and the Provisional Votes have not been counted.

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## **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 papers 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.

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

Subject to *rule 14.1(b)* of this Schedule the sealed packets received from the Chief Returning Officer shall be safely kept unopened by the Trustee for a period of six (6) months from the closing date for making votes in the election to which the packet relates. At the expiry of that six (6) month period the packets shall be destroyed unopened.

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### **13. REVIEW OF ELECTION RESULTS**

#### **13.1 Candidates may seek review:**

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

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#### **13.2 Appointment of Electoral Review Officer:**

For the purposes of carrying out reviews in respect of any election, the Trustee shall ensure that an independent Electoral Review Officer who is not an Adult Registered Member is appointed upon receipt of an application for review made in accordance with *rule 13.4*.

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#### **13.3 Electoral Review Officer to conduct reviews:**

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

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#### **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.
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#### **13.5 Service of application on other candidates:**

The application for review and any accompanying evidence shall also be served by the candidate referred to in *rule 13.1* of this Schedule upon all other candidates in the election to which the review relates, either at the same time, or as close thereto as is possible, as the review application is lodged with the Trustee.

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**13.6 Costs:**

Upon making an application for review the applicant shall also lodge with the Trustee the sum of \$500 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 \$500 shall be refunded to the applicant, otherwise it shall be used to off-set the costs of the review.

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**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 of the application for review and provide to him or her:

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

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**14.3 Electoral Review Officer to be guided by substantial merits:**

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

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**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

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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.

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**14.5 Decision to be final:**

All decisions of the Electoral Review Officer shall be final (noting that the right to seek judicial review in the High Court is always available).

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**15. TERMINATION OR REMOVAL AS DIRECTOR AND SHAREHOLDER**

**15.1 Termination or removal of office:**

Notwithstanding the foregoing rules of this Schedule, an Elected Representative shall cease to be a Director and a Shareholder of the Trustee if he or she:

- (a) retires from office by giving written notice to the Trustee;
  - (b) dies;
  - (c) completes his or her term of office and is not reappointed;
  - (d) refuses to act;
  - (e) is absent without leave from three (3) consecutive ordinary meetings of the Trustee (in their capacity as Directors of the Trustee) without good reason or without the permission of the Chairperson;
  - (f) is an Elected Representative who was one of the four (4) highest polling Resident Candidates in the previous election and ceases, in any Income Year, to be Resident in the Ngāti Mutunga o Wharekauri Area of Interest;
  - (g) is convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993;
  - (h) is disqualified from being a director of a company registered under the Companies Act 1993;
  - (i) is removed as a trustee of a trust by order of a Court on the grounds on breach of trust, lack of competence or failure to carry out the duties of a trustee
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satisfactorily;

- (j) is bankrupt or makes any composition or arrangement with his or her creditors;
  - (k) is convicted of an offence punishable by two (2) or more years imprisonment;
  - (l) becomes subject to a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 or becomes subject to a personal or property order under the Protection of Personal and Property Rights Act 1988;
  - (m) is determined in accordance with section 104 of the Trusts Act 2019 to have lost capacity to perform the functions of a trustee;
  - (n) makes a false declaration in their nomination form under *rule 6.5(e)* of this Schedule; or
  - (o) is removed from their role as Director and as Shareholder of the Trustee in accordance with *clause 17.3*.
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**15.2 Process for termination or removal:**

An Elected Representative shall be declared removed as a Director and as Shareholder of the Trustee on any of the grounds in *rule 15.1(d)-(n)* of this Schedule by a Special Resolution of Directors.

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15.3 An Elected Representative removed in accordance with *rules 15.1* and *15.2* of this Schedule shall cease to be a Director and a Shareholder of the Trustee forthwith and shall not be entitled to be re-elected or appointed as an Elected Representative for a period of not less than three (3) years following his or her removal.

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15.4 The removal of an Elected Representative as a Director and a Shareholder of the Trustee in accordance with *rule 15.1* of this Schedule shall, together with reasons, be reported at the next annual general meeting of the Trust following such removal.

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## **16. REPLACEMENT OF ELECTED REPRESENTATIVES AS DIRECTORS AND SHAREHOLDERS**

### **16.1 Vacancy**

In the event of a vacancy under *rule 15* of this Schedule:

- (a) if the vacancy relates to an Initial Representative, a replacement Initial Representative shall be appointed as a Director and as a Shareholder by the remaining Initial Representatives or, if more than five (5) Initial Representatives remain in office, the Initial Representatives may continue to act notwithstanding the vacancy;
- (b) if the vacancy occurs within six (6) months of the end of the term of office of the relevant Elected Representative, it shall not be necessary for the Trustee to fill the vacancy;
- (c) if the vacancy as a Director and as a Shareholder of the Trustee relates to an Elected Representative who was elected pursuant to this Schedule who was not one of the four (4) Elected Representative positions filled by the four (4) highest polling Resident Candidates in the previous election:
  - (i) the Trust shall offer the vacant Elected Representative position to the next highest polling nominee for Elected Representative at the previous election;
  - (ii) if that nominee declines to accept appointment as an Elected Representative to act as Director and as Shareholder of the Trustee, a replacement shall be appointed by the Trustee; and
- (d) if the vacancy relates to an Elected Representative who was one of the four (4) highest polling Resident Candidates in the previous election:
  - (i) the Trust shall offer the vacant position of Elected Representative to act as Director and as Shareholder of the Trustee to the next highest polling nominee at the previous election who did declare that they were a Resident Candidate under *rule 6.5(e)* of this Schedule; and
  - (ii) if that nominee declines to accept appointment as an Elected Representative to act as Director and as Shareholder of the Trustee, a replacement shall be appointed by the Trustee, provided that such replacement must be Resident within the Ngāti Mutunga o Wharekauri Area of Interest.

### **16.2 Term of Replacement Directors and Shareholders**

In the case of an appointment made pursuant to *rule 16.1* of this Schedule, the replacement Elected Representatives shall hold office as Directors and Shareholders of the Trustee:

- (a) in the case of a person appointed to replace an Initial Representative, for the balance of the Establishment Period; and
- (b) in the case of a person appointed to replace an Elected Representative elected pursuant to this Schedule, for the balance of the term of office of the Elected Representative holding office as Director and Shareholder of the Trustee that he or she has replaced.

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## **17. RECORD OF CHANGES OF ELECTED REPRESENTATIVES**

### **17.1 Record of changes of Elected Representatives:**

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

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### **SCHEDULE 3 – PROCEDURE FOR TRUST MEETINGS**

#### **1. TRUSTEE MEETINGS**

- 1.1** The Trustee shall meet for the dispatch of business, adjourn and otherwise regulate meetings of the Trustee as the Directors of the Trustee think fit.
- 1.2** A meeting of the Trustee may also be requested by the Chairperson, the Deputy Chairperson, or the written request of three (3) or more Directors of the Trustee in accordance with *rule 3* of this Schedule.
- 1.3** Subject to any other requirements in this Deed or the Constitution:
- (a) meetings of the Trustee will be held at such date, time and venue as the Directors of the Trustee may from time to time determine; and
  - (b) the Directors of the Trustee may adjourn or otherwise regulate meetings as they, in their discretion, think fit.
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#### **2. NOTICE OF MEETING**

**2.1 Notice to Directors:**

Written notice of every meeting shall be either posted or sent by electronic form to each Director of the Trustee at least seven (7) days before the date of the meeting. However, it shall not be necessary to give notice of a meeting of the Trustee to any Director for the time being absent from New Zealand unless that Director has provided details of where he or she may be contacted while overseas. No notice shall be required for adjourned meetings except to those Directors who were not present when the meeting was adjourned.

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**2.2 Content of notice:**

Every notice of a meeting shall state the place, day and time of the meeting, and the agenda of the meeting.

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**2.3 Waiver of notice:**

The requirement for notice of a meeting may be waived if 75% of the Directors of the

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Trustee who are at the time entitled to receive notice of the meeting give their written consent to such a waiver prior to or at the meeting.

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**2.4 Meeting limited to notified business:**

Subject to *rule 2.3* of this Schedule, no business shall be transacted at any meeting of the Trustee other than the business expressly referred to in the notice calling the meeting.

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**2.5 Deficiency of notice:**

Subject to *rule 2.4* of this Schedule, no deficiency in the giving of notice for any meeting of the Trustee shall otherwise invalidate such meeting or the proceedings at such meeting.

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**3. QUORUM**

- 3.1 No business is to be transacted at any meeting of Directors of the Trustee unless the required quorum is present at the time when the meeting proceeds to business.
- 3.2 The quorum for a meeting of the Trustee at which a Special Resolution of Directors is proposed, other than as provided in *rule 3.6* of this Schedule, is 75% or more of the Directors of the Trustee present in person or by telephone or electronic means.
- 3.3 The quorum for a meeting of the Trustee at which the only resolutions to be proposed are ordinary resolutions, other than as provided in *rule 3.6* of this Schedule, is 50% or more of the Directors of the Trustee present in person or by telephone or electronic means.
- 3.4 If the required quorum under *rules 3.2 or 3.3* of this Schedule is not present within one (1) hour from the time appointed for any meeting, the meeting will stand adjourned until the 10th Business Day, or such other date as the Directors of the Trustee may determine, following that adjournment.
- 3.5 On the later day to which any meeting is adjourned under *rule 3.4* of this Schedule, the meeting will be held at the same time and in the same place as the adjourned meeting unless the Directors of the Trustee determine that the meeting shall be held at another time and place.
- 3.6 If a quorum is not present within one (1) hour from the time appointed for any adjourned meeting, the Directors of the Trustee present in person or by telephone or by
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electronic means shall constitute a quorum.

- 3.7 If, due to the application of *clause 12.1* of this Trust Deed, the required quorum under *rules 3.2 or 3.3* of this Schedule is not present to determine any resolution, the resolution will be adjourned for consideration at the next scheduled meeting of Directors or a meeting of Directors on such other date as the Directors may determine.
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#### **4. CHAIRPERSON AND DEPUTY CHAIRPERSON**

##### **4.1 Directors to appoint:**

At the first meeting of the Directors of the Trustee following an election and at the first meeting of Directors after the annual general meeting in each subsequent Income Year, the Directors shall by ordinary resolution appoint:

- (a) one (1) Director to be Chairperson, who must be a Resident Candidate; and
  - (b) one (1) Director to be Deputy Chairperson.
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##### **4.2 Retirement:**

Subject to *rule 4.1* of this Schedule, these people will, unless they earlier retire or are removed as a Director of the Trustee, hold their respective offices until the first meeting of the Trust after the annual general meeting in the Income Year immediately following their appointment as Chairperson or Deputy Chairperson, but they may at that time be reappointed.

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##### **4.3 Retirement or removal from office of Chairperson or Deputy Chairperson:**

The Chairperson or Deputy Chairperson may give notice in writing at any time of his or her retirement from the role of Chairperson or Deputy Chairperson. The Directors may by Special Resolution of Directors at any time before the next meeting referred to in *rule 4.2* of this *Schedule* remove any person from the office of Chairperson or Deputy Chairperson. In the event that the Chairperson or Deputy Chairperson ceases to hold that office then a further appointment in accordance with *rule 4.1* of this Schedule shall be held for the position.

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## **5. PROCEEDINGS AT MEETINGS**

### **5.1 Decisions by majority vote:**

Unless stated otherwise in this Deed, questions arising at any meeting of Directors of the Trustee shall be decided by a majority of votes of Directors present at a validly called meeting. In the case of an equality of votes, the Chairperson shall not have a second or casting vote.

If at any time the Trustee is no longer a limited liability company, this rule expressly modifies the default duty in section 38 of the Trusts Act 2019.

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### **5.2 Chairperson:**

The Chairperson shall take the chair at all meetings of the Elected Representatives. 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 Directors of the Trustee present shall elect one (1) of their number to be chairperson of the meeting.

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### **5.3 Vacancies:**

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

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### **5.4 Defects of appointment:**

All acts done by any meeting of the Directors of the Trustee or of any committee appointed under *rule 6.1* of this Schedule shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such Director 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.

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### **5.5 Unruly meetings:**

If any meeting of Directors 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,

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adjourn the meeting or may direct that any uncompleted item of business of which notice was given and which, in his or her opinion, requires to be voted upon, be put to the vote without discussion.

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## **6. APPOINTMENT OF COMMITTEES**

### **6.1 Directors may appoint committees:**

The Directors of the Trustee may from time to time by ordinary resolution and as they think expedient appoint two (2) or more Directors to be a committee to inquire into or progress any matter on behalf of the Trustee provided that:

- (a) the terms of the committee will include as a minimum a requirement that the committee act in accordance with *rules 6.2 and 6.3* of this Schedule;
- (b) only a Director shall chair any such committee; and
- (c) any committee so appointed may co-opt, for the purposes of consultation and advice, persons who are not Directors.

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### **6.2 Committees to report to Directors:**

All committees appointed under *rule 6.1* of this Schedule shall report to the Directors of the Trustee in respect of their activities and such reports shall, unless a direction is made to the contrary by the Directors:

- (a) be provided on a monthly basis; and
- (b) contain details of the activities of the committee since the last such report.

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### **6.3 Regulation of procedure by committees:**

Subject to the rules and the provisions of this Deed, any committee established by the Directors of the Trustee 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:

- (a) must notify the Directors of the Trustee of all persons co-opted to the committee;
  - (b) may regulate its meetings as it sees fit subject to any policies and procedures established by the Directors of the Trustee;
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- (c) must determine questions by consensus and where consensus is not reached, the question shall be passed by a majority of votes;
  - (d) must not incur debts or liabilities that cumulatively exceed the amount of one thousand (\$1,000) dollars without the prior approval of the Directors of the Trustee;
  - (e) must not enter into any transaction or other commitment without the approval of the Directors of the Trustee; and
  - (f) must ensure its activities and actions are consistent with the Trust Kaupapa and the provisions of this Trust Deed.
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## **7. WRITTEN RESOLUTIONS**

- 7.1** A written resolution signed or approved in writing by all the Directors of the Trustee shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Directors. A written resolution may comprise several duplicated documents, each signed or approved by one (1) or more of the Directors.
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## **8. MINUTES**

### **8.1 Minutes to be kept:**

The Directors of the Trustee shall keep a proper record of minutes of all decisions taken and business transacted at every meeting of the Directors of the Trustee.

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### **8.2 Minutes to be evidence of proceedings:**

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

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### **8.3 Minutes to be evidence of proper conduct:**

Where minutes of the proceedings at a meeting of the Directors of the Trustee 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.

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## **9. TELECONFERENCE OR AUDIO VISUAL MEETINGS**

**9.1** For the purposes of these rules a teleconference or audio visual meeting between a number of Directors of the Trustee or committee members who constitute a quorum shall be deemed to constitute a meeting of the Directors or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to teleconference/audio visual meetings so long as the following conditions are met:

- (a) all of the Directors or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a teleconference/audio visual meeting and to be linked for the purposes of such a meeting. Notice of a teleconference/audio visual meeting may be given on the telephone or by electronic means;
- (b) throughout the teleconference/audio visual meeting each participant must be able to hear each of the other participants taking part;
- (c) at the beginning of the teleconference/audio visual 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/audio visual meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's express consent;
- (e) a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the teleconference/audio visual meeting unless he or she leaves the meeting with the chairperson's express consent; and
- (f) a minute of the proceedings at a teleconference/audio visual 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.

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## **10. MEETINGS OF SHAREHOLDERS**

**10.1** While the Trustee remains a limited liability company, the provisions of *rules 2, 3, 5, 8 and 9* of this Schedule apply also to all meetings of the Shareholders, with any necessary modifications.

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## **SCHEDULE 4 – PROCEDURE FOR PASSING SPECIAL RESOLUTION**

### **1. APPLICATION OF THIS SCHEDULE**

#### **1.1** A Special Resolution to:

- (a) approve a Major Transaction in accordance with *clause 3.9*; or
- (b) amend this Deed in accordance with *clause 21*; or
- (c) approve a resettlement in accordance with *clause 22*; or
- (d) terminate the Trust in accordance with *clause 23*; or
- (e) approve the recognition of a new Mandated Iwi Organisation in place of the Trust under the Māori Fisheries Act 2004,

shall only be passed as set out in this Schedule.

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### **2. VOTING ON SPECIAL RESOLUTION**

#### **2.1** Every Special Resolution shall be by way of ballot of Adult Registered Members with votes to be:

- (a) cast on a voting paper by either electronic voting facilities or by postal voting; and
- (b) received by the Chief Returning Officer on or before any notified date by which completed voting papers are to be received by the Chief Returning Officer.

#### **2.2** The Trust Management and Chief Returning Officer may, as appropriate and in a manner not inconsistent with the provisions of the Electoral Act 1993, take steps to assist the casting of votes by Adult Registered Members who are disabled.

#### **2.3** For the avoidance of doubt, Adult Registered Members may not vote by proxy.

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### **3 VOTING**

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- 3.1** In order for a Special Resolution to be passed it must receive the approval of not less than 75% of those Adult Registered Members who validly cast a vote on the proposed Special Resolution in accordance with this Schedule.
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**4. TRUSTEE TO CONVENE SPECIAL GENERAL MEETING**

- 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 a special general meeting.
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**5. NOTICE OF VOTE**

**5.1 Notice**

The Trustees 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).

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**5.2 Method of giving notice:**

Notice of a special general meeting called for the purposes of considering a Special Resolution shall be given by:

- (a) private notice by post (including by electronic form where available) to all Adult Registered Members at the last address shown for such Adult Registered Member on the Register. If notice sent to an electronic address fails, and the Trustee is aware of the failure, then the notice must be sent to the last known physical address;
  - (b) public notice by:
    - (i) advertising by electronic or digital means including on the Trust's website and social media;
    - (ii) inserting a prominent advertisement on at least two (2) separate days in the Chatham Islands Community Focus Trust newsletter (so long as it exists), in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members of Ngāti Mutunga o Wharekauri reside; and
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(iii) such other means as the Trustee may determine.

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**5.3 Content of private notice to Members of Ngāti Mutunga o Wharekauri:**

All private 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, including any electronic connection details or how such details may be obtained;
  - (b) details of the proposed Special Resolution;
  - (c) details of the reasons for the proposed Special Resolution and the effect that the Special Resolution will have;
  - (d) details of the procedure to be followed in making a postal vote or a vote by electronic means where available, including the date voting closes;
  - (e) a statement that postal votes may either be delivered to the Chief Returning Officer at the special general meeting, or posted or by electronic means;
  - (f) where voting papers and any other information that may reasonably inform Members of Ngāti Mutunga o Wharekauri about the Special Resolution may be viewed or obtained;
  - (g) in the case of a Special Resolution relating to *rule 1.1(c)* or *(e)* of this Schedule:
    - (i) that a vote is to be taken to approve a proposal to amend this Trust Deed or to have a new organisation recognised as a Mandated Iwi Organisation in place of the Trust, as the case may be; and
    - (ii) if the new organisation seeks recognition as a Mandated Iwi Organisation by meeting the criteria in section 14 of the Māori Fisheries Act 2004, that a vote is to be taken to ratify the constitutional documents of the new organisation; and
    - (iii) any other information specified by or under the Māori Fisheries Act 2004; and
  - (h) a voting paper. The voting paper can be sent via postal voting and electronic means. If the voting paper is sent via electronic means the voting form must also
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contain sufficient information to verify the voter and the voting documents issued to that voter pursuant to *rule 6.1* of this Schedule.

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**5.4 Content of public notice:**

All public notices published in accordance with *rule 5.2(b)* of this Schedule shall contain the matters referred in *rule 5.3(a)-(g)* of this Schedule.

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**6. POSTAL VOTING**

**6.1 Other details to accompany vote:**

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

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**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 five (5) Business Days after the closing date, but only if the envelope containing the voting paper is date stamped on or before the date for voting closes.

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**6.3 Postal votes may be received at the special general meeting:**

Voting papers may be delivered to the Chief Returning Officer at the special general meeting, rather than being posted or sent by electronic means.

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**7. APPOINTMENT OF CHIEF RETURNING OFFICER**

**7.1 Appointment of Chief Returning Officer:**

For the purposes of the Special Resolution, the Trustee shall appoint a Chief Returning Officer who shall not be an Elected Representative or employee of the Trust. The Trustee shall ensure that the Chief Returning Officer is appointed on terms requiring the Chief Returning Officer to act in accordance with the powers and duties of the Chief Returning Officer as set out in this Deed, including, to avoid doubt, *rules 7.2 to 8.3* of this Schedule.

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**7.2 Chief Returning Officer to receive voting papers:**

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Voting papers must be addressed to the Chief Returning Officer.

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**7.3 Chief Returning Officer to be present at Special General Meeting:**

The Chief Returning Officer must be present at the special general meeting. The Chief Returning Officer will be available to collect any completed voting papers at the special general meeting. The Chief Returning Officer shall also ensure that additional voting papers are available at the special general meeting.

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**7.4 Eligibility to Vote:**

Those eligible to vote on a special resolution are:

- (a) those Adult Members recorded in the Register as an Adult Registered Member on the closing day for voting; and
  - (b) subject to *rule 7.5(b)* of this Schedule, any other Adult Member who has on or before the closing date for voting provided to the Chief Returning Officer an application form for registration which complies with *rule 3.1 of* Schedule 1.
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**7.5 Only one vote to be cast:**

The Chief Returning Officer must:

- (a) ensure that appropriate measures are in place to ensure that only one (1) vote is cast by each Adult Registered Member; 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 Registrar to ensure that the person casting the vote is eligible to be registered on the Ngāti Mutunga o Wharekauri Register as an Adult Registered Member.
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**7.6 Recording of votes:**

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

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**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

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record and count all votes validly cast.

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**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 to the Trustee a declaration in writing stating:

- (a) the number of voting papers received;
  - (b) the number of voting papers rejected as informal;
  - (c) the number of valid votes received in favour of each proposed resolution and the number of valid votes received against each proposed resolution; and
  - (d) whether each proposed resolution has been passed by a sufficient majority of Adult Registered Members.
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**8.3 Provisional Votes:**

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

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

Upon receipt by the Trust of the declaration of the Chief Returning Officer under *rule 8.1* of this Schedule, the Trust shall:

- (a) give public notice of the result within 10 Business Days of the date of the declaration, by:
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(i) advertising by electronic or digital means including on the Trust's website and social media;

(ii) inserting a prominent advertisement on at least two (2) separate days in the Chatham Islands Community Focus Trust newsletter (so long as it exists), in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members of Ngāti Mutunga o Wharekauri reside; and

(iii) such other means as the Trustee may determine; and

(b) announce the result at the next annual general meeting of the Trust.

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## **9. PROCEEDINGS AT SPECIAL GENERAL MEETING**

**9.1** Except as otherwise set out in this Schedule, the provisions of *clause 10* of this Deed shall apply to the holding of any special general meeting called for the purposes of considering a Special Resolution and the meeting shall be conducted accordingly.

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## SCHEDULE 5 – TRUST PLANNING AND REPORTING

### 1. PLANS

#### 1.1 Trustee to prepare Annual Plan:

In addition to the requirement in *rule 1.3*, the Trustee shall prepare no later than one (1) month before the commencement of each Income Year an Annual Plan that specifies information in respect of that Income Year including:

- (a) the strategic vision of the Trust for the *Te Korowai o Ngati Mutunga o Wharekauri* Group, consistent with the longer term vision of the *Te Korowai o Ngati Mutunga o Wharekauri* Group as identified in the Five Year Strategic Plan;
- (b) the nature and scope of the activities proposed by the Trust for the *Te Korowai o Ngati Mutunga o Wharekauri* Group in the performance of the Trust's Purpose;
- (c) the ratio of capital to total assets;
- (d) the objectives, performance targets and measurements by which performance of the *Te Korowai o Ngati Mutunga o Wharekauri* 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 Assets having regard to the interests of all Members of Ngāti Mutunga o Wharekauri;
- (g) the policy of the Trust in respect of sales and exchanges of settlement quota and the acquisition of shares and any changes in that policy from the policy for the previous year;
- (h) any proposal to change the constitutional documents of any asset-holding company owned by the Trust; and
- (i) any other information as the Trustee in its discretion considers necessary or appropriate.

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#### 1.2 Trustee to prepare Five Year Strategic Plan:

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In addition to the requirement in *rule 1.3*, the Trustee shall also produce within 18 months following the execution of this Deed, and update not less than every two (2) years, a Five Year Strategic Plan that:

- (a) sets out the longer term vision of the Trust in respect of the matters referred to in *rule 1.1(a) to (h)*; and
  - (b) includes a statement by the Trustee of the commercial, management and distribution policies that the Trustee intends to follow in respect of the Trust Assets.
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### **1.3 Initial Annual Plan and Five Year Strategic Plan**

In addition to the requirements in *rules 1.1* and *1.2*, the Trustee shall, within three (3) months of establishment of the Trust prepare and produce an Annual Plan. That plan shall have effect until such time as it is replaced by new plans as required in *rule 1.1* and *1.2*.

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

### **2.1 Preparation of Annual Report:**

The Trustee must, within six (6) months after the end of each Income Year, and no later than 20 Business Days prior to an annual general meeting, cause to be prepared an annual report on the affairs of Te Korowai o Ngati Mutunga o Wharekauri Group covering the accounting period ending at the end of that Income Year which includes:

- (a) a comparison of its performance against the objectives set out in the Annual Plan, including:
    - (i) changes in shareholder or member value as required by the Māori Fisheries Act 2004; and
    - (ii) dividend performance or profit distribution as required by the Māori Fisheries Act 2004;
  - (b) Consolidated Financial Statements including a balance sheet and income and expenditure statement prepared in accordance with generally accepted accounting practice, and accounting separately for settlement cash assets; and
  - (c) notes to those documents so as to give a true and fair view of the financial affairs of Te Korowai o Ngati Mutunga o Wharekauri Group for that Income Year.
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The Consolidated Financial Statements shall include as a separate item details of any remuneration or fees paid to any Directors or any Director's firm (including without limitation any such payment to any Director as a director or trustee of a Trust Entity) and details of any premiums paid in respect of Trustee or Director's indemnity insurance (or any indemnity payments made by an insurer).

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## **2.2 Contents of annual report:**

The Annual Report prepared under *rule 2.1* shall also include:

- (a) information of the implementation of the Deed of Settlement;
  - (b) information on the steps taken by the Trust to increase the number of Registered Members and the number of additional Registered Members registered in that Income Year;
  - (c) any changes made to the Trust Deed or to the constitutional documents of any Trust Entity;
  - (d) information on any sales or exchanges of Settlement Quota or Income Shares in the previous Income Year, including:
    - (i) the quantity of settlement quota held by the asset-holding company of the mandated iwi organisation in that year; and
    - (ii) the value of settlement quota sold or exchanged; and
    - (iii) the identity of the purchaser or other party to the exchange; and
    - (iv) any transaction with settlement quota that has resulted in a registered interest by way of caveat or mortgage being placed over the quota; and
    - (v) the settlement quota interests that have been registered against the quota shares of the mandated iwi organisation; and
    - (vi) the value of ordinary shares sold, exchanged, or acquired;
  - (d) a report on the interactions of the Trust in fisheries matters, including:
    - (i) with other entities within Ngāti Mutunga o Wharekauri; and
    - (ii) with other mandated iwi organisations; and
    - (iii) with Te Ohu Kai Moana Trustee Limited; and
    - (iv) with Aotearoa Fisheries Ltd;
  - (e) an annual report in respect of each Trust Entity which reports on:
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- (i) the performance of each Trust Entity;
- (ii) the investment of money of each Trust Entity and its subsidiaries; and
- (iii) the matters specified in *rule 4.1(b)(i) to (iii) of Schedule 6*, including changes in shareholder or member value and dividend performance or profit distribution; and

(f) any amendments made to this Deed.

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**2.2 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.

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**2.3 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 Director of the Trustee or employee of the Trust (including any firm of which such a person is a member or employee) may be appointed as the auditor. For the avoidance of doubt, the Trust's accountant shall not be appointed as the auditor.

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## SCHEDULE 6 – TRUST ENTITIES

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### 1. TRUSTEE MAY ESTABLISH TRUST ENTITIES

#### 1.1 Establishment of Trust Entities:

In receiving, controlling, and supervising the use of the Trust Assets on behalf of Te Korowai o Ngati Mutunga o Wharekauri Group, whether pursuant to the Deed of Settlement, the Settlement Act or otherwise, the Trustee may establish and oversee the operations of any Trust Entities and, from time to time, disestablish any Trust Entity.

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#### 1.2 Ownership and Control of Trust Entities:

The Trustee shall ensure that:

- (a) any Trust Entity is established on terms which require the Trust Entity to manage any of the Trust Assets it holds solely for the benefit of Ngāti Mutunga o Wharekauri;
  - (b) the Trustee has and retains all the shares in any Trust Entity that is a Company and the sole power to appoint and remove the trustees and directors or any responsible body of any Trust Entity; and
  - (c) any Asset-Holding Company which exercises the rights of a shareholder in Aotearoa Fisheries Limited or their subsidiaries is established or maintained on terms which require the Trust to direct the exercise of the rights of a shareholder in Aotearoa Fisheries Limited; and
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#### 1.3 Trustee to monitor:

In giving effect to the Trust Kaupapa, the Trustee:

- (a) shall be responsible for monitoring and otherwise overseeing the activities of any Trust Entity;
  - (b) shall not conduct or otherwise undertake any activities in competition with any Trust Entity;
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- (c) shall exercise its ownership or other rights and interests in any Trust Entity in such a way as to promote the performance by that Trust Entity of its purposes in a manner that is consistent with the Trust Kaupapa.
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**1.4 Trustee to fund Trust Entities:**

The Trustee may fund Trust Entities (if any) by distributing capital or income or by making advances to the Trust Entity or by such other means as is consistent with the Trust Kaupapa.

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**1.5 Assets and income held for Trust:**

In respect of any Trust Entity:

- (a) all assets held and income derived by a Trust Entity shall be held and derived for and on behalf of the Trust;
  - (b) each Trust Entity shall in each Income Year remit to the Trust so much of the surplus income derived by that Trust Entity on behalf of the Trust as is agreed between the relevant Trust Entity and the Trust having regard to:
    - (i) the relevant Trust Entity's purposes and the desirability of retaining and reinvesting or distributing income to meet those purposes;
    - (ii) the projected operating requirements of the relevant Trust Entity and any of its subsidiaries as set out in their plans; and
    - (iii) the responsibilities and duties of the directors, trustees or board members of the relevant Trust Entity to comply with the requirements of New Zealand law; and
  - (c) subject to any other requirements in this Trust Deed, the Trust may provide for the payment, application or appropriation of, or decide to pay, apply or appropriate, or direct the Trust Entity to pay or apply, as much of the available income in any Income Year as the Trust in its sole discretion thinks fit in furtherance of the Trust Kaupapa.
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**1.6 Trust Entities responsible for governance:**

For the avoidance of doubt, and except as expressly provided by this Deed:

- (a) all Trust Entities shall be governed by their respective boards or other responsible bodies; and
  - (b) except where expressly specified in this Deed, the role of the Trustee or the Directors of the Trustee in respect of such Trust Entities shall be limited to the exercise of the rights conferred on the Trustee as shareholder or (as applicable) appointor and beneficiary of the relevant Trust Entity.
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**1.7 Remuneration of directors and other trustees of Trust Entity:**

The Trustee shall ensure that Trust Entities are established on terms which give the Trustee the power to determine the remuneration payable to any director or trustee or controlling body of any Trust Entity.

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**1.8 No influence in determining remuneration**

Any Director of the Trustee receiving any remuneration referred to in *clause 1.7* shall not:

- (a) take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration; or
  - (b) 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.
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**2. APPOINTMENT OF DIRECTORS AND TRUSTEES OF TRUST ENTITIES**

**2.1 Appointment and removal of directors and trustees:**

The Trustee shall ensure that Trust Entities are established on terms which ensure that:

- (a) the directors and trustees or other controlling body of the Trust Entity shall be appointed and removed by the Trustee; and
  - (b) require as a term of appointment that any directors, trustees or board members appointed by or at the direction of the Trust to any Trust Entity do not act in a
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manner which brings or is likely to bring Ngāti Mutunga o Wharekauri, the Trust or any Trust Entity into disrepute.

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**2.2 Elected Representatives as directors and trustees of Trust Entities:**

No more than 40% of the Elected Representatives then in office as Directors of the Trustee may be appointed as directors or trustees of any individual Trust Entity that is an Asset-Holding company, that is a subsidiary established by an Asset-Holding Company, that is a Fishing Enterprise or that undertakes any Commercial Activities.

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**2.3 Appointments with regard to skills and expertise:**

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

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**3. TRUST ENTITIES TO PREPARE PLANS AND REPORTS**

**3.1 Trust Entities to prepare Plans and Statements of Intent:**

The Trustee shall require that each Trust Entity will:

- (a) within six (6) months of the establishment of the Trust Entity, prepare a Statement of Intent setting out its long term objectives and the general principles by which it proposes to operate;
  - (b) as required by the Trustee, update the Statement of Intent to take into account changes in circumstances that may arise from time to time, including without limitation changes to the nature of its business and the business of any of its subsidiaries;
  - (c) within twelve (12) months of the establishment of the Trust Entity, prepare a Five Year Strategic Plan that:
    - (i) sets out its medium term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the Statement of Intent referred to in paragraph (a) of this rule; and
    - (ii) is reviewed and updated not less than every three (3) years.
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- (d) within three (3) months of the establishment of the Trust Entity, and thereafter no later than two (2) months before the commencement of each Income Year, prepare an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its five year planning objectives and fulfil the objectives and principles of the Statement of Intent;
  - (e) in addition to any normal reporting requirements, within two (2) calendar months after the completion of the first, second and third quarter of each Income Year provide the Trustee with:
    - (i) a report on its operations and financial position;
    - (ii) an unaudited summary of financial results as at the end of that period, andsuch reports to be in such form as the Trustee may require from time to time.
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### **3.2 Trustee approval required:**

Prior to being implemented:

- (a) all Statements of Intent, Five Year Strategic Plans and Annual Plans must be approved by the Trustee; and
  - (b) such approval shall be given in light of the Trust's overall plans and policies in respect of the Trust Assets.
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### **3.3 Reports to comply with Companies Act 1993:**

The Trustee shall require that all annual reports by any Trust Entity 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 2013;
  - (c) the auditor's report of the financial statements (or group financial statements)
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of the company for that Income Year.

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**3.4 Trust Entities to meet Companies Act 1993 standard:**

All reports of any Trust Entity that is a trust shall be provided to the same standard, including as to form and content, as is required under *clause 3.3* as if the Trust Entity was a company.

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**3.5 Report to include comparison against plans:**

In addition to the matters set out in *rules 3.3* and *3.4* of this Schedule, the Trustee shall require that all reports by any Trust Entity include a comparison of its performance against both its respective Annual Plans for that Income Year and its medium and longer term planning objectives (as set out in the Five Year Strategic Plan and Statement of Intent).

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**3.6 Protection of Information:**

For the avoidance of doubt, nothing in this *rule 3* of this Schedule limits or affects the rights of the Trustee, as shareholder in any Trust Entity that is a company, to agree pursuant to section 211(3) of the Companies Act 1993 not to include information in the annual report of the Trust Entity.

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**4. STRATEGIC GOVERNANCE**

**4.1** Notwithstanding any other requirement in this Schedule, the Trustee must exercise strategic governance over:

(a) any Trust Entity; and

(b) the process to examine and approve Annual Plans that set out:

(i) the key strategies for the use and development of the Trust Assets including, where relevant, any Fisheries Assets and Aquaculture Assets (if any);

(ii) the expected financial return on those Trust Assets including, where relevant, any Fisheries Assets and Aquaculture Assets (if any);

(iii) any programme to:

a. manage the sale of Annual Catch Entitlements derived from the Settlement Quota held by the Asset Holding Company; and

b. reorganise the Settlement Quota held by any Asset Holding Company or its subsidiaries including through buying and selling of Settlement Quota in accordance with the Māori Fisheries Act 2004;

but not in such a manner as to result in the Trust or the Trustee or a Director of the Trustee being deemed to be a director of any Trust Entity that is a company under the Companies Act 1993, and nor shall this *rule 4* or any other provision in this Deed prevent the Trust or any Trust Entity from entering into such arrangements with another company or trust as the Trust shall consider necessary or desirable to efficiently and effectively administer, manage or hold the Trust Assets or its operations in a manner consistent with the Trust Kaupapa.

## SCHEDULE 7 - FISHERIES AND AQUACULTURE ASSETS

### 1. INCOME SHARES, SETTLEMENT QUOTA AND RECOGNITION OF NEW MANDATED IWI ORGANISATION

#### 1.1 Application of this schedule:

This schedule does not apply to transfers of Fisheries Assets between entities within the Te Korowai o Ngati Mutunga o Wharekauri Group provided that those entities comply with the relevant provisions of the Māori Fisheries Act 2004.

- 1.2 Any proposal in relation to the approval of the recognition of a new Mandated Iwi Organisation in place of the Trust under the Māori Fisheries Act 2004, to the disposal of Income Shares under section 70 of the Māori Fisheries Act 2004 or to the disposal of Settlement Quota under sections 159, 162 or 172 of the Māori Fisheries Act 2004 may only proceed if a Special Resolution of Members has been passed in accordance with the rules in *Schedule 4*.
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## **2. ASSET-HOLDING COMPANY**

### **2.1 Asset-Holding Company**

The Trustee must ensure that there is at least one (1) Trust Entity that is an Asset-Holding Company and that, to the extent and for so long as required by the Māori Fisheries Act 2004, the Asset-Holding Company is wholly owned by the Trust and performs the functions and complies with the requirements set out in sections 16 and 17 of the Māori Fisheries Act 2004.

2.2 Any Asset-Holding Company that is already established prior to the date that the Settlement Act comes into force shall continue to function.

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## **3. FISHING OPERATION**

3.1 If the Trust wishes to have its own fishing operation to harvest, process, or market fish using annual catch entitlements from its Settlement Quota, or to be involved in a joint venture for such purposes, it must ensure that there is a Fishing Enterprise separate from, but responsible to, the Trust to undertake such operations.

3.2 A Fishing Enterprise set up to undertake such operations must be a separate entity from any Asset-Holding Company, or any subsidiary established by an Asset-Holding Company, that holds any Settlement Quota or Income Shares of Ngāti Mutunga o Wharekauri.

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## **4. NOTICE OF PARTICULAR MEETINGS**

4.1 In addition to the notice requirements for annual general meetings set out in this Deed, in the case of a special general meeting relating to elections, changing a constitutional document to the extent that it relates to matters under the Māori Fisheries Act 2004, the disposal of Income Shares, or the conversion and disposal of Settlement Quota, the Trustee must:

(a) give public and private notice in accordance with *rule 4.1(b)* and *(c)* of this Schedule of:

(i) the date and time of the meeting and its venue;

(ii) the agenda for the meeting;

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- (iii) the matter or issue on which a vote is to be taken;
  - (iv) where any relevant explanatory documents may be viewed or obtained;  
and
  - (v) any other information specified by or under the Māori Fisheries Act 2004;  
and
- (b) any public notice in accordance with *rule 4.1(a)* must be provided by:
- (i) advertising by electronic or digital means including on the Trust's website and social media;
  - (ii) inserting a prominent advertisement on at least two (2) separate days in the Chatham Islands Community Focus Trust newsletter (so long as it exists), in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustee considers that a significant number of Members of Ngāti Mutunga o Wharekauri reside; and
  - (iii) such other means as the Trustee may determine; and
- (c) any private notice in accordance with *rule 4.1(a)*, together with any Voting Papers and advice as to the address to which, and the date by which, the completed Voting Paper must be returned, must be provided:
- (i) by post (including by electronic form where available) to any Adult Registered Member who at the time of registering on the Register, made a written request to be sent a private notice and Voting Papers for every general meeting relating to elections, changing a constitutional document to the extent it relates to matters under the Māori Fisheries Act 2004, the disposal of Income Shares, or the conversion and disposal of Settlement Quota, to be sent to the last address shown for such Adult Registered Member on the Register. If notice sent to an electronic address fails, and the Trustee is aware of the failure, then the notice must be sent to the last known physical address; and
  - (ii) to any Adult Member who, whether or not on the Register, makes a written request for a private notice in respect of a particular meeting in accordance with this *rule 4*.
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## **5. COMPLIANCE WITH MĀORI FISHERIES ACT**

- 5.1 The Trustee will at all times comply with the provisions of the Māori Fisheries Act 2004 unless otherwise provided in the Settlement Act.
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## **6. AQUACULTURE ASSETS**

- 6.1 For the purposes of *rules 6 and 7* of this Schedule, the terms “Settlement Assets”, “authorisations” and “coastal permits” have the meaning given to them by the Māori Commercial Aquaculture Claims Settlement Act 2004.
- 6.2 Any proposal in relation to the transfer of authorisations or coastal permits that are Settlement Assets may only proceed if a Special Resolution of Members has been passed in accordance with the rules in Schedule 4 of this Deed.
- 6.3 This schedule does not apply to transfers between Trust Entities provided that those entities comply with the relevant provisions of the Māori Commercial Aquaculture Claims Settlement Act 2004.
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## **7. COMMERCIAL AQUACULTURE ACTIVITIES**

- 7.1 If the Trust undertakes commercial aquaculture activities (as that term is used in the Māori Commercial Aquaculture Claims Settlement Act 2004), it must establish a Trust Entity to undertake those activities, which may be the Asset-Holding Company that holds the Settlement Quota and Income Shares.
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