

PROPOSED AMENDMENTS TO NGATIWAI TRUST BOARD DEED OF TRUST

TO BE:

1. Approved by Ngatiwai Trust Board
2. Approved by TOKM
3. Approved by the beneficiaries as per this Deed and the Maori Fisheries Act 2004 at the AGM

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DEED dated

2001~~16~~

PARTIES

~~Laly Haddon Mark
McMath Christina
Merepeka Henley~~

~~Himiona Munro~~

~~Henry
Murphy Elvis
Reti~~

~~Philip Wellington~~

~~Donna Tamaki~~

~~Grant Pirihi Alan Moore
Loma Cleave Taiaha
Rodney Ngawaka~~

~~Kathy Pita~~

~~Makere Lawrence Bade~~

Hayden Thomas Edmonds

Laly Paraone Haddon

Eta Puke Haika

Merepeka Ihapera Christina Henley

Kristan John MacDonald

Allan John Moore

Himiona Peter Munroe

Henry Bertie Purcell Murphy

George Ngawaka

Ngawaka Haswell Grant Pirihi

Rihi Ngaroimata Kathleen Pita

Gary Brian Reti

Marilyn Lorraine Stephens

Erica Wellington

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INTRODUCTION

- A. The Ngatiwai Trust Board was constituted under the Charitable Trusts Act 1957 in 1984. This current trust deed has amended the former constitution, in part to meet the requirements of the Maori Fisheries Act 2004.
- B. This Deed establishes ~~the Ngatiwai Trust~~Ngatiwai Trust Board to act, amongst other things, as the Mandated Iwi Organisation of Ngatiwai for the purposes of the Maori Fisheries Act 2004, and to act as the iwi Aquaculture Organisation for the purposes of the Maori Commercial Aquaculture Claims Settlement Act 2004.
- C. This Deed sets out the functions and purposes, and provides for the control, governance and operation of ~~the Ngatiwai Trust~~Ngatiwai Trust Board

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TRUST TERMS1. INTERPRETATION

1. INTERPRETATION Definitions

Definitions

1.1 In this Deed, unless the context otherwise requires:

ACE means annual catch entitlement, as that term is defined in the Fisheries Act 1996.

Act means Maori Fisheries Act 2004.

Adult Member of Ngatiwai means a Member of Ngatiwai who is over the age of 18 years who is not registered on the Members Register.

Adult Registered Members means Adult Members of Ngatiwai who are registered on the Members Register.

Alternates means Adult Registered Members elected to the position of Alternates in accordance with clause-paragraph 3 of Schedule 1 of this Deed.

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

Aquaculture Settlement Assets has the same meaning as the term 'Settlement Assets' in the section 5 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

Asset Holding Company means a company established by the Trust, in accordance with clause 3.2, which meets the requirements for a

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

Board means the Trustees [appointed pursuant to clause 4 of this Deed](#) ~~if~~ if the Trust becomes (or already is) incorporated as a Board under the Charitable Trusts Act 1957 ~~pursuant to clause 4.20 of this Deed~~ or otherwise.

Charitable Purpose means every purpose within New Zealand which in accordance with the laws of New Zealand for the time being is charitable, whether such purpose involves the relief of poverty, the advancement of education or religion, or any other object or purpose that is charitable within the laws of New Zealand.

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

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

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

Directors means directors or trustees as the case may be, of any Corporate Entity.

Fishing Enterprise means a fishing operation established by ~~the Ngatiwai Trust~~ **Ngatiwai Trust Board** under clause 8.2 to utilise annual catch entitlement from its Settlement Quota.

Fisheries Settlement Assets has the same meaning as the term "Settlement Assets" in the Act

General Assets means all those assets owned by the Trust but excludes Fisheries Settlement Assets, Aquaculture Settlement Assets, and includes any entity established as a fishing enterprise other than the Asset Holding Company.

General Meeting means an annual general meeting or a special general meeting convened and conducted in accordance with clause 7 or a Marae Election convened and conducted in accordance with Schedule 1 of this Deed.

Income Share means an income share within the meaning of the Act that is allocated and transferred to the Asset Holding Company on behalf of Ngatiwai by Te Ohu Kai Moana Trustee Limited.

Inland Revenue Acts has the meaning given to it in section 3(1) of the

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Tax Administration Act 1994.

Iwi means Ngatiwai.

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

Iwi Organisation means any organisation existing at law or in fact that represents or purports to represent any Iwi other than Ngatiwai and includes Runanga, Maori Trust Boards and urban Maori authorities.

Management Service means any service which manages any aspect of the Trusts business in pursuit of its Kaupapa/purposes as set out in clause 3.

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Mandated Iwi Organisation has the meaning given to it in the Act. Marae means a recognised Marae of Ngatiwai as set out in Schedule 2.

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Marae Election means a General Meeting convened by the Trust on behalf of a Marae called for the purpose of electing a Trustee to the Trust.

Members of Ngatiwai means persons who affiliate to Ngatiwai through descent from a primary ancestor of Ngatiwai, (the identity of such primary ancestor shall be determined pursuant to clause 5 or, if necessary, pursuant to clause 9) and includes Whangaiwhangai determined in accordance with Ngatiwai tikanga who do not descend from a primary ancestor of Ngatiwai.

Members' Register means the register of Members of Ngatiwai held and maintained by the Trust in accordance with clause 5.

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Ngatiwai means the Iwi of Ngatiwai.

Notice in Writing includes letters, emails and facsimiles.

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Private Notice means a notice-

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- (a) sent by any means that is private to the recipient; and
- (b) complies with Kaupapa 4 of Schedule 7 of the Act,

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Public Notice means a notice that-

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- (a) is published in a newspaper generally circulating in the relevant area or areas; and
- (b) may also be published by panui or electronic media, including radio and television; and
- (c) complies with Kaupapa 4 of Schedule 7 of the Act.

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Returning Officer means a person elected in accordance with [schedule 1](#).

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

Registration Form means the form used from time to time by the Trustees to enter the details of Members of Ngatiwai and [Whangai Whangai](#) on the Members' Register,

Roopu Kaumatua Kuia means the committee appointed under clause [9-2 9.3\(a\)](#).

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

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Secretary means any person appointed under clause [4.138](#) to perform general secretarial and administrative functions for the Trust.

Settlement Cash Assets means money allocated and transferred to the Trust pursuant to section 137(1)(f) of the Act by Te Ohu Kai Moana Trustee Limited.

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

Subsidiary means any subsidiary (as defined by section 5 of the Companies Act 1993) of a Corporate Entity and includes any person or persons that is controlled by a Corporate Entity and includes a separate enterprise as that term is used in section 32(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004 that is responsible to the Trust.

Te Kawai Taumata means the group of that name established under the Act. Te Ohu Kai Moana Group has the meaning given to it in the Act.

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

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Te Putea Whakatupu Trustee Limited means the company of that name formed under the Act.

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Te Wai Maori Trustee Limited means the company of that name formed under the Act.

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Tikanga means the customary values and practices of Ngatiwai.

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Trust means ~~the~~ Ngatiwai Trust [Board as](#) established by this Deed.

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Trust Fund means all the assets and liabilities including income that are

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from time to time held by the Trustees on the trusts of this Deed whether or not received in the manner described in clause 3.2.

Trustees means the persons elected or appointed under clause 4.

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

Whangai means those persons who do not affiliate to Ngatiwai by descent from a primary ancestor of Ngatiwai but who are adopted by a Member of Ngatiwai in accordance with the ~~t~~ikanga of Ngatiwai such ~~t~~ikanga to be determined in accordance with clause 5 or, if necessary clause 9.

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

Interpretation of Schedules

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

(a) terms or expressions have the meanings given to them by the Deed; ~~and~~

~~and~~

(b) a reference to a paragraph is a reference to a paragraph of that schedule.

Statutes

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

General References

1.4 References in the Deed to:

(a) a person includes an individual, body corporate, an association of persons (whether corporate or not) and a trust. ~~This definition (in each case, whether applies whether~~ or not ~~having that entity has~~

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- separate legal personality);
- (b) one gender includes the other gender;
- (c) the singular includes the plural and vice versa;
- (d) clauses and sub-clauses are references to clauses and sub-clauses in this Deed; and
- (e) the Deed includes its Schedules.

Headings

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

2. ESTABLISHMENT OF TRUST

Acknowledgement of Trust

- 2.1 The Trustees acknowledge and declare that they hold the Trust Fund upon the trusts and with the powers set out in this Deed. The name of the Trust established by this Deed is the Ngatiwai Trust.

3. KAUPAPA/PURPOSES

Purposes

- 3.1 The purposes for which the Trust is established are to receive, hold, manage and administer the Trust Fund for every Charitable Purpose benefiting Ngatiwai whether it relates to:
 - (a) the relief of poverty; or;
 - (b) the advancement of education or religion; or
 - (c) ~~of~~ any other matter beneficial to the community of Ngatiwai and all the Members of Ngatiwai, irrespective of where those Members reside; and
and
 - (d) for every such Charitable Purpose benefiting Maori who are not Members of Ngatiwai and members of the community generally.

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Incidental purposes

3.2 Incidental to, and to give effect to the purposes in clause 3.1, and at all times subject to clause 3.4, the Trustees shall:

- (a) promote the cultural, spiritual, educational, health and economic development and advancement of Ngatiwai and its Members including those Members of Ngatiwai residing in the rohe of other Iwi and retain and enhance mana whenua, mana moana, and intellectual property rights between Rangī-nui and Papatuanuku;
- (b) provide knowledge and support for individuals and groups on resource management, ancestral rights and current legal positions and benefits for Maori in general and Ngatiwai in particular;
- (c) represent the best interests of all Ngatiwai, and those registered Marae and individuals in particular, in those matters relating to the determinations of authorised statutory bodies, and to meet all the legal requirements set down by any such bodies;
- (d) provide, encourage and create employment and skill training opportunities for the purpose of personal development and self-sufficiency for individuals and groups and people within the defined Ngatiwai lands and in particular for Members of Ngatiwai;
- (e) provide, manage and control educational, service orientated, community and recreational facilities and open space (limited to such purposes specified as charitable under Section 61A Charitable Trusts Act 1957) for the benefit of the New Zealand public generally and Members of Ngatiwai in particular;
- (f) deliver Crown, local and public authority services and funds to members of Ngatiwai;
- (g) directly receive and hold, on behalf of Ngatiwai on the trusts set out in clause 3.1, Settlement Cash Assets allocated and grants made to Ngatiwai by Te Ohu Kai Moana Trustee Limited.
- (h) receive distributions from Te Putea Whakatapu Trustee Limited and Te Ohu Kaimoana Trustee Limited, as provided for under subparts 4 and 5 of Part 2 of the Act and to hold those distributions on the trusts set out in clause 3.1 or on such other trusts as are required in order to ensure that a distribution to the Trust by either of those companies would be within the purposes for which those companies hold their funds and make those distributions but not in a manner that could adversely affect the charitable status of the Trust;
- (i) if relevant, enter into agreements with other Mandated Iwi

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Organisations in relation to:

- (i) claims under section 11 of the Act;
- (ii) the allocation of:
 - (aa) harbour quota under section 143 of the Act; and
 - (bb) freshwater quota under section 148 of the Act;
- (j) establish separate companies to undertake fishing and fisheries-related activities, including, but not limited to, any activity related to the seafood industry, including, for the avoidance of doubt, a Fishing Enterprise, and to hold the shares in those companies and any distributions or other benefits resulting from them on the trusts in clause 3.1;
- (k) establish one or more Asset Holding Companies that, in each case:
 - (i) is wholly owned by the Trust;
 - (ii) is separate to the companies referred to in sub-paragraph (j);
 - (iii) performs the function and complies with the requirements set out in sections 16 to 18 of the Act; and
 - (iv) performs any other function, but not if doing so would be inconsistent with sections 16 to 18 of the Act,and to hold the shares in those companies and any distributions or other benefits resulting from them on the trusts in clause 3.1;
- (l) perform the functions provided for, by or under the Act in respect of a Mandated iwi Organisation, in a manner consistent with the Act;
- (m) represent Ngatiwai by voting at any meeting convened under:
 - (i) clause 1 or clause 6 of Schedule 8 to the Act, to appoint or remove a member or alternate member of Te Kawai Taumata;
 - (ii) section 117 of the Act, implemented in accordance with clause 1 of Schedule 8 to the Act, to appoint a member of a committee of representatives;
- (n) act on behalf of Ngatiwai in relation to aquaculture claims and Aquaculture Settlement Assets under the Maori Commercial Aquaculture Claims Settlement Act 2004, in respect of which the Trustees must act for the benefit of all Members of Ngatiwai, irrespective of where those Members reside, including:
 - (i) directly receiving and holding, on behalf of Ngatiwai, Aquaculture Settlement Assets allocated to Ngatiwai by Te Ohu

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Kai Moana Trustee Limited in accordance with the Maori Commercial Aquaculture Claims Settlement Act 2004; and

(ii) entering into Aquaculture Agreements with other Iwi Aquaculture

Organisations in relation to the allocation of Aquaculture Settlement Assets;

(o) if Ngatiwai determine, directly receive and hold, on behalf of Ngatiwai on the trusts set out in clause 3.1, any other Treaty of Waitangi settlement assets; and

(p) perform other functions provided for, by or under the Act or any other enactment or otherwise, but not if doing so would adversely affect the charitable status of the Trust.

(q) To negotiate with the Crown on behalf of Ngatiwai for the purpose of achieving binding settlement(s) of Ngatiwai Treaty claims.

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Strategic governance

3.3 The Trust must exercise strategic governance over:

(a) its Asset Holding Companies and any Fishing Enterprise; and

(b) the process to examine and approve annual plans that set out:

(i) the key strategies for the use and development of Fisheries Settlement Assets of Ngatiwai;

(ii) the expected financial return on those Fisheries Settlement Assets;

(iii) any programme to:

(aa) manage the sale of ACE derived from the Settlement Quota held by the Asset Holding Companies; and

(bb) reorganise the Settlement Quota held by the Asset Holding Companies, in the buying and selling of Settlement Quota in accordance with the Act,

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but not in such a manner as shall result in the Trust or any of the Trustees being deemed to be a Director of that or those companies under the Companies Act 1993, and nor shall this clause 3.3 or any other provision of this Deed prevent the Trust or any Corporate Entity or Subsidiary from entering into such arrangements with another company or trust as the Trustees shall consider necessary or desirable to efficiently and effectively administer, manage or hold its assets or

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operations, consistently with the purposes in clause 3.1.

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No non-charitable objects and purposes

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- 3.4 The objects and purposes of the Trust shall not include or extend to any matter or thing which is or shall be held or determined to be non-charitable within the laws of New Zealand and the powers and purposes of the Trustees and, without derogating from clauses 10.1(d) or 12, the Trust shall be restricted accordingly and limited to New Zealand.

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4. APPOINTMENT AND POWERS OF TRUSTEES, AND MANAGEMENT OF THE TRUST

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Number of Trustees

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- 4.1 The Trust shall have up to 14 Trustees. ~~These Trustees who~~ must be Adult Registered Members of Ngatiwai, and be elected by Adult Members of Ngatiwai in accordance with Schedule 1 of this Deed.

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~~except that the first Trustees shall be those persons who have signed this Deed as parties, and those first Trustees shall remain in office until the later of:~~

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~~(a) the date one year after the date of this Deed; or~~

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~~(b) the date six months after the date upon which the recognition of the Trust as the mandated iwi organisation of Ngatiwai is recorded under section 13(1)(b) of the Act unless they are earlier replaced by Trustees elected on accordance with the provisions of Schedule 1.~~

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- 4.1A4.2 Retiring Trustees shall, however, be eligible for re-election, as per schedule 1.

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Cessation of Office of Trustee

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- 4.32 Any person shall cease to ~~be hold office as~~ a Trustee if he or she:

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(a) shall have been in office for more than three years since his or her election; or

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(b) resigns as a Trustee by giving notice in writing to the Trust; or

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(c) fails or neglects to attend three consecutive meetings of the Trustees

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without leave ~~or of absence, unless it appears to the other Trustees at their first meeting after the last of such absences that there is a proper reason for such non-attendance;~~ or

(d) has been suspended for a period exceeding three consecutive meetings of the Trustees; or

(e) ~~becomes~~ has been declared of unsound mind by a medical practitioner, ~~or~~ becomes a person in respect of whose affairs an order under the Protection of Personal and Property Rights Act 1988 is made, ~~or otherwise becomes unfit or unable to act as a Trustee;~~ or

(f) is or becomes a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or

(g) is or has ever been convicted of an offence a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 unless that person has served the sentence or otherwise suffered the penalty imposed on that person or is an "eligible person an individual" for the purposes of the Criminal Records (Clean Slate) Act 2004); or

(h) dies; or

(i) is in office or employment with, or accepts office or employment with, any other iwi Organisation; ~~or-~~

(j) fails to meet the requirements for registration as an Officer with the Charities Commission

4.43 Notwithstanding clause 4.3, the cessation of the Trustee's appointment shall occur; The Trustee concerned shall cease to hold office:

(a) in a case where sub-paragraph 4.32(a) applies, from the end of the day three years after the date on which that Trustee was last elected to office, or until such date that a further election has been held and confirmed at the following Annual General Meeting, whichever is the later;

(b) in a case where sub-paragraph 4.32(b) applies from the date the notice of retirement resignation shall have been delivered to the Trust;

(c) in the case where sub-paragraph 4.32(c) applies from the date ~~of~~ the first meeting of Trustees after following that Trustee's third consecutive absence without leave; and

(d) in cases where sub-paragraphs 4.32(d) to 4.32(h) apply, from the date on which the Trust was notified in writing of the relevant fact together with such evidence as the Trustees may reasonably

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require.

(d) Provided that in all cases, notice of cessation of office shall be sent in writing to the Trustee, and evidence of it being sent shall be sufficient to be binding on that Trustee.

4.54 Should a vacancy reduce the number of Trustees below half the number specified in clause 4.1 the vacancy shall be filled as soon as practicable by election in accordance with the terms of this Deed, and the remaining Trustees (which shall include any Trustee who shall cease to be a Trustee under clause 4.32(a)) shall continue to act until that vacancy has been filled.

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Powers of Trustees

4.65 To achieve the purposes of the Trust:

(a) the Trustees shall have in the administration, management and investment of the Trust Fund all the rights, powers and privileges of a natural person;

(b) subject always to the trusts imposed by this Deed, the Trustees may deal with the Trust Fund as if the Trustees were the absolute owners of and beneficially entitled to the Trust Fund including, for the avoidance of doubt, but subject to complying with the applicable provisions of the Act and the Maori Commercial Aquaculture Claims Settlement Act 2004, the acquisition and disposition of Settlement Quota, Income Shares and Settlement Assets;

(b) Accordingly; in addition to any specific powers vested in the Trustees by law, in dealing with the Trust Fund or acting as Trustees of the Trust, the Trustees may do any act or thing or procure the doing of any act or thing or enter into any obligation whatever, including, without limitation, exercising unrestricted powers to borrow and raise money, and to give securities and guarantees;

(c) except as otherwise expressly provided by this Deed, the Trustees may exercise all the powers and discretions vested in the Trustees by this Deed in the absolute and uncontrolled discretion of the Trustees, at such time or times, upon such terms and conditions, and in such manner as the Trustees may decide;

(d) if any dividend or distribution is received which in the opinion of the Trustees has been paid or made out of profits other than trading profits of the financial year in respect of which the dividend or distribution has been paid or made, the Trustees may decide how much of that dividend or distribution ought to be treated as capital and how much as income of the Trust Fund. Such decision shall be made by the Trustees after considering the nature of the profit used

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to pay or make the dividend or distribution and the account to which the dividend or distribution has been debited in the books of the person making such payment or distribution. The Trustees shall not be liable to any person in respect of the payment of any moneys in accordance with any decision made by the Trustees under this clause 4.65;

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- (e) the Trustees may at any time after payment of or provision for all reasonable costs, charges and expenses of the Trustees in respect of the establishment, management and administration of the Trust, pay or apply all or any of the income of the Trust for the purpose or purposes contained in clause 3.1;
- (f) if any income of any financial year of the Trust shall not be paid or applied in accordance with clause 3.1 during or within ~~six~~-twelve months from the end of that financial year the Trustees must accumulate that income, and any income so accumulated must be added to and form part of the capital of the Trust Fund and is subject to the trusts and powers declared in this Deed in respect of the capital of the Trust Fund;
- (g) the Trustees may at any time pay or apply all or any of the capital of the Trust for the purpose or purposes contained in clause 3.1; and
- (h) carry on and accept the administration and management of any lands, properties, businesses or undertakings of any beneficial owners in return for such consideration and remuneration as the Trustees shall from time to time determine.
- (i) exercise all such powers necessary in prosecuting any Treaty claims and receiving assets recovered or arising from such claims.

Duties and obligations of Trustees

4.7. For the avoidance of any doubt, the Trustees shall at all times act in the best interests of the Trust and abide by the Trustee Act 1956 and act in accordance with the duties and obligations imposed on those Trustees by the laws of statute and equity. These include, but are not limited to:

- (a) the duty to exercise all reasonable care and skill in performing their roles as Trustees**
- (b) the duty of acquaintance with all Trust documents, assets and business**
- (c) the duties of adherence and obedience, including without limitation, adhering to the terms of this Deed and giving effect to its objects.**
- (d) the duty to act personally, with the exception of the powers of**

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delegation as set out in clause 4.14.

(e) the duty to invest prudently.

(f) the duty not to profit directly or indirectly from the Trust, unless otherwise permitted by this Trust Deed.

Suspension of Trustees

4.8 It is acknowledge by the Trustees that:

- (a) The Board shall be entitled to suspend a Trustee for any acts or omissions caused by that Trustee which are perceived by the Board to be adverse to the interests of the Trust.
- (b) Suspension of a Trustee shall be effective the moment that 75% of the Trustees entitled to vote do so in favour of that suspension.
- (c) A suspension can be enforced for any length of time as the Board feels appropriate in the circumstances.

Management of the Trust - General

4.96 Management of the Trust - General: In the course of general Trust business:

- (a) The Trustees shall have the absolute management and entire control of the Trust Fund.
- (b) The Trustees may from time to time appoint, remunerate and dismiss officers or employees of the Trust, unless, either generally or in a particular case, they shall have for the time being delegated any one or more of the powers of appointment, remuneration or dismissal, as the case may be, to a person holding the position of Chief Executive of ~~the Ngatiwai Trust~~ Ngatiwai Trust Board, or Acting Chief Executive of Ngatiwai Trust Board.
- (c) Any individual may be appointed as an officer or employee of the Trust but no Trustee may be appointed as an employee.
- (d) The Trustees may appoint an incorporated or unincorporated entity to provide services to the Trust. In any case where the entity directly or indirectly procures, causes, permits or otherwise howsoever makes a Trustee available to carry out management services, the appointment shall be of no effect and neither that entity nor that person shall have any authority on behalf of nor claim against the Trust, unless prior to that appointment the full terms and conditions of the proposed appointment shall have been

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disclosed in writing to all the Trustees, and the Trustees shall have voted unanimously (subject to clause 4.2143) in support of that appointment on those terms.

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- (e) The office of the Trust shall be at such place as the Trustees from time to time may notify by such means as the Trustees determine to the Members of Ngatiwai and in any website, letterhead, formal written contract or printed publications of the Trust.

Meetings of the Trustees

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4.107 Meetings of Trustees: The Trustees shall meet to conduct business at such intervals as the Trustees may decide, but not less frequently than 5 times in each calendar year. The procedures to be adhered to in such meetings is as follows:

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~~The Trustees shall meet to conduct business at such intervals as the Trustees may decide, but not less frequently than 6 times in each year.~~

- (a) The Trustees may invite to such meeting whomever the Trustees may decide will assist with their deliberations.

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- (b) Except as expressly provided otherwise by this Deed any matter requiring decision at a meeting of the Trustees shall be decided by a simple majority of the Trustees personally present and voting on the matter.

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- (c) Eight Trustees shall constitute a quorum for a meeting of Trustees.

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- ~~(d)~~ In the event of an equality of votes the Chairperson shall not have a second or casting vote, but only so as to preserve the status quo.

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- (e) Except as expressly provided otherwise by this Deed a resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and constituted.

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- (i) Any such resolution may consist of several like documents each signed by one or more Trustees.

- ~~(e)(ii)~~ Any such document sent by a Trustee by facsimile or such other electronic means as shall be determined by the Trustees from time to time shall be deemed to have been duly signed by that Trustee.

- ~~(e)(f)~~ Any Trustee may at any time give notice convening a meeting of

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the Trustees. Such notice shall be given in writing by letter posted to each Trustee at least 15 Working Days before the date of the proposed meeting. The notice shall state the time and place of the meeting and, in sufficient terms, the nature of the business to be transacted.

~~(f) Eight Trustees shall constitute a quorum for a meeting of Trustees.~~

~~(g)~~ (g) The Trustees may act notwithstanding any vacancy in their body, but if and so long as the number of Trustees holding office is less than the number fixed by clause 4.107(c), the continuing Trustees may act only for the purposes of increasing the number of Trustees to that number or calling a General Meeting pursuant to clause 7.

(h) The contemporaneous linking together of the Trustees by telephone or other electronic means of communication shall constitute a meeting of the Trustees and the provisions of this clause 4.107 as to meetings of the Trustees shall apply to such meetings provided the following conditions are met:

(i) each Trustee shall be entitled to receive notice in writing of such a meeting and to be linked by electronic means for the purposes of the meeting;

~~(ii) each of the Trustees taking part in the meeting must be able to hear each of the other Trustees taking part during the whole of the meeting;~~

~~(iii)~~(ii) at the commencement and conclusion of the meeting the Chairperson must call upon each Trustee to acknowledge their attendance;

~~(iv)~~(iii) a Trustee may not withdraw from such a meeting unless that Trustee has previously obtained the express consent of the Chairperson of the meeting to do so;

(iv) a Trustee shall be conclusively presumed to have been present, to have heard the meeting, and to have formed part of the quorum of such a meeting at all times during the meeting unless that Trustee has previously obtained the express consent of the Chairperson to not attend or to withdraw from such a meeting.

~~(v)~~

(i) Minutes of the proceedings of all meetings of the Trustees shall be recorded in a book to be kept for that purpose by the Secretary and shall be signed by the Chairperson of the meeting at which the minutes are confirmed. Every such minute purporting to be so signed shall be prima facie evidence of the matters recorded. A minute of the

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proceedings of any meeting by telephone or other electronic means of communication shall be sufficient evidence of the observance of all necessary formalities if the minute of the meeting signed by the Chairperson of the meeting shall contain a certificate to that effect.

Chairperson, Deputy Chairperson and Secretary

4.118 Chairperson, Deputy Chairperson and Secretary:

~~(j)~~The Trustees shall elect one Trustee to act as Chairperson. This Chairperson shall be elected at the first Meeting of the Trustees following the Annual General Meeting. The Chairperson shall be responsible for chairing all meetings, and exercising all such powers as are appropriate of a chairperson of a Charitable Trust.

4.12 ~~(j)~~The Trustees may also elect one Trustee to act as Deputy Chairperson either as the need arises or from year to year or for such term of years as the Trustees may decide. In the absence of the Chairperson the Deputy Chairperson shall have and may exercise all the powers of, and shall perform all the duties, of the Chairperson.

4.13 ~~(k)~~The Trustees shall appoint a non-voting Secretary who may be honorary, or may be a full-time or part-time employee of the Trust.

Delegation of powers

4.149 ~~Delegation of powers: All delegations of the powers of a Trustee must comply with the following requirements to be effective:~~

(a) The ~~Trustees Board~~ may delegate in writing to any Trustee, committee of Trustees, or employee who is the Chief Executive of the Trust, such of the powers of the ~~Trustees Board~~ as the ~~Trustees Board~~ may decide, provided that:

(i) the ~~Trustees Board~~ may not delegate strategic governance; and

(ii) In the case of any entity appointed under clause 4.96(d) the delegation shall be personal to the person provided by that entity in that capacity.

(b) Any person or committee acting under delegated power shall act in accordance with the terms of this Deed ~~and,~~

~~(c) In the absence of proof to the contrary, shall also be presumed to be~~

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~~acting within the terms of the delegation.~~

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

4.15 In the absence of proof to the contrary, it shall be presumed that the person acting under delegated power is or was acting within the terms of the delegation.

Accounts and Audit

4.10 Accounts and Audit:

- (a) 4.16 The Trustees shall keep an account or accounts at such bank or banks as the Trustees may decide. Cheques, withdrawals and authorities shall be signed or endorsed, as the case may be, by such person or persons (including in all instances at least one Trustee) as the Trustees may decide;
- (b) 4.17 The Trustees shall cause true accounts for each financial year to be kept in such manner as the Trustees may decide of all receipts, credits, payments, assets and liabilities of the Trust Fund and all such other matters necessary for showing the true state and condition of the Trust. The accounts of the Trust shall be audited at least once in each year by a chartered accountant (not being a Trustee) appointed in that capacity by the Trustees; and
- (c) 4.18 Nothing in ~~this clause 4.10~~ clauses 4.16 and 4.17 shall derogate from any other obligations of the Trustees in respect of accounts and audits.

Reliance on Advice

4.11 Reliance on Advice

- 4.19 (a) The Trustees, when exercising powers or performing duties as Trustees, may rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given, by any of the

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following persons:

- (a) an employee of the Trust whom the Trustees believe on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) professional adviser or expert in relation to matters which the Trustees believe on reasonable grounds to be within the person's professional or expert competence;
- (c) committee of Trustees appointed and acting in accordance with clause 4.149.

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4.2042 Clause 4.144 applies only if the Trustees:

- (a) act in good faith;
- (b) make proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) have no knowledge that such reliance is unwarranted.

Disclosure of Interest

4.2143 Any Trustee who is or may be in any other capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the Trust is or may be in any way concerned or involved shall disclose the nature and extent of that Trustee's interest to the other Trustees, and shall not take part in any deliberations or decision of the Trustees concerning any matter in which that Trustee is or may be interested other than as a Trustee of the Trust, and shall be disregarded for the purpose of forming a quorum for any such deliberation or decision.

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Definition of Interested Trustee

4.2244 A Trustee will be interested in a matter if the Trustee:

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

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- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the matter; or
- (e) is otherwise directly or indirectly interested in the matter.

Interests in common with Iwi

4.2315 Notwithstanding clauses 4.2143 and 4.2244, no Trustee will be regarded as being interested in a matter where-solely because that Trustee is a member of an-the Iwi and where his or her interest is not different in kind from the interests of other Mmembers of that-the Iwi.

Recording of Interest

4.15-2446 A disclosure of interest by a Trustee shall be recorded in the minute book of the Trust. Immediately following his or her appointment as a Trustee, each Trustee must enter into the minute book and must disclose in writing to the other, the name of any Iwi other than Ngatiwai, of which he or she is a member, and the Trustee must also, at any time after his or her appointment, enter into the Minute Book and disclose to the next meeting of the Trustees, any interest of which that Trustee becomes aware.

No private pecuniary profit

4.46725 No private pecuniary profit may be made by any person from the Trust, except that:

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

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with that entity is in any way attributable to that Trustee's connection with the Trust;

~~(i)~~ 4.26 ~~Notwithstanding clause 4.25, provide that:~~ before any such reimbursement paid to a Trustee may be regarded as properly incurred by that Trustee or any such remuneration paid to a Trustee may be regarded as reasonable or properly payable or any such charges may be regarded as usual, the amount of that reimbursement, remuneration or charge must have been approved as such by a resolution of Trustees and in the case of an appointment referred to in clause 4.96(d), the provisions of that clause have been complied with;

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~~(ii)~~ 4.27 ~~Furthermore,~~ the Trustees must disclose in their annual report referred to in clause 7.32 next published after payment of that disbursement, remuneration or charge, in respect of all such reimbursements, remuneration or charges:

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~~(a)~~ ~~(aa)~~ the amount thereof received by each Trustee or any such firm or entity;

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~~(b)~~ ~~(bb)~~ the nature of the reimbursement and the nature and extent of the services rendered or time expended;

~~(c)~~ ~~(cc)~~ the method of calculation of the reimbursement, remuneration or charge; and

~~(iii)~~ 4.28 in the case of an appointment referred to in clause 4.96(d), the full written terms and conditions thereof have been made available for inspection at the office of the Trust, by any Adult Registered Member who makes written request for the same.

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4.17-2918 Subject to clauses ~~416~~ 4.25 to 4.28, in the exercise of the powers conferred by this Deed, each Trustee in the discharge of any duty or exercise of any discretion as Trustee shall ensure that any person who is:

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(a) a Trustee;

(b) a shareholder or director of any Corporate Entity or Subsidiary;

(c) a settlor or a trustee of any Corporate Entity or Subsidiary;

~~(d)~~ any associated person (as defined in section OD 7 of the Income Tax Act 2004) of either a director, or any person referred to in clauses ~~4.2113~~ to ~~4.2315~~,

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~~(e)~~ does not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence the determination of, the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person, and any payment made to any person in or following breach of this clause ~~4.17-29~~ shall be void.

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4.481930 The Trustees shall require that a clause to the same effect as clause 4.2113 of this Deed be included in the constitution of every Asset Holding Company or Fishing Enterprise or any subsidiary of any of them.

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Appointment and removal of Custodian Trustee

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4.231019 The Trustees may at any time by deed appoint any appropriate corporation to be the custodian trustee of the Trust Fund, or any part of the Trust Fund, upon the terms of this Deed or any further terms as the Trustees may decide, and for the avoidance of doubt the Custodian Trustee must when exercising its powers act in accordance with this Deed. The Trustees may at any time by deed revoke any such appointment or otherwise act pursuant to the provisions of section 50 of the Trustee Act 1956.

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Incorporation

4.2120 Incorporation:

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(a) 4.32 The Trustees may (if they have not already) at any time apply for incorporation under Part II of the Charitable Trusts Act 1957 under such name as the Trustees may decide. Upon incorporation the powers and discretions conferred upon the Trustees by law or by this Deed shall be conferred upon the Trustees as a trust board.

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(b) 4.33 Upon incorporation under the Charitable Trusts Act 1957 the Trust shall have a common seal which shall be affixed by the authority of the Trustees previously given to any document requiring execution by the Trustees. Every such affixing shall be attested by two Trustees and shall be sufficient evidence of authority to affix the seal.

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(c) 4.34 No person dealing with the Trustees shall be bound or concerned to see or inquire as to the authority to affix the seal, or to inquire as to the authority under which any document was sealed or in whose presence it was sealed.

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5. REGISTER OF MEMBERS OF NGATIWAI

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Members' Register of Ngatiwai

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5.1 The Trustees must:

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- (a) have, and maintain in a current state, the Members' Register:
 - (i) that includes the name, date of birth, and contact details of every Member of Ngatiwai who applies for registration; and
 - (ii) that is available for inspection by Registered Members who can view their own registration details; and
 - (iii) that is available for inspection by a parent, legal guardian or other person standing in the stead of a parent, who may view the registration details of any child, ward or other dependant under 18 years of age who was registered by such persons, whichever the case may be; and
 - (iv) that allocates a member registration number to each Member of ~~the~~ Ngatiwai entered in the Members' Register; and
 - (v) that records the Marae that each Registered Member has indicated on his or her Registration Form ~~is~~ as the one Marae to which that person chooses to affiliate for the purpose of voting in Marae Elections.

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(b) make ongoing efforts to register all Members of Ngatiwai on the Members' Register.

(c) make all reasonable efforts to ensure the integrity and confidentiality of the Members' Register.

(d) make all reasonable efforts to ensure that the electronic database is stored safely and protected from threats.

5.2 The Trustees may transfer, to each Marae, a duplicate copy of that part of the Members Register containing the details of the Ngatiwai Members who have registered with that Marae, provided that the Trustees shall ensure that the relevant Marae complies with clauses 5.1 ~~(c)~~ and ~~(d)~~ and the duplicate copy is maintained in a current state.

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5.3 The Trustees may enter in the Members' Register any Member of Ngatiwai whose details are already held by the Trustees where:

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(a) the details held by the Trustees fulfil the requirements of Kaupapa 5 of Schedule 7 of the Maori Fisheries Act 2004, ~~except that the requirement in clause (b)(iii) of that Kaupapa need not necessarily be fulfilled~~; and

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(b) the particulars were acquired by the Trustees as a result of an application on a form (not being the current Registration Form) made by:

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(i) Adult Members of Ngatiwai, on their own behalf or by their

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legal guardian at the time of the application; and

- (ii) other Members of Ngatiwai, who were not Adult Members of Ngatiwai at the time of the application, by their parent on their behalf, or by their legal guardian at the time; and
- (iii) other Members of Ngatiwai by an Adult Member of Ngatiwai on their behalf who, in the opinion of the Roopu Kaumatua Kuia, stood in the stead of a parent of that person at the time of the application.

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

- (a) Adult Members of Ngatiwai, on their own behalf or by their legal guardian; and
- (b) other Members of Ngatiwai, who are not Adult Members of Ngatiwai, by 1 of their parents s or a legal guardian on their behalf; and
- (c) other Members of Ngatiwai by an Adult Member of Ngatiwai on their behalf who, in the opinion of the Roopu Kaumatua Kuia, stands in the stead of a parent of that person; and

(e)(d) Adults who identify as whangai of Ngatiwai in accordance with the tikanga of Ngatiwai as determined by the Roopu Kaumatua Kuia

in each case that application must be completed on the Registration Form, the Trustees may require any person making a request under this clause to provide evidence of his or her affiliation to Ngatiwai.

5.5 (f) Any Adult Registered Member of Ngatiwai at, or at any time after, application for registration as a Registered Member, or at any time whether or not on the Members' Register, may request in writing that he or she wishes to receive Private Notice of any General Meetings and for Voting Papers relating to:

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

The Trustees may require any person making a request under clause 5.5(i) of this Deed to provide evidence of his or her affiliation to Ngatiwai.

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Registration as a Member of Ngatiwai

5.6 Subject to clauses 5.76 and 5.87, the Trustees must enter in the Members' Register any person:

- (a) by or on behalf of whom a valid application has been made; and
- (b) who in the reasonable opinion of the Trustees affiliates to Ngatiwai through descent from a primary ancestor of Ngatiwai and affiliates to the Marae recorded on his or her Registration Form in accordance with clause 5.1(a)(v) of this Deed or
- ~~(b)~~(c) Subject to 5.7(d)(ii) who in accordance with Ngatiwai Tikanga satisfies the definition of whangai and affiliates to the Marae recorded on his or her Registration Form in accordance with clause 5.1(as)(v) of this Deed.

5.7 The Trustees:

- (a) may require any person seeking registration as a Member of Ngatiwai to provide evidence verifying his or her affiliation to Ngatiwai through descent from a primary ancestor of Ngatiwai or by whangai as per clause 5.46 (de) or of any other matter referred to in clause 5.65 before that person's registration is entered in the Members' Register together with such other information as the Trustees request and the person making the application for registration agrees (but the omission to provide such other information shall not be a reason for the Trustees to not accept the application for registration); and
- (b) may require any person who is entered in the Members' Register to provide evidence verifying his or her affiliation to Ngatiwai through descent from a primary ancestor of Ngatiwai or by whangai as per clause 5.46(de) and any other matter referred to in clause 5.65;
- (c) may consult with the Roopu Kaumatua Kuia in relation to any application for registration, or continued registration as a Member of Ngatiwai; and
- (d) without limiting the foregoing, may request the Roopu Kaumatua Kuia to:
 - (i) determine who is the primary ancestor, or are primary ancestors, of Ngatiwai; and
 - (ii) determine the ~~t~~Tikanga of Ngatiwai by which ~~Whangai~~whangai or other persons who do not descend from a primary ancestor of Ngatiwai are able to affiliate to Ngatiwai.

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

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5.8 If the Trustees consider that any information about a person received under clause 5.45(a) or clause 5.6 is not accurate or complete, or that the existing information on the Members' Register is not accurate or complete such that in either case the person concerned does not meet the qualifications required by this Deed for entry of that person in the Members' Register, the Trustees may decline to register, or remove that person from the Members' Register or decline to change that person's Marae affiliation, as the case may be..

Process when registration declined or removed

5.9 Where an application for registration is declined, or any decision is made by the Trustees to remove any person from the Members' Register, or not change that person's Marae affiliation, the person concerned may dispute that decision of the Trustees, and the procedure outlined in clause 9 shall apply.

Registration not necessary

5.10 To avoid doubt, it shall not be necessary, in order to be considered a Member of Ngatiwai for the purposes of clause 3.1, for a Member of Ngatiwai to be registered in accordance with this clause 5.

De-registration by Member of Ngatiwai

5.11 To avoid doubt, a Registered Member may, at any time, request in writing that his or her registration be removed or terminated. His or her registration will be deemed removed at the date on which the written request is received at the Trust's office.

Request to change, amend or update Register

5.12 A Registered Member may at any time request that the information relating to that person on the Members' Register be changed, amended, updated provided that:

- (a) the request must be made in writing and sent to the Trust at the Trust's office; and
- (b) if a Registered Member wishes to change the Marae affiliation recorded for that person under clause 5.1(a)(v)5(b)(ii):
 - (i) clauses 5.6, 5.7 and 5.8 shall apply;

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- (ii) no Registered Member of Ngatiwai may request such change more than once every 3 years; and
- (iii) if the Registered Member wishes to change his or her Marae affiliation in time for a Marae Election, the Trust must receive the written request not less than 25 Working Days before the relevant Marae Election.

Notice not necessary

5.13 It shall not be necessary for the Trust to provide Private Notice to Members of Ngatiwai where the Trustees believe on reasonable grounds (and have evidence supporting that belief), that the Member's contact details are not current.

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6. VOTING PROCEDURE

6.1

~~(a) The following resolutions must be approved by not less than 75% of the Adult Registered Members of Ngatiwai who are entitled to vote and actually cast a valid vote in accordance with the voting procedures set out in Schedule 1: Any resolution to:~~

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- ~~(a) to (i)~~ ratify or change this Deed, or amend the constitution of any Asset Holding Company (in accordance with the requirements of sections 17, and 18 as the case may be, of the Act);
- ~~(b) to (ii)~~ dispose of Income Shares (in accordance with section 20 of the Act);
- ~~(c) to (iii)~~ treat Quota as Settlement Quota (in accordance with section 159 of the Act);
- ~~(d) to (iv)~~ dispose of Settlement Quota (under section 162 of the Act);
- ~~(e) to (v)~~ rationalise any Settlement Quota (under section 172 of the Act); and
- ~~(f) to (vi)~~ enter into a transaction or a series of transactions, or agree to transact, whether contingent or not, with a person not entitled to hold income Shares or Settlement Quota under the Act, including an option, security, mortgage, or guarantee, that could result in:

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(i) ~~(aa)~~ the sale of Income Shares or Settlement Quota by an Asset Holding Company; or

(ii) ~~(bb)~~ Ngatiwai or the Trust being disentitled for a period of more than 5 years to:

(i) ~~(aa)~~ the income from the income Shares; or

(ii) ~~(bb)~~ the income from the ACE arising from the Settlement Quota; or

(iii) ~~(cc)~~ the control or use of the ACE arising from the Settlement Quota;

(g) ~~(vii)~~ wind up the Trust in accordance with clause 119 of this Deed;

~~must be approved by not less than 75% of the Adult Members of Ngatiwai who are entitled to vote and actually cast a valid vote in accordance with the voting procedures set out in Schedule 1 and no such resolution shall be passed unless notice in respect of those resolutions has been given in accordance with the Act and no such resolution shall be passed unless notice in respect of those resolutions has been given in accordance with the Kaupapa 4 in Schedule 7 of the Act.~~

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~~(b) 6.2 The following resolutions must be approved by not less than 75% of the Adult Registered Members of Ngatiwai who are entitled to vote and actually cast a valid vote in accordance with the voting procedures set out in Schedule 1 Any resolution to:~~

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(a) (i) ~~to t~~ Transfer authorisations or coastal permits that are Aquaculture Settlement Assets (except where the proposed transfer is to a company that is wholly owned by the Trust as an Iwi Aquaculture Organisation); and

(b) (ii) ~~request any request~~ that Te Ohu Kai Moana Trustee Limited transfer authorisations or coastal permits that are Aquaculture Settlement Assets (except where the proposed transfer is to a company that is wholly owned by the Trust as an Iwi Aquaculture Organisation);

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~~and no such resolution shall be passed unless notice in respect of those resolution has been given in accordance with the Maori Commercial Aquaculture Claims Settlement Act 2004 must be approved by not less than 75% of the Adult Members of Ngatiwai who are entitled to vote and actually cast a valid vote in accordance with the voting procedures set out in Schedule 1 and no such resolution shall be passed unless notice in respect of those resolution has been given in accordance with the Maori Commercial Aquaculture Claims Settlement Act 2004.~~

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~~6.3(e)~~ in the case of a resolution not described in clauses 6.1(a) and 6.24(b) a resolution shall be passed if ~~m~~More than 50% of the Adult ~~Registered~~ Members of Ngatiwai who are entitled to vote cast a valid vote in favour of the resolution in accordance with the procedures determined and published by the Trustees prior to the General Meeting (but in the absence of the Trustees publishing the procedure prior to the General Meeting, by a show of hands at the General Meeting in accordance with paragraph ~~8.344~~ of Schedule 1 of this Deed).

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7. GENERAL MEETINGS OF IWI AND REPORTING

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Reporting Responsibilities

7.1 Without derogating from its duties under any enactment or at law, the Trust has the reporting responsibilities in relation to:

- (a) its own performance; and
- (b) the performance of any:
 - (i) Asset Holding Company;
 - (ii) Fishing Enterprise;
 - (iii) joint venture or other entity that conducts business using the Settlement Quota or Income Shares;
 - (iv) other Corporate Entity(s) (not including those referred to in clauses (i) to (iii) above) in accordance with the provisions of this clause 7.

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Trust to hold an Annual General Meeting

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

- (a) The annual report for the previous financial year
- (b) The annual plan for the next financial year
- (c) Asset Holding Company Annual Reports for such entities as explained in clause 7.5
- (d) Any proposal to change the constitutional documents of any Asset Holding Company

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All such documents and proposals shall be made available not less than 20 working days before the meeting.

(a)

7.3 Annual Report the annual report for the previous financial year, ~~made available not less than 20 Working Days before the meeting,~~ that reports against the objectives set out in the annual plan for the previous year, ~~including~~ This annual report must include:

(i)(a) information on the steps taken by the Trust to increase the number of Registered Members ~~and a status report of those steps; and~~

(ii)(b) a comparison of the Trust's performance against the objectives set out in the annual plan, including:

(aa) changes in the value of the Trust Fund; and

(bb) profit distribution; ~~and~~

(iii) the annual audited financial report, prepared in accordance with generally accepted accounting practice, and accounting separately for Settlement Cash Assets; ~~and~~

(iv) a report giving information of the sales and exchanges of Settlement Quota in the previous year, including:

(aa) the quantity of Settlement Quota held by all Asset Holding Companies at the beginning of that year; and

(bb) the value of Settlement Quota sold or exchanged in that year; and

(cc) the identity of the purchaser or other party to the exchange; and

(dd) any transaction with Settlement Quota that has resulted in a registered interest by way of caveat or mortgage being placed over the ~~the~~ Settlement Quota; and

(ee) the Settlement Quota interests that have been registered against the Quota shares of the Trust; and

(ff) the value of Income Shares sold, exchanged, or acquired; ~~and~~

(v) a report on the interactions of the Trust In fisheries matters:

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- (~~aa~~) with other entities within Ngatiwai; ~~and~~
- (~~bb~~) with other Mandated Iwi Organisations; ~~and~~
- (~~cc~~) with Te Ohu Kai Moana Trustee Limited; and
- (~~vi~~) any changes made under section 18 of the Act to constitutional documents of the Trust or those of its Asset Holding Companies; ~~and~~

~~7.4 (b)~~ ***Annual Plan***: an annual plan for the next financial year, that must include:

- (~~i~~) ~~(a)~~ the objectives of the annual plan;
- (~~ii~~) ~~(b)~~ the policy of the Trust in respect of the sales and exchanges of Settlement Quota; and
- (~~iii~~) ~~(c)~~ any changes in that policy from the policy for the previous year; and
- (~~iv~~) ~~(d)~~ any proposal to change the constitutional documents of any Corporate Entity or Subsidiary that is a fishing company; and

~~7.5(e)~~ ***Asset Holding Company Annual Report***: in relation to every Asset Holding Company that receives Settlement Quota and Income Shares (or other settlement assets), and in relation to any enterprise established by the Trust under clause 8.2 to conduct fishing operations utilising ACE from the Settlement Quota, to harvest, process or market fish, or be involved in any joint venture for those purposes, (each referred to in this clause ~~7.52~~ as an "enterprise") an annual report on:

- (~~a~~) the performance of that enterprise; and
- (~~b~~) the investment of money of that enterprise; and
- (~~iii~~) ~~(c)~~ the annual plan of that enterprise, including:
 - (~~iaa~~) the key strategies for the use and development of Ngatiwai's Fisheries Settlement Assets;
 - (~~iibb~~) the expected financial return on those Fisheries Settlement Assets;
 - (~~iiiee~~) any programme to:
 - (~~1~~) ~~(aa)~~ manage the sale of ACE derived from the Settlement Quota; or
 - (~~2~~) ~~(bb)~~ reorganise the Settlement Quota held by

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that enterprise by buying or selling Quota in accordance with the Act; and

- (d) ~~any proposal to change the constitutional documents of any Asset Holding Company.~~

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General Meetings of Members of Ngatiwai

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7.6 ~~3~~ General Meetings of Members of Ngatiwai

(a) ~~Annual General Meeting~~: Each Annual General Meeting must be:

- (i) (a) in the case of the first Annual General Meeting, held before the date referred to in clause 4.1; and
- (ii) (b) no more than 15 months apart.
- (iii) (c) Must consider the matters as listed in clause 7.2.

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~~7.7(b) Special General Meeting: A General Meeting, called a special meeting, must be convened by the Trustees on the written request of:~~

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- (i) (a) the Chairperson of the Trustees (or the Deputy Chairperson if the Chairperson is indisposed); or
- (ii) (b) not less than 30% of the Trustees; or
- (iii) (c) not less than 10% of the Adult Registered Members of Ngatiwai,

~~provided that no meeting may be convened to consider: In respect of the following matters, the Trustees must have first resolved to obtain approval of the Adult Registered Members of Ngatiwai:~~

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

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~~unless the Trustees have resolved to:~~

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

as the case may be; and

- ~~(xii)~~ (h) the request must state the objects for which the special meeting is required and be signed (including counterparts) by those requesting the Special Meeting; and
- ~~(xiii)~~ (i) the Special Meeting must be held within 30 Working Days from the date the request was received by the Secretary.

~~(c)~~

7.8 Notice of General Meeting: Members of Ngatiwai shall be given not less than 20 Working Days notice of a General Meeting ~~(including, to avoid doubt, a meeting to consider the matters in clause 7.2, or any meeting at which any of the matters in paragraphs (iv) to (vii) of clause 7.3(b), or any ratification of, or changes to, this Deed or to amend the constitution of any Asset Holding Company in accordance with the requirements of sections 17 or 18 of the Act (as the case may be), are to be or are actually considered or voted on),~~ in accordance with this Deed and otherwise in accordance with the requirements of the Act.

~~(a) This includes, to avoid doubt, a meeting to consider the matters in clause 7.2, or any meeting at which any of the matters in paragraphs (d) to (g) of clause 7.7, or any ratification of, or changes to, this Deed or to amend the constitution of any Asset Holding Company in accordance with the requirements of sections 17 or 18 of the Act (as the case may be), are to be or are actually considered or voted on)~~

~~(b) In accordance with Schedule 7 of the Act, Members of Ngatiwai may, at the timing of registering, request to receive a private notice and postal ballot papers for every meeting relating to elections, changing a constitutional document, the disposal of income shares or the conversion and disposal of settlement quota. Whether or not on the register, Members may make a written request for a private~~

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notice in respect of a particular meeting.

7.9(e)

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

(+) (a) 75% or more of the Trustees; and

(++) (b) 40 Adult Registered Members.

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7.10(e)

No business shall be transacted at a Marae Election unless a quorum is present. The quorum at a Marae Election is:

(+) (a) 50% or more of the Trustees; and

(++) (b) 10 Adult Registered Members.

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7.11(f)

Adjourned meeting: If a quorum is not present within ~~one-half an~~ hour of the time appointed for the start of a General Meeting, the meeting is to stand adjourned until the same hour at the same place 20 Working Days following the adjournment of that meeting unless the Trustees otherwise determine an alternative date, time and venue.

7.12(g)

Chairperson: ~~The Chairperson or,~~ if the Chairperson is unavailable, the Deputy-Chairperson, will preside over and have control of every General Meeting. If there is no Chairperson or Deputy Chairperson present after half an hour has passed since at the time appointed for holding a General Meeting, or if either of those persons is unwilling to preside over the meeting, the Trustees present will choose by majority one of their number to substitute as Chairperson for that meeting.

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Information must be made available in writing

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Information referred to in clause 7.24 must be made available on request in writing by any Member of Ngatiwai. Once that request has been received by the Trust, the information shall be provided within twenty working days and will be subject to such reasonable charges as the Trustees require.

7.145

Any Adult Registered Member may request in writing a copy of the Deed, and a copy will be provided subject to such reasonable charges as the ~~trustees~~

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Trustees require.

No derogation from purposes

7.156 Clause 7 shall not derogate from the provisions of clause 3.4.

8. ASSET HOLDING COMPANY AND FISHING ENTERPRISE

Trust must hold an Asset Holding Company

8.1 The Trust must ensure that it has at least one Asset Holding Company ~~and that, to the extent and for so long as required by the Act subject to the provide in clause 7.3 and the provisions of clause 7.3(g)(ii) and clause 7.3(g)(iii), that Asset Holding Company~~ is wholly owned by the Trust and performs the functions and complies with the requirements set out in sections 16 and 17 of the Act, which at the date of this Deed are that the Asset Holding Company:

- (a) must be and remain wholly owned and controlled by the Trust;
- (b) must not permit more than 40% of its Directors to be Trustees;
- (c) must have constitutional documents that have been approved by a simple majority of the Trustees as complying with the requirements of the Act;
- (d) must have constitutional documents that have been ratified by a resolution passed by a majority of not less than 75% of the Trustees, whether or not present at the meeting at which that resolution is proposed;
- (e) must receive and hold, on behalf of the Trust, for so long as they are to be retained, all Settlement Quota and income Shares allocated by Te Ohu Kai Moana Trustee Limited to, or otherwise acquired by Ngatiwai under the Act;
- (f) must provide dividends solely to the Trust;
- (g) must not undertake fishing or hold a fishing permit;
- (h) must not enter into any transactions relating to or affecting the Income Shares it holds unless the Trust has complied with its obligations under this Deed including without limitation clause 7.73 and sections 69 to 72 of the Act;
- (i) must not enter into any transactions relating to or affecting the

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Settlement Quota it holds unless the Trust has complied with its obligations under this Deed including without limitation clause 7.73 and sections 161 to 176 of the Act;

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- (j) in its function of receiving and holding Settlement Quota and Income Shares is bound by all the requirements specified for Mandated iwi Organisations in relation to those matters in the Act;
- (k) may establish one or more Subsidiaries to be its Subsidiary Asset Holding Companies;
- (l) may transfer to any such Subsidiary Asset Holding Company established under the preceding clauses:
- (m) any Subsidiary Asset Holding Company established under the preceding clauses:
 - (i) must be and remain wholly owned by the Asset Holding Company that established it;
 - (ii) must receive and hold, on behalf of the Asset Holding Company, Settlement Quota and Income Shares transferred to it by the Asset Holding Company under clause 8.1(l);
 - (iii) must provide dividends solely (but indirectly) to the Trust;
 - (iv) must not enter into any transactions relating to or affecting the Income Shares it holds unless the Trust has complied with its obligation under sections 69 to 72 of the Act;
 - (v) in its functions of receiving and holding Settlement Quota and Income Shares is bound by all the requirements specified for Mandated Iwi Organisations in relation to those matters in the Act;
 - (vi) may establish one or more Subsidiaries to be its Subsidiary Asset Holding Companies which it shall ensure complies with the obligations imposed on it in this clause 8.1; and
 - (vii) must not undertake fishing or hold a fishing permit,

but the Asset Holding Company and its Subsidiaries may undertake any other activity or hold any other assets not prohibited by the Act.

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Establishment of Fishing Enterprise

8.2 If the Trust wishes to establish its own fishing operation, utilising ACE from its Settlement Quota, to harvest, process or market fish, or to be involved in a joint venture for those purposes, it must establish an enterprise which is

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separate from, but responsible to, the Trust to undertake those operations, which must not be the Asset Holding Company or a Subsidiary that receives the Settlement Quota,

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Requirements of constitution

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8.3 The constitution of every Asset Holding Company or Fishing Company or a Subsidiary of any of them must require that Asset Holding Company, Fishing Enterprise or Subsidiary to:

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

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and may provide for the Trust to appoint up to two Trustees as Directors of that Asset Holding Company or Fishing Enterprise or Subsidiary, as the case may be, provided however that at no time may the Trustees comprise more than 40% of the total number of Directors of that Asset Holding Company, Fishing Enterprise or Subsidiary.

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Commercial Aquaculture Activities

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

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9. DISPUTES PROCEDURE

Disputes relating to matters arising under the Act

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9.1 Pursuant to the provisions of the Act, or if not provided for in the Act, as provided herein:

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(a) If any dispute shall arise between Members of Ngatiwai and the ~~Trust Board~~, (other than a dispute provided for in clauses 9.1 ~~(cb)~~ or 9.3), and the parties are unable, within a reasonable time, to resolve the dispute, they must, acting ~~in~~ good faith, endeavour to agree on a process for resolving the dispute.

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~~(b)~~ Should the parties fail to reach agreement on the process to resolve a dispute relating to matters arising under the Act, that dispute shall be determined in accordance with Part 5 of the Act.

~~(cb)~~ Any dispute of a general nature, being a dispute not covered by Part 5 of the Act, shall be referred to mediation, by a mediator to be agreed by the disputing parties one month from the date the Board is advised of the dispute, or failing agreement within 10 Working Days thereafter, to be appointed by the Registrar of the Maori Land Court or its successor. ~~Should the matter not be resolved by mediation then the Trustees shall reconsider the decision, however any such re-consideration shall then be binding upon the parties.~~ Should the dispute not be resolved by mediation, clause 9.2 shall apply.

9.2 The provisions of clause 9.1 shall not derogate from the rights or obligations of the Trustees or any Member of Ngatiwai as beneficiaries of this Trust pursuant to the Trustee Act 1956 or any other ~~Act or~~ provision of law or equity.

Registration Disputes

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9.3 ~~If~~ the Trustees shall make a decision under clause 5. ~~87~~ to either not register a person or to remove a person from the Members' Register, they must:

(a) refer the matter for recommendation to a Roopu Kaumatua Kuia, appointed by the Trustees under this clause and comprising three Ngatiwai kaumatua whom the Trustees consider are mature persons or elders knowledgeable in Ngatiwai whakapapa and recognised as such by Members of Ngatiwai;

(b) consider the recommendation of the Roopu Kaumatua Kuia under clause 9.3(a) and any determination of the Roopu Kaumatua Kuia made pursuant to a request under clause 5. ~~76~~(d); and

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

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9.4 If the person concerned disputes that decision, that person may exercise their rights under section 180(1)(m) of the Act.

Proceedings of the Roopu Kaumatua Kuia

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9.5 The Roopu Kaumatua Kuia shall ~~provide~~ invite the person concerned, and any representative that person appoints the opportunity to attend a meeting of the Roopu Kaumatua Kuia and present the applicant's account of why he or she should be registered or remain, on the Members' Register, as the case may be, Members of the Roopu Kaumatua Kula shall have the discretion to take into account their own knowledge and such other matters as the Roopu Kaumatua Kula considers will assist it in making a determination. The Roopu Kaumatua Kuia must also inform the person concerned of those other matters and take into account any submissions or information provided by that person on those matters.

Determination

~~9.29.6~~ The determination of the Trustees on the registration of the person concerned shall be final and binding on that person and the Trust, subject to the provisions of section 180(1)(m) of the Act.

~~10. WINDING UP OF TRUST~~

~~10.1 If at any time the Trustees decide that for any reason it is no longer practicable or desirable to carry out the purposes of the Trust the Trustees may decide to wind up the Trust and to vest the assets of the Trust in such one or more charitable bodies in New Zealand for Charitable Purposes in such manner, upon such terms, and in such proportions as the Trustees may decide, provided that:~~

- ~~(a) any such vesting must comply with the Act;~~
- ~~(b) a resolution supporting the winding up proposal and the terms of it must be put and passed by a majority of 75% at a General Meeting in accordance with clause 6.1(a)(vii) and clause 7.3; and~~
- ~~(c) if the Trust is incorporated under the Charitable Trusts Act 1957 the assets of the Trust shall be disposed of in accordance with the provisions of that Act.~~

~~10.1. ALTERATION OF TERMS OF DEED~~

~~Changes to the Deed~~

~~10.1.1~~ The Trustees have power to amend, revoke or add to the provisions of the Deed provided that:

- ~~(a) no amendment may be inconsistent with the Act;~~

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(b) no amendment may be made earlier than two years after the date on which the Trust is recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for Ngatiwai if the amendment relates to any matter provided for, by or under the Act, unless the amendment is required as a consequence of a rule made or amended under section 25 of the Act;

(c) an amendment may only be promoted if a resolution that the amendment is a resolution for the collective benefit of all Members of Ngatiwai is put and passed by a majority of 75% at a General Meeting in accordance with clause 6.1(a) and clauses 7.6 and 7.7;

(d) notwithstanding the terms of this Deed, no amendment to this Deed shall be made, and if purported to be made shall be of no legal effect, if the consequence of that amendment is to prejudice in a material manner the Trust's entitlement to charitable status under the law of New Zealand, or its entitlement to an income tax exemption under the Income Tax Act 2004 in respect of income derived by it, Prior to any resolution to amend this Deed being placed before Members of Ngatiwai, competent advice shall be obtained by the Trustees confirming that the proposed amendments will not jeopardise the charitable status of the Trust or its entitlement to an income tax exemption on income derived by it.

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Changes to constitutions of Corporate Entities

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104.2 To the extent any proposal for the amendment of the constitutional documents of the Asset Holding Company relates to a matter provided for in the Act, such amendment:

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(a) must not be made earlier than two years after the date on which the Trust is recognised by Te Ohu Kai Moana Trustee Limited as the Mandated Iwi Organisation for Ngatiwai unless the amendment is required as a consequence of a rule made or amended under section 25 of the Act;

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(b) must be consistent with the Act;

(c) may only be promoted if the amendment is put and passed by a majority of 75% at a General Meeting in accordance with clause 6.1(a) and clause 7.6 and 7.7

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(d) must not amend the requirement in clause 8.3(a) in a manner which would jeopardise the charitable status of a Corporate Entity.

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104.3 Any Adult Member of Ngatiwai (including a Trustee) may put forward in writing

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proposals for changes to this Deed for consideration by the Trustees and the Trustees shall consider that proposal where they are satisfied that, in accordance with clause 5.5, the person is a Member of Ngatiwai.

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Notification to Members of Ngatiwai

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104.4 Any amendment or proposal under clauses 10, 11 or 12 must be notified to Members of Ngatiwai in the Trust's next communication to them.

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11. WINDING UP OF TRUST

11.1 If, at any time, the Trustees decide that for any reason it is no longer practicable or desirable to carry out the purposes of the Trust the Trustees may decide to wind up the Trust and to vest the assets of the Trust in such one or more charitable bodies in New Zealand for Charitable Purposes in such manner, upon such terms, and in such proportions as the Trustees may decide, provided that:

- (a) any such vesting must comply with the Act;
- (b) a resolution supporting the winding up proposal and the terms of it must be put and passed by a majority of 75% at a General Meeting in accordance with clause 6.1(a)(g) and clause 7.6 to 7.12; and
- (c) if the Trust is incorporated under the Charitable Trusts Act 1957 the assets of the Trust shall be disposed of in accordance with the provisions of that Act.

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12. RESETTLEMENT

Power to resettle

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

- (a) any such settlement or resettlement affecting assets subject to the Act, and excluding General Assets, must comply with the Act;

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- (b) the resettlement is upon trust for the benefit of all Members of Ngatiwai;
- (c) the resettlement may only be promoted if a resolution supporting it is put and passed at a General Meeting in accordance with clause 6.34(e) and clause 7.6 to 7.123;
- (d) the resettlement is upon trusts for Charitable Purpose.

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Perpetuities

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12.2 Any settlement or resettlement under clause 12.1 must not transgress the rule against perpetuities as it applies to the Trust.

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13. LIABILITY AND INDEMNITY

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13.1 No Trustee shall be personally liable for any loss to the Trust Fund which is not attributable to that Trustee's own dishonesty or wilful commission (or omission) of any act known or ought to have been reasonably known, by that Trustee to be a breach of trust.

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13.2 In keeping with their duty to act within the best interests of the Trust, No no Trustee shall be required to take any legal proceedings against a co- Trustee for any breach or alleged breach of trust committed by such co-Trustee.

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13.3, 2 Each Trustee shall be entitled to a full and complete indemnity from the Trust Fund for any reasonable personal liability which the Trustee may incur in any way arising from or in connection with that Trustee acting as a Trustee of the Trust. This entitlement is provided such liability is not attributed to the Trustee's own dishonesty or the wilful commission (or omission) by that Trustee of any act known or ought to have been reasonably known by that Trustee, to be a breach of trust.

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SCHEDULE 1

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PART A: Election Processes

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1. Election of Trustees

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~~Subject to clause 4.1 of this Deed which provides for the appointment of the first Trustees, any subsequent~~

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1.1 All Trustees shall be elected by Adult Registered Members of Ngatiwai in accordance with this Deed.

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1.2 Trustees must arrange and conduct Marae Elections to ensure that 14 Trustee positions must be filled in accordance with this Schedule 1 as to ensure that:

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~~(a) the first Marae Elections must be completed prior to the date laid down in clause 4.1 of this Deed to allow the newly elected Trustees to take office from that date;~~

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~~(b) the first Trustees (being the 14 signatories to this Deed) will stand down and Marae Elections shall be held to fill the thirteen vacancies at General Meetings constituted, inter alia, for the purpose of Marae Elections;~~

~~(c) the first Trustees may stand for election in the first Marae Elections if they so choose (subject to the rule in clause 4.2 of this Deed);~~

2. Marae Elections

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2.1 Each Marae shall hold a Marae Election to elect a Trustee.

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3.42.2 The Trust must determine in consultation with the Marae, a procedure, a date or a specified time within which each Marae must hold its Marae Election, provided that no Marae Election may be held no later than 10 Working Days before the annual General Meeting of Ngatiwai. The Trust must ensure that the Marae holds its Marae Election at that date or within that the specified time period prescribed.

3.22.3 The Trust must ensure that the notice procedures for each Marae Election must comply with paragraph 14 of this Schedule 1 and the Act.

3.32.4 Each Adult Registered Member of Ngatiwai shall be eligible to vote in the Marae Election held on behalf of the Marae to which they have affiliated in accordance with clauses 5.1(a)(v) and 5.5(b).

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3.42.5 In any election of Trustees, Adult Members of Ngatiwai may only exercise one vote for their chosen nominee in the Marae Election held on behalf of the Marae to which they have affiliated in accordance with clauses 5.1(a)(v)

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and 5.5(b).

~~3.52.6~~ The highest polling nominee eligible for election for each Marae shall be elected as a Trustee for that Marae.

~~3.62.7~~ Where a Trustee has been elected in a manner inconsistent with the Act that Marae Election shall be deemed to be invalid and another Marae Election must be held in accordance with this Deed.

~~3.72.8~~ Should for any reason a Marae be removed from Schedule 2, Adult Members of Ngatiwai affiliating to that Marae must have the opportunity to select another Marae to which they affiliate, for voting purposes (subject to the rule in clause 5.11 of this Deed).

3 Alternates

~~4. 3.1~~ Each Marae is further entitled to elect one Alternate at the Marae Election, ~~(held in accordance with paragraph 2.1 to 2.8 3 of this Schedule),~~ who shall be the next highest polling nominee eligible for election ~~-(after the nominee who is elected as Trustee) for that Marae.~~ Should there not be sufficient nominees to make an appointment of Alternate, the position shall not be filled.

~~4.13.2~~ An Alternate may exercise the powers of a Trustee should a Trustee be unable for any reason to undertake their duties, giving notice to that effect in writing to the Board where possible, but such exercising of Trustee powers ceases upon the resumption of duties of the Trustee concerned.

4. Extraordinary Vacancy

~~5. 4.1~~ Should an extraordinary vacancy in the office of Trustee occur as a result of any of the matters in clause 4.3(b) to 4.3(j) in clause 4.2(b) to 4.3(h) of this Deed then that vacancy shall be filled by the Alternate elected for that Marae (for which the vacancy has occurred) in accordance with paragraphs ~~23~~ of this Schedule 1. If the Marae (for which the vacancy has occurred) does not have an Alternate the extraordinary vacancy must be filled as soon as practicable by a Marae Election held in accordance with this Schedule 1.

5. Obligations of Trustees

~~6. 5.1~~ Notwithstanding the fact that Trustees are appointed on a Marae basis, all Trustees represent all the Members of Ngatiwai irrespective of where those Members reside, and are subject to all other Trustee obligations that arise at law.

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6. Time of Elections

- 7- 6.1 The Trustees must arrange and conduct an election of Trustees in accordance with the electoral provisions set out in this Deed at such times as shall ensure that no person who is an elected Trustee shall hold office for a period longer than 3 years without facing re-election, with the proviso that the Trustee shall continue in office until such date that a further election has been held and confirmed at the following Annual General Meeting, whichever is the later.

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7. Results of Marae Elections

- 8- 7.1 In the absence of any otherwise agreed procedure confirmed by the Board, Eeach Marae must notify the Trust in writing of the results of their Marae Election for Trustee (and if relevant, an Alternate), immediately after such results are known. The Trust will prepare these results for announcement of the new Trustees at itsit's Aannual General Meeting.

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8. Eligible voters

- 9- 8.1 All Adult Registered Members of Ngatiwai shall be eligible to vote in the Marae Election held on behalf of the Marae to which they have affiliated in accordance with clauses 5.1(a)(~~v~~) and 5.5(~~b~~) and any votes cast shall be received:

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- (a) by Voting Paper (~~not proxy~~) at a General Meeting constituted, inter alia, for the purpose of a Marae Election; and or
- (b) by Voting Paper received by post, ~~or~~ facsimile or scanned and emailed before 5pm on the Working Day prior to the General Meeting constituted, inter alia, for the purpose of a Marae Election; and/or-
- (c) by electronic voting system, pursuant to any procedure determined by the Board

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It being noted that no proxy vote shall be accepted as a valid vote under any circumstances.

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- 10- 8.2 All Adult Registered Members shall be eligible to vote on any resolution required by clause 6.1(a) and 6.21(b) of this Deed and any votes cast shall be received:

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(a) by Voting Paper (not proxy) at a General Meeting; and/or

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(b) by Voting Paper received by post, or facsimile or scanned and emailed before 5pm on the Working Day prior to the General Meeting; and/or;

(c) by electronic voting system, pursuant to any procedure determined by the Board

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It being noted that no proxy voting shall be accepted as a valid vote under any circumstances.

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(b)

11. 8.3 In the absence of any process adopted by the Trustees to the contrary any vote cast under clause 6.1(e) and 6.2 of this Deed shall be cast by a show of hands at the General Meeting. However those exercising such a vote may be called upon by the Trustees to prove their affiliation to Ngatiwai and provide evidence that they are over 18 years of age in any such vote.

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9. Nominations for Trustee

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12. 9.1 The Trust must, no later than 35 Working Days prior to a Marae Election, publicly notify Adult Members of Ngatiwai that nominations for the position of Trustee may be lodged. Any such nomination must include the written signature of both the candidate and the nominator and may not be withdrawn after it has been received. The nomination must:

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(a) contain details of the nominee's full name, address and contact number;

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(b) include a declaration signed by the nominee that declares that the nominee is not a person who is precluded from holding office as a Trustee on the basis of one or other of these matters specified in clause 4.32 of the Deed;

(c) be accompanied by a brief statement containing details of experience and objectives relevant to the position of Trustee.

(d) include the name of the Marae to which the candidate is affiliated in accordance with clauses 5.1(a)(v) and 5.5(b) and on whose behalf the candidate intends to stand; and

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(e) be endorsed by the Chairperson or Acting Chairperson of the Marae referred to in paragraph 409.1(d) above.

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10 Time for Nominations

~~13.~~ 10.1 Nominations for the position of Trustee may only be made by Adult Registered Members who are affiliated in accordance with clauses 5.1(a) ~~(v)~~ and 5.5 ~~(b)~~ to the Marae on whose behalf the Marae Elections are being held and nominations must be received at the office of the Trust no later than 25 Working Days before the Marae Election is to be held, and

- (a) in the event that there is only one nomination eligible for election received for the position of Trustee for any of the Marae, the nominee for that Marae shall be deemed to be elected under the provisions of this Schedule 1 from the date of the General Meeting constituted, inter alia, for the purpose of a Marae Election;
- (b) in the event that there are no nominees received for Trustee for any Marae further nominations must be called for until the number of nominees is at least equal to the number of vacancies for Trustee for any Marae.

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PART B: All Votes

11. Notice of Voting and General Meeting

~~14.~~ 11.1 Any vote taken under clause 6.1 ~~(a)~~ and 6.21 ~~(b)~~ of this Deed .or for Marae Elections must be publicly notified not less than 20 Working Days before the date of the vote. If the vote is to be at a General Meeting, the notice procedures must comply with those specified in the Act, which at the date of this Deed are:

- ~~(e)~~ (a) Public Notice that includes;
 - (i) the date, time, venue and agenda of the General Meeting, the place where explanatory documents may be viewed or obtained, and any other Information specified in the Act;
 - (ii) where relevant, advice that a vote is to be taken to ratify or amend the constitutional documents of the Trust;
 - (iii) advice on the method by which the vote will be counted, and
 - (iv) where relevant, the matter or issues on which the vote is to be taken; and
- (b) Private Notice to every Adult Registered Member of Ngatiwal who has requested such from the Trust in writing, that gives:
 - (i) the information in the preceding sub-paragraph of this Schedule;

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- (ii) a copy of the Voting Paper; and
 - (iii) the address and return date for the Voting Paper.
- (c) Private Notice to every Adult Registered Member of Ngatiwai if there is to be a vote taken to ratify the constitutional documents of the Mandated Iwi Organisation that gives the information in paragraphs (a) and (b) above, 14(a)(i) to (iii) and 14(b)(ii) to (iii).

12 Valid votes

~~15.~~ 12.1 The conduct of a vote of Adult Registered Members of the Ngatiwai at every General Meeting (including for Marae Elections) taken under clause 6.1~~(a)~~ and 6.~~24(b)~~ of this Deed must provide that:

- (a) in order for a vote to be validly cast, the person casting it must:
 - (i) ~~where the person is be~~ an Adult Registered Member at the time his or her vote was cast; or
 - (ii) where the person is not registered at the time of the vote, also complete a Registration Form which shall be attached to and form part of the Voting Paper; and

~~(b)~~ (b) No vote cast under paragraph 8.1 9 of this Schedule 1 shall be finally counted unless the details provided on the Voting Paper (except the ancillary information) are correct and the affiliation of the voter to Ngatiwai has been confirmed by the Returning Officer, either:

- (i) because that person is an Adult Registered Member at the time they cast their vote; or
- (ii) If that person has applied at the time that their vote was cast, to become an Adult Registered Member, because their registration was accepted in accordance with clause 5.6.

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

13. Secret Ballots

~~16.~~ 13.1 All Votes cast under clause 6.1~~(a)~~ and 6.~~24(b)~~ and cast in Marae Elections shall be conducted so as to ensure that:

- (a) the manner in which a vote is cast shall be known to the returning officer or persons assisting the Returning Officer, but not to others;

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(b) that the returning officer and those persons shall undertake to keep that information confidential; and

(c) that the Voting Papers are destroyed by the returning officer after the date of completion of the final count under clause 15(b), plus a period of one month thereafter.

14. Returning Officer

14.1 A Returning Officer shall be appointed by the Board to oversee the voting process and to confirm the results. This Returning Officer shall report to the Board after elections to identify any procedural issues or concerns.

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SCHEDULE 2

Recognised Marae of Ngatiwai

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Tuparehuia

Ngaiotonga

Otetao Reti

Oakura

Mokau

Whananaki

Matapouri

Ngunguru

Pataua

Takahiwai

Omaha

Motairehe

Kawa

Punaruku

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SCHEDULE 3

Maori Fisheries Act 2004 Schedule 7 (as at 11 July 2011)

Schedule 7: Kaupapa applying to constitutional documents of mandated iwi organisations

The kaupapa set out in this schedule—

- (a) must be provided for in the constitutional documents of every mandated iwi organisation; but
- (b) only apply for the purposes of this Act.

Kaupapa of iwi representation

Kaupapa 1

- (1) All adult members of an iwi must have the opportunity, at intervals not exceeding 3 years, to elect the directors, trustees, or officeholders, as the case may be, of the mandated iwi organisation of the iwi.
- (2) Elections for individual offices may be held at different times, and for different terms of office. However, no person elected to office may hold office for a period longer than 3 years without facing re-election.

Kaupapa 2

All adult members of an iwi—

- (a) have voting rights—
 - (i) in elections for the appointment of directors, trustees, or other officeholders of the mandated iwi organisation; and
 - (ii) on amendments to the constitutional documents of the mandated iwi organisation; and
 - (iii) in relation to the disposal of income shares under section 70; and
 - (iv) in relation to the disposal of settlement quota under sections 159 and 162; and
- (b) may put forward proposals for constitutional change for the consideration of the directors, trustees, or other officeholders, as the case may be.

Kaupapa 3

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(1) A mandated iwi organisation must ensure that voting rights of iwi members are able to be exercised at appropriate times in an election of directors, trustees, or other officeholders, in accordance with the constitutional documents and policies of the mandated iwi organisation, but iwi members have no right to vote in respect of the appointment of the employees of a mandated iwi organisation.

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(2) If a mandated iwi organisation has electronic voting facilities, every adult member of the iwi has the right to vote by electronic means, but electronic voting must not be the only means by which a member may vote.

Notification of meetings

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Kaupapa 4

(1) A general meeting of a mandated iwi organisation must be notified by a public notice that must include—

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

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(b) the agenda for the meeting; and

(c) where any relevant explanatory documents may be viewed or obtained; and

(d) any other information specified by or under this Act.

(2) In the case of the general meeting of a mandated iwi organisation required by section 17(2), (which relates to ratification of the constitutional documents of the mandated iwi organisation), the meeting must be notified by both—

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(a) a public notice that gives—

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(i) the information required under subclause (1); and

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(ii) advice that a vote is to be taken to ratify the constitutional documents of the mandated iwi organisation; and

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(b) a private notice, sent to every adult member on the register of iwi members, that gives—

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(i) the information required for the public notice; and

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(ii) a copy of the ballot paper for the vote to be taken at the meeting; and

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(iii) advice as to the address to which, and the date by which, the completed ballot paper must be returned.

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(3) In the case of a general meeting of a mandated iwi organisation required by kaupapa 2 (which relates to elections), section 18, (which relates to

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changing a constitutional document), section 70 (which relates to the disposal of income shares), or by sections 159 or 162 (which relate to the conversion and disposal of settlement quota), the mandated iwi organisation—

(a) must give a public notice that includes—

- (i) the information required under subclause (1)(a); and
- (ii) the matter or issues on which the vote is to be taken; and

(b) must give a private notice with the information required under subclause (2)(b) to any adult member of the iwi who,—

- (i) at the time of registering on the register of iwi members, made a written request to be sent a private notice and postal ballot papers for every meeting relating to 1 or more of the relevant provisions; or
- (ii) whether or not on the register, makes a written request for a private notice in respect of a particular meeting.

Iwi membership

Kaupapa 5

Every mandated iwi organisation must—

(a) have, and maintain in a current state, a register of iwi members—

- (i) that includes the name, date of birth, and contact details of every member of the iwi who applies for registration; and
- (ii) that is available for inspection by registered members of the iwi; and

(b) provide for—

- (i) adult members of the iwi to register themselves; and
- (ii) other members to be registered by a parent or legal guardian; and
- (iii) persons registering on the register of iwi members to be able to state whether they wish to receive a private notice for general meetings and postal ballot papers relating to the matters listed in subclause (3) of kaupapa 4; and

(c) make ongoing efforts to register all iwi members.

Kaupapa 6

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(1) The policy of a mandated iwi organisation relating to the rights of whangai or other persons who do not descend from a primary ancestor of the iwi must be—

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(a) determined in accordance with the tikanga of the iwi; and

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(b) stated in the constitutional documents of the mandated iwi organisation

(2) In this kaupapa, whangai refers to a person adopted by a member of an iwi in accordance with the tikanga of that iwi, but who does not descend from a primary ancestor of the iwi.

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Accountability

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Kaupapa 7

(1) Every mandated iwi organisation is accountable for its performance to all the members of the iwi, including members not living within its territory, and therefore has reporting responsibilities in relation to—

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(a) its own performance; and

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(b) the performance of—

(i) its asset-holding companies; and

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(ii) any joint venture or other entity that conducts business using the settlement assets of the mandated iwi organisation.

(2) Each year, each mandated iwi organisation must hold a general meeting at which it provides an opportunity for the members of the iwi to consider—

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(a) the annual report for the previous financial year, made available not less than 20 working days before the meeting, that reports against the objectives set out in the annual plan for the previous year, including—

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(i) information on the steps taken by the mandated iwi organisation to increase the number of registered members; and

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(ii) a comparison of its performance against the objectives set out in the annual plan, including—

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(A) changes in shareholder or member value; and

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(B) dividend performance or profit distribution; and

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(iii) the annual audited financial report, prepared in accordance with generally accepted accounting practice, and accounting separately for settlement cash assets; and

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(iv) a report giving information of the sales and exchanges of settlement quota in the previous year, including—

(A) the quantity of settlement quota held by the asset-holding company of the mandated iwi organisation in that year; and

(B) the value of settlement quota sold or exchanged; and

(C) the identity of the purchaser or other party to the exchange; and

(D) any transaction with settlement quota that has resulted in a registered interest by way of caveat or mortgage being placed over the quota; and

(E) the settlement quota interests that have been registered against the quota shares of the mandated iwi organisation; and

(F) the value of income shares sold, exchanged, or acquired; and

(v) a report on the interactions of the mandated iwi organisation in fisheries matters—

(A) with other entities within the iwi; and

(B) with other mandated iwi organisations; and

(C) with Te Ohu Kai Moana Trustee Limited; and

(vi) any changes made under section 18 to the constitutional documents of the mandated iwi organisation or those of its asset-holding companies or any subsidiaries of the asset-holding companies; and

(b) an annual plan for the next financial year, that must include—

(i) the objectives of the annual plan; and

(ii) the policy of the mandated iwi organisation in respect of sales and exchanges of settlement quota; and

(iii) any changes in that policy from the policy for the previous year; and

(iv) any proposal to change the constitutional documents of any fishing company owned by the mandated iwi organisation; and

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(c) in relation to every asset-holding company of a mandated iwi organisation or any subsidiary of an asset-holding company that receives settlement assets,—

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(i) an annual report on—

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(A) the performance of that asset-holding company or any of its subsidiaries; and

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(B) the investment of money of that asset-holding company or any of its subsidiaries; and

(C) the matters set out in paragraph (b) of kaupapa 11; and

(ii) any proposal to change the constitutional documents of the asset-holding company or any of its subsidiaries.

(3) Information referred to in this kaupapa must be made available in writing on request by any member of the iwi.

Kaupapa 8

There must be a dispute resolution mechanism to deal with disputes between members of the iwi and the mandated iwi organisation relating to matters arising under this Act, including a means to deal with disputes raised by persons whose applications for registration are not accepted.

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Ownership of iwi fisheries assets

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Kaupapa 9

(1) If a mandated iwi organisation wishes to have its own fishing operation, utilising annual catch entitlement from its settlement quota to harvest, process, or market fish, or to be involved in a joint venture for those purposes, it must establish a fishing enterprise separate from, but responsible to, the mandated iwi organisation to undertake those operations.

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(2) An enterprise set up to undertake such operations must be a separate entity from the asset-holding company or subsidiary established by an asset-holding company to which any settlement quota or income shares of the iwi are transferred.

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Governance

Kaupapa 10

The elected directors, trustees, or officeholders, as the case may be, of a mandated iwi organisation must not comprise more than 40% of the total number of directors, trustees, or officeholders of an asset-holding company, a subsidiary established by

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an asset-holding company, or a fishing enterprise established in accordance with Kaupapa 9.

Kaupapa 11

Every mandated iwi organisation must exercise strategic governance over—

(a) its asset-holding companies, any subsidiary of an asset-holding company, and any fishing company or joint venture referred to in Kaupapa 9; and

(b) the process to examine and approve annual plans that set out—

(i) the key strategies for the use and development of iwi fisheries assets;

(ii) the expected financial return on the assets;

(iii) any programme to—

(A) manage the sale of annual catch entitlements derived from the settlement quota held by asset-holding companies or their subsidiaries;

(B) reorganise the settlement quota held by asset-holding companies or their subsidiaries, as by buying and selling settlement quota in accordance with this Act.

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