



Constitution

of

**Te Aupouri Commercial Development
Company Limited**

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Constitution of Te Aupouri Commercial Management Limited

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Alternate Director means a person appointed as an alternate of a Director pursuant to clause 12;

Board means Directors who number not less than the required quorum acting together as the board of Directors of the Company;

Commercial Activity means any activity carried out in pursuit of the Trust Purposes (as set out in clause 2.4 of the Trust Deed), which has as its principal objective the maximising of financial or economic returns to Te Aupouri

Companies Act means the Companies Act 1993;

Company means Te Aupouri Commercial Management Limited;

Constitution means this constitution, as altered from time to time;

Director means a person appointed as a director of the Company by the Shareholders;

Resolution means a resolution passed by the Shareholders;

Share means a share issued, or to be issued, by the Company;

Shareholders means those persons whose names are entered in the share register from time to time as the holders for the time being of the Shares, with the intention being that the Shareholders are the Trustees from time to time or a custodian trustee appointed by the Trustees or, in the event that the Trustees incorporate as a board under the Charitable Trusts Act 1957, a board constituted under that Act;

Te Aupouri has the meaning given to it in the deed of trust of the Trust as amended;

Te Aupouri Fisheries Management Limited means the Company incorporated on 13 March 2008 to receive and hold all Income Shares and Settlement Quota (as defined by the Māori Fisheries Act 2004) on behalf of the Trust.

Te Aupouri Development Group means the group comprising the Te Runanga Nui o Te Aupouri Trust, Te Aupouri Iwi Development Trust, Te Aupouri Fisheries Management Limited and the Company.

Trust means the Te Runanga Nui o Te Aupouri Trust established under a deed of trust dated 11 September 2005 and amended by further deed dated **31 January 2011**; and

Trustees means the trustees of the Trust.

Trust Deed means the trust deed of the Trust.

1.2 Construction

In this Constitution, unless the context otherwise requires:

(a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;

(b) in the absence of an express indication to the contrary, references to clauses or paragraphs are to clauses and paragraphs of this Constitution;

(c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;

(d) the singular includes the plural and vice versa and one gender includes the other gender;

(e) the words **written** and **writing** include facsimile and email communications and any other means of communication resulting in permanent visible reproduction;

(f) the word **person** includes any association of persons whether corporate or unincorporated, and any state or government or department or agency thereof, whether or not having separate legal personality; and

(g) words or expressions defined in the Companies Act have the same meaning in this Constitution.

(h) References to the Trust shall, where appropriate, include reference to the Trustees from time to time acting in their capacity as Trustees of the Trust.

2. The Companies Act

Subject to clause 3, the Company, the Board, each Director and the Shareholders have the rights, powers, duties and obligations set out in the Companies Act except to the extent that they are negated or modified by the Constitution.

3. Company to undertake Commercial Activities

3.1 The board shall conduct or otherwise undertake all Commercial Activities of the Te Aupouri Development Group except those Commercial Activities carried out by the Te Aupouri Fisheries Management Limited, either by itself or through any subsidiary, trust or other entity established for that purpose, on behalf of and solely for the benefit of the Trust, and in furtherance of the Trust's purposes.

3.2 The board shall use and administer on behalf of the Trust, all assets made available by the Trust on a prudent, commercial and profitable basis, subject to any restrictions placed upon the use of such assets and in accordance with the plans and a statement of intent referred to at clause 11 of this constitution.

4. Subsidiaries

4.1 Establishment of, and transfer of assets to, subsidiary

The Company may:

- (a) establish one or more subsidiaries to undertake some or all of the Commercial Development Activities the Te Aupouri Development Group; and
- (b) transfer to any subsidiary some or all of the assets owned by the Company.

4.2 Wholly owned and controlled

Any subsidiary established by the Company under clause 4.1 must be and remain wholly owned and controlled by the Company.

4.3 Obligations of Directors in establishing a subsidiary

If a subsidiary is established by the Company under clause 4.1, the Directors will ensure that the constitution of the subsidiary provides that

- (a) the subsidiary is bound by all the requirements outlined in clause 3.1 and 3.2 of this Constitution, with all necessary modifications;
- (b) the Trust must exercise strategic governance over the subsidiary through its strategic governance of the Company; and
- (c) the subsidiary will report to the Company on all matters necessary, and at such times, as to allow the Company to fulfil its reporting requirements to the Trust.

5. Rights attaching to Shares

The Shares at the date of certification of this Constitution will be issued to the Shareholders, being the persons named in the Application for Registration of the Company. Subject to this Constitution, each Share confers on the Shareholders the right to:

- (a) vote on any resolution at a meeting of the Shareholders; and
- (b) receive notice of and attend every Shareholders meeting.

6. Transfer of Shares

6.1 Pre-emptive provisions

No share in the company shall be transferred by any shareholder except as specified in this constitution.

6.2 Transfer

- (a) Shares in the company shall transfer consequent upon any change in the trustees of the Trust, provided that the shares continue to be held jointly by the trustees of the Trust.
- (b) Section 84 of the Act is qualified in that:
 - (i) It is not necessary for a form of transfer to be signed by either the transferor or the transferee; and
 - (ii) On notification by the Trust of a change of trustee the company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares.

7. Shares to be and remain with Shareholders

Notwithstanding any other provision in this Constitution all Shares in the Company must be and remain wholly owned and controlled by the Trust either acting through the Trustees from time to time, a custodian trustee appointed by the Trustees, or in the event that the Trustees incorporate a board under the Charitable Trusts Act 1957, a board constituted under that Act.

8. Dividends

The Board may, subject to the Companies Act and this Constitution, authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything that is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test. Dividends may only be paid to the Trust.

9. Application of Income

The Company shall in each income year remit to the Trust so much of the income derived by it on behalf of the Trust as is determined by the Trustees having regard to:

- (a) The objectives and purposes of the Company as set out in clauses 3.1 and 3.2 and the desirability of retaining and reinvesting income to meet those objectives and purposes;
- (b) The projected operating requirements of the Company and any subsidiaries as set out in their plans; and
- (c) The responsibilities and duties of the directors of the Company under the Companies Act 1993 or otherwise under the law.

10. Exercise of powers of Shareholders

10.1 Exercise of power by meeting or written resolution

A power reserved to the Shareholders by the Companies Act or by this Constitution may be exercised either:

- (a) at a meeting of the Shareholders; or
- (b) by a resolution in writing signed by the Shareholders, as provided for in section 122 of the Companies Act.

10.2 Powers of the Shareholders

Unless otherwise specified in the Companies Act or this Constitution, any power reserved to the Shareholders may be exercised and any approval of the Shareholders may be given by Resolution.

11. Plans and Statements of Intent

11.1 Statement of Intent

Within three months of the amendment of the Trust Deed, the Company shall prepare a statement of intent, setting out its long-term objectives and the general principles by which the Company proposes to operate, including creation of any subsidiaries. The Company shall also update this Statement of Intent as required by the Trustees.

11.2 Five-year plan

Within three months of the amendment of the Trust Deed, the Company shall prepare a five year plan, which shall be updated, not less than every two years, and which sets out its medium-term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the statement of intent.

11.3 Annual Plan

No later than two months following the completion of the five year strategic plan referred to in clause 11.2, and hereafter no later than two months before the commencement of each Income Year, the Company shall prepare an annual plan setting out the steps to be taken in the relevant Income Year to meet its five-year planning objectives and fulfil the objectives and principles of the statement of intent.

11.4 Trustees approval required

Prior to being implemented, the statements of intent, five-year plans and annual plans of the Company must be approved by the Trustees.

12. Meetings of the Shareholders

12.1 Annual meetings

Subject to clause 12.3, the Company must hold an annual meeting not later than:

- (a) five months after the balance date of the Company; or
- (b) fifteen months after the previous annual meeting.

12.2 Time and place of annual meeting

Each annual meeting must be held at such time and place as the Board appoints.

12.3 Resolution in lieu of annual meeting

It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed by the Shareholders, as provided for in section 122 of the Companies Act.

12.4 Special meetings

All meetings other than annual meetings shall be called special meetings.

12.5 Calling of special meetings

A special meeting:

- (a) may be called by the Board at any time; and
- (b) must be called by the Board on the written request of the Shareholders.

12.6 Meeting Procedures

The provisions of the First Schedule to the Companies Act govern the proceedings of meetings of the Shareholders.

12.7 Provision of Annual Report

No later than three months after the end of each income year, and notwithstanding any agreement made by the Shareholders under section 211(3) of the Companies Act, the Company must provide to the Shareholders an annual report that:

- (a) complies with each paragraph of section 211(1) of the Companies Act;
- (b) details matters relating to the Company's performance in the previous year, including:
 - (i) a comparison of performance against the Annual Plan and the five year strategic plan;
 - (ii) the Consolidated Financial Statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of the Company for that Income Year;
 - (iii) the performance of the Company and any of its subsidiaries established under clause 4.1 in the previous year;

- (iii) the investment of the money of the Company and any of its subsidiaries established under clause 4.1 in the previous year; and
 - (x) any changes made to this Constitution or the constitution of any subsidiary of the Company established under clause 4.1 in the previous year;
- (c) details matters relating to the Company's projected performance in the current year, including:
- (i) the key strategies for the use and development of any assets held by the Company;
 - (ii) the expected financial return on any assets held by the Company; and
 - (iii) any proposal to change this Constitution or the constitution of any subsidiary of the Company established under clause 4.1; and

12.8 Quarterly reports

No later than one month after the end of the First, Second and Third Quarters, the Company shall provide a Quarterly Report to the Trustees on the affairs of the Company for that Quarter which includes a comparison of performance against the Annual Plan and the five year strategic plan, and an unaudited summary of the financial statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of the entity for that Quarter.

12.9 Shareholders to act in accordance with Resolutions of the Trust

Notwithstanding any other provisions in this Constitution, the Shareholders shall, in exercising their rights and powers as Shareholders, act in accordance with all lawful directions of the Trust.

13. Appointment and removal of Directors

13.1 Number of Directors

The Company must have not fewer than 3 and not more than 5 Directors.

13.2 Trust must appoint Directors

The Trust must appoint the Directors of the Company. Accordingly, any person who is not disqualified by the Companies Act, the Trust Deed or this Constitution from holding office as a Director of the Company may be appointed as a Director by a written notice to the Company signed on behalf of the Trust.

13.3 Term of appointment of Directors

The term of appointment of Directors is as follows:

- (a) no Director can be appointed for a term exceeding 3 years;

- (b) at the end of his or her term of appointment a Director shall be eligible for reappointment (for a further term not exceeding 3 years) but, subject to clause 13.3(c), no person can hold office as a Director for more than 9 years in the aggregate;
- (c) where a person has ceased to be eligible to hold office as a Director because he or she has held office for 9 years in the aggregate then that person becomes eligible for another appointment as a Director on the second anniversary of his or her having reached that level of 9 years, and a fresh calculation of the 9 year period for the purposes of clause 13.3(b) commences on the date of that other appointment;
- (d) for the purposes of this clause 11 any period during which a person is an Alternate Director of the Company is to be treated as a period during which that person is a Director unless otherwise agreed in writing by the Trust.

Nothing in this clause 13.3 limits any of clauses 13.4, 13.6 or 13.7.

13.4 Restrictions on eligibility to hold office as a Director

Not more than 40% of the Directors of the Company or the directors of any subsidiary of the Company established under clause 4.1 may be current Trustees at any one time. Any Director appointed in breach of this provision must resign:

- (a) as a Director; or
- (b) as a Trustee, within 5 working days of the breach occurring failing which that person is automatically deemed to have resigned as a Director at the end of that 5 working day period.

13.5 No invalidity for breach

A breach of any one or more of clauses 13.1 or 13.4 does not:

- (a) invalidate an action or decision of the Company; or
- (b) in the case of clause 13.1, occur in the case of a casual or extraordinary vacancy in the office of Director if that vacancy is filled within 3 months after that vacancy occurs.

13.6 Removal of Directors

Any Director may be removed from office by written notice to the Company signed on behalf of the Trust at any time with or without reason, including (without limitation) if the Trust is satisfied that the relevant Director:

- (a) is not performing satisfactorily the role and/or duties of a Director; or
- (b) without limiting clause 13.6(a), has been absent from 3 or more successive meetings of the Board without the written permission of the Trust; or
- (c) is in neglect of his or her duty as a Director or has committed an act of gross misconduct.

13.7 Office of Director vacated in certain cases

The office of Director is vacated if the person holding that office:

- (a) dies; or
- (b) is declared bankrupt or otherwise becomes disqualified from being a director pursuant to the Companies Act or this Constitution; or
- (c) without limiting clause 13.7(b), is deemed (by any clause of this Constitution) to have resigned that office; or
- (d) resigns from that office in accordance with this Constitution; or
- (e) is removed from office in accordance with this Constitution.

13.8 Notices of appointment or removal of Directors

Any notice of appointment or removal of a Director or the chairperson or deputy chairperson by the Trust takes effect from the time it is served on the Company, or from such later time as the notice states it is to take effect.

13.9 Directors' resignation procedure

A Director may resign office:

- (a) by signing a written notice of resignation and delivering it to the address for service of the Company, the notice being effective when it is received at that address or at a later time specified in the notice; or
- (b) in any other manner permitted by the Companies Act.

14. Alternate Directors

14.1 Directors may appoint and remove Alternate Directors

Every Director may:

- (a) subject to clause 14.2, appoint any person who is not disqualified by the Companies Act or this Constitution from being a Director and/or an Alternate Director to act as an Alternate Director in his or her place; and
- (b) remove that person from that office, by giving written notice to that effect to the Company, which notice must be accompanied by a certified copy of the written approval of the Trust referred to in clause 14.2(c).

14.2 Process for appointment of Alternate Director

A Director who proposes to appoint an Alternate Director must, before making that appointment:

- (a) give at least 10 working days' notice (or such shorter period of notice as the Trust may agree) to the Trust of the Director's proposal to appoint an

Alternate Director, the reasons for the proposed appointment and the period of the proposed appointment;

- (b) provide the Trust with details of the proposed appointee, and details of his or her business experience and skills and personal attributes; and
- (c) obtain the prior approval in writing of the Trust to the proposed appointment, which approval may be given on such terms and conditions as the Trust may decide including, without limitation, a limitation on the period during which the relevant person holds appointment as an Alternate Director.

14.3 Eligibility for appointment as Alternate Director

Without limiting the provisions in this Constitution prohibiting or disqualifying persons from being appointed to, or from continuing to hold, the office of Director, the following persons shall not be eligible for appointment as an Alternate Director:

- (a) a person who is already a Director;
- (b) a person who is already an Alternate Director for three Directors; or
- (c) a Trustee, unless the proposed appointor is also a Trustee;

14.4 Alternate Director for up to three Directors

A person may be appointed as the Alternate Director for up to three Directors. However, an Alternate Director may represent only one of the Directors for which he or she is the Alternate Director at any particular Board meeting or in signing any particular written resolution of the Directors or in taking any other particular action as a Director and the Alternate Director must, in each such case, identify the particular Director for whom he or she is acting as Alternate Director in the particular case.

14.5 Term of office for Alternate Director

Unless first approved in writing by the Trust, no person can hold office as an Alternate Director:

- (a) for a continuous period of more than 9 years; or
- (b) for two or more periods which, in the aggregate, equal more than 9 years unless between the date on which that person first held such office and the end of that aggregate period there was a continuous period of at least 2 years in which that person did not hold office as an Alternate Director.

14.6 Term as a Director counted

For the purposes of clause 14.5 any period during which a person is a Director shall be deemed to be a period during which that person is an Alternate Director.

14.7 Criteria for Trust approval of appointment of Alternate Director

In considering whether to give approval pursuant to clause 14.2(c) to a person becoming an Alternate Director, the Trust must have regard to:

- (a) the business skills and experience and personal attributes of the proposed appointee;
- (b) whether the relevant person is already or may become an Alternate Director for one or two other Directors;
- (c) the reasons for the proposed appointment; and
- (d) the period during which the relevant person is proposed to hold appointment as an Alternate Director.

14.8 Alternate Director has powers of appointor

While acting in the place of the Director who appointed him or her, the Alternate Director:

- (a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, participate in, and vote at a meeting of the Board and to sign any document, including a written resolution, but excluding the right to appoint an alternate Director and also excluding the right to act as chairperson of the Board);
- (b) is also subject to the same terms and conditions of appointment as that Director, subject to clause 14.8(c); and
- (c) may be reimbursed pursuant to clause 18 his or her reasonable out-of-pocket expenses of performing the role of Alternate Director but is not entitled to the payment of any remuneration pursuant to clause 18.1(a) unless the appointor of that Alternate Director agrees in writing with the Company to forgo the amount of remuneration (if any) that the Company proposes to pay to that Alternate Director.

14.9 Termination of appointment of Alternate Director

The appointment of a person as an Alternate Director for a particular Director terminates automatically if that Director ceases to be a Director. Nevertheless that person may remain as an Alternate Director for another Director who has appointed him or her as an alternate and who continues in office.

15. Powers of Directors

15.1 Management of Company

Except as provided in this Constitution, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

15.2 Ability to act in best interests of the Trust

Any Director may, when exercising powers or performing duties as a Director, act in a manner that he or she believes is in the best interests of the Trust (being the party on whose behalf the Shares are held by the Shareholders), even though it may not be in the best interests of the Company.

15.3 Exercise of powers by Board

Subject to the provisions of this Constitution, the Board may exercise all the powers of the Company that are not required, either by the Companies Act or this Constitution, to be exercised by the Shareholders.

15.4 Delegation of powers

The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Companies Act.

15.5 Appointment of attorney

The Company may exercise the power conferred by section 181 of the Companies Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

15.6 Ratification by Shareholders

Subject to the provisions of section 177 of the Companies Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Companies Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

16. Proceedings of the Board

16.1 Methods of holding meetings

A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

16.2 Notice of meeting

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board. Notice of a meeting of Directors must be given to:

- (a) every Director who is in New Zealand; and

- (b) any Alternate Director who is in New Zealand who is an Alternate Director of a Director who is known to be either outside of New Zealand or otherwise unavailable to attend the meeting.

16.3 Waiver of irregularity

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

16.4 Quorum

A quorum for a meeting of the Board may be fixed by all of the Directors, and unless so fixed, is a majority of the Directors at the time of the appointment of the Directors.

16.5 Chairperson

At the first meeting after the completion of the previous financial year, the Directors must elect one of their number as chairperson of the Board for a period of one year. If no chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

16.6 Votes

Every Director has one vote. In the case of an equality of votes, the chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it, except in those instances where the Companies Act requires otherwise. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that director expressly dissents from or expressly abstains from voting on, or votes against, the resolution.

16.7 Resolutions in writing

A resolution in writing, signed or assented to by a majority of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings. The Company shall within seven days after any resolution is passed in accordance with this clause send a copy of the resolution to each Director who has not signed or assented to the resolution but failure to do so shall not invalidate the resolution.

16.8 Minutes

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

16.9 Validity of acts

All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) any defect in the appointment of any Director or person acting as a Director; or
- (b) that they or any of them were disqualified; or
- (c) any irregularity in a notice of meeting.

16.10 Other procedures

Except as set out in this clause 16, the Board may regulate its own procedure. The provisions of the Third Schedule of the Companies Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

17. Directors' Interests

17.1 Disclosure of interests

Immediately following his or her appointment as a Director, the Director must enter into the interests register, and must disclose to the Board:

- (a) the name of any lwi of which he or she is a member; and/or
- (b) any other organisation of which he or she is a director, trustee or officeholder or in respect of which he or she performs another role. The Director must also, at any time after his or her appointment, enter into the interests register and disclose to the Directors the name of any organisation of which he or she becomes a director, trustee or officeholder or in respect of which he or she performs another role.

17.2 Director deemed to be interested

A Director is deemed to be interested in any transaction or proposed transaction that the Company enters into, or proposes to enter into, with an lwi or other organisation within the scope of clause 17.1(a) or (b) irrespective of whether or not the required entry and disclosure has been made under clause 17.1.

17.3 Additional requirements for Directors

In addition to the disclosure requirement imposed by clause 17.1, each Director must:

- (a) comply with the provisions of section 140 of the Companies Act (relating to disclosure of interest of Directors either generally or in relation to a specific transaction or matter); and

- (b) disclose to the Board any other potentially relevant conflict of interest that that Director believes he or she has, or may have, in relation to a specific transaction or matter being considered by the Board.

17.4 Relevance of conflict of interests

Where a Director discloses a potentially relevant conflict of interest pursuant to clause 17.3(b) then, for the purposes of clause 17.6, that conflict of interest is not to be treated as being relevant to the specific transaction or matter being considered by the Board unless a majority of the other Directors resolve or agree in writing that such conflict of interest is relevant.

17.5 Failure to disclose does not affect validity of transaction

Failure to comply with clauses 17.1 to 17.4 does not affect the validity of a transaction entered into by the Company, but, if applicable, the transaction may be avoided under clause 17.9.

17.6 Interested Director may not vote

Subject to clauses 17.7, 17.8 and 17.13, a Director who is interested (whether under the Companies Act or under clauses 17.1 or 17.2) in, or pursuant to clause 17.3(b) has disclosed a potential conflict of interest (which is treated under clause 17.4 as being relevant) in respect of, a transaction entered into, or proposed to be entered into, by the Company must not:

- (a) vote on a matter relating to the transaction; or
- (b) attend that part of a meeting of Directors at which a matter relating to the transaction arises or be included among the Directors present at a meeting for the purposes of a quorum; or
- (c) sign a document relating to the transaction on behalf of the Company; or
- (d) do any other thing in his or her capacity as a Director in relation to the transaction.

17.7 Iwi membership

Where a Director is a member of any Iwi other than Te Aupouri (but not an officeholder of that other Iwi or any organisation representing that other Iwi), and that Iwi benefits or is likely to benefit from the transaction entered into, or to be entered into, by the Company, the Director is not prohibited (by virtue of the Director's membership of that Iwi) from being included among the Directors present at a meeting for the purposes of a quorum or doing any of the matters specified in clause 17.6 unless the Director receives or is likely to receive a benefit that is more advantageous than the benefit conferred on the other members of that Director's Iwi.

17.8 Company may avoid transaction if Director interested

Sections 107(3) and 141 of the Companies Act (relating to transactions in which a Director is interested) shall apply to the Company as if each of those sections was set out in this Constitution and the meaning of the Companies Act term "interested" was extended so as to include:

- (a) subject to clause 17.7, each interest that is required to be disclosed under clauses 17.1, 17.2 and 17.3(a); and
- (b) subject to clause 17.7, each conflict of interest that is disclosed under clause 17.3(b) and that is treated as being relevant under clause 17.4.

17.9 Benefits for Directors

The Directors must not authorise:

- (a) the payment by the Company to a Director of compensation for loss of office;
- (b) the making of loans by the Company to a Director;
- (c) the giving of guarantees by the Company for debts incurred by a Director; and
- (d) the entering into of a contract to do any of the things set out in this clause.

17.10 Payment for professional services

The Board may authorise the payment of remuneration to any Director in respect of any professional services provided by that Director, or any firm or company of which the Director is a partner, director or employee to the Company, other than as a Director. Any such payment must be authorised by the other Directors by majority and certified by the Directors who have authorised such payment as being fair and reasonable (having regard to the level of remuneration that would be paid in an arms-length transaction).

17.11 Exercise of Directors powers

Notwithstanding any other provision of this Constitution, in the exercise of the powers conferred upon them by this Constitution in the carrying on of any business of the Company, no Director of the Company shall be entitled to 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 to be received, gained, achieved, afforded or derived by that Director, and any payment made in breach of this clause shall be void as against the Company.

In their exercise of the powers conferred upon them by this Constitution, each Director in the carrying on of the business of the Company shall ensure that any person who is

- (a) a Shareholders of the Company;
- (b) a settlor or a trustee of any trust that is a Shareholders of the Company;
- (c) 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 15.13(a) – (b) above,

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 breach of this clause shall be void.

18. Directors' remuneration and other benefits

18.1 Remuneration and expenses

Subject to clause 18.2, the Company may:

- (a) remunerate a Director for services as a Director; and
- (b) reimburse a Director for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director.

18.2 Determination of remuneration

The Trustees shall determine the remuneration payable to any Director of the Company provided that any Trustee that is also a Director of the Company may not take part in any such determination.

18.3 Payments to Directors

Any payments made under clauses 17.10 or 18.1 to any Director, or to any firm or company of which the Director is a partner, director or an employee must be:

- (a) in accordance with clause 18.2; and
- (b) separately accounted for by the Company (as a separate item in the financial statements of the Company for the year in which the payments are made); and
- (c) published in the annual report of the Company for the year in which payments are made.

18.4 No Compensation for loss of office

The Company must not pay to, or for the benefit of, any Director any compensation by reason of his or her ceasing to be a Director whether by reason of his or her removal from office as a Director or deemed or actual resignation as a Director or the expiry of his or her term of appointment as a Director or otherwise.

19. Indemnity and insurance for Directors and employees

19.1 Indemnity for Directors

Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Companies Act and any liability or costs referred to in section 162(4) of the Companies Act.

19.2 Indemnities and insurance

In addition to the indemnity set out in clause 19.1, the Company may with the prior written approval of the Trust and the Board:

- (a) indemnify a Director or employee of the Company or a related company for any costs referred to in section 162(3) of the Companies Act;
- (b) indemnify a Director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Companies Act; and
- (c) effect insurance for a Director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Companies Act.

19.3 Interpretation

Words given extended meanings by section 162(9) of the Companies Act have those extended meanings in this clause.

20. Notices

All notices, reports, accounts or documents required to be sent to a Shareholders shall be sent in the manner set out in section 391 of the Companies Act. Notices to any other person shall be sent in the same manner as if that person was a shareholder.

21. Liquidation

Upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed to the Trust.

22. Audit

The financial statements of the Company must be audited on an annual basis in accordance with Part XI of the Companies Act. The Shareholders have no power to resolve not to appoint an auditor in respect of the Company in respect of any accounting period and, to the extent permitted by the Companies Act, section 196(2) of the Companies Act does not apply to the Company.

23. Method of contracting

23.1 Deeds

A deed that is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors;
- (b) if there is only one Director, by that Director whose signature must be witnessed;
- (c) one or more attorneys appointed by the Company; or
- (d) any Director, or any person authorised by the Board, whose signature must be witnessed.

23.2 Other written contracts

An obligation or contract that is required by law to be in writing, and any other written obligation or contract that is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

23.3 Other obligations

Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

24. Approval and amendment of constitution

24.1 Approval by Trustees required

This Constitution will have no effect until it is approved by the Trustees.

24.2 Amendment must be approved by the Trust

Any amendment to this Constitution or the constitution of any subsidiary established by the Company under clause 4.1 is proposed, will have no effect until it is approved by the Trust.