

***TE TĀWHARAU O
NGĀTI PŪKENGA
TRUST DEED***

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1. DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

In this Trust Deed, unless the context otherwise requires:

“Adult Registered Members of Ngāti Pūkenga” means those Registered Members of Ngāti Pūkenga identified on the Ngāti Pūkenga Register as being 18 years of age or over;

“Advisors” means those Advisors appointed in accordance with *clause 4.6*;

“Annual Plan” means the annual plan of Te Tāwharau o Ngāti Pūkenga Trust prepared in accordance with *clause 9.1*;

“Annual Report” means the annual report of Te Tāwharau o Ngāti Pūkenga Trust in accordance with *clause 10.1*;

“Balance Date” means the date that the Trustees by resolution adopt as the date up to which Te Tāwharau o Ngāti Pūkenga Trust's financial statements are to be made each year;

“Beneficiary” means any person who falls within the definition of Ngāti Pūkenga;

“Business Day” means a day that is not -

- (a) a Saturday or a Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, or Labour Day; or
- (c) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or

- (d) a day that is observed as the anniversary of the province of -
- (i) Wellington; or
 - (ii) Auckland;

“Chairperson” means the chairperson from time to time of Te Tāwharau o Ngāti Pūkenga Trust elected by the Trustees in accordance with *rule 4* of the *Third Schedule*;

“Chief Executive Officer” means the Chief Executive Officer of Te Tāwharau o Ngāti Pūkenga Trust appointed in accordance with *clause 5.1*;

“Chief Returning Officer” means the person appointed as chief returning officer for the purposes of a Special Resolution and Trustee elections in accordance with *rule 8.1* of the *Third Schedule* and *rule 7.1* of the *Fourth Schedule*;

“Commercial Activities” means any activity carried out in pursuit of Te Tāwharau o Ngāti Pūkenga Trust Purposes, which has as its principal objective the maximising of financial or economic returns to Ngāti Pūkenga;

“Consolidated Financial Statements” means the consolidated financial statements prepared by Te Tāwharau o Ngāti Pūkenga Trust in accordance with *clause 10.1*;

“Crown” means Her Majesty the Queen in Right of New Zealand;

“Development Activities” means any activity carried out in pursuit of the Trust Purposes of which has as its principal objective of the development of Ngāti Pūkenga;

“Deputy Chairperson” means the deputy chairperson from time to time of Te Tāwharau o Ngāti Pūkenga Trust if one is selected in accordance with *rule 4.1* of the *Third Schedule*;

“Disputes Committee” means a committee appointed from time to time in accordance with *clause 25.2*;

“Elected Trustees” means those Trustees elected from time to time in accordance with *rule 6.2 of the Second Schedule* of this Trust Deed and being Trustees with full powers, including voting rights;

“Elected Alternate Trustees” means those Trustees elected from time to time in accordance with *rule 6.3 of the Second Schedule* of this Trust Deed and having the roles and powers as set out in *clause 4.5*;

“Establishment Period” means the term of office of the Establishment Trustees as set out at *rule 3.4 of the Second Schedule*;

“Establishment Trustees” means those individuals noted below, such individuals to be the Trustees for the Establishment Period:

1. Rehua Smallman;
2. Harry Haerengarangi Mikaere;
3. Rehina Regina Berghan;
4. Hori Moanaroa Parata;
5. Rahera Aroha Ohia.

“Hauraki Collective Settlement” means the settlement of the Hauraki Collective historical claims insofar as they relate to Ngāti Pūkenga;

“Investment Advisor” means any individual or company appointed under *clause 8.3*;

“Investment Committee” means the committee appointed under *clause 8.5*;

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

“**Kainga**” means the four kainga of Ngāti Pūkenga as set out in the *Fifth Schedule*;

“**Major Transaction**’ in relation to the Ngāti Pūkenga Development Group means:

- (a) The acquisition of, or an agreement to acquire, whether contingent or not, Property by Te Tāwharau o Ngāti Pūkenga Trust or a Trust Entity, the value of which is more than half the value of the Trust Fund before the acquisition; or
- (b) The disposition of, or an agreement to dispose of, whether contingent or not, Property by Te Tāwharau o Ngāti Pūkenga Trust or a Trust Entity, the value of which is more than half the value of the Trust Fund before disposition; or
- (c) A transaction that has or is likely to have the effect of Te Tāwharau o Ngāti Pūkenga Trust or a Trust Entity, acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half of the value of the Trust Fund before the transaction; or
- (d) Any property alienation to a Ngāti Pūkenga Entity as referred to in *clause 2.5*,

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 Fund (whether the assets are held by Te Tāwharau o Ngāti Pūkenga Trust or a Trust Entity); or
- (b) The transfer of assets from the Crown to Te Tāwharau o Ngāti Pūkenga Trust under the terms of a Settlement Act (Individual), Settlement Act (Collective).

“**Ngāti Pūkenga**”:

- (1) In this Deed, Ngāti Pūkenga —
 - (a) means the collective group composed of—

- (i) individuals descended from one or more Ngāti Pūkenga tupuna; and
 - (ii) individuals who are members of the groups referred to in paragraph (c)(i), (ii) and (iii); and
- (b) means every individual referred to in paragraph (a); and
- (c) includes the following groups:
- (i) Ngāti Pūkenga, Te Tawera, Ngāti Ha; and
 - (ii) Ngāti Kiorekino, Ngāti Hinemotu, Ngāti Pūkenga, Ngāti Rakau, Ngāti Te Matau, Ngāi Towhare, and Ngāti Whakina; and
 - (iii) any whanau, hapu, or group of individuals composed of individuals referred to in paragraph (a).
- (2) In this Deed, Ngāti Pūkenga tupuna or ancestors means an individual who—
- (a) exercised customary rights as Ngāti Pūkenga in relation to the Kainga Areas of Interest by virtue of being descended from—
 - (i) Pukenga, Kumaramaoa, and Rongopopoia; or
 - (ii) a recognised ancestor of any of the groups referred to in subsection (1)(c)(i), (ii) and (iii); and/or
 - (b) exercised the customary rights as Ngāti Pūkenga in relation to the Ngāti Pūkenga Kainga Areas of Interest at any time after 6 February 1840.
- (3) For the purposes of subsection (2), **customary rights** means rights according to tikanga Maori (Maori 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.
- (4) For the avoidance of doubt, for the purposes of the Trust Deed, whāngai are considered Ngāti Pūkenga.

(5) For the purposes of *clause (1)(a)* 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 Pūkenga's tikanga (customary values and practices);

(6) In subsection (2), **Kainga Areas of Interest** means each of the areas identified as the Kainga areas of interest shown in the plans in the Ngāti Pūkenga Deed of Settlement (which is defined as '*Settlement Act (Individual)*' in this Deed).

"Ngāti Pūkenga Claims" means the **Ngāti Pūkenga Historical Claims** as defined in clauses 9.2 to 9.4 of the Ngāti Pūkenga Deed of Settlement;

"Ngāti Pūkenga Deed of Settlement" means the deed to be signed on 7 April 2013 between representatives of Ngāti Pūkenga and the Crown recording the settlement of the Ngāti Pūkenga Claims contained therein;

"Ngāti Pūkenga Development Group" means Te Tāwharau o Ngāti Pūkenga Trust and all Trust Entities together;

"Ngāti Pūkenga Development Limited" means the company established in accordance with *clause 6*;

"Ngāti Pūkenga Entity" means any Trust Entity and any trust or similar entity established and held by any Kainga;

"Ngāti Pūkenga Register" means the register of Registered Members of Ngāti Pūkenga that is to be maintained by Te Tāwharau o Ngāti Pūkenga Trust;

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

“Registered Member of Ngāti Pūkenga” means a person who is referred to in the definition of Ngāti Pūkenga and who is registered on the Ngāti Pūkenga Beneficiary Register.

“Related Person” means a person specified in section CZ 9B of the Income Tax Act 2007, the persons specified being:

- (a) a settlor or trustee of a trust by which a business is carried on; or
- (b) a shareholder or director of a company by which a business is carried on; or
- (c) a settlor or trustee of a trust that is a shareholder of accompany by which a business is carried on; or
- (d) that person, where he or she and the settlor, trustee, shareholder or director, already mentioned in this definition, are associated persons as defined in sections YB 1 to YB 16 of the Income Tax Act 2007.

“Settlement Act” means such Act or Acts of Parliament as the case may be, that may be passed so as to give effect to the Ngāti Pūkenga Deed of Settlement, Tauranga Moana Iwi Collective Settlement and/or Hauraki Collective Settlement (as the case requires) and the promises contained therein;

“Settlement Act (Individual)” means the Act or Acts of Parliament as the case may be that may be passed so as to give effect to any Deed of Settlement solely between Ngāti Pūkenga and the Crown and the promises contained therein;

“Settlement Act (Collective)” means the Act or Acts of Parliament as the case may be that may be passed so as to give effect to any Deeds of Settlement (and the promises contained therein) between:

- (a) The Tauranga Moana Iwi Collective and the Crown; or
- (b) The Hauraki Collective and the Crown; or
- (c) Any collective made up of groups, each with a negotiations mandate approved by the Crown, that relates to a region including Maketu kainga and which includes Ngāti Pūkenga;
- (d) Any collective made up of groups, each with a negotiations mandate approved by the Crown, that relates to a region including Pakikaikutu kainga and which includes Ngāti Pūkenga.

“Settlement Date (Individual)” means the date specified as the Settlement Date in the Ngāti Pūkenga Deed of Settlement;

“Shareholders” means the Trustees or such other persons who hold the shares in Ngāti Pūkenga Development Limited pursuant to any settlement under *clause 13*;

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

“Tauranga Moana Iwi Collective Settlement” means the settlement of the Tauranga Moana Iwi Collective historical claims insofar as they relate to Ngāti Pūkenga;

“Te Tāwharau o Ngāti Pūkenga Trust” or **“Trust”** means the Trust created by this trust deed;

“TMIC JVC” means the Tauranga Moana Iwi Collective Limited Partnership and the Tauranga Moana Iwi Collective General Partner Limited;

“Trust Deed” means this deed of trust and includes the recitals and the schedules to this deed;

“Trust Entity” means:

- (a) A wholly owned or controlled company, trust or other entity established by Te Tāwharau o Ngāti Pūkenga Trust for the purpose of receiving, holding and managing any property transferred from the Crown directly or indirectly to Te Tāwharau o Ngāti Pūkenga Trust in settlement of the Historical Claims of Ngāti Pūkenga;
- (b) A wholly owned or controlled company, trust or other entity established by Te Tāwharau o Ngāti Pūkenga Trust for any other purpose;

and includes any subsidiary of a Trust Entity.

“Trust Fund” means the assets of Te Tāwharau o Ngāti Pūkenga Trust and shall include all assets received or otherwise owned or acquired from time to time by Te Tāwharau o Ngāti Pūkenga Trust, including without limitation all assets transferred to Te Tāwharau o Ngāti Pūkenga Trust from TMIC JVC, any settlement assets generally, the use of any assets provided to Te Tāwharau o Ngāti Pūkenga Trust and any money, investments or other Property paid or given to or acquired or agreed to be acquired by Te Tāwharau o Ngāti Pūkenga Trust;

“Trust Purposes” means the objects and purposes set out in *clause 2.4*;

“Trustees” means the Elected Trustees and the Elected Alternate Trustees, appointed from time to time in accordance with the *Second Schedule* of this Trust Deed to act as the Trustees for the time being of Te Tāwharau o Ngāti Pūkenga Trust, and **“Trustee”** shall mean any one of those persons.

“Wāhi Tapu Trust” means a Trust to be established by the Trustees to hold, administer, and protect from alienation or securitisation any lands listed in the *Sixth Schedule*.

“Whakapapa Committee” means the committee established in accordance with *Rule 4* of the *First Schedule*.

“Whāngai” means an individual who is not Ngāti Pūkenga (in accordance with the definition of Ngāti Pūkenga), but who in accordance with the tikanga of Ngāti Pūkenga is adopted as a child into and raised as Ngāti Pūkenga.

1.2 Interpretation

In this Trust Deed, unless the context otherwise requires:

- 1.2.1 words importing the singular include the plural and vice versa;
- 1.2.2 words importing one gender and include the other gender;
- 1.2.3 references to persons include corporations and unincorporated bodies of persons, governments or other public bodies or agencies whether or not having separate legal personality;
- 1.2.4 references to a statute shall be deemed to be references to that statute as amended, re-enacted or substituted from time to time;
- 1.2.5 references to a clause, recital or a schedule shall be deemed to be a clause, recital or schedule to this Trust Deed;
- 1.2.6 the schedules to this Trust Deed shall form part of this Trust Deed;
- 1.2.7 headings appear as a matter of convenience only and shall not affect the interpretation of this Trust Deed;
- 1.2.8 references to a company are references to a company incorporated pursuant to the Companies Act 1993;
- 1.2.9 references to a subsidiary or subsidiaries shall be references to a subsidiary or subsidiaries as defined by the Companies Act 1993.

2. ESTABLISHMENT, STATUS AND OBJECTS OF TE TĀWHARAU O NGĀTI PŪKENGĀ TRUST

2.1 Trust Established:

The Trustees acknowledge that they hold the Trust Fund upon the Trusts and with the powers set out in this Trust Deed. The Trustees further acknowledge that trust hereby created shall be known as Te Tāwharau o Ngāti Pūkenga Trust.

2.2 Trust Representative:

Te Tāwharau o Ngāti Pūkenga Trust shall be governed and administered by and in accordance with this Trust Deed. Te Tāwharau o Ngāti Pūkenga Trust shall be the representative for the iwi of Ngāti Pūkenga in all iwi matters relating to Ngāti Pūkenga, other than in respect of matters as agreed by the Trustees. Te Tāwharau o Ngāti Pūkenga Trust is not the representative for the Kainga in relation to Kainga matters.

2.3 Powers of Trust:

The Trustees, on behalf of Te Tāwharau o Ngāti Pūkenga Trust, shall be capable of holding real and personal property, of suing and being sued, and shall have all the rights, powers and privileges of a natural person with the intention that they shall, in their capacity as Trustees, have the fullest powers necessary to do all such things that they consider necessary in their sole discretion to perform or otherwise carry out the Trust Purposes.

2.4 Objects and Purposes of Te Tāwharau o Ngāti Pūkenga Trust:

The Purposes for which Te Tāwharau o Ngāti Pūkenga Trust is established are to receive, manage and administer the Trust Fund for the commercial and tribal development of Ngāti Pūkenga, on behalf of and for the benefit of the present and future Beneficiaries in accordance with this Trust Deed including, without limitation:

2.4.1 the promotion amongst Ngāti Pūkenga of the spiritual, economic, political, educational, social and cultural advancement or well-being of Ngāti Pūkenga and it's whānau;

- 2.4.2 the promotion amongst the iwi of the health and well being of Ngāti Pūkenga including the aged or those suffering from mental or physical sickness or disability;
- 2.4.3 the promotion and the advancement of the social and economic development of Ngāti Pūkenga including, without limiting the generality of this purpose, by the promotion of business, commercial or vocational training or the enhancement of community facilities in a manner appropriate to the particular needs of Ngāti Pūkenga;
- 2.4.4 the establishment and maintenance of places of cultural or spiritual significance to Ngāti Pūkenga;
- 2.4.5 the promotion of a tribal forum to hear and determine matters affecting Ngāti Pūkenga and to advocate on their behalf;
- 2.4.6 to act as the post-settlement governance entity for Ngāti Pūkenga for Treaty Settlement purposes;
- 2.4.7 to hold the lands received pursuant to the Ngāti Pūkenga Deed of Settlement, Tauranga Moana Iwi Collective Settlement and/or Hauraki Collective Settlement and/or any Settlement Act (Collective) (as the case requires);
- 2.4.8 to recover remaining Ngāti Pūkenga lands, resources and Wāhi Tapu;
- 2.4.9 to ensure that the lands listed in the *Sixth Schedule* are not removed from the power of the Wāhi Tapu Trust nor charged for security or otherwise alienated, but subject to *clause 2.5*; and
- 2.4.10 to identify further lands to be added to those listed in the *Sixth Schedule*;

2.4.11 to administer all applicable forest licences that derive from an Individual Settlement, a Tauranga Moana Iwi Collective Settlement and/or Hauraki Collective Settlement and/or any Settlement Act (Collective) (as the case requires);

2.4.12 to develop, monitor, evaluate and review Ngāti Pūkenga iwi tribal plans from time to time;

2.4.13 to develop policies to control the distribution of profits from the Trust Fund or from any Trust Entity to Te Tāwharau o Ngāti Pūkenga Trust; and

2.4.14 any other purpose that is considered by the Trustees from time to time, to be beneficial to Ngāti Pūkenga.

2.5 Lands listed in the Sixth Schedule:

The lands listed in the *Sixth Schedule* may be alienated to a Ngāti Pūkenga Entity by Special Resolution of the Trust as if it were a Major Transaction, but only on the conditions that:

2.5.1 the Ngāti Pūkenga Entity is first approved by the Trust before any Special Resolution is made; and,

2.5.2 the Ngāti Pūkenga Entity must hold the land on trust for Ngāti Pūkenga and the land may not be charged for security or otherwise alienated.

3. RESTRICTION ON MAJOR TRANSACTIONS

Notwithstanding *clause 2.3*, the Trust must not enter into a Major Transaction, unless that Major Transaction:

3.1 Is approved by way of Special Resolution in accordance with the *Fourth Schedule*; or

3.2 Is contingent upon approval by way of Special Resolution.

4. **APPOINTMENT, POWERS AND MEETINGS OF TRUSTEES**

4.1 **Appointment in accordance with Second Schedule:**

The Trustees shall be appointed to office in accordance with the rules set out in the *Second Schedule*.

4.2 **Trustees to control Trust affairs:**

Subject to *clause 4.5* and any requirements imposed by this Trust Deed, the Ngāti Pūkenga Deed of Settlement, Tauranga Moana Iwi Collective Settlement, Hauraki Collective Settlement, the Settlement Act (Individual) and any Settlement Act (Collective), the Trustees shall control and supervise the business and the affairs of Te Tāwharau o Ngāti Pūkenga Trust in such a manner as they, in their sole discretion see fit.

4.3 **Proceedings of Trustees:**

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

4.4 **Appointment of Committees:**

Subject to *clause 4.5*, the Trustees shall have the power to appoint any of their number to committees of Te Tāwharau o Ngāti Pūkenga Trust from time to time to transact the business of Te Tāwharau o Ngāti Pūkenga Trust, provided that responsibility for the activities of the committees is retained by the Trustees.

4.5 **Roles and Powers of Elected Alternate Trustees:**

4.5.1 An Elected Alternate Trustee has the right to:

- (a) attend any Trust meeting;
- (b) receive copies of all Trust papers and documents; and,

(c) be heard and speak on any Trust business during any Trust meeting as if they are Elected Trustees with a power to vote.

4.5.2 Subject to *clause 4.5.3* below an Elected Alternate Trustee does not have the power to vote in any Trust meeting and their attendance at any Trust meeting does not affect the quorum for that meeting.

4.5.3 An Elected Alternate Trustee may vote at a Trust meeting, and their attendance counts towards the quorum at such Trust meeting, where the Elected Trustee nominated by a particular Kainga is an Interested Trustee under *clause 16* or is absent while Trust business is being conducted and where the Elected Alternate Trustee was nominated by that same Kainga. For the avoidance of doubt, under this clause the Elected Alternate Trustee has the same powers and roles of the absent Elected Trustee as if he or she were an Elected Trustee elected under *rule 6.2 of the Second Schedule* but only for the purposes and during the period of absence of that Elected Trustee over that Trust meeting.

4.5.4 Elected Alternate Trustees shall be entitled to any remuneration or costs (subject to approval under *clause 15.2*).

4.6 **Advisors**

(a) The Trustees shall have the discretion to appoint and remove Advisors as they deem appropriate, provided that the total number of Advisors does not exceed three; and

(b) The Advisors shall have the right to

- (i) attend any Trust meeting;
- (ii) receive copies of all Trust papers and documents;
- (iii) be remunerated for attendance fees and disbursements (subject to approval under *clause 15.2*); and,
- (iv) be heard and speak on any Trust business during any Trust meeting as if they were Trustees.

- (c) For the avoidance of doubt, the Advisors are not Trustees and shall have no right or power to vote in any Trust meeting and shall not form part of any quorum for any Trust meeting.

4.7 **Establishment Trustees:**

The Establishment Trustees shall work with the Kainga to:

- (a) prepare the plans as set out in *clause 9.1* and *clause 9.2*;
- (b) prepare the SIPO plan as set out in *clause 8*;
- (c) prepare tikanga and guidelines, as referred to in *rule 5.1(b) of the Third Schedule*, within twelve months of the establishment of the Trust; and
- (d) prepare such other policies as necessary for the good governance of the Trust and for any Trust Entity.

- 4.8 Notwithstanding rule 3 of the Third Schedule, the quorum for Trust meetings during the Establishment Period shall be a simple majority of the total number of Establishment Trustees then in office.

5. **CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES**

5.1 **Trust to appoint Chief Executive Officer:**

Te Tāwharau o Ngāti Pūkenga Trust shall appoint a Chief Executive Officer to manage the day-to-day administration of Te Tāwharau o Ngāti Pūkenga Trust, including, without limitation the implementation of Te Tāwharau o Ngāti Pūkenga Trust's planning, reporting and monitoring obligations under this Trust Deed.

5.2 **Delegations to Chief Executive Officer:**

The Chief Executive Officer shall be responsible for the employment of all other employees of Te Tāwharau o Ngāti Pūkenga Trust and shall exercise such other powers

and discretions as are delegated to him or her by Te Tāwharau o Ngāti Pūkenga Trust from time to time.

5.3 Trustees not to be employed:

A Trustee may not hold the position of Chief Executive Officer nor may a Trustee be an employee of, or a contractor to Te Tāwharau o Ngāti Pūkenga Trust.

6. NGĀTI PŪKENGĀ DEVELOPMENT LIMITED

In receiving, controlling, and supervising the use of the Trust Fund on behalf of Ngāti Pūkenga, whether pursuant to the Deed of Settlement, the Settlement Act or otherwise, Te Tāwharau o Ngāti Pūkenga Trust shall establish and oversee the operations of Ngāti Pūkenga Development Limited. The Trustees may change the name of Ngāti Pūkenga Development Limited to such other company name as they consider appropriate so long as the provisions of this Deed relating to Ngāti Pūkenga Development Limited continue to apply to that company under its new name. For the avoidance of doubt, Ngāti Pūkenga Development Limited shall also be, for the purposes of this trust deed a Trust Entity.

6.1 Ownership and Control of Ngāti Pūkenga Development Limited:

Subject to *clause 13*, Ngāti Pūkenga Development Limited shall either be 100% owned or otherwise wholly controlled by Te Tāwharau o Ngāti Pūkenga Trust.

6.2 Ngāti Pūkenga Development Limited Objects:

The Trustees shall ensure that the constitution of Ngāti Pūkenga Development Limited will contain provisions that require Ngāti Pūkenga Development Limited to manage any of the Trust Fund it holds solely for the benefit of Ngāti Pūkenga.

6.3 Appointment of Directors

6.3.1 Appointment and removal of directors:

The directors of Ngāti Pūkenga Development Limited shall each be appointed as follows:

- (a) The Shareholders shall appoint one director on the basis of the selection criteria as set out in *clause 6.3.2*;
- (b) The Shareholders shall appoint four directors on the basis of the selection criteria as set out in *clause 6.3.3*.

6.3.2 Selection criteria for directors generally

The Shareholders shall appoint directors taking into account any tikanga and guidelines adopted by the Trust and taking into account the following set of skills and/or related qualifications needed by Ngāti Pūkenga Development Limited as a whole:

- (a) best development practice;
- (b) finance;
- (c) operational management;
- (d) law; and
- (e) best governance practices.

6.3.3 Selection criteria under *Clause 6.3.1(b)*

The Shareholders shall appoint the four directors employing the criteria

- (a) that they are nominated by a Kainga, one each per Kainga, under *clause 6.3.4*; and
- (b) as set out in *clause 6.3.2*.

The decision as to whether a nomination is a proper nomination under *clause 6.3.4* is to be determined by the Shareholders. If the Shareholders decide, on the basis of the criteria set out in *clause 6.3.3(b)*, not to appoint as a Director any particular nominee of a Kainga the Shareholders shall seek a further nomination from the Kainga as set out in *clause 6.3.4*.

6.3.4 **Kainga nominations**

Nominations for directors by Kainga shall be obtained by the following process:

- (a) Each of the Ngāti Pūkenga Kainga shall convene a hui for the purpose of nominating one director; and
- (b) The nomination of a director shall be in writing to the Shareholders and must be endorsed by the person nominated.

6.3.5 **Removal of Directors**

The Shareholders may by resolution remove any director from office provided that in relation to any person appointed under *clause 6.3.1(b)* the Shareholders shall seek a nomination of a replacement director from the Kainga concerned and otherwise pursuant to *clause 6.3.3*.

6.3.6 **Performance of Directors:**

The Shareholders shall monitor the performance of the directors of Ngāti Pūkenga Development Limited against the information provided under *clause 9.1*. If, in the Trustees' discretion Ngāti Pūkenga Development Limited are failing to meet the standards required by *clause 9.1*, then the Shareholders may work with the Ngāti Pūkenga Kainga and director(s) as appropriate to remedy that or those matters and, subject to *clauses 6.3.1 and 6.3.2* deal with the issues as appropriate.

7. **TRUST ENTITIES**

7.1 **Establishment of Trust Entities:**

Te Tāwharau o Ngāti Pūkenga Trust may establish Trust Entities in order to receive, hold or manage the Trust Fund, or any property forming part of the Trust Fund, provided that any Trust Entity must be established for the benefit of Te Tāwharau o Ngāti Pūkenga Trust or the Iwi and in furtherance of the Trust Purposes.

7.2 Te Tāwharau o Ngāti Pūkenga Trust may, from time to time, disestablish any Trust Entity.

- 7.3 Te Tāwharau o Ngāti Pūkenga Trust shall monitor and supervise each Trust Entity in the following manner:
- 7.3.1 Te Tāwharau o Ngāti Pūkenga Trust shall be responsible for monitoring and otherwise overseeing the activities of any Trust Entity and 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.
- 7.3.2 For the avoidance of doubt, and except as expressly provided by this Deed, each Trust Entity shall be governed by its respective Board and the role of Te Tāwharau o Ngāti Pūkenga Trust in respect of each Trust Entity shall be limited to the exercise of the rights conferred on Te Tāwharau o Ngāti Pūkenga Trust as shareholder or (as applicable) appointor and as beneficiary of the Trust Entity.
- 7.3.3 Except as provided at *clause 6.3*, Te Tāwharau o Ngāti Pūkenga Trust shall have and retain the power to appoint and remove the Directors, trustees or Board members (as the case may be) of any Trust Entity.
- 7.3.4 Te Tāwharau o Ngāti Pūkenga Trust shall determine the remuneration payable to any Director, trustee or Board members of any Trust Entity.
- 7.3.5 Te Tāwharau o Ngāti Pūkenga Trust shall require that any Directors, trustees or Board members appointed by or at the direction of Te Tāwharau o Ngāti Pūkenga Trust to any Trust Entity do not act in a manner which brings or is likely to bring the Iwi, Te Tāwharau o Ngāti Pūkenga Trust or any Trust Entity into disrepute.
- 7.3.6 A Director, trustee or Board member of any Trust Entity shall only be appointed if that person has the particular skills and expertise that are required of a Director, trustee or Board member of the Trust Entity to which the appointment relates and bearing in mind the activities that the relevant Trust Entity undertakes or is likely to undertake in the future and the mix of skills and expertise that is required on the relevant board of that Trust Entity.

8. INVESTMENTS

- 8.1 The Trustees shall consider and decide on a Statement of Investment Policies and Objectives (the SIPO) which provides for the prudent investment of the whole of the Trust Fund (and of Trust Entity that is designated by the Trustees as an investment entity for the purposes of this clause 8) in accordance with sections 13B to 13E (inclusive) of the Trustee Act 1956. The SIPO shall be reviewed at least annually by the Trustees.
- 8.2 The Trustees shall invest the Trust Fund or cause it to be invested in accordance with the SIPO.
- 8.3 The Trustees may appoint one or more individuals or companies to be an Investment Advisor of the Trust.
- 8.4 The Investment Advisor shall, if the Trustees direct in writing, have full authority and responsibility to invest in accordance with the SIPO the part of the Trust Fund designated by the Trustees in their direction, but for the avoidance of doubt the Trustees retain responsibility for any part of the Trust Fund so invested and the actions of the Investment Advisor in relation to any part of the Trust Fund so invested.
- 8.5 The Trustees may appoint an Investment Committee comprising appropriately qualified individuals. The Investment Committee shall:
 - 8.5.1 Prepare a draft SIPO for consideration and (if considered appropriate by the Trustees) approval (with or without amendments) by the Trustees;
 - 8.5.2 Review the SIPO and submit a report with (if necessary) a revised draft SIPO each year to the Trustees;
 - 8.5.3 Review the performance of any Investment Advisor at least once each year and report to the Trustees;

8.5.4 (If authorised by the Trustees) have the power in circumstances of urgency or expediency to acquire, re-invest and dispose of (i) term deposits with registered New Zealand banks of up to One Million New Zealand Dollars (NZ\$1,000,000.00) and (ii) other debt investments and equity investments of up to One Millions New Zealand Dollars (NZ\$1,000,000.00);

8.5.5 Report within 15 Business Days of the end of each quarter to the Trustees on all acquisitions, re-investments and disposals of term deposits, other debt investments and equity investments;

8.5.6 When applying income or when preparing or reviewing the SIPO, act fairly in considering the present and future beneficiaries of Ngāti Pūkenga,

For the avoidance of doubt the Trustees retain responsibility for any part of the Trust Fund invested and the actions of the Investment Advisor in relation to any part of the Trust Fund invested under this clause.

8.6 The Trustees may, after consulting with the Investment Committee, resolve to specify the maximum amount of transactions that may be authorised under *clause 8.5.4*, but any amendment to the maximum amount of transactions that may be authorised under clause 8.5.4 must be approved by Special Resolution.

9. **PLANS**

9.1 **Trust to prepare annual plan:**

Te Tāwharau o Ngāti Pūkenga Trust shall prepare no later than one month before the commencement of each Income Year an annual plan which specifies in respect of that Income Year the following information:

9.1.1 the strategic vision of Te Tāwharau o Ngāti Pūkenga Trust for the Ngāti Pūkenga Development Group;

- 9.1.2 the nature and scope of the activities proposed by Te Tāwharau o Ngāti Pūkenga Trust for the Ngāti Pūkenga Development Group in the performance of the Trust Purposes including the ongoing implementation of the Ngāti Pūkenga Settlement;
- 9.1.3 the ratio of capital to total assets;
- 9.1.4 the performance targets and measurements by which performance of the Ngāti Pūkenga Development Group may be judged;
- 9.1.5 the manner in which it is proposed that projected income will be dealt with;
- 9.1.6 any proposals for the ongoing management of the Trust Fund having regard to the interests of the Registered Members of Ngāti Pūkenga; and
- 9.1.7 such other information as Te Tāwharau o Ngāti Pūkenga Trust in its discretion considers necessary.

9.2 Trust to prepare five year strategic plan:

Te Tāwharau o Ngāti Pūkenga Trust shall also produce within 12 months following the execution of this Trust Deed, and update not less than every two years, a five year plan. Such a plan shall set out the long-term vision of Te Tāwharau o Ngāti Pūkenga Trust in respect of the matters referred to in *clauses 9.1.1 to 9.1.7* and shall include a statement by the Trustees of the commercial, management and distribution policies that Te Tāwharau o Ngāti Pūkenga Trust intends to follow in respect of the Trust Fund.

10. ANNUAL REPORTS, ACCOUNTS AND AUDITOR

10.1 Preparation of annual report:

Te Tāwharau o Ngāti Pūkenga Trust must, within four months after the end of each Income Year, cause to be prepared an annual report on the affairs of the Ngāti Pūkenga Development Group covering the accounting period ending at the end of that Income Year which includes, as separate items, details of any remuneration for any Trustee and any premiums paid in respect of Trustees' indemnity insurance, a comparison of

performance against the annual plan, and Consolidated Financial Statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of the Ngāti Pūkenga Development Group.

10.2 Audit of financial statements:

Te Tāwharau o Ngāti Pūkenga Trust 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 Te Tāwharau o Ngāti Pūkenga Trust for the Income Year immediately following the Income Year to which the financial statements relate.

10.3 Appointment of auditor:

The auditor shall be appointed by Te Tāwharau o Ngāti Pūkenga Trust 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 Trustee or employee of Te Tāwharau o Ngāti Pūkenga Trust (including any firm of which such a person is a member or employee), may be appointed as the auditor and, for the avoidance of doubt, no accountant of, or for, the Trust may be appointed as the auditor.

11. TRUST ENTITY PLANS AND REPORTS

11.1 Trust Entities to prepare Plans and Statements of Intent:

Te Tāwharau o Ngāti Pūkenga Trust shall procure that each Trust Entity:

11.1.1 Within three months of the incorporation of each Trust Entity, prepare a statement of intent, setting out its long-term objectives and the general principles by which it proposes to operate;

11.1.2 As required by Te Tāwharau o Ngāti Pūkenga Trust, update the statements 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;

11.1.3 No later than six months following the incorporation of or establishment of a Trust Entity, prepare a five year plan, which shall be updated, not less than every two years, and which sets out its medium-term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the statement of intent referred to in *paragraph 11.1.1* of this clause;

11.1.4 No later than two months following the completion of the five year plan referred to in *paragraph 11.1.3* of this clause, and hereafter no later than two months before the commencement of each Income Year, prepares 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;

11.2 Trust approval required:

Prior to being implemented, the statements of intent, five-year plans and annual plans of Trust Entities must be approved by Te Tāwharau o Ngāti Pūkenga Trust.

11.3 Protection of Sensitive Information:

For the avoidance of doubt, nothing in this *clause 11* limits or affects the rights of the Trustees, as shareholders in a Trust Entity, to agree pursuant to section 211(3) of the Companies Act 1993 not to include information in the annual reports of a Trust Entity where Te Tāwharau o Ngāti Pūkenga Trust considers on reasonable grounds that the information is commercially or otherwise sensitive.

11.4 Provision of Financial Information:

Te Tāwharau o Ngāti Pūkenga Trust shall procure that each Trust Entity shall provide the Trust on a quarterly basis with reports setting out the unaudited summary of financial results for that period.

12. DISCLOSURE OF PLANS, REPORTS AND MINUTES

12.1 Documents to be available for inspection:

Te Tāwharau o Ngāti Pūkenga Trust shall hold at its offices and make available for inspection by any Registered Member of Ngāti Pūkenga during normal business hours on any Business Day:

12.1.1 the Annual Report for each of the preceding three Income Years;

12.1.2 the Consolidated Financial Statements for the preceding three Income Years;

12.1.3 the Annual Plan;

12.1.4 the Five Year Plan;

12.1.5 the constitutions, trust deeds and other documents of incorporation for all Trust Entities;

12.1.6 a list of the directors and trustees of Trust Entities;

12.1.7 the constitution of TMIC JVC;

12.1.8 the minute book kept in accordance with *Rule 7* of the *Third Schedule* of all decisions taken and business transacted at every annual general meeting and special general meeting;

12.1.9 their own personal details on the Ngāti Pūkenga Register; and

12.1.10 this Trust Deed.

12.2 Costs of copying:

Any Registered Member of Ngāti Pūkenga shall be entitled to obtain copies of this information. However Te Tāwharau o Ngāti Pūkenga Trust shall also be entitled to recover at its discretion all reasonable copying or postage costs (if any).

13. RESETTLEMENT

The Trustees have power in their discretion to settle or resettlement any or all of the Trust Fund upon trust in any manner which in the opinion of the Trustees is for the advancement or benefit of the Registered Members of Ngāti Pūkenga as a whole or groups of them (including for the avoidance of doubt upon a Charity that is (a) for the advancement of education or the relief of poverty or for other purposes beneficial to the community and (b) for the benefit of Registered Members of Ngāti Pūkenga) provided that:

- 13.1 The resettlement is approved by a Special Resolution;
- 13.2 The resettlement does not transgress the rule against perpetuities (if applicable) as it applies to the Trust.

14. **NO DISCLOSURE OF SENSITIVE INFORMATION**

For the avoidance of doubt, but subject to Te Tāwharau o Ngāti Pūkenga Trust's reporting obligations, the Trustees may at their sole discretion limit disclosure of any information about the activities or proposed activities of Te Tāwharau o Ngāti Pūkenga Trust and the Ngāti Pūkenga Development Group which the Trustees consider on reasonable grounds to be commercially or otherwise sensitive.

15. **GENERAL MEETINGS**

15.1 **Trust to hold annual general meeting:**

The Trustees shall, no later than six 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 Te Tāwharau o Ngāti Pūkenga Trust, hold a general meeting for the Registered Members of Ngāti Pūkenga, to be called its annual general meeting, and shall at that meeting:

- 15.1.1 report on the operations of the Ngāti Pūkenga Development Group during the preceding Income Year;
- 15.1.2 present the Annual Report and duly audited Consolidated Financial Statements;

15.1.3 present the proposed Annual Plan;

15.1.4 announce the names of Trustees appointed in the course of the year ;

15.1.5 approve the appointment of the auditor for the next Income Year;

15.1.6 approve the Trustees' remuneration (including any remuneration payable to any Elected Alternate Trustee);

15.1.7 report on any Trustees' and Advisors' remuneration;

15.1.8 undertake all other notified business; and

15.1.9 at the discretion of the Chairperson, undertake any other general business raised at that meeting.

15.2 Approval of Trustees' or Advisors' remuneration:

No remuneration will be paid to a Trustee in his or her capacity as a Trustee or to an Advisor (notwithstanding *clause 15.1.6*) unless that remuneration has been authorised by a resolution of the Adult Registered Members of Ngāti Pūkenga present at the annual general meeting. Each such resolution will express the remuneration to be paid to the Trustees or Advisors as a monetary sum per annum payable either to all Trustees or Advisors taken together or to any person who from time to time holds office as a Trustee or Advisor.

15.3 Notice of annual general meeting:

The Trustees shall give not less than 30 days notice of the holding of the annual general meeting, such notice to be posted to all Adult Registered Members of Ngāti Pūkenga at the last address shown for each such Adult Registered Member of Ngāti Pūkenga on the Ngāti Pūkenga Register. Notice of the meeting shall also be inserted prominently in all major metropolitan newspapers circulating in New Zealand, and in any provincial

newspapers circulating in regions where the Trustees consider that a significant number of Registered Members of Ngāti Pūkenga reside. All such notices shall contain:

15.3.1 the date, time and place of the meeting;

15.3.2 an agenda of matters to be discussed, and resolutions to be put, at the meeting;
and

15.3.3 details of where copies of any information to be laid before the meeting may be inspected.

15.4 Notice of special general meetings:

In addition to the annual general meeting of Te Tāwharau o Ngāti Pūkenga Trust, the Trustees shall convene a special general meeting of Te Tāwharau o Ngāti Pūkenga Trust on the written request of:

15.4.1 the Chairperson and Deputy Chairperson for the time being of Te Tāwharau o Ngāti Pūkenga Trust; or

15.4.2 the majority of the Elected Trustees from time to time; or

15.4.3 ten percent (10%) of Adult Registered Members of Ngāti Pūkenga.

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

15.5 Annual general meeting not limited to notified business:

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

15.6 Special general meeting limited to notified business:

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

15.7 Invalidation:

The accidental omission to give notice to, or a failure to receive notice of an annual or special general meeting by an Adult Registered Member of Ngāti Pūkenga, does not invalidate the proceedings at that meeting.

15.8 Deficiency of notice:

Subject to *clause 15.6*, a deficiency or irregularity in any notice of any special or general meeting will not invalidate anything done at the meeting if:

15.8.1 the deficiency or irregularity is not material ; and

15.8.2 the Adult Registered Members of Ngāti Pūkenga who attend the meeting agree to waive the deficiency or irregularity.

15.9 Quorum:

The quorum required for any annual or special general meeting of Te Tāwharau o Ngāti Pūkenga Trust shall be thirty (30) Adult Registered Members of Ngāti Pūkenga present in person.

15.10 Chairing of meetings:

The Chairperson for the time being of Te Tāwharau o Ngāti Pūkenga Trust will be the Chairperson of any annual or special general meeting. If the Chairperson is not present at the time appointed for holding a meeting, then, the Deputy Chairperson shall be the chair. If the Deputy Chairperson is also not present, then the Trustees present shall elect one of their number to substitute as for that meeting.

15.11 Voting:

To the extent that a vote is sought or required at any annual or special general meeting, every Adult Registered Member of Ngāti Pūkenga present shall have one vote. Voting shall be carried out in accordance with the *Fourth Schedule*. Unless stated otherwise in this Trust Deed, questions arising at any annual or special general meeting shall be decided by a majority of votes of Adult Registered Members of Ngāti Pūkenga present in person at the meeting. In the case of an equality of votes, the Chairperson shall have a second or casting vote. However, except as provided in *clauses 3, 13, 15.1.5, 22 and 23* and in the *Fourth Schedule*, the Trustees shall not be bound by a resolution passed at any annual or special general meeting, but will only be required to give consideration to any such resolution in administering the Trust Fund and carrying out the Trust Purposes.

15.12 Adjourned meetings:

If within one hour of the time appointed for an annual general or a special general meeting, a quorum is not present, the meeting will stand adjourned to be reconvened no sooner than 15 business days after the date of the meeting. On that later date, the meeting will be held again at the same time and in the same place as the adjourned meeting. If a quorum is not present within one hour from time appointed for that adjourned meeting, the Adult Registered Members of Ngāti Pūkenga present will constitute a quorum.

15.13 Minutes:

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

15.14 Minutes to be evidence of proceedings:

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

15.15 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.

16. **DISCLOSURE OF INTERESTS**

16.1 **Definition of interested Trustee:**

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

16.1.1 is a party to, or will derive a material benefit from that matter;

16.1.2 has a material financial interest in any other party to the matter;

16.1.3 is a director, officer, Trustee of any other party to, or person who will or may derive a material financial benefit from, the matter, not being a party that is wholly owned, or in the case of a Trust controlled, by Te Tāwharau o Ngāti Pūkenga Trust, any subsidiary of Te Tāwharau o Ngāti Pūkenga Trust, or TMIC JVC;

16.1.4 is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the matter; or

16.1.5 is otherwise directly or indirectly interested in the matter.

16.2 **Disclosure of interest to other Trustees:**

A Trustee or Advisor must forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with Te Tāwharau o Ngāti Pūkenga Trust, disclose to the Trustees at a meeting of Te Tāwharau o Ngāti Pūkenga Trust:

16.2.1 if the monetary value of the Trustee's or Advisor's interest is able to be quantified, the nature and monetary value of that interest; or

16.2.2 if the monetary value of that Trustee's or Advisor's interest cannot be quantified, the nature and extent of that interest.

16.3 Recording of Interest:

A disclosure of interest by a Trustee or Advisor shall be recorded in the minute book of Te Tāwharau o Ngāti Pūkenga Trust.

16.4 Dealings with Interested Parties

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

16.4.2 An interested Advisor shall not take part in any deliberation nor speak in respect of any matter in which that Advisor is interested.

17. PROHIBITION OF BENEFIT OR ADVANTAGE

In the carrying on of any business by any member of a Trust Entity under this Trust Deed, and in the exercise of any power authorising the remuneration of the Trustees (or Elected Alternate Trustees or Advisors as the case may be), no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related Person, in his or her capacity as a Related Person, is able by virtue of that capacity in any way (whether directly or indirectly) to determine, or to materially influence the determination of the nature or amount of that benefit, advantage or income, or the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived. The provisions of this clause do not apply in relation to any distribution that is made by the Trustees to all Registered Members of Ngāti Pūkenga on an equal basis.

18. DISCLOSURE OF REMUNERATION

The Trustees shall, in accordance with *clause 10.1* show the amount of any remuneration paid to, or fees charged by, any Trustee, Elected Alternate Trustee,

Advisor and the amount of any premiums paid out of the Trust Fund for any Trustee indemnity insurance separately in the financial statements including any payments made pursuant to *clause 20*.

19. **LIABILITY OF TRUSTEES**

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

20. **INDEMNITY AND INSURANCE**

20.1 **Indemnity and insurance for Trustees:**

Any Trustee, officer, or employee of Te Tāwharau o Ngāti Pūkenga Trust or any member of the Ngāti Pūkenga Development Group may be indemnified or have their insurance costs met out of the Trust Fund which he or she incurs in defending any criminal or civil proceedings because of his or her actions in relation to Te Tāwharau o Ngāti Pūkenga Trust or any member of the Ngāti Pūkenga Development Group, where those proceedings do not arise out of any failure by the Trustee, officer or employee and he or she was acting in good faith in a manner that he or she believed to be in the best interests of Te Tāwharau o Ngāti Pūkenga Trust or any member of the Ngāti Pūkenga Development Group with the object of fulfilling Te Tāwharau o Ngāti Pūkenga Trust Purposes.

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

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

20.3 **Record of decisions:**

All decisions made under this clause to give or approve indemnities or meet or approve any insurance costs shall be recorded in the minutes of the meeting at which such a

decision was made together with the reasons why such indemnities or insurance costs were thought by the Trustees to be just and equitable.

21. CUSTODIAN TRUSTEE

21.1 The Trustees may incorporate a limited liability company as a Custodian Trustee and on any such appointment or incorporation, the following provisions shall have effect:

21.1.1 the sole function of the Custodian Trustee shall be to hold and deal with the Trust Fund in accordance with any direction in writing by the Trustees for which purpose the Custodian Trustee shall execute all such documents and perform all such acts as the Trustees in writing direct;

21.1.2 the Custodian Trustee shall not be liable for acting on any such direction provided that if the Custodian Trustee is of the opinion that any such direction conflicts with the trusts or the law, or exposes the Custodian Trustee to any liability or is otherwise objectionable, the Custodian Trustee may apply to the Court for directions and any order giving any such directions shall bind both the Custodian Trustee and the Trustees;

21.1.3 the Custodian Trustee shall not be liable for any act or default on the part of any of the Trustees;

21.1.4 all actions and proceedings touching or concerning the Trust Fund may be brought or defended in the name of the Custodian Trustee at the written direction of the Trustees, and the Custodian Trustee shall not be liable for the costs;

21.1.5 no person dealing with the Custodian Trustee shall be concerned to enquire as to the concurrence or otherwise of the Trustees, or be affected by notice of the fact that the Trustees have not concurred.

22. AMENDMENTS TO TRUST DEED

22.1 Special Resolution required:

Subject to *clause 22.2*, all amendments to the Trust Deed shall only be made with the approval of a Special Resolution passed in accordance with the *Fourth Schedule*.

22.2 Limitations on Amendment:

No amendment shall be made to the Trust Deed which:

22.2.1 changes the Trust Purposes so that the Trustees are no longer required to act for the benefit of the present and future Registered Members of Ngāti Pūkenga;

22.2.2 changes this clause;

22.2.3 changes *clause 2.4.10*;

22.2.4 changes *clause 23*; or

22.2.5 changes the requirement for a Special Resolution (as defined from time to time), as outlined in this clause.

23. TERMINATION OF TRUST

Subject to clause 22.2 Te Tāwharau o Ngāti Pūkenga Trust established by this Trust Deed shall only be terminated or dissolved if the Adult Registered Members of Ngāti Pūkenga have, by Special Resolution:

23.1 resolved that it has become impossible, impracticable or inexpedient to carry out the Trust Purposes; and

23.2 nominated a Trust or other entity, established for the benefit of the present and future Registered Members of Ngāti Pūkenga, to which the Trust Fund should be paid or transferred (after the payment of all relevant costs, debts and liabilities).

24. PERPETUITIES

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

25. **DISPUTE RESOLUTION**

25.1 **Dispute in Relation to Interpretation of Trust Deed:**

In the event that a dispute arises in relation to the interpretation of this Deed, it shall be submitted to the Trustees by notice in writing and Te Tāwharau o Ngāti Pūkenga Trust shall acknowledge receipt in writing within 10 business days of the receipt of the notice. The dispute will then be dealt with as follows:

25.1.1 Upon receipt of notice of the dispute under *clause 25.1*, the Trustees shall attempt to resolve that dispute;

25.1.2 If the dispute is not settled within 20 business days of the receipt by the Trustees of written notice of the dispute, then it shall be referred to a Disputes Committee constituted in accordance with *clause 25.2*.

25.2 **Dispute Committee to be appointed as required:**

There shall not be a permanent Disputes Committee. Disputes Committees shall be appointed by the Trustees on a case-by-case basis, having regard to the precise subject matter of the dispute in question and only after the expiry of the 20 business day period referred to in *clause 25.1.2* above.

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

A Disputes Committee shall comprise three Adult Registered Members of Ngāti Pūkenga, who shall be appointed for their skills and expertise in dealing with the issues that are the subject of the relevant dispute, provided that such Registered Members

cannot also be Trustees or employees of, or contractors to Te Tāwharau o Ngāti Pūkenga Trust.

25.4 Role of Disputes Committee:

The role of the Disputes Committee shall be to facilitate and make findings and decisions on the disputes referred to it.

25.5 Deliberations of Disputes Committee:

In dealing with any dispute, a Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the manner in which a dispute before it should be dealt with. The findings and decisions of a Disputes Committee shall be final and binding on the parties.

25.6 Notification of Outcome:

A Disputes Committee shall give its findings and decision, together with reasons, in writing to the Trustees and any other party to the dispute.

26. REVIEW OF TRUST DEED

26.1 Review within five years:

The Trustees shall, within five years of the Settlement Date (Individual), initiate a review of the terms and operations of this Trust Deed and in particular, shall review the arrangements relating to the election of Trustees, and all other aspects of the representation of Ngāti Pūkenga within Te Tāwharau o Ngāti Pūkenga Trust.

26.2 Process of review:

In conducting this review, the Trustees shall:

26.2.1 engage and consult with Ngāti Pūkenga and in order to seek the views of Ngāti Pūkenga on the terms of this Trust Deed, and in particular, the arrangements relating to the election of Trustees and representation of Ngāti Pūkenga within Te Tāwharau o Ngāti Pūkenga Trust; and

26.2.2 have regard to the tikanga of Ngāti Pūkenga.

26.3 Review to be independently facilitated:

The process of engagement and consultation required by *clause 26.2.1* shall be undertaken by an independent facilitator appointed by the Trustees. The role of the independent facilitator shall be to:

26.3.1 liaise with the Trustees in the preparation of any discussion materials to be distributed to Ngāti Pūkenga;

26.3.2 facilitate any hui;

26.3.3 receive, compile and review any written submissions received from Ngāti Pūkenga; and

26.3.4 make recommendations to the Trustees as to the amendments that should be made to the Trust Deed as a consequence of the information received from the process of engagement and consultation.

26.4 Outcome of review:

Following the completion of the review, and consideration by the Trustees of the report made by the independent facilitator in accordance with *clause 26.3.4*, the Trustees shall recommend amendments (if any) to this Trust Deed, and seek the approval of those amendments by Special Resolution in accordance with the *Fourth Schedule*.

**FIRST SCHEDULE
MEMBERSHIP OF NGĀTI PŪKENGĀ**

1. TRUST TO KEEP REGISTER

1.1 Trust to maintain register:

The Trustees and shall administer and maintain the Ngāti Pūkenga Register, which is a register of the Registered Members of Ngāti Pūkenga.

1.2 Register to comply with this Schedule:

The Ngāti Pūkenga Register shall be confirmed and maintained in accordance with the rules and procedures set out in this schedule.

2. CONTENTS OF REGISTER

2.1 Register to contain Members' details

The Ngāti Pūkenga Register shall record the names, dates of birth, the Ngāti Pūkenga Kainga that the Registered Members of Ngāti Pūkenga nominate for the purposes of Trustee elections pursuant to the Second Schedule and postal addresses of the Registered Members of Ngāti Pūkenga.

2.2 Beneficiary Registration Unique Identifier

The Trustees will allocate a beneficiary identifier to each Registered Member of Ngāti Pūkenga on the Register. The Trustees will immediately after allocation, notify the relevant Registered Member of Ngāti Pūkenga of his or her beneficiary identifier.

3. APPLICATIONS FOR REGISTRATION

3.1 Form of applications:

Any applications for registration as a Registered Member of Ngāti Pūkenga must be made in writing to Te Tāwharau o Ngāti Pūkenga Trust in the form approved by the Trustees from time to time. The application must contain:

- (a) the full name, date of birth and postal address of the applicant;
- (b) the Kainga (being only one of the Kainga listed in the *Fifth Schedule*) that the applicant nominates for the purposes of Trustee elections pursuant to the *Second Schedule*;
- (c) information to support the registration of an applicant as Whāngai;
- (d) such evidence as the Trustees may from time to time require as to that applicant's status as a Registered Member of Ngāti Pūkenga.

3.2 Any Registered Member of Ngāti Pūkenga may amend his or her details as they appear on the Ngāti Pūkenga Register by submitting a new application form in accordance with rule 3.1 above.

4. **DECISIONS AS TO MEMBERSHIP**

4.1 **Whakapapa Committee to be established:**

The Trustees shall establish a Whakapapa Committee to make decisions on any applications made pursuant to *rule 3* of this *Schedule* by any person for recording on the Ngāti Pūkenga Register of that person's membership of Ngāti Pūkenga.

4.2 **Composition of Whakapapa Committee:**

The Whakapapa Committee shall comprise up to four (4) Adult Registered Members of Ngāti Pūkenga, appointed by the Trustees from time to time, with the expertise and knowledge of Ngāti Pūkenga whakapapa (including, for the avoidance of doubt knowledge of tikanga as it relates to whāngai) necessary to make determinations regarding membership applications. Trustees with the required expertise and knowledge of Ngāti Pūkenga whakapapa may be appointed to the Whakapapa Committee.

4.3 Consideration of applications:

All applications for membership pursuant to *rule 3* of this *Schedule* with any supporting evidence shall be forwarded by the Trustees to the Whakapapa Committee.

4.4 Decisions to be made on applications:

Upon receipt of an application for membership in accordance with *rule 3* of this *Schedule*, the Whakapapa Committee shall consider the application, may seek further information and shall make a decision as to whether the application should be accepted as to the applicant's status as a Registered Member of Ngāti Pūkenga.

4.5 Successful applications to be notified and registered:

In the event that the Whakapapa Committee decides that the application should be accepted, then such decision shall be notified in writing to Te Tāwharau o Ngāti Pūkenga Trust, which shall in turn notify the applicant and enter the applicant's name and other relevant details on the appropriate part of the Ngāti Pūkenga Register.

4.6 Notification of unsuccessful applicants:

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

4.7 Unsuccessful applicant may reapply:

- (a) Any applicant whose application has been declined may at any time seek to have his or her application reconsidered by the Whakapapa Committee provided that such application for reconsideration may only be made on the basis of new evidence (being evidence that was not submitted or considered as part of the initial or, if more than one, any previous application) as to the applicant's status as a Registered Member of Ngāti Pūkenga.
- (b) Where any applicant has reapplied for membership and such reapplication has been declined that applicant may apply to have their application for membership resolved by way of Dispute Resolution under *clause 25* provided that if a

Disputes Committee is required then the Trustees in their discretion may appoint any Adult Registered Member of Ngāti Pūkenga to the Disputes Committee and including any Trustee or any person already on the Whakapapa Committee (even if the membership of the Disputes Committee and the Whakapapa Committee is similar).

4.8 **Review of Membership**

If the Whakapapa Committee is made aware that a registered Member is subsequently shown to be ineligible, such Membership shall be rescinded by the Whakapapa Committee. In the event that a person's membership has been rescinded, the Whakapapa Committee shall convey their decision to rescind in writing to the Trustees, together with the reasons for the decision. The Trustees shall then notify the person affected in writing of the decision to rescind their membership, together with the reasons given for that decision, and advising them that they may re-apply for membership under *rule 4.7* of this *Schedule*.

5. **MAINTENANCE OF REGISTER**

5.1 **Trustees to establish policies:**

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

5.2 **Assistance in identifying membership:**

In maintaining the Ngāti Pūkenga Register the Trustees shall include in the policies that it develops, policies for assisting in the identification and registration of those Registered Members of Ngāti Pūkenga that are not for the time being on the Ngāti Pūkenga Register.

5.3 Responsibility of Registered Members of Ngāti Pūkenga:

Notwithstanding *rules 1.1 and 5.2* of this schedule, it shall be the responsibility of each person who is a Registered Member of Ngāti Pūkenga, to ensure that his or her name is included on the Ngāti Pūkenga Register and that his or her full postal address for the time being is provided and updated.

5.4 Consequences of registration:

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

**SECOND SCHEDULE
ELECTIONS OF TRUSTEES**

1. ELECTION OF TRUSTEES

1.1 This Schedule to apply

The Trustees shall be appointed in accordance with the rules and procedures set out in this Schedule.

2. ELIGIBILITY FOR ELECTION

2.1 Eligibility of Trustees:

To be elected, a Trustee must, as at the closing date for nominations:

- (a) Be recorded on the Ngāti Pūkenga Register as a Registered Member of Ngāti Pūkenga;
- (b) be recorded in the Ngāti Pūkenga Register as having chosen the Kainga that he or she is seeking to be elected by as his or her Kainga for the purposes of Trustee elections; and
- (c) not otherwise be disqualified from holding office as a Trustee under *rule 10* of this Schedule.

3. APPOINTMENT OF TRUSTEES

3.1 One Elected Trustee shall be elected by each of the Ngāti Pūkenga Kainga as set out in rule 6 of this Schedule.

3.2 One Elected Alternate Trustee shall be elected by each of the Ngāti Pūkenga Kainga as set out in *rule 6* of this Schedule.

3.3 Trustees shall be elected for a term of three (3) years, but will continue to hold office until replaced following an election under *rule 6* of this Schedule. The election of Trustees shall commence upon the expiry of the term of the Establishment Trustees.

3.4 The Establishment Trustees shall hold office for two years from the date of establishment of the Trust, but will continue to hold office until replaced following an election under *rule 6* of this Schedule.

3.5 Eligibility of retiring Trustees:

Trustees retiring from office shall be eligible for reappointment.

3.6 Transitional provisions for first Trust election:

Notwithstanding rule 3.3 of this Schedule, in the case of the very first election upon the expiry of the term of the Establishment Trustees the following shall apply:

(a) The Trustees from the Manaia and Maketu Ngāti Pūkenga Kainga shall be elected for a term of two (2) years, but shall continue to hold office until replaced following an election under *rule 6* of this *Schedule*; and

(b) The Trustees from the Pakikaikutu and Tauranga Ngāti Pūkenga Kainga shall be elected for a term of three (3) years, but shall continue to hold office until replaced following an election under *rule 6* of this *Schedule*.

4. TIMING OF ELECTIONS

4.1 The elections for Trustees and Elected Alternate Trustees in any given Income Year must, except in the case of election of replacement Trustees or replacement Elected Alternate Trustees in accordance with rule 6 of this Schedule, be concluded by the time of the annual general meeting of Te Tāwharau o Ngāti Pūkenga Trust in that Income Year. Elected Trustees or Elected Alternate Trustees shall take office at the annual general meeting immediately following the election.

5. MAKING OF NOMINATIONS

5.1 Calling for nominations;

The Trustees shall give notice calling for nominations for those Elected Trustee or Elected Alternate Trustee positions for which elections are required at least four months before the annual general meeting of Te Tāwharau o Ngāti Pūkenga Trust for that Income Year, and in any event in sufficient time for the election to be concluded in accordance with *rule 4* of this Schedule.

5.2 Process for obtaining nominations:

Nominations shall be obtained by following the process:

- (a) Each of the Ngāti Pūkenga Kainga shall convene hui for the purpose of nominating at least two candidates for that Kainga;
- (b) Following the notification of Ngāti Pūkenga Kainga candidates, all other Registered Members of Ngāti Pūkenga shall have the opportunity to nominate further candidates.
- (c) All candidates validly obtained in accordance with *rules 5.2(a) and (b)* of this *clause* shall constitute the Trustee nominations for each of the Ngāti Pūkenga Kainga.

5.3 Timing for nominations:

The timing for receipt of nominations shall be as follows:

- (a) The hui of Ngāti Pūkenga Kainga to be held in accordance with *rule 5.2(a)* of this *Schedule* shall be completed no less than three months before the Annual General Meeting of that year or as soon as possible in the case of a termination of office of a Trustee under *rule 10* of this *Schedule*. The candidates nominated as a result of the Ngāti Pūkenga Kainga Hui shall be received by the Trust within two business days of those hui. The Trust shall notify the nominations in accordance with *rule 5.5 of this Schedule*;

- (b) Within fifteen business days of notification of Ngāti Pūkenga Kainga nominations under *rule 5.3(a)* of this *Schedule*, all further nominations from Registered Members of Ngāti Pūkenga made in accordance with *rule 5.2(b)* of this *Schedule* shall be received by the Trust. This shall be the closing date for nominations.
- (c) Should less than two nominations under *rules 5.2(a)* or *5.2(b)* of this *Schedule* be received by the Trust in relation to any particular Ngāti Pūkenga Kainga then the Trust shall immediately give notice calling for an additional nomination or nominations under *rule 5.1* of this *Schedule* to be added to any nomination already received in order to obtain at least two nominations for that Ngāti Pūkenga Kainga and time shall be of the essence. For the avoidance of doubt, no notice under *rule 7.1* of this *Schedule* shall be given nor elections shall be held by the Trust until at least two nominations are received for each Ngāti Pūkenga Kainga under *rules 5.2(a)* and *5.2(b)* of this *Schedule*.

5.4 Nomination to be in writing and with consent of nominee:

- (a) The nomination of a candidate for election as a Trustee shall be in writing, and must be endorsed in writing by the candidate.
- (b) A valid endorsement in writing by the candidate must acknowledge that the candidate will also accept election as an Elected Alternate Trustee should they poll in second place in the elections under *rule 6.3* of this *Schedule*.

5.5 Method of Giving Notice:

Notice of Ngāti Pūkenga Kainga nominations under *rule 5.3(a)* of this *Schedule* shall be given by inserting a prominent notice in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of such Registered Members of Ngāti Pūkenga reside.

5.6 Content of Notices:

Every notice given in accordance with *rule 5.5* of this *Schedule* shall contain:

- (a) A list of the candidates nominated as a result of the Ngāti Pūkenga Kainga Hui convened in accordance with *rule 5.2(a)* of this *Schedule*;
- (b) the closing date for the nominations from Registered Members of Ngāti Pūkenga; and
- (c) the method by which nominations may be made by Registered Members of Ngāti Pūkenga.

6. HOLDING OF ELECTIONS

6.1 Mode of Voting

- (a) All elections shall be by postal ballot. Voting forms shall be delivered to the Chief Returning Officer appointed under *rule 8* of this *Schedule*.
- (b) Only one vote shall be accepted by the Chief Returning Officer from any Adult Registered Member of Ngāti Pūkenga.

6.2 Candidates with most votes elected as Elected Trustee:

The successful candidates for election as Elected Trustee by the respective Ngāti Pūkenga Kainga shall be that candidate who receives the most validly cast votes from the Adult Registered Members of Ngāti Pūkenga who have nominated that Kainga under *rule 3.1(b)* of the *First Schedule*.

6.3 Candidates elected as Elected Alternate Trustee:

- (a) The successful candidates for election as Elected Alternate Trustee by the respective Ngāti Pūkenga Kainga shall be that candidate who receives the second most validly cast votes from the Adult Registered Members of Ngāti Pūkenga who have nominated that Kainga under *rule 3.1(b)* of the *First Schedule* (being the candidate with the next most number of validly cast votes after the candidate referred to in *rule 6.2* of this *Schedule* above); or

- (b) In the case where an Elected Alternate Trustee ceases to hold office under *rule 10.2 of this Schedule*, the successful candidate (not being any present Trustee of the Trust) for election as a replacement Elected Alternate Trustee shall be that candidate who receives the most validly cast votes from the Adult Registered Members of Ngāti Pūkenga who have nominated that Kainga under *rule 3.1(b) of the First Schedule* (being the Kainga from which the Elected Alternate Trustee who is being replaced was originally elected).

7. NOTICE OF ELECTIONS

7.1 Notice to be given:

Immediately after the closing date for nominations, Te Tāwharau o Ngāti Pūkenga Trust shall fix a closing date for the elections (being the last day upon which a vote may be validly cast in the election).

7.2 Period of Notice:

The Trustees shall give not less than 20 business days notice of the closing date for the elections and the method by which votes may be cast.

7.3 Method of Giving Notice:

Notice under *rule 7.1* of this Schedule shall be given by:

- (a) posting notice to each Registered Member of Ngāti Pūkenga; and
- (b) inserting a prominent notice on at least two separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of such Registered Members of Ngāti Pūkenga reside.

7.4 General Content of Notices:

Every notice given in accordance with *rule 7.3(a) and (b)* of this *Schedule* shall contain:

- (a) A list of the candidates for election as Trustees for each of the Ngāti Pūkenga Kainga;
- (b) the closing date for the elections; and
- (c) the method by which votes may be cast.

7.5 Additional Content of Postal Notice;

Each notice given in accordance with *rule 7.3(a)* of this *Schedule* shall also contain:

- (a) a voting form that contains information that is sufficient to identify the elector and the voting documents issued to that elector; and
- (b) Details of the procedure to be followed in making a vote by post, including the date by which the voting form must be received by the Chief Returning Officer;

8. APPOINTMENT OF CHIEF RETURNING OFFICER

8.1 Appointment of the Chief Returning Officer:

For the purposes of elections, the Trustees shall appoint as required a Chief Returning Officer who may not be a Trustee, and who shall be a person of standing within the community. The Chief Returning Officer shall receive all voting forms, keep a record of votes received and otherwise be responsible for coordinating Trustee elections.

9. COUNTING OF VOTES

9.1 Counting votes and certifying election result:

- (a) Once all votes have been counted by the Chief Returning Officer, and the result of the election determined, the Chief Returning Officer shall certify the result of the election and communicate the result to Te Tāwharau o Ngāti Pūkenga Trust. Te Tāwharau o Ngāti Pūkenga Trust shall thereafter advise the candidates of the results and give notice of the same at the next annual general meeting of Te Tāwharau o Ngāti Pūkenga Trust.

- (b) The Chief Returning Officer shall ensure that the votes, nominations, and other election records are kept secure and stored for the period of one year following any election such that they can be accessed for review or reconsideration over that period. Thereafter the Chief Returning Officer shall destroy such records.

10. **TERMINATION OF OFFICE OF TRUSTEES**

10.1 Notwithstanding the foregoing rules of this schedule, a Trustee shall cease to hold office if he or she:

- (a) retires from office by giving written notice to Te Tāwharau o Ngāti Pūkenga Trust;
- (b) completes his or her term of office and is not re-elected;
- (c) refuses to act;
- (d) is absent without leave from three consecutive ordinary meetings of the Trustees without good reason or without permission of the Chairperson;
- (e) becomes physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Trustee;
- (f) becomes bankrupt or makes any composition or arrangement with his or her creditors; or
- (g) is convicted of an indictable offence; or
- (h) dies.

10.2 Notwithstanding the foregoing rules of this schedule, an Elected Alternate Trustee shall cease to hold office if he or she:

- (a) retires from office by giving written notice to Te Tāwharau o Ngāti Pūkenga Trust;

- (b) completes his or her term of office and is not re-elected;
- (c) refuses to act;
- (d) becomes physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Trustee;
- (e) becomes bankrupt or makes any composition or arrangement with his or her creditors; or
- (f) is convicted of an indictable offence; or
- (g) dies.

11. **RECORD OF CHANGES OF TRUSTEES**

- 11.1 Upon termination of office of any Trustee, a replacement Trustee shall be appointed in accordance with the process set out in this Schedule. The replacement Trustee shall hold office for the remainder of the term of the Trustee that he or she has replaced.
- 11.2 Upon notification of every appointment, retirement, reappointment or termination of office of any Trustee, the Trustees will ensure that an entry is made in the minute book of Te Tāwharau o Ngāti Pūkenga Trust to that effect.

**THIRD SCHEDULE
PROCEEDINGS OF TRUSTEES**

1. TRUSTEES TO REGULATE MEETINGS

- 1.1 The Trustees shall meet together not less than once every two months for the dispatch of business. In addition, the majority of Elected Trustees may at any time and by notice in writing to Te Tāwharau o Ngāti Pūkenga Trust summon a meeting of the Trustees and the Trustees shall take such steps as are necessary to convene such a meeting.

2. NOTICE OF MEETING

2.1 Notice to Trustees:

Written notice of every meeting shall be either hand delivered, posted or sent by facsimile or by electronic form to each Trustee or Advisor at least five business days before the date of the meeting. However, it shall not be necessary to give notice of a meeting of Trustees to any Trustees or Advisors for the time being absent from New Zealand, unless that Trustee or Advisor has provided details of where he or she may be contacted whilst overseas. No notice shall be required for adjourned meetings except to those Trustees or Advisors who were not present when the meeting was adjourned.

2.2 Content of notice:

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

2.3 Waiver of notice:

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

2.4 Meeting limited to notified business:

No business shall be transacted at any meeting of the Trustees, unless expressly referred to in the notice calling the meeting.

2.5 Deficiency of notice:

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

3. QUORUM

3.1 Subject to clause 4.5.3 of the Deed, four (4) Elected Trustees shall constitute a quorum at meetings of the Trustees.

3.2 For the avoidance of doubt, a quorum at meetings of the Trustees must include an Elected Trustee or and Elected Alternate Trustee from each Kainga.

4. CHAIRPERSON AND DEPUTY CHAIRPERSON

4.1 Trustees to elect:

At the first meeting of the Trustees following a Trustees election, the Trustees shall appoint, for a term of no more than three years, one of the Elected Trustees to be Chairperson and (at their discretion) one of the Elected Trustees to be Deputy Chairperson.

4.2 Voting on election:

Where there is more than one candidate for Chairperson (or as the case may be Deputy Chairperson) a vote will be taken and the person receiving the most votes in favour of his or her appointment will become Chairperson (or Deputy Chairperson).

4.3 Termination of office:

The Chairperson (or Deputy Chairperson) will cease to hold office upon the expiry of their tenure as determined under *rule 4.1* of this *Schedule* or in the event that he or she

resigns from that office, ceases to be a Trustee or is removed from the office of Chairperson by the Trustees, passing a resolution of no confidence in him or her. In the event that the Chairperson (or Deputy Chairperson) ceases to hold that office, then a further election shall be held for the position.

5. PROCEEDINGS AT MEETINGS

5.1 Decision making:

- (a) Unless stated otherwise in this Trust Deed, the Trustees shall attempt to make decisions on the basis of consensus. Where a vote is required and subject to *clause 4.5.3 of the Deed*, such matters shall be decided by a majority vote of Elected Trustees present. In the case of an equity of votes, the Chairperson shall not have a casting vote. In this event, the issue will be reconsidered until such time as a consensus or majority position is reached.
- (b) The Trustees shall make all decisions having particular regard to any tikanga and guidelines as adopted by the Trust from time to time.

5.2 Chairperson:

The Chairperson shall take the chair at all meetings of the Trustees. If the Chairperson is not present, then, the Deputy Chairperson, if there is one shall take the chair. Subject to *clause 4.5.3 of the Deed*, if there is no Deputy Chairperson or the Deputy Chairperson is also not present, then the Elected Trustees present shall elect one of their number to be Chairperson at the meeting.

5.3 Vacancies:

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

5.4 Defects of appointment:

All acts done by any meeting of the Trustees shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Trustee, or that a Trustee was disqualified, be valid as if every such person had been duly appointed and was qualified to act.

6. WRITTEN RESOLUTIONS IN LIEU OF MEETING

6.1 A written resolution signed by all the Trustees shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees. Such a resolution may comprise several duplicated documents, either signed or conveyed in electronic form by one or more of the Trustees.

7. MINUTES

7.1 Minutes to be kept:

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

7.2 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.

7.3 Minutes to be evidence of proper conduct:

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

8. FORMS OF CONTRACTS

8.1 Contracts by deed:

Any contract, which, if made between private persons, must be by deed, shall, if made by Te Tāwharau o Ngāti Pūkenga Trust, be in writing signed under the name of Te Tāwharau o Ngāti Pūkenga Trust by any three Trustees.

8.2 Contracts in writing:

Any other form of contract shall, if made by Te Tāwharau o Ngāti Pūkenga Trust, be in writing signed under the name of the Trust by a person acting with the express or implied authority of the Trustees.

8.3 Contracts pursuant to resolution:

Notwithstanding anything to the contrary in *rule 8.1* of this *Schedule*, no contract made by or on behalf of Te Tāwharau o Ngāti Pūkenga Trust shall be invalid by reason only that it was not made in the manner provided by this clause, if it was made pursuant to a resolution of the Trustees.

9. GOVERNANCE EVALUATION

9.1 The Trustees will conduct an annual evaluation of the Trust's performance, including the Chairperson, against its stated objectives.

9.2 In addition, the Trust will conduct an annual evaluation of each Trustee's performance against agreed performance standards.

9.3 These evaluations shall be conducted by an independent party.

**FOURTH SCHEDULE
PROCEDURE FOR PASSING SPECIAL RESOLUTION**

1. THIS SCHEDULE TO APPLY

1.1 A Special Resolution to:

- (a) amend this Trust Deed; or
- (b) terminate Te Tāwharau o Ngāti Pūkenga Trust; or
- (c) approve a Major Transaction; or
- (d) settle or resettle any or all of the Trust Fund under *clause 13* of the *Deed*,

shall only be passed as set out in this *Schedule*.

2. POSTAL VOTING AND SPECIAL GENERAL MEETING

2.1 Voting on a Special Resolution shall occur either by placing voting forms into a ballot box in person at the special general meeting held for the purposes of considering the Special Resolution, or by post.

3. VOTING

3.1 In order for a Special Resolution to be passed, it must receive the approval of not less than 75% of those Adult Registered Members of Ngāti Pūkenga who validly cast a vote in favour of the proposed Special Resolution in accordance with this Schedule.

4. SPECIAL GENERAL MEETING REQUIRED

4.1 A special general meeting of Te Tāwharau o Ngāti Pūkenga 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.

5. NOTICE

5.1 Notice of special general meeting:

The Trustees shall give not less than 30 days of notice of the date, time and place of the special general meeting, called for the purposes of considering any Special Resolution.

5.2 Method of giving notice:

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

- (a) in writing and posted to all Adult Registered Members of Ngāti Pūkenga at the address shown for each such Adult Registered Member of Ngāti Pūkenga on the Ngāti Pūkenga Register; and
- (b) Advertised prominently in any major metropolitan newspapers circulating in New Zealand, and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Registered Members of Ngāti Pūkenga reside.

5.3 Content of notice to Registered Members:

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

- (a) the date, time and place of the special general meeting called for the purposes of considering the Special Resolution;
- (b) details of the proposed Special Resolution;

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

5.4 Content of advertisement:

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

6. POSTAL VOTING

6.1 Other details to accompany vote:

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

6.2 Timing of Postal Votes:

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

6.3 Postal Votes may be received at the special general meeting:

Voting forms may be delivered to the Chief Returning Officer at the special general meeting, rather than being posted.

7. APPOINTMENT OF CHIEF RETURNING OFFICER

7.1 Appointment of Chief Returning Officer:

For the purposes of the Special Resolution, the Trustees shall appoint a Chief Returning Officer, who shall not be a Trustee or employee of Te Tāwharau o Ngāti Pūkenga Trust and who shall be a person of standing within the community.

7.2 Chief Returning Officer to receive voting forms:

Voting forms must be addressed to the Chief Returning Officer.

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

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

7.4 Only one vote to be cast:

The Chief Returning Officer must ensure that appropriate measures are in place to ensure that only one vote is cast by each Adult Registered Member of Ngāti Pūkenga, who votes on the Special Resolution.

7.5 Recording of votes:

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

8. COUNTING OF VOTES

8.1 All votes to be counted:

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

8.2 Certification and notifying result:

Once all votes have been counted and the result of the Special Resolution determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the Special Resolution and communicate the results to the Trustees.

9. PROCEEDINGS AT SPECIAL GENERAL MEETING

Except as otherwise set out in this *Schedule*, the provisions of *clause 15* of the *Deed* shall apply to the holding of any special general meeting called for the purposes of considering a Special Resolution, and the meeting shall be conducted accordingly.

**FIFTH SCHEDULE
NGĀTI PŪKENGĀ KAINGA**

1. Tauranga
2. Maketu
3. Manaia
4. Pakikaikutu

SIXTH SCHEDULE
WĀHI TAPU LANDS TO BE PROTECTED

1. Otukopiri 5.27 hectares, approximately, being Part 26 Block XV Tauranga Survey District. Part Proclamation S363330, as shown A on deed plan OTS – 060 – 004 in the Ngāti Pūkenga Deed of Settlement and subject to survey.
and
1.16 hectares, approximately, being Part 26 Block XV Tauranga Survey District and Parts Ngapeke 1F2A. Balance Proclamation S363330, as shown B, C and D on deed plan OTS – 060 – 004 in the Ngāti Pūkenga Deed of Settlement and subject to survey.
and
Subject to the encumbrances as set out in the Ngāti Pūkenga Deed of Settlement.

EXECUTED as a Deed on this.....day of2013

SIGNED by)

)

as Trustee in the presence of:)

Witness Signature

Witness Name

Witness Occupation

Witness Address

SIGNED by)

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as Trustee in the presence of:)

Witness Signature

Witness Name

Witness Occupation

Witness Address

SIGNED by)

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as Trustee in the presence of:)

Witness Signature

Witness Name

Witness Occupation

Witness Address

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as Trustee in the presence of:)

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as Trustee in the presence of:

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Witness Signature

Witness Name

Witness Occupation

Witness Address