

**DEED OF TRUST  
OF THE  
TE RUNANGA NUI O TE AUPOURI TRUST**

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- (a) is prepared in accordance with clause 7.1;
- (b) while the Trust is a Mandated Iwi Organisation for the purposes of the MFA 2004, complies with the requirements of that Act; and
- (c) while the Trust is an Iwi Aquaculture Organisation for the purposes of the Maori Commercial Aquaculture Claims Settlement Act 2004, complies with the requirements of that Act.

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

**Aquaculture Settlement Assets** means “Settlement Assets” under the Maori Commercial Aquaculture Claims Settlement Act 2004 that are allocated and transferred to the Trust on behalf of Te Aupouri by Te Ohu Kai Moana Trustee Limited.

**Asset Holding Company** means a company established or maintained by the Trust in accordance with clause 3, which meets the requirements in the MFA 2004 for asset holding companies and includes any subsidiary of an Asset-Holding company.

**Aupouri Maori Trust Board** or **Trust Board** means the Aupouri Maori Trust Board, a Maori Trust Board pursuant to the Maori Trust Boards Act 1955.

**Balance Date** means 31 March or any other date that the Trustees by resolution adopt as the date up to which the Trust’s financial statements are to be made in each year.

**Business Day** means any day in which registered banks are open for business in Auckland, Wellington and Kaitaia.

**Chairperson** means the chairperson from time to time of the Trust elected by the Trustees in accordance with rule 4 of the Third Schedule.

**Chief Executive Officer** means the Chief Executive Officer of the Trust appointed in accordance with clause 28.1.



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

- (a) the person appointed from time to time as chief returning officer for the purposes of Trustee elections in accordance with rule 11 of the Second Schedule; or
- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with rule 8.1 of the Fourth Schedule.

**Commercial Activities** means any activity carried out in pursuit of the Trust Purposes, which has as its principal objective the maximising of financial or economic returns to Te Aupouri.

**Commercial Assets** means all the Trust Assets except for the Cultural Assets listed in the Fifth Schedule.

**Community Development Activities** means any activity carried out in pursuit of the Trust Purposes which has as its principal objective of the cultural and social development of Te Aupouri.

**Confidential Information** means any information which the Trustees or the Chief Executive Officer consider on reasonable grounds is of a commercially or otherwise sensitive nature and the release of which could be detrimental to the interests of Te Aupouri.

**Consolidated Financial Statements** means the consolidated financial statements of the Group prepared by the Trustees in accordance with clause 7.1.

**Corporate Entity** includes TACDL, TAIDT, 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 Trustees.

**Cultural Assets** means those assets listed in the Fifth Schedule as amended from time to time in accordance with Clause 21.

**Cultural Redress Properties** means all properties specified as Cultural Redress in the Deed of Settlement.

**Deed** means this Deed and includes the recitals and the schedules to this Deed.

**Deed of Settlement** means means the deed between Te Aupouri and the Crown recording the settlement of the Te Aupouri Historical Claims signed on 28 January 2012 and includes any amendment to this.

**Deputy Chairperson** means the deputy chairperson from time to time of the Trust if one is elected in accordance of rule 4 of the Third Schedule.

**Disputes Committee** means a committee formed in accordance with clause 24.5.

**Electoral Review Officer** means the person appointed to act as electoral review officer in accordance with rule 14.2 of the Second Schedule.

**Fisheries Settlement Assets** means Income Shares, Fisheries Settlement Quota and Fisheries Settlement Cash received from Te Ohu Kai Moana Trustee Limited.

**Fisheries Settlement Cash** means money allocated and transferred to the Trust pursuant to section 137(1)(f) of the MFA 2004 by Te Ohu Kai Moana Trustee Limited.

**Fisheries Settlement Quota** means the quota shares within the meaning of the MFA 2004 that are allocated and transferred to an Asset Holding Company on behalf of Te Aupouri by Te Ohu Kai Moana Trustee Limited.

**Fishing Enterprise** means a fishing operation established by the Trust under clause 3 to utilise Annual Catch Entitlement from its Fisheries Settlement Quota.

**Income Share** means an income share within the meaning of the MFA 2004 that is allocated and transferred to an Asset Holding Company on behalf of Te Aupouri by Te Ohu Kai Moana Trustee Limited.

**Income Year** means any year or accounting period ending on the Balance Date.

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

**MFA 2004** means the Maori Fisheries Act 2004.

**Major Transaction** in relation to any member of the Te Aupouri Development Group means:

- (a) The ratification of any Deed of Settlement; or
- (b) The acquisition of, or an agreement to acquire, whether contingent or not, property by that member the value of which is more than ten percent of the value of the Commercial Assets before the acquisition;
- (c) The disposition of, or an agreement to dispose of, whether contingent or not, property by that member the value of which is more than ten percent of the value of the Commercial Assets before disposition;
- (d) A transaction that has or is likely to have the effect of that member acquiring rights or interests or incurring obligations or liabilities the value of which is more than ten percent of the value of the Commercial Assets before the transaction;
- (e) The disposition of, or an agreement to dispose of, whether contingent or not, Income Shares or Fisheries Settlement Quota by the Trust to Te Ohu Kai Moana Trustee Limited or an entity within the Te Ohu Kai Moana Group or another Mandated Iwi Organisation under the MFA 2004; or
- (f) A transaction or series of transactions, or an agreement to transact, whether contingent or not, with a person not entitled to hold Income Shares or Fisheries Settlement Quota under the MFA 2004, including an option, security, mortgage, or guarantee, that could result in:
  - (i) the sale of Income Shares or Fisheries Settlement Quota by the Trust;or

- (ii) Te Aupouri or the Trust being disentitled for a period of more than five (5) years to:
  - (A) the income from the Income Shares; or
  - (B) the income from the Annual Catch Entitlement arising from the Settlement Quota; or
  - (C) the control or use of the Annual Catch Entitlement arising from the Settlement Quota,

but does not include:

- (a) Any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Commercial Assets (whether the Commercial Assets are held by the Trust or any other member of Te Aupouri Development Group); or
- (b) Any acquisition or disposition of property by that member from or to any other wholly owned member of Te Aupouri Development Group; or
- (c) Any acquisition or disposition of property or Income Shares or Fisheries Settlement Quota by the Trust from or to any company which is wholly owned by the Trust; or
- (d) Any exchange of Fisheries Settlement Quota for Quota of the same market value that is carried out in accordance with the requirements of the MFA 2004 and in compliance with any policy of the Trust on quota exchanges that is notified in the Trust's Annual Plan;

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

**Mandated Iwi Organisation** has the meaning given to it in the MFA 2004.

**Member of Te Aupouri** means every individual referred to in paragraph (b) of the definition of Te Aupouri and includes Whangai who do not descend from a Te Aupouri Tupuna.

**Private Notice** has the meaning set out in Rule 7.2 of the First Schedule. .

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

**Public Notice** means a notice:

- (a) 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
- (b) complies with Kaupapa 4 of Schedule 7 of the MFA 2004.

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

**Quarter** means a three month period in an Income Year and **First Quarter**, **Second Quarter** and **Third Quarter** have corresponding meanings.

**Quarterly Report** means the report that each of the subsidiaries of the Trust are required to provide to The Trustees on their operations at the end of the First, Second and Third Quarters of each Income Year in accordance with clause 8.1.6.

**Registration Form** means the form used from time to time by the Trustees to enter the details of Members of Te Aupouri and Whangai on the Te Aupouri Register.

**Related Person** means a person specified in paragraphs (15) to (17) of section CD44 of the Income Tax Act 2007

**Settlement Act** means the Te Aupouri Claims Settlement Act 2015 and includes any amendment to this.



**Settlement Date** means Thursday, 17 December 2015.

**Settlement Instruments** means any Overlay, Protocol, Statutory Acknowledgement, Social Accord, Deed of Recognition, Right of Deferred Selection, Right of First Refusal or other redress mechanism included in any Deed of Settlement.

**Special General Meeting** means a special general meeting of the Trust called in accordance with clause 12.5 of this Deed.

**Special Resolution** means a resolution that has been passed with the approval of not less than 75% of the Adult Members of Te Aupouri who validly cast a vote in accordance with the process set out in the Fourth Schedule.

**Statement of Intent** means the statements of intent prepared by TACDL, TAIDT and/or TAAHC in accordance with clause 8.1.

**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 Trustees.

**Te Aupouri** means:

- (a) the collective group composed of individuals referred to in paragraph (c); and
- (b) every whānau, hapū, or group to the extent that it is composed of individuals referred to in paragraph (c); and
- (c) every individual descended from a Te Aupouri tūpuna.

**Te Aupouri Asset Holding Company Limited** or **TAAHC** means the company called Te Aupouri Asset Holding Company Limited incorporated on 13 March 2008.

**Te Aupouri Commercial Development Limited** or **TACDL** means the company called Te Aupouri Commercial Development Limited maintained in accordance with clause 3.

**Te Aupouri Contemporary Claims** means all claims not included within the definition of the Te Aupouri Historical Claims and/or Te Aupouri Foreshore and Seabed Claims (as applicable) and not included in any Agreement in Principle, Deed of Settlement or Settlement Act.

**Te Aupouri Iwi Development Trust** or **TAIDT** means the trust initially called the Te Aupouri Iwi Development Trust established in accordance with clause 3.

**Te Aupouri Development Group** or **Development Group** means the Trust, Te Aupouri Asset Holding Company, Te Aupouri Commercial Development Limited, Te Aupouri Iwi Development Trust, subsidiaries (if any) of Te Aupouri Asset Holding Company, Te Aupouri Commercial Development Limited or Te Aupouri Iwi Development Trust and any trusts or other entities (whether incorporated or not) under their control.

### **Te Aupouri Historical Claims**

- (1) In this Deed **Te Aupouri Historical Claims**:
  - (a) means the claims described in subsection (2); and
  - (b) includes the claims described in subsection (3); but
  - (c) does not include the claims described in subsection (4).
- (2) The historical claims are every claim that Te Aupouri or a representative entity had on, or at any time before, the settlement date, or may have after the settlement date, and that—
  - (a) is founded on a right arising—
    - (i) from te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or
    - (ii) under legislation; or
    - (iii) at common law (including aboriginal title or customary law); or
    - (iv) from a fiduciary duty; or
    - (v) otherwise; and
  - (b) arises from, or relates to, acts or omissions before 21 September 1992—

- (i) by, or on behalf of, the Crown; or
  - (ii) by or under legislation.
- (3) The historical claims include—
- (a) a claim to the Waitangi Tribunal that relates exclusively to Te Aupouri or a representative entity, including each of the following claims, to the extent that subsection (2) applies to the claim:
    - (i) Wai 643 (Te Kao Blocks 76 and 77B); and
    - (ii) Wai 737 (Te Rūnanga o Te Aupouri); and
    - (iii) Wai 1442 (Te Kao Block 84); and (iv) Wai 1663 (Te Kao Block 34); and
  - (b) any other claim to the Waitangi Tribunal, including each of the following claims, to the extent that subsection (2) applies to the claim and the claim relates to Te Aupouri or a representative entity:
    - (i) Wai 22 (Muriwhenua Fisheries and SOE claim); and
    - (ii) Wai 45 (Muriwhenua Land); and
    - (iii) Wai 82 (Pingongo Pā—Parish of Omanaia claim); and
    - (iv) Wai 249 (Ngapuhi Nui Tonu claim); and
    - (v) Wai 292 (Te Kao School and telephone exchange); and
    - (vi) Wai 712 (Nga Puhi Nui Tonu Property Rights claim); and
    - (vii) Wai 765 (Muriwhenua South Block and Part Wharemaru Block claim); and
    - (viii) Wai 861 (Tai Tokerau District Maori Council Lands); and
    - (ix) Wai 1359 (Muriwhenua Land Blocks claim); and
    - (x) Wai 1662 (Muriwhenua Hapū Collective claim); and
    - (xi) Wai 1847 (Ngāti Kuri and Te Aupouri (Francis Brunton) claim); and
    - (xii) Wai 1980 (Parengarenga 3G Block claim); and
    - (xiii) Wai 2000 (Harihona Whanau claim).
- (4) However, the historical claims do not include—
- (a) a claim that a member of Te Aupouri, or a whānau, hapū, or group referred to in section 13(1)(b), had or may have that is founded on a right arising by virtue of being descended from an ancestor who is not a Te Aupouri tupuna; or
  - (b) a claim that a representative entity had or may have that is based on a claim referred to in paragraph (a).

(5) This definition applies to a historical claim, whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date.

**Te Aupouri Register** means the register of Members of Te Aupouri that was established by the Trustees in accordance with the First Schedule of the initial deed of trust dated 22 September 2005 and is to be maintained by the Trustees in accordance with the First Schedule to this Deed.

**Te Aupouri Takutai Moana Claims** means every claim, application or matter (whether or not a claim or application has arisen or been considered, researched, filed, notified or been heard) that Te Aupouri (or a representative entity of Te Aupouri) has under the Marine and Coastal Area (Takutai Moana) Act 2011 or replacement legislation.

**Te Aupouri Tupuna** means the individuals who exercised customary rights—

- (a) by virtue of being descended from the children of the marriages of Te Ikanui with Tihe and Kohine, being Te Heitiki, Tūpuni, Tonga, Te Kāka, Mānga, Pūwai, Te Matakau, and Te Mai; and
- (b) predominantly in relation to the Te Aupouri area of interest at any time after 6 February 1840.

**Te Kawai Taumata** means the group of that name established under the MFA 2004.

**Te Ohu Kai Moana Group** has the meaning given to it in the MFA 2004.

**Te Ohu Kai Moana Trustee Limited** means the company of that name formed under the MFA 2004.

**Te Putea Whakatupu Trustee Limited** means the company of that name formed under the MFA 2004.

**Te Runanga Nui o Te Aupouri Trust** means the trust governed by this Deed.

**Te Wai Maori Trustee Limited** means the company of that name formed under the MFA 2004.

**Trust** means the Te Runanga Nui o Te Aupouri Trust.

**Trust Assets** means all assets held by the Trust and its subsidiaries as at the date of this Deed and any assets received or otherwise owned or acquired from time to time by the Trustees, including without limitation all assets received pursuant to the MFA 2004 and/or pursuant to any Deed of Settlement and any money, investments or other Property paid or given to or acquired or agreed to be acquired by the Trustees.

**Trust Purposes** means the objects and purposes set out in clause 2.4.

**Trustees** means the Trustees elected from time to time in accordance with the Second Schedule of this Deed to represent Te Aupouri and to act as the Trustees for the time being of the Trust and **Trustee** shall mean any one of those persons.

**Whakapapa Validation Committee** means the committee appointed in accordance with rule 4 of the First Schedule.

**Whangai** means those persons who do not affiliate to Te Aupouri by descent from a Te Aupouri Tupuna but who are adopted by a Member of Te Aupouri in accordance with the Tikanga of Te Aupouri. For the avoidance of doubt, Whangai does not extend to the child of a Whangai unless the other parent of that child descends from a Te Aupouri Tupuna.

## 1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include the other gender;
- (c) references to persons include corporations and unincorporated bodies of persons, governments or other public bodies or agencies whether or not having a separate legal personality;

- (d) references to a statute shall be deemed to be references to that statute as amended, re-enacted or substituted from time to time;
- (e) references to a clause, recital or a schedule shall be to a clause, recital or a schedule to this Deed;
- (f) the schedules to this Deed shall form part of this Deed;
- (g) headings appear as a matter of convenience only and shall not affect the interpretation of this Deed;
- (h) references to a company are references to a company incorporated pursuant to the Companies Act 1993; and
- (i) references to a subsidiary or subsidiaries shall be references to a subsidiary or subsidiaries as defined by the Companies Act 1993.

## **2. RECONSTITUTION, STATUS AND OBJECTS OF THE TRUST**

### **2.1 Te Runanga Nui o Te Aupouri Trust amended**

This Deed is made in accordance with clause 22 of the amended deed of trust for the Trust dated 31 January 2011. This Deed takes effect from the date of execution of this Deed at which time the amended deed of trust dated 31 January 2011 shall be revoked with the effect that the Trust shall be governed and administered by and in accordance with this Deed.

### **2.2 Trustees Representatives**

The Trustees shall govern and administer the Trust in accordance with this Deed. The Trustees shall be the representatives for Te Aupouri in all matters relating to Te Aupouri except as otherwise delegated to the other entities in the Development Group.

### **2.3 Powers of Trust**

Subject to the MFA 2004 and this Deed the Trustees shall be capable of holding real and personal property, of suing and being sued, and shall have all of the rights, powers and privileges of a natural person with the intention that they shall in their capacity as Trustees, have the fullest powers necessary to do all such things it

considers necessary or desirable in its sole discretion to perform or otherwise carry out the Trust's Purposes.

#### **2.4 Objects and Purposes of the Trust**

The objects and purposes of the Trust are to receive, hold, manage and administer the Trust Assets on trust for the exclusive benefit of the Te Aupouri community and all the Members of Te Aupouri irrespective of where those Members reside and shall without limitation include:

- (a) the promotion amongst Te Aupouri of the educational, spiritual, economic, social and cultural advancement or well-being of Te Aupouri including the promotion of Te Reo and tikanga of Te Aupouri;
- (b) the maintenance and establishment of places of cultural or spiritual significance to Te Aupouri;
- (c) to represent Te Aupouri in Te Aupouri Contemporary Claims and;
- (d) to receive and hold any lands or assets including forest licenses received pursuant to any Deed of Settlement, Settlement Act, or Waitangi Tribunal remedies application, and retain ownership for the objects and purposes set out in this Deed and protection of the lands and assets;
- (e) to receive, protect, manage and administer the Trust Assets on behalf of and for the benefit of the present and future Members of Te Aupouri;
- (f) administer the implementation and ongoing operation of any Settlement Instruments established by the Deed of Settlement and enforce the rights and obligations contained therein on behalf of Te Aupouri;
- (g) to act as the Mandated Iwi Organisation and the Iwi Aquaculture Organisation for Te Aupouri;
- (h) to endeavour to recover lands of importance to Te Aupouri including lands not able to be returned in any settlement;

- (i) to recognise the importance of Potahi Marae as a focal point for Te Aupouri;
- (j) to endeavour to develop practical ways of reconnecting Te Aupouri with the traditional lands and culture of their iwi;
- (k) to endeavour to assist Te Aupouri to develop their traditional lands including existing land owned by Te Aupouri in the far north and lands returned in settlement; and
- (l) any other purpose that is beneficial to Te Aupouri.

## **2.5 Restriction on Major Transactions**

Notwithstanding clause 2.3, the Trust and any entity which is a member of the Te Aupouri Development Group must not enter into a Major Transaction unless that Major Transaction:

- (a) Is approved by way of Special Resolution; or
- (b) Is contingent upon approval by way of Special Resolution;

And notice is given to the Adult Registered Members in accordance with rule 5.1 of the Fourth Schedule.

## **2.6 Restriction on Transactions affecting Cultural Assets**

Notwithstanding clause 2.3 the Trust and any entity which is a member of the Te Aupouri Development Group must not enter into any transaction relating to or affecting, or which may relate to or affect, the ownership of the Cultural Assets listed in the Fifth Schedule including, but not limited to, the disposition of, or agreement to dispose of, the Cultural Assets and any option, security, mortgage or guarantee that could result in the sale of the Cultural Assets.

## **2.7 Mandate to progress the Te Aupouri Takutai Moana Claims**

The mandate to progress the Te Aupouri Takutai Moana Claims through either engagement with the Crown or proceedings in the High Court shall continue to be held by the Te Runanga Nui o Te Aupouri Trust. The mandate to progress the Te Aupouri Takutai Moana Claims with the Crown shall continue to be held by the



Trustees of the Trust for the timebeing despite any change in the identity of those holding office as Trustees.

### **3. ESTABLISHMENT OF ASSET HOLDING COMPANY, FISHING ENTERPRISE, TACDL AND TAIDT**

#### **3.1 Asset Holding Company**

The Trustees shall maintain an Asset Holding Company, currently the Te Aupouri Asset Holding Company Limited, which will receive and hold on behalf of the Trustees, for so long as they are retained, all Income Shares and Settlement Quota. At the discretion of the Trust, the Asset Holding Company may also receive and hold on behalf of the Trustees, for as long as it is retained, all or some of the Fisheries Settlement Cash and the Trust Assets. In the event that a new Asset Holding Company is established to take over the role of the Te Aupouri Asset Holding Company Limited then all references to the Te Aupouri Asset Holding Company Limited or TAAHC should be read as references to the new Asset Holding Company with any necessary amendments. The Trustees will ensure that the constitution of the Te Aupouri Asset Holding Company Limited is amended so that it complies with this Deed.

#### **3.2 Establishment of Fishing Enterprise**

If the Trustees wish to establish a fishing operation, utilising Annual Catch Entitlement from the 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 separate from, but responsible to, the Trustees to undertake those operations, but which must not be the Asset Holding Company or a Subsidiary that receives Fisheries Settlement Quota or Income Shares but it may be TACDL at the Trustees' discretion.

#### **3.3 Te Aupouri Commercial Development Limited**

The Trustees shall maintain a company, currently the Te Aupouri Commercial Development Company Limited, which will undertake the Commercial Activities of the Trust and receive and hold on behalf of the Trustees such of the Commercial Assets, other than those transferred under the provisions of the Maori Fisheries Act 2004, as determined by the Trustees. In the event that a new company is established to take over the role of the Te Aupouri Commercial Development Company Limited then all

references to the Te Aupouri Commercial Development Company Limited or TACDL should be read as references to the new company with any necessary amendments.

#### **3.4 Establishment of Te Aupouri Iwi Development Trust**

In receiving, controlling, and supervising the use of the Trust Assets on behalf of Te Aupouri, whether pursuant to the Deed of Settlement, the Settlement Act or otherwise, the Trustees shall oversee the operations of TAIDT.

#### **3.5 Naming**

The Trustees shall be able to change the names of TACDL, TAIDT, TAAHC and any other subsidiary and/or any subsidiaries of TACDL, TAIDT, TAAHC and any other subsidiary by resolution of the Trustees following consultation with members of Te Aupouri.

#### **3.6 Ownership and control of TAAHC and TACDL**

TAAHC and TACDL shall be 100% owned and controlled by the Trust.

#### **3.7 Control of TAIDT**

TAIDT shall be 100% controlled by the Trustees.

#### **3.8 TACDL Objects**

The Trustees shall ensure that the constitution of TACDL will contain provisions that TACDL shall as its objective hold, use and administer on behalf of the Trust: such assets as may be made available by the Trustees for the use of TACDL which TACDL shall hold, use and administer on a prudent, commercial and profitable basis, subject to any restrictions placed upon the use of such assets by the Trustees, and in doing so shall conduct or otherwise undertake all Commercial Activities of the Te Aupouri Development Group except for those Commercial Activities undertaken by the TAAHC, either by itself and/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 the furtherance of the Trust Purposes.

#### **3.9 TAIDT Objects**

The Trustees shall ensure that the Trust Deed of TAIDT will contain provisions that TAIDT shall as its objective use and administer on behalf of the Trust such assets as may be made available by the Trustees to TAIDT subject to any restrictions placed upon the use of such assets by the Trustees, together with any other resourcing that

TAIDT is able to access for the purposes of undertaking Community Development Activities that are delegated to it from time to time, either itself and/or through any subsidiary, trust or other entity established for that purpose, on behalf of and solely for the benefit of Te Aupouri and in furtherance of the Trust Purposes at 2.4(a), 2.4(b), 2.4(j) and 2.4(m) to the extent that they are consistent with Charitable purposes.

### **3.10 Operation of TAIDT**

The trustees shall ensure that the Trust Deed of TAIDT will contain provisions that the trustees of TAIDT will prepare subsidiary plans and reports in accordance with clause 7 and that the operation of TAIDT will otherwise be consistent with the provisions of this Deed.

### **3.11 Appointment of Directors/Trustees**

The directors of TACDL and TAAHC and the trustees of TAIDT shall each be appointed and removed by the Trustees at their discretion, and each director or trustee shall only be appointed upon satisfactorily demonstrating to the Trustees that he or she possesses the necessary skills and expertise required to perform the role.

### **3.12 Term of Directors/Trustees**

The directors of TACDL and TAAHC and the trustees of TAIDT shall each hold office for no more than three years provided that at the end of their three year terms the retiring directors and/or trustees will be eligible to be reappointed.

### **3.13 Directors of TACDL and TAAHC and trustees of TAIDT**

There shall be not more than 5 and not less than 3 directors of TACDL and TAAHC and trustees of TAIDT. At least one of the directors of TACDL and TAAHC must be an Adult Member of Te Aupouri and a majority of the trustees of TAIDT must be Adult Members of Te Aupouri.

### **3.14 Remuneration of directors of TACDL and TAAHC and trustees of TAIDT:**

The Trustees shall determine the remuneration payable to any director of TACDL and/or TAAHC and/or trustee of TAIDT, provided that any Trustee who is also a director of TACDL and/or TAAHC and/or trustee of TAIDT shall not take part in any such determination.

## **4. ELECTION, POWERS AND MEETINGS OF TRUSTEES**

#### **4.1 Election in accordance with Second Schedule**

The Trustees from time to time of the Trust shall be elected to office in accordance with the rules set out in the Second Schedule.

#### **4.2 Trustees to control Trust affairs**

Subject to any requirements imposed by the Trust by this Deed, any Deed of Settlement, any Settlement Act, the MFA 2004 and the Maori Commercial Aquaculture Claims Settlement Act 2004 the Trustees shall control and supervise the business and affairs of the Trust in such manner as they see fit.

#### **4.3 Proceedings of Trustees**

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

#### **4.4 Strategic Governance**

The Trustees must exercise strategic governance over:

- (a) its Asset Holding Companies, TACDL and/or 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 Te Aupouri;
  - (ii) the expected financial return on those assets;
  - (iii) any programme to:
    - (A) manage the sale of Annual Catch Entitlements derived from the Fisheries Settlement Quota held by the Asset Holding Companies; and
    - (B) reorganise the Fisheries Settlement Quota held by the Asset Holding Companies, in the buying and selling of Fisheries Settlement Quota in accordance with the MFA 2004,

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 4.4 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 operations, consistently with the purposes in clause 2.4.

## **5. APPLICATION OF INCOME**

### **5.1 TAAHC and TACDL to remit funds to the Trust**

TAAHC and TACDL shall in each Income Year remit to the Trust so much of the income derived by TAAHC and TACDL on behalf of the Trust as is determined by the Trustees having regard to:

- (a) The objectives and purposes of TAAHC and TACDL as set out in clauses 3.1 and 3.8 respectively and the desirability of retaining and reinvesting income to meet those objectives and purposes;
- (b) The projected operating requirements of TACDL and TAAHC and any subsidiaries as set out in their plans; and
- (c) The responsibilities and duties of the directors of TACDL and TAAHC under the Companies Act 1993 or otherwise under the law.

### **5.2 Trustees to make payments to TAIDT**

The Trustees shall in each Income Year pay such portion of the Trust income as it may determine to TAIDT. TAIDT shall apply all such income received by it towards the fulfilment of its objectives and purposes as set out in clause 3.10 and in accordance with its annual plan approved by the Trustees as set out in clause 8.2.

### **5.3 Representatives may apply income as they see fit**

Except as required by clause 5.2, and subject to any other requirements in this Deed, the Trustees may provide for the payment, application or appropriation, or decide to

pay, apply or appropriate as much of the available income (including any funds remitted by TACDL and TAAHC) in any Income Year as the Trustees in their sole discretion think fit for or towards the Trust Purposes.

#### **5.4 Payments out of income**

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

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

#### **5.5 Matters to consider in applying income**

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

- (a) Determine how much of the income should cease to be income and be added to and form part of the capital of the Trust Assets, provided that the Trustees may not in the Income Year convert the entire income of the Trust into capital;
- (b) Endeavour to act fairly in considering the present and future needs and interests of all members of Te Aupouri wherever they may be.

### **6. PLANS**

#### **6.1 Trust to prepare Annual Plan**

The Trustees shall prepare no later than one month before the commencement of each Income Year an Annual Plan which specifies in respect of that Income Year the following information:

- (a) the strategic vision of the Trustees for the Te Aupouri Development Group;

- (b) the nature and scope of the activities proposed by the Trustees for the Te Aupouri Development Group in the performance of the Trust's purposes including the ongoing implementation of the Deed of Settlement;
- (c) the ratio of capital to total assets;
- (d) the performance targets and measurements by which performance of the Te Aupouri Development Group may be judged;
- (e) the manner in which it is proposed that projected income will be dealt with; and
- (f) any proposals for the ongoing management of the Trust Assets having regard to the interests of all Members of Te Aupouri;
- (g) the policy of the mandated iwi organisation in respect of sales and exchanges of Fisheries Settlement Quota and any changes to that policy;
- (h) any proposal to change the constitutional documents of any fishing company owned by the Trustees; and
- (i) such other information as the Trustees in their discretion consider necessary.

## **6.2 Trustees to prepare five year strategic plan**

The Trustees shall also, following consultation with Te Aupouri, produce within 12 months following the execution of this Deed, and update not less than every two years, a five year plan. Such a plan shall set out the long-term vision of Te Aupouri iwi and of the Trust in respect of the matters referred to in clauses 6.1 (a) to (i) and shall include a statement by the Trustees of the commercial, management and distribution policies that the Trust intends to follow in respect of the Trust Assets.

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

### **7.1 Preparation of Annual Report**

The Trustees must, within four months after the end of each Income Year, cause to be prepared an Annual Report on the affairs of the Te Aupouri Development Group

covering the accounting period ending at the end of that Income Year which includes a comparison of performance against the Annual Plan and the five year strategic plan, and 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 Te Aupouri Development Group for that Income Year. The financial statements shall include as a separate item details of any remuneration or fees paid to any Trustee or any Trustee's firm (including without limitation any such payment to any Trustee as a director or trustee of any other member of the Te Aupouri Development Group) and details of any premiums paid in respect of Trustees' indemnity insurance.

The annual report must also give information of the sales and exchanges of Fisheries Settlement Quota in the previous year, the interactions of the mandated iwi organisation in fisheries matters and any changes made to the constitutional documents of the Trust and/or its subsidiaries and comply with the requirements of the MFA.

## **7.2 Audit of financial statements**

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

## **7.3 Appointment of auditor**

The auditor shall be appointed by the Trustees prior to the end of the Income Year to which the audit relates and, where possible, the fee of the auditor shall also be fixed at that time. No Trustee or employee of the Trust (including any firm of which such a person is a member or employee) may be appointed as the auditor.

## **8. SUBSIDIARY PLANS AND REPORTS**

### **8.1 TACDL, TAIDT and TAAHC to prepare Plans and Statements of Intent**

The Trustees shall ensure that each of TACDL, TAIDT and TAAHC:

8.1.1 Within three months of the establishment of TACDL and TAIDT or, in the case of TAAHC, the amendment of this Deed, prepare a statement of intent, setting out its long-term objectives and the general principles by which



TACDL, TAIDT and TAAHC propose to operate, including creation of any subsidiaries;

- 8.1.2 As required by the Trustees, update the statements of intent to take into account changes in circumstances that may arise from time to time, including without limitation, changes to the nature of its business and the business of any of its subsidiaries;
- 8.1.3 Within three months of the establishment of TACDL and TAIDT or, in the case of TAAHC, the amendment of this Deed, prepare a five year plan, which shall be updated, not less than every two years, and which sets out its medium-term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the statement of intent referred to in paragraph 8.1.1 of this clause;
- 8.1.4 No later than two months following the completion of the five year strategic plan referred to in paragraph 8.1.3 of this clause, and hereafter no later than two months before the commencement of each Income Year, prepares an annual plan setting out the steps to be taken in the relevant Income Year to meet its five-year planning objectives and fulfil the objectives and principles of the statement of intent.
- 8.1.5 No later than three months after the end of each Income Year, provides an Annual Report on the affairs of the entity covering the accounting period ending at the end of that Income Year which includes a comparison of performance against the Annual Plan and the five year strategic plan, and 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 entity for that Income Year.
- 8.1.6 No later than one month after the end of the First, Second and Third Quarters, provides a Quarterly Report to the Trustees on the affairs of the entity 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.

**8.2 Trustees' approval required**

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

**8.3 Reports by TACDL and TAAHC to comply with Companies Act 1993**

The Trustees shall ensure that all annual reports by TACDL and TAAHC comply in all respects with the requirements of the Companies Act 1993.

**8.4 Limitation of Information in accordance with Companies Act 1993**

For the avoidance of doubt, nothing in this clause 8 limits or affects the rights of the Trustees, as shareholders in TACDL and TAAHC, to agree pursuant to section 211(3) of the Companies Act 1993 not to include the information listed in paragraphs (a), and (e) to (j) of subsection (1) of section 211(3) in the annual report of TACDL and TAAHC.

**9. DISCLOSURE OF PLANS, REPORTS AND MINUTES**

The Trustees shall hold at their offices and make available for inspection by any Member of Te Aupouri during normal business hours on any Business Day:

- (a) the Statements of Intent for the Trust and each of its subsidiaries;
- (b) the Annual Reports for the Trust and each of its subsidiaries for each of the preceding three (3) Income Years;
- (c) the Consolidated Financial Statements for the Trust and each of its subsidiaries for the preceding three (3) Income Years;
- (d) the Annual Plan for the Trust and each of its subsidiaries;
- (e) the Five Year Plan for the Trust and each of its subsidiaries;
- (f) the constitutions and/or trust deeds of TACDL, TAIDT and TAAHC and any subsidiaries;

- (g) a list of the directors and/or trustees of TACDL, TASDT and TAAHC and any subsidiaries;
- (h) the minutes kept in accordance with clause 12.17 of all decisions taken and business transacted at every Annual General Meeting and Special General Meeting;
- (i) their own personal details on the Te Aupouri Register;
- (j) this Deed; and
- (k) any Deed of Settlement.

Any Member of Te Aupouri shall be entitled to obtain copies of this information. However, the Trust shall also be entitled to recover at its discretion all reasonable copying or postage costs (if any).

## **10. ARCHIVING OF RECORDS**

### **10.1 Retention of Records**

The Trust and its subsidiaries shall hold the documents listed at clause 9 for the following periods:

- (a) The documents listed at clause 9(a), 9(b), 9(c), 9(d), 9(e), 9(g), 9(h) and 9(i) will be retained for a minimum period of seven years or such other period as may be prescribed by law; and
- (b) The documents listed at clause 9(f), 9(j) and 9(k) will be retained permanently.

### **10.2 Records to be archived**

At the expiry of seven years the Trustees shall archive the records of the Trust and all members of the Te Aupouri Development Group.

### **10.3 Records may be retained for longer**

Provided that when the time period specified above at 10.1(a) expires, the Trustees or the directors or trustees of the other entity to which the records relate will give

consideration to whether the records should be retained for a longer period of time for any reason including where the records form part of the historical record, where the documents may be relevant to an issue in dispute, contain information that is commercially or otherwise sensitive or are still required by the entity to which the records relate.

## **11. NO DISCLOSURE OF SENSITIVE INFORMATION**

### **11.1 Disclosure limited**

For the avoidance of doubt, but subject to the Trust's reporting obligations in clauses 9.(b), 9.(c), 9.(h), 12.1(b) and 12.1(c), the Trustees may at their sole discretion limit disclosure of any information about the activities or proposed activities of the Trust which the Trustees consider on reasonable grounds to be commercially or otherwise sensitive.

## **12. GENERAL MEETINGS**

### **12.1 Trustees to hold Annual General Meeting**

The Trustees shall, no later than six (6) calendar months after the end of each Income Year, and in any event no more than 15 months after the date of the last Annual General Meeting of the Trust, hold a general meeting for the Members of Te Aupouri, to be called the Annual General Meeting, and shall at that meeting:

- (a) provide the opportunity for voters to cast their votes where an election for Trustees is required in accordance with the Second Schedule;
- (b) report on the operations of the Te Aupouri Development Group during the preceding Income Year;
- (c) present the Annual Report and duly audited Consolidated Financial Statements;
- (d) present the proposed Annual Plan;
- (e) where a five year plan has been prepared or updated in accordance with clause 6.2, present the proposed Five Year Plan;

- (f) announce the names of any newly appointed Trustees;
- (g) approve the appointment of the auditor for the next Income Year;
- (h) approve the Trustees' remuneration;
- (i) present the annual reports of the TAAHC, TACDL and TAIDT;
- (j) present any proposed amendments to the constitution of TAAHC or TACDL or the trust deed of TAIDT;
- (k) undertake all other notified business; and
- (l) at the discretion of the Chairperson, undertake any other general business raised at that meeting.

## **12.2 Annual Report to be made available prior to the annual general meeting**

The Annual Report must be made available not less than 20 working days before the date of the Annual General Meeting.

### **12.3 Approval of Trustees' remuneration**

- (a) No remuneration will be paid to a Trustee in his or her capacity as a Trustee unless that remuneration has been authorised by a resolution of the Adult Registered Members of Te Aupouri present at the Annual General Meeting.
- (b) Each resolution passed in accordance with paragraph (a) of this clause will express the remuneration to be paid to the Trustees as a monetary sum per annum payable either to all Trustees taken together or to any person who from time to time holds office as a Trustee.
- (c) This clause does not apply to any remuneration paid to any Trustee in his or her capacity as a director of the Asset Holding Company, or any other member of the Te Aupouri Development Group. That remuneration shall be determined by the Trust.

### **12.4 Notice of Annual General Meeting**

The Trustees shall give not less than 28 days' notice of the holding of the Annual General Meeting, such notice to be sent to all Adult Registered Members by Private Notice. Notice of the meeting shall also be inserted prominently in appropriate major metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Te Aupouri reside. All such notices shall contain:

- (a) the date, time and place of the meeting;
- (b) an agenda of matters to be discussed at the meeting;
- (c) details of where copies of any information to be laid before the meeting may be inspected; and
- (d) any other information specified by or under the MFA 2004.

### **12.5 Notice of special general meetings**

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

- (a) the Chairperson and Deputy Chairperson for the time being of the Trust; or
- (b) any three (3) Trustees; or
- (c) five percent (5%) of Adult Registered Members of Te Aupouri.

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

#### **12.6 Annual general meeting not limited to notified business**

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

#### **12.7 Special general meeting limited to notified business**

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

#### **12.8 Invalidation**

The accidental omission to give notice to, or a failure to receive notice of an annual or Special General Meeting by an Adult Registered Member does not invalidate the proceedings at that meeting.

#### **12.9 Deficiency of notice**

Subject to clause 12.7, a deficiency or irregularity in a notice of any special or general meeting will not invalidate anything done at the meeting if:

- (a) the deficiency or irregularity is not material; and
- (b) the Adult Registered Members who attend the meeting agree to waive the deficiency or irregularity.

#### **12.10 Location of annual or special general meetings**

The location and venue for annual and Special General Meetings will be:

- (a) Annual General Meetings will be held in Te Kao. The venue for all Annual General Meetings will be Potahi Marae unless the marae is not available and it is not practicable to reschedule the Annual General Meeting to a date on which the marae will be available.
- (b) Special General Meetings will be held in Te Kao unless the Trustees unanimously agree that the meeting should take place elsewhere. When Special General Meetings take place in Te Kao the venue will be Potahi Marae unless the marae is not available and it is not practicable to reschedule the Special General Meeting to a date on which the marae will be available.

#### **12.11 Attendance**

All Adult Registered Members are entitled to attend any annual or Special General Meeting of the Trust. Members of Te Aupouri who are not registered on the Te Aupouri Register are also entitled to attend any annual or Special General Meeting. However, such people will not be entitled to take part in any vote at the meeting and will not be counted to determine the quorum. Any other person can attend an Annual or Special General Meeting at the discretion of the trustees.

#### **12.12 Quorum**

The quorum required for any Annual or Special General Meeting of the Trust shall be 20 Adult Registered Members present in person including amongst those Adult Registered Members no less than four (4) Trustees.

#### **12.13 Chairing of meetings**

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

#### **12.14 Voting**

To the extent that a vote is sought or required at any Annual or Special General Meeting, every Adult Registered Member present shall have one vote. Voting may be



by voice or on a show of hands. The Chairperson of the meeting may also demand a poll on a resolution either before or after any vote. In order for a resolution to be passed it must receive the approval of not less than 50 percent of the Adult Registered Members who cast a vote. However, except in the case of resolutions passed regarding the matters set out in clauses 2.5, 12.1(g), 12.3, 21, 22.1, 23 25 and 29 and in the Fourth Schedule the Trust shall not be bound by a resolution passed at any Annual or Special General Meeting, but will only be required to give consideration to any such resolution in administering the Trust Assets and carrying out the Trust Purposes. Nothing in this clause 12.14 detracts from the obligation of the Trustees under rule 3.2 of the Fourth Schedule to comply with any Special Resolution passed in accordance with the Fourth Schedule.

#### **12.15 Adjourned meetings**

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

#### **12.16 Unruly meetings**

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

#### **12.17 Minutes**

The Trustees shall keep proper minutes of all decisions taken and business transacted at every Annual General Meeting and Special General Meeting.

#### **12.18 Minutes to be evidence of proceedings**

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

**12.19 Minutes to be evidence of proper conduct**

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

**12.20 Request for information**

While the Trust is also the Mandated Iwi Organisation for Te Aupouri any Member of Te Aupouri may request in writing the Annual Plan, Annual Report, and the information and documents referred to in clause 12.1(i).

**13. DISCLOSURE OF INTERESTS****13.1 Definition of interested Trustee**

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, or in the case of a trust controlled, by the Trust or any subsidiary of the Trust;
- (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.

**13.2 Disclosure of interest to other Trustees**

A Trustee must, as soon as possible after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, disclose to his or her co-Trustees:

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

**13.3 Recording of Interest**

A disclosure of interest by a Trustee shall be recorded in the minute book of the Trust.

**13.4 Dealings with Interested Parties**

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

**14. PROHIBITION OF BENEFIT OR ADVANTAGE**

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

**15. REMUNERATION AND EXPENSES****15.1 No private pecuniary profit**

No private pecuniary profit may be made by any Trustee from the Trust.

However, each Trustee shall be entitled:

- (a) in each Income Year, to remuneration for his or her services as a Trustee as may be reasonable having regard to his or her duties and responsibilities so long as that remuneration has been properly authorised pursuant to clause 12.3;
- (b) to be reimbursed for fair and reasonable expenditure incurred by him or her on behalf of the Trust or any member of the Te Aupouri Development Group, subject in every case to approval by the Trust;
- (c) if any Trustee is engaged in a profession or business, to charge fees for work done by that Trustee or that Trustee's firm (whether or not the work is of a professional or business nature) on the same basis as if that Trustee was not one of the Trustees but contracted to carry out the work on their behalf.

## **16. DUTIES AND LIABILITY OF TRUSTEES**

### **16.1 Fundamental duty**

The fundamental duty of the Trustees is to administer the assets and liabilities of the Trust as Trustees in the advancement of the purposes of the Trust.

### **16.2 Compliance with Trust Deed**

The Trustees must not act or agree to act in a manner that contravenes this Deed.

### **16.3 Fiduciary obligations**

The Trustees must always act in accordance with their fiduciary duties and obligations.

### **16.4 Collective interests of Iwi**

The Trustees must not, when exercising powers or performing their duties as Trustees, act or agree to act in a manner that unfairly prejudices or unfairly discriminates against any particular Members.

### **16.5 Standard of care**

The Trustees, when exercising powers or performing duties as Trustees, must act in good faith and exercise the care, diligence and skill to be reasonably expected of a

person acting in like circumstances, taking into account any special skills or experience that any Trustee has.

#### **16.6 Acceptance of liability**

Each Trustee accepts the duties, obligations and liabilities attaching to the office of Trustee under this Deed when they become a Trustee.

#### **16.7 Liability**

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

### **17. INDEMNITY AND INSURANCE**

#### **17.1 Indemnity and insurance for Trustees**

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

#### **17.2 Indemnity and insurance costs to be just and equitable**

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

#### **17.3 Indemnity and insurance re specific trusts**

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

**17.4 Record of decisions**

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

**18. SPECIFIC TRUSTS****18.1 Trustees may accept specific trusts**

Notwithstanding any other provision in this Deed, the Trustees may accept or otherwise deal with any Property upon trust for the Purposes of the Trust or for any specific purpose that comes within the Trust Purposes. Such a trust may include any trust for the benefit of the Members of Te Aupouri. Any Property held by the Trustees pursuant to this clause shall be dealt with in accordance with the terms of the specific trust and shall not constitute part of the Trust Assets.

**18.2 Specific trusts to be separate**

If the Trustees accept a trust for any specific purpose as outlined in clause 18.1 it must keep the Properties subject to such trust and any income derived from it separate from the Trust Assets, and administer that Property and income as a separate specific trust in terms of the specific trust under which it was accepted.

**18.3 Use of specific trust assets**

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

**18.4 Indemnity and insurance re specific trusts**

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

**18.5 Expenses of specific trusts**

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

**19. TE AUPOURI NOT TO BE BROUGHT INTO DISREPUTE****19.1 Trustees not to bring into disrepute**

No Trustee shall act in a manner which brings or is likely to bring the Trust or any member of Te Aupouri Development Group into disrepute.

**19.2 Directors and Trustees not to bring into disrepute**

The Trustees shall also require that any directors or trustees appointed by or at the direction of the Trustees to any company or any trust do not act in a manner which brings or is likely to bring the Trust or any member of Te Aupouri Development Group into disrepute.

**19.3 Trustee may be censured or removed**

Any Trustee that acts in a manner that brings or is likely to bring into disrepute the Trust or any member of Te Aupouri Development Group may, by a resolution passed by a majority of not less than 75% of the other Trustees, be formally censured or removed from office.

**19.4 Censure or removal to be notified**

The censure or removal of a Trustee in accordance with this clause shall, together with reasons, be reported to the Members of Te Aupouri at the next Annual General Meeting of the Trust following such censure or removal.

**19.5 Effect of Removal**

A Trustee removed from office in accordance with clause 19.3 shall cease to hold office as a Trustee immediately and shall not be entitled to be re-elected as a Trustee for a period of not less than four years following his or her removal.

**19.6 Replacement of Trustee**

The removal of a Trustee in accordance with clause 19.3 shall give rise to a casual vacancy which shall be filled in accordance with rule 4.3 of the Second Schedule.

## **20. RECEIPTS FOR PAYMENTS**

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

## **21. ADDITION TO AND REMOVAL OF CULTURAL ASSETS IN FIFTH SCHEDULE**

### **21.1 Addition of Cultural Assets to the Fifth Schedule**

The Trustees may at their discretion decide to add properties to the list of Cultural Assets contained in the Fifth Schedule by executing a deed of amendment of Trust.

### **21.2 Consideration of proposals**

Every Adult Registered Member of Te Aupouri may put forward for consideration by the Trustees proposals for properties to be added to the Fifth Schedule. Any proposal put forward under this clause 21.2 must be in writing and addressed to the Chairperson at the registered office of the Trust and must be considered by the Trustees. Where the Trustees agree with the proposal, the property or properties proposed may be added to the list of Cultural Assets contained in the Fifth Schedule in accordance with clause 21.1. In the event that the Trustees do not agree with the proposal and the threshold set out in clause 12.5 is met, the Trustees will be required to call a Special General Meeting to consider the proposal and the Special Resolution procedure in the Fourth Schedule will apply with any necessary amendments.

### **21.3 Removal of Cultural Assets from the Fifth Schedule**

Where the Trustees propose that land be removed from the list of Cultural Assets contained in the Fifth Schedule, those lands shall only be removed with the approval of a Special Resolution passed in accordance with the Fourth Schedule.

## **22. AMENDMENTS TO DEED**

### **22.1 Special Resolution required**

Subject to clauses 21.1 and 22.2 all amendments to this Deed shall only be made with the approval of a Special Resolution passed in accordance with the Fourth Schedule.



## **22.2 Mandatory Amendment to Definition of Te Aupouri**

22.2.1 The Trustees must from time to time sign a deed of amendment amending the definition of Te Aupouri to ensure it is the same as the definition of Te Aupouri in the latest of the following:

- (a) any Deed of Settlement;
- (b) any Settlement Act.

22.2.2 The Trustees must sign a deed of amendment under clause 22.2.1 as soon as possible after a change is required under that clause.

22.2.3 The new definition will have effect for the purposes of this deed immediately upon the Trustees signing a deed of amendment under clause 22.2.1.

## **22.3 Limitations on Amendment**

No amendment shall be made to this Deed which:

- (a) changes the Trust Purposes so that the Trustees are no longer required to act for the benefit of the present and future Members of Te Aupouri;
- (b) changes this clause;
- (c) changes clause 23;
- (d) subject to clause 22.2, changes the definition of Te Aupouri;
- (e) changes clause 2.6 regarding transactions relating to Cultural Assets;
- (f) changes the requirement for a Special Resolution (as defined from time to time) in clause 22.1;
- (g) is inconsistent with the MFA 2004; or
- (h) is 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

Te Aupouri if the amendment relates to any matter provided for by or under the Maori Fisheries Act unless the amendment is required as a consequence of a rule made or amended under section 25 of the MFA 2004.

#### **22.4 Amendment to make the Trust a charity**

Notwithstanding any other provision in this Deed to the contrary, this Deed may be amended, and the benefits conferred hereunder altered, in order for the Trust to become a charity and to qualify for any tax exemptions available from time to time for charitable entities under the provisions of the Income Tax Act 2004, provided that any such amendment:

- (a) is made in accordance with clause 22.1; and
- (b) does not change the Trust's Purposes in a way that means that the Trustees are no longer required to act for the benefit of the present and future Members of Te Aupouri; and
- (c) does not occur prior to any Settlement Act.

#### **22.5 Consideration of proposals**

Every Adult Registered Member of Te Aupouri may put forward for consideration by the Trustees proposals for amendments to this Deed. Any proposal put forward under this clause 22.5 must be in writing and addressed to the Chairperson at the registered office of the Trust. Any proposal put forward under this clause 22.5 must be considered by the Trustees.

#### **22.6 Proposals to be discarded**

Where a proposal for amendments to this Deed does not comply with clause 22.3, The Trustees may discard the proposal and the Trustees will not be required to call a Special General Meeting in accordance with the Fourth Schedule.

#### **22.7 Execution of Deed of Amendment**

22.7.1 Where a special resolution approving amendments to this Deed has been passed in accordance with clause 22.1 the Trustees must sign a deed of amendment to give effect to those amendments as soon as possible after the special resolution has been passed.

22.7.2 The amendments will have effect for the purposes of this deed immediately upon the Trustees signing a deed of amendment under clause 22.7.1.

## **22.8 Review of Deed**

The Trustees shall within five years of the execution of this Deed undertake a review of this Deed and prepare a report on the review including recommendations for alterations (if any) to this Deed. Such alterations, if any, must be approved in accordance with the Special Resolution Procedure set out in Fourth Schedule.

## **23. WINDING UP**

- (a) Subject to clause 22.3 the Trust established by this Deed shall only be terminated or dissolved if the Adult Registered Members have, by Special Resolution resolved that it has become impossible, impracticable or inexpedient to carry out the Trust Purposes; and nominated a Trust or other form of governance entity, established for the benefit of the present and future Members of Te Aupouri, to which the Trust Assets should be paid or transferred (after the payment of all relevant costs, debts and liabilities).
- (b) On the winding up or dissolution of the Trust, the Trustees must give or transfer all of the Trust Assets after the payment of costs, debts and liabilities to one or more organisations or bodies within New Zealand having similar objects to the Trust (being for the exclusive benefit of members of the Te Aupouri community) as the Adult Registered Members by Special Resolution, shall decide.

## **24. DISPUTE RESOLUTION**

### **24.1 Definition of Disputes**

This clause applies to the following disputes:

- (a) Those disputes for which disputes procedures are required by the MFA 2004, including disputes in relation to the matters set out in section 180(1)(m) of the MFA 2004,
- (b) Any dispute regarding a decision made by the Whakapapa Validation Committee under rule 4.4 of the First Schedule to not register a person
- (c) Any dispute regarding the eligibility of a candidate to stand for election as a trustee under rule 2.2 of the Second Schedule;

- (d) Any dispute regarding the ability of a trustee to continue acting under rule 16 of the Second Schedule; and
- (e) Any other dispute that arises in relation to the interpretation of, or otherwise in relation to, this Deed.

#### **24.2 Notice of Dispute**

All disputes referred to the Trustees and falling within the clause 24.1 shall be submitted to the Trustees by notice in writing and the Trustees shall acknowledge receipt in writing within 10 working days of the date of receipt of the notice.

#### **24.3 Refusal to consider certain disputes**

In the event that the Disputes Committee determines that any dispute referred to it does not fall within clause 24.1, the Trustees will advise the person or persons who submitted the dispute and no further action will be taken.

#### **24.4 Disputes relating to matters arising under the MFA 2004**

Subject to clauses 24.5 to 24.10, if any dispute shall arise between Members of Te Aupouri and the Trustees relating to matters arising under the MFA 2004 that dispute shall be determined in accordance with Part 5 of the MFA 2004. However the provisions of this clause 24 shall not derogate from the rights or obligations of the Trustees or of any Member of Te Aupouri pursuant to the Trustee Act 1956 or any other Act or provision of law or equity.

#### **24.5 Appointment of Disputes Committee**

There shall be a permanent Disputes Committee which shall consist of three Adult Registered Members who are Te Aupouri kaumātua and/or kuia, all of whom shall be appointed from time to time by the Trustees, and who shall in the view of the Trustees have the necessary knowledge of whakapapa, tikanga and korero of Te Aupouri to deal with such disputes, and such other skills as are required in order to fulfill their obligations under the Deed, provided however that such members shall not also be members of the Whakapapa Validation Committee.

#### **24.6 Removal of appointees of Disputes Committee**

At their discretion, the Trustees may remove appointees to the Disputes Committee and replace those appointees provided that where the Disputes Committee is considering a dispute relating to one or more of the Trustees that Trustee or Trustees may not take part in any decision to remove a member or members of the Disputes

Committee. Where it is necessary to replace an appointee to the Disputes Committee the appointment of the replacement shall take place in accordance with clause 24.5.

#### **24.7 Role of Disputes Committee**

The role of the Disputes Committee in dealing with the dispute shall be to facilitate the resolution of the dispute. However, where it is not possible for the dispute to be resolved by agreement between the parties, the Disputes Committee shall make findings on the dispute and decide how the dispute will be resolved provided that any determination must be in accordance with the provisions of the Trust Deed.

#### **24.8 Deliberations of Disputes Committee**

In dealing with any dispute the Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence, including expert evidence, and determine the manner in which a dispute before it should be dealt with.

#### **24.9 Determination**

The findings and decisions of the Disputes Committee shall be final and binding on the parties.

#### **24.10 Notification of outcome**

The Trustees shall notify all parties to the dispute of the decision of the Disputes Committee, together with any reasons therefore, in writing.

#### **24.11 Fisheries disputes**

Where in accordance with clause 24.1(a) a dispute arises pursuant to section 180(1)(m) of the MFA 2004, the disputes procedure contained in clauses 24.5 to 24.10 shall be deemed to constitute the agreed process for resolving the dispute pursuant to section 181(1) of the MFA 2004.

#### **24.12 Disputes Committee may convene hui**

In facilitating the resolution of any dispute the Disputes Committee may convene a general meeting of Te Aupouri in order to discuss the matters that are in dispute.

#### **24.13 Hui to meet notice requirements**

Any general meeting called by the Disputes Committee in order to try to settle any disputes shall be called in accordance with clause 12.

## **25. DISPOSAL OF INCOME SHARES AND SETTLEMENT QUOTA**

### **25.1 Special Resolution Required**

Any proposal in relation to the disposal of Income Shares pursuant to section 70 of the MFA 2004 or in relation to the disposal of Fisheries Settlement Quota pursuant to sections 159, 162 or 172 of the MFA 2004 may only proceed if a Special Resolution has been passed in accordance with the Fourth Schedule.

### **25.2 Transfers between entities**

This clause 25 does not apply to transfers between entities within Te Aupouri Development Group provided that those entities comply with the relevant provisions of the MFA 2004.

## **26. ADVICE TO TRUSTEES**

### **26.1 Trust may rely on advice**

The Trustees may, when exercising its powers or performing its duties, rely on reports, statements and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

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

### **26.2 Trust may obtain legal opinion**

If the Trustees are in doubt over any matter relating to the management and administration of Trust Assets, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a lawyer as defined by the Lawyers and Conveyancers Act 2006 of at least seven years' standing. This right to obtain and act upon a lawyer's opinion, however, will not restrict any right on the part of the Trustees to apply to the High Court of New Zealand for directions.



## **27. CUSTODIAN TRUSTEE**

### **27.1 Custodian Trustee**

The Trustees shall incorporate a custodian trustee and on incorporation the following provisions shall have effect:

- (a) The directors and shareholders of the custodian trustee shall be the Trustees currently holding office pursuant to this Deed;
- (b) The Trust Assets may be vested in the custodian trustee as if the custodian trustee were sole Trustee;
- (c) The management of the Trust Assets and the exercise of all powers and discretions exercisable by the Trustees under this Deed shall remain vested in the Trustees as fully and effectively as if there were no custodian trustee;
- (d) The sole function of the custodian trustee shall be to hold the Trust Assets, invest its funds and dispose of the assets in accordance with any direction in writing by the Trustees for which purpose the custodian trustee shall execute all such documents and perform all such acts as the Trustees in writing direct;
- (e) The custodian trustee shall not be liable for acting on any such direction provided that if the custodian trustee is of the opinion that any such direction conflicts with the trusts or the law or exposes the custodian trustee to any liability or is otherwise objectionable the custodian trustee may apply to the Court for directions and any order giving any such directions shall bind both the custodian trustee and the Trust;
- (f) The custodian trustee shall not be liable for any act or default on the part of any of the Trustees;
- (g) All actions and proceedings touching or concerning the Trust Assets may be brought or defended in the name of the custodian trustee at the written direction of the Trustees and the custodian trustee shall not be liable for the costs; and



- (h) No person dealing with the custodian trustee shall be concerned to enquire as to the concurrence or otherwise of the Trustees or be affected by notice of the fact that the Trustees has not concurred.

## **28. CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES**

### **28.1 Trust to appoint Chief Executive Officer**

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

### **28.2 Delegations to Chief Executive Officer**

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

## **29. RESETTLEMENT**

### **29.1 Power to resettle**

The Trustees shall 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 Te Aupouri, the whole or any portion or portions of the capital or income of the Trust Assets provided that:

- (a) any such settlement or resettlement must comply with the MFA 2004;
- (b) the resettlement is upon trust for the benefit of all Members of Te Aupouri;  
and
- (c) a Special Resolution supporting the resettlement is passed in accordance with the Fourth Schedule.

### **29.2 Perpetuities**

As provided by the Settlement Act, the rule against perpetuities and the provisions of the Perpetuities Act 1964—

- (a) do not prescribe or restrict the period during which—

- (i) Te Rūnanga Nui o Te Aupouri Trust may exist in law; or
  - (ii) the trustees may hold or deal with property or income derived from property; and
- (b) do not apply to a document entered into to give effect to the deed of settlement if the application of that rule or the provisions of that Act would otherwise make the document, or a right conferred by the document, invalid or ineffective.

However, if Te Rūnanga Nui is, or becomes, a charitable trust, the application (if any) of the rule against perpetuities or any provision of the Perpetuities Act 1964 to that trust must be determined under the general law.

**FIRST SCHEDULE**  
**MEMBERSHIP OF TE AUPOURI AND TE AUPOURI REGISTER**

**1. TRUST TO KEEP REGISTER**

**1.1 Trustees to maintain Register**

The Trustees shall continue and maintain, or cause to be continued and maintained, the Te Aupouri Register.

**1.2 Register to comply with this Schedule**

The Te Aupouri Register shall be maintained in accordance with the rules and procedures set out in this Schedule.

**2. CONTENTS OF REGISTER**

**2.1 Register to contain Members' details**

The Te Aupouri Register shall record in it the full names, dates of birth and postal addresses of the Members of Te Aupouri.

**2.2 Beneficiary Registration Number**

The Trustees will allocate a beneficiary identification number to each Adult Registered Member. The Trustees will immediately after allocation, notify the relevant Adult Registered Member of his or her beneficiary identification number.

**3. APPLICATIONS FOR REGISTRATION**

**3.1 Form of Applications**

All applications for registration as a Member of Te Aupouri must be made in writing to the Trustees. The application must contain:

- (a) the full name, date of birth, postal address and electronic address (if any) of the applicant;
- (b) such evidence as the Trustees may from time to time require as to that applicant's status as a Member of Te Aupouri, including details of the whakapapa (genealogical) connection of the applicant to Te Aupouri.



### **3.2 Entitlement to make Applications**

An application for registration as a Member of Te Aupouri may be made:

- (a) By Adult Members on their own behalf or by their legal guardian; or
- (b) In the case of Members of Te Aupouri who are under the age of 18 years, by a person who is their parent or legal guardian or a person who is 18 years of age or older and who in the opinion of the Whakapapa Validation Committee stands in the stead of a parent or guardian of that person.

### **3.3 Compliance with Deed**

All Members of Te Aupouri who apply to register and are registered on the Te Aupouri Register are, by their application and registration, deemed to agree to the terms of this Deed, including the disputes procedure set out in clause 24 and the election, voting and meeting procedures set out in the Second Schedule, Third Schedule and Fourth Schedule.

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

### **4.1 Whakapapa Validation Committee to be established**

The Trustees shall establish a Whakapapa Validation Committee to make decisions on all applications made pursuant to rule 3.1 of this Schedule by any person for the recording in the Te Aupouri Register of that person's membership of Te Aupouri.

### **4.2 Composition of Whakapapa Validation Committee**

The Whakapapa Validation Committee shall comprise not less than three and up to five members of Te Aupouri, appointed by the Trustees from time to time, with the expertise and knowledge of Te Aupouri whakapapa necessary to make determinations regarding membership applications. Trustees with the required expertise and knowledge of Te Aupouri whakapapa may be appointed to the Whakapapa Validation Committee.

### **4.3 Consideration of applications**

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

#### **4.4 Decisions to be made on applications**

Upon receipt of an application for membership in accordance with rule 3.1 of this Schedule the Whakapapa Validation Committee shall consider the application and shall make a decision as to whether the application should be accepted.

#### **4.5 Successful applications to be notified and registered**

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

#### **4.6 Notification of unsuccessful applicants**

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

#### **4.7 Unsuccessful applicant may reapply**

Any applicant whose application has been declined may at any time seek to have his or her application reconsidered by the Whakapapa Validation Committee provided that such application for reconsideration may only be made on the basis of new evidence (being evidence that was not submitted or considered as part of the initial or, if more than one, any previous application) as to the applicant's status as a Member of Te Aupouri.

### **5. MAINTENANCE OF REGISTER**

#### **5.1 Trustees to establish policies**

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

## **5.2 Assistance in identifying membership**

In maintaining the Te Aupouri Register the Trustees shall include in the policies that they develop policies for assisting in the identification and registration of those Members of Te Aupouri that are not for the time being on the Te Aupouri Register. Such policies shall include policies as to the nature of the assistance that the Trust will provide to those persons that believe that they are Members of Te Aupouri but for whatever reason are not able to establish such membership.

## **5.3 Responsibility of Members of Te Aupouri**

Notwithstanding rule 6 of this Schedule it shall be the responsibility of each person who is a Member of Te Aupouri (or in the case of those persons under 18 years, the parent or guardian or person standing in the stead of parent or guardian of that person) to ensure that his or her name is included in the Te Aupouri Register and that his or her full postal address for the time being is provided and updated.

## **5.4 Consequences of registration**

Registration of any person in the Te Aupouri Register as a Member of Te Aupouri shall be conclusive evidence of that person's status as a Member of Te Aupouri.

## **6. TE AUPOURI REGISTER**

Subject to the Privacy Act 1993 and to any policies that may be adopted from time to time by the Trust for the protection of private information, the Trustees shall ensure that the Te Aupouri Register is available to be inspected during business hours by all Adult Registered Members, provided that each Adult Registered Member shall only have access to inspect their own personal details on the Register.

## **7. PRIVATE NOTICE**

### **7.1 Requests for Private Notice**

Any Adult Registered Member may at any time make a written request to receive a Private Notice for general meetings and postal ballot papers relating to:

- (a) the election of Trustees; or
- (b) any amendment to this Deed or the constitutional documents of or TAAHC; or

- (c) the disposal of Income Shares or Fisheries Settlement Quota; or
- (d) the conversion of Quota into Fisheries Settlement Quota; or
- (e) any other decision to be determined through the special resolution procedure set out in the Fourth Schedule.

## **7.2 Private Notice**

Private Notice means notice given by any one or more of the following means:

- (a) Ordinary post to the address recorded on the Te Aupouri Register for that Adult Registered Member;
- (b) Electronic mail to the email address recorded on the Te Aupouri Register for that Adult Registered Member; or
- (c) Any other means of communication that is private to the recipient.

Any Private Notice relating to matters provided for in the Maori Fisheries Act 2011 must comply with kaupapa 4 of Schedule 7 of the Maori Fisheries Act 2011.

## **7.3 Notice not necessary**

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



**SECOND SCHEDULE  
ELECTIONS OF TRUSTEES**

**1. PROCEDURE**

**1.1 This Schedule to apply**

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

**2. ELIGIBILITY FOR APPOINTMENT AS TRUSTEE**

**2.1 Trustee to be registered**

In order to be nominated as a Trustee, a person must be recorded in the Te Aupouri Register as an Adult Registered Member on the closing date for nominations.

**2.2 Eligibility to hold office**

A candidate will not be eligible to hold office as a Trustee if he or she:

- (a) Had previously held office as a trustee and was terminated from this role because he or she refused to act unless four years have passed from the date that the Trustee ceased to hold office;
- (b) Had previously held office as a trustee and was terminated from this role because he or she was absent without leave from three consecutive ordinary meetings of the Trustees without good reason or without the permission of the Chairperson unless four years have passed from the date that the Trustee ceased to hold office;
- (c) Had previously held office as a trustee and he or she was removed from office under clause 19.3 of this Deed because he or she acted in a manner that brought or was likely to bring into disrepute the Trust or any member of Te Aupouri Development Group unless four years have passed from the date that the Trustee ceased to hold office;
- (d) Is physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Trustee;

- (e) Is bankrupt or has made any composition or arrangement with his or her creditors; or
- (f) Has:
  - (i) ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible person for the purposes of the Criminal Records (Clean Slate) Act 2004); or
  - (ii) been convicted in the last 10 years of an offence punishable by more than 3 years imprisonment (unless that person is an eligible person for the purposes of the Criminal Records (Clean Slate) Act 2004).

Where any question arises as to the eligibility of a Trustee to stand for election, their eligibility will be determined in the first instance by the other Trustees who are not standing for re-election. In the event that a dispute arises that dispute will be determined in accordance with the disputes resolution procedure at clause 24 of this Deed.

### **2.3 Expectations of Trustees**

All candidates must endeavour to fulfil the following expectations of Trustees:

- (a) To take part in all Trustee meetings unless excused;
- (b) To possess a working knowledge of this Deed;
- (c) To possess or develop a working knowledge of the Agreements in Principle, any Deed of Settlement and any Settlement Legislation,
- (d) To possess or develop a working knowledge of the Trustee's obligations under the Trustee Act, trust law and other relevant legal obligations;
- (e) To comply with the Trust's policies and procedures;

- (f) To be able to articulate personal and responsible views in Trustee discussions;
- (g) To have a basic understanding of the issues presented to the Trust at each meeting;
- (h) To be able to analyse and prioritise issues and be willing to make informed decisions for the benefit of all Members; and
- (i) To be prepared to actively participate in Trustee development workshops and opportunities.

#### **2.4 Trustees not to be Trust employees**

A Trustee shall not hold the position of Chief Executive Officer nor shall a Trustee be employed as an employee of the Trust.

#### **2.5 Trustees may be Directors**

Nothing in rule 2.4 of this Schedule or elsewhere prevents a Trustee from holding office as a director or trustee of any member of the Te Aupouri Development Group, provided that the Trustees must not comprise more than 40 percent of the directors or trustees of the Asset Holding Company or Fishing Enterprise as defined in the MFA 2004 or any other subsidiary company or trust including TACDL and TAIDT.

#### **2.6 Number of Trustees to be limited**

The total number of trustees shall be no more than seven (7) persons provided that for the first two years following the date the Initial Trustees take office three (3) Transition Trustees appointed in accordance with rule 3 will also hold office in addition to the seven (7) elected Trustees giving a total of ten (10) trustees.

### **3. TERM OF OFFICE**

#### **3.1 Term of office**

The Trustees from time to time shall hold office until such time as their position comes up for re-election in accordance with this rule provided that no Trustee shall hold office for longer than three years without facing re-election.

#### **3.2 Eligibility of retiring Trustees**

Trustees retiring from office shall be eligible for reappointment subject to rule 2.2.

### **3.3 Casual vacancies**

Should any casual vacancy arise as a result of a Trustee ceasing to hold office prior to the expiry of his or her Trustee's term of office then that vacancy shall be filled by the holding of a further election in accordance with this Schedule provided that the Trustees shall have the discretion not to hold such an election if:

- (a) The number of Trustees remaining in office following the creation of the casual vacancy is not less than six (6); or
- (b) The casual vacancy occurs less than six months before the original Trustee's term was due to expire.

### **3.4 Term of casual appointments**

In the case of a Trustee elected pursuant to rule 4.3 of this Schedule the Trustee thereby appointed shall hold office for the balance of the term of office of the Trustee that he or she has replaced.

## **4. TIMING OF ELECTIONS**

### **4.1 Timing**

The elections for Trustees in any given Income Year must, except in the case of elections to fill casual vacancies under rule 4.3 of this Schedule, be concluded by the date of the Annual General Meeting of the Trust in that Income Year.

## **5. MAKING OF NOMINATIONS**

### **5.1 Calling for nominations**

The Trustees shall give notice calling for nominations for those Trustee positions for which elections are required at least three months before the date of the Annual General Meeting for the Trust for that income year. Such notice shall specify the method of making nominations, and the latest date by which nominations must be made and lodged with the Trustees or such other person as the notice directs. Such notice shall also specify the procedure for determining who has been elected in the event that there is an equality of votes that will affect the outcome of an election as set out in rule 7.3.

**5.2 Timing for nominations**

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

**5.3 Form of notice**

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

- (a) in writing sent to all Adult Registered Members by Private Notice;
- (b) by newspaper advertisement published in a newspaper generally circulating in the relevant area or areas; and
- (c) by such other means as the Trust may determine.

**5.4 Inclusion of invitation to register**

Any such notice shall also invite applications from qualified persons for inclusion of their names in the Te Aupouri Register, and shall set out the date upon which the Trustees must receive the Registration Form in order for the person to vote, being the same date as that fixed as the latest date for casting a vote in accordance with this Schedule.

**5.5 Nomination to be in writing**

The nomination of a candidate for election as a Trustee shall be in writing signed by not less than five (5) Adult Members of Te Aupouri shown on the Te Aupouri Register as being entitled to vote in respect of the election of that candidate.

**5.6 Consent of candidate**

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

**5.7 Declaration of candidate**

Each candidate must sign a declaration on the nomination paper stating that they are eligible to stand for election and that they will endeavour to fulfil the expectations of Trustees set out at rule 2.3. In the event that a candidate does not sign this declaration their nomination will be deemed to be invalid.

**5.8 Candidate Profile**

The nomination form must be accompanied by a profile of the candidate prepared by the candidate which addresses the following issues:

- (a) The candidate's understanding of the role of a Trustee, their obligations under the Deed and the law relating to trustees' obligations;
- (b) The candidate's commitment to the role of a Trustee and their capacity to undertake the work required to effectively carry out that role;
- (c) The candidate's skills and experience that are relevant to the role of a Trustee including but, not limited to, any experience at a governance level of an iwi or any other organisation;
- (d) Where the candidate resides and, in particular, whether they reside in the haukainga region; and
- (e) Any other information that the candidate wishes to provide relating to their suitability to act as a Trustee.

## **6. HOLDING OF ELECTIONS**

### **6.1 Mode of voting at elections**

Subject to rule 7.2 of this Schedule, voting at all elections shall be by way of secret ballot provided that voters can cast their votes by any one of the following methods:

- (a) Postal voting;
- (b) By delivering their voting form to the Chief Returning Officer at an Annual or Special General Meeting; or
- (c) Electronic voting (where available and at the discretion of the Trustees).

### **6.2 Election of Highest Polling Candidates**

Except as provided by rule 7.4, the number of highest polling candidates equal to the number of positions available shall be deemed to have been elected as Trustees.

### **6.3 Ineligible Candidates**

For the avoidance of doubt, in the event that a candidate is ineligible to stand for election but information relating their eligibility is not known until after the elections have been held, as soon as a determination has been made that he or she is not eligible their election or appointment as a Trustee will be deemed to be invalid and the next highest polling candidate will be deemed to have been elected.”

### **6.4 Equality of votes**

Where there is an equality of votes between the candidates who receive the fourth and fifth highest number of votes in the elections for the Initial Trustees or between any candidates where the number of votes will determine which candidate will be appointed as a Trustee in any other election, the Chief Returning Officer shall forthwith inquire as to whether either of the equally polling candidates wishes to concede election to the other candidate and if such concession is made then the other candidate will be deemed to be elected. If there is no concession within 10 working days, the Chief Returning Officer will determine which candidate will be appointed through the toss of a coin.

### **6.5 Representation of haukainga and taurahere**

In order to ensure that there will always be at least two Trustees who are resident in the haukainga area as defined by the map of the Te Hiku area of interest set out on the page 81 of this Deed and at least two Trustees that are resident outside that area the following provisions will apply to the appointment of trustees:

- (a) Where the appointment of the highest polling candidates would result in there being a total of less than two Trustees that are resident in the haukāinga area or less than two Trustees that are resident outside the haukainga area including those Trustees not facing re-election, the highest polling candidate that is resident in the under-represented area will be deemed to have been elected as a Trustee instead of the lowest polling candidate that would otherwise have been deemed to be elected. Provided that where there is no other candidate resident in the under-represented area the highest polling candidates will be deemed to have been elected as Trustees.
- (b) Where the appointment of the highest polling candidates would result in there being no Trustees that are resident in the haukainga area or no Trustees that are resident outside the haukainga area in total including those Trustees not facing re-election, the two highest polling candidates that are resident in the under-represented area will be deemed to have been elected as Trustees instead of the two lowest polling candidates that would otherwise have been deemed to be elected. Provided that where there is only one candidate resident in the under-represented area then that candidate only will be deemed to have been elected as a Trustee instead of the lowest polling candidate that would otherwise have been deemed to be elected and in all other respects the highest polling candidates will be deemed to have been elected as Trustees and that where there is no candidate resident in the under-represented area the highest polling candidates will be deemed to have been elected as Trustees.
- (c) Where the appointment of the highest polling candidates would result in there being a minimum of two Trustees that are resident in the haukainga area and two Trustees that are resident outside the haukainga area in total including those Trustees not facing re-election then the highest polling candidates will be deemed to have been elected as Trustees.







**6.6 No election where one nominee**

In the event that the total number of nominations is equal to the total number of vacancies, no election shall be necessary and the person or persons nominated shall be deemed to have been duly appointed. In the event that no election is necessary the names of the person or persons appointed as Trustees shall be announced at the Annual General Meeting during which the election would have been held. In the event that no election is necessary and the election would have been held at a Special General Meeting, then it shall not be necessary to hold a Special General Meeting for the purposes of announcing the results and the results shall be announced:

- (a) by newspaper advertisement published on at least two separate days and inserted prominently in any major metropolitan newspapers and/or any provincial newspaper circulating in regions where the Trustees consider that a significant number of Members of Te Aupouri reside; and
- (b) by such other means as the Trustees may determine.

**6.7 Election at Annual General Meeting**

After the initial election voting for every election, except those relating to casual vacancies, shall take place at the Annual General Meeting in the year during which the Trustee's term expires provided that Adult Members of Te Aupouri may also cast their vote by one of the other methods set out in rule 7.1.

**6.8 Election at Special General Meeting**

The Trustees shall call a Special General Meeting for the purpose of holding an election if:

- (a) An election is required to fill a casual vacancy under rule 4.3 of this Schedule;  
or
- (b) A Trustee's position remains vacant after an election has been held in accordance with this schedule.

## **6.9 Eligibility to vote**

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

- (a) each such Adult Member of Te Aupouri will only be eligible to cast one vote in an election;
- (b) each such Adult Member of Te Aupouri is either an Adult Registered Member of Te Aupouri or has completed and sent with their voting form a Registration Form.

## **6.10 Provisional votes**

Where an Adult Member of Te Aupouri is not also an Adult Registered Member of Te Aupouri, and has voted in accordance with rule 7.8(b) of this Schedule:

- (a) such vote is provisional until such time as the Registration Form is approved by the Whakapapa Validation Committee as set out in the First Schedule; and
- (b) where the Registration Form is declined in accordance with the First Schedule, the said vote will be invalidated.

## **7. NOTICE OF ELECTIONS**

### **7.1 Closing date for postal ballot**

Immediately after the closing date for nominations, the Trustees shall, where an election is required fix a closing date for the postal ballot and, if applicable, the electronic ballots (being the last day upon which either a postal or electronic vote may be validly cast in the election).

### **7.2 Period of notice**

The Trustees shall give not less than 28 days' notice of the closing date for the postal and electronic ballots and the method by which votes may be cast as set out in rule 7.1 of this Schedule. Notice given under this rule may be given at the same time as notice of the annual or Special General Meeting given under clause 12.4 or 13.5 of this Deed.

### **7.3 Method of giving notice**

Notice under rule 8.2 of this Schedule shall be given:

- (a) in writing sent to all Adult Registered Members by Private Notice and to any other Member of Te Aupouri who is 18 years of age or older who has made a written request for a notice;
- (b) inserting a prominent advertisement in a newspaper generally circulating in the relevant area or areas; and
- (c) by such other means as the Trust may determine.

#### **7.4 General Content of notices**

Every notice given in accordance with rule 8.3(a), (b) and (c) of this Schedule shall contain:

- (a) The date, time and venue of the Annual General Meeting or Special General Meeting at which the election will be held;
- (b) The number of Trustee positions that are open for election and a list of the candidates for election as Trustees; and
- (c) the methods by which votes may be cast as set out in rule 7.1 of this Schedule.

#### **7.5 Additional content of written notice**

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

- (a) Copies of the candidate profiles for each candidate who is eligible to stand for election;
- (b) a voting form that complies with rule 9.1 of this Schedule;
- (c) details of the procedure to be followed in making a vote by post, including the closing date for the postal ballot and the date by which the voting form must be received by the Chief Returning Officer;
- (d) the address to which the voting form shall be posted or delivered to the Chief Returning Officer;

- (e) details of the procedure to be followed in making a vote at an Annual General Meeting or Special General Meeting including the time by which a voting form must be received by the Chief Returning Officer or his or her nominee at the relevant Annual General Meeting or Special General Meeting;
- (f) where applicable, the details of the procedure to be following in making a vote by electronic means including the date by which an electronic vote must be made; and
- (g) the method for determining the outcome of elections including the procedure when there is an equality of votes that will effect the outcome of the election as set out in rule 7.3 and the requirement for at least two Trustees to be resident in the haukāinga area and at least two Trustees to be resident outside the haukāinga area as set out in rule 7.4 of this Schedule.

#### **7.6 Additional information in other notices**

Each notice given in accordance with rule 8.3(b) and (c) of this Schedule shall also give details about how voting forms may be obtained and where any relevant explanatory documents may be viewed or obtained.

### **8. POSTAL VOTING**

#### **8.1 Other details to accompany vote**

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

#### **8.2 Timing of postal votes**

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

#### **8.3 Votes may be received at the Annual or Special General Meeting**

Voting forms may be delivered to the Chief Returning Officer at the Annual or Special General Meeting, rather than being posted.

## **9. ELECTRONIC VOTING**

### **9.1 Method of electronic voting**

Each electronic vote must contain information that is sufficient to identify the elector.

### **9.2 Timing of electronic votes**

Votes must be cast no later than the closing date and time for the electronic ballot.

## **10. APPOINTMENT OF CHIEF RETURNING OFFICER**

### **10.1 Appointment of Chief Returning Officer**

For the purposes of elections the Trustees shall appoint as required a Chief Returning Officer who shall not be a Trustee, or an employee of the Trust, and who shall be a person of standing within the community. The Chief Returning Officer shall be responsible for co-ordinating Trustee elections and may appoint such other persons as he or she considers necessary to assist with that task provided that such persons shall also not be Trustees or employees of the Trust.

### **10.2 Chief Returning Officer to receive voting forms**

All postal voting forms must be addressed to the Chief Returning Officer and, where electronic voting is available, all electronic votes must be received by the Chief Returning Officer.

### **10.3 Chief Returning Officer to be present at Annual or Special General Meeting where election held**

The Chief Returning Officer or his or her nominee must be present at the any Annual or Special General Meeting where an election is to be held. The Chief Returning Officer or his or her nominee will be available to collect any completed voting forms at the Annual or Special General Meeting.

### **10.4 Only one vote to be cast**

The Chief Returning Officer shall ensure that appropriate measures are in place to ensure that only one vote is cast by each Adult Member of Te Aupouri who is eligible to vote and votes in the relevant election.

**10.5 Recording of votes**

A record shall be kept by the Chief Returning Officer of all postal votes received and all electronic votes cast (if applicable), including separate records of votes received from Adult Registered Members of Te Aupouri and provisional votes received from Adult Members of Te Aupouri under rule 7.8(b).

**11. OUTCOME OF ELECTION****11.1 All votes to be counted**

At the time and date for completion of voting in an election under this schedule, the Chief Returning Officer shall record and count all votes validly cast provided that the Chief Returning Officer may commence recording and counting those votes that have been validly cast prior to the end of the voting period.

**11.2 Certification and notifying election result**

Once all votes have been counted and the result of the election determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the election and communicate the result of the election to the Trust. The Trust shall thereafter advise the candidates of the result and where possible give notice of the same at the Annual or Special General Meeting of the Trust in accordance with clause 12.1 (f) of the Deed.

**11.3 Certification and notifying election result other than at Annual or Special General Meeting**

In the event that the Chief Returning Officer is not able to certify the result of the election prior to the conclusion of the Annual or Special General Meeting then the notice of the election results will be given:

- (a) by newspaper advertisement published on at least two separate days and inserted prominently in any major metropolitan newspapers and/or any provincial newspaper circulating in regions where the Trustees consider that a significant number of Members of Te Aupouri reside; and
- (b) by such other means as the Trustees may determine.

**11.4 New Trustees to take office**



The new Trustees will take office on announcement of the result of the elections. In the event that the result of the elections is announced in accordance with rules 7.5(a) or 12.3(a) the date that the Trustees will take office shall be the date that the first newspaper advertisement is published.

### **11.5 Provisional votes**

Where, in respect of any election, one or more provisional votes has been cast in accordance with rule 7.7 of this Schedule:

- (a) If the validity or otherwise of the provisional votes may affect the outcome of the election or the term of any of the Trustees as provided by rule 3.2 the Chief Returning Officer must not certify the result of the election until the validity of the provisional votes has been confirmed pursuant to rule 7.9(a) of this Schedule and any valid provisional vote has been counted; or
- (b) If the validity or otherwise of the provisional votes will not affect the result of the election the Chief Returning Officer may certify the result notwithstanding that the validity of the provisional votes has not been confirmed pursuant to rule 7.9(a) of this Schedule and the provisional votes have not been counted. In the event that the Chief Returning Officer certifies the result in accordance with this rule he or she does not need to confirm the validity of any provisional votes. Provided however that nothing in this rule affects the obligation of the Trustees to determine every application for registration as a Member of Te Aupouri in accordance with the First Schedule.

## **12. RETENTION OF ELECTION RECORDS**

### **12.1 Compiling and sealing voting records**

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

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

Subject to rule 15.1(b) of this Schedule the sealed packets received from the Chief Returning Officer shall be safely kept unopened by the Trustees for a period of one year from the closing date for making votes in the election to which the packet relates. Upon the expiry of that one year period the packets shall be destroyed unopened.

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

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

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

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

For the purposes of carrying out reviews in respect of any election the Trustees shall ensure that an Electoral Review Officer is appointed. The Electoral Review Officer shall be the person nominated from time to time by the President of the Auckland District Law Society or his or her nominee.

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

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

#### **13.4 Form of request for review**

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

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

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

The application for review and any accompanying evidence shall also be served upon all other candidates in the election to which the review relates, either at the

same time, or as close thereto as is possible, as the review application is lodged with the Trustees.

### **13.6 Costs**

Upon making an application for review the applicant shall also lodge with the Trustees the sum of \$500 in lieu of the costs of undertaking the review. That sum shall be held by the Trustees pending the outcome of the review application. If the application is successful then the \$500 shall be refunded to the applicant, otherwise it shall be used to off-set the costs of the review.

## **14. CONDUCT OF REVIEW**

### **14.1 Notification of Electoral Review Officer**

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

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

### **14.2 Electoral Review Officer to exercise wide powers**

Subject to compliance by the Electoral Review Officer with the rules of natural justice the Electoral Review Officer shall have the power to inquire into and decide upon any matter relating to a review in such manner as he or she thinks fit and, in particular, may open the sealed packet of voting forms and other voting documents and seek such further evidence or reports as he or she deems necessary including any reports or evidence from the Chief Returning Officer for the relevant election.

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

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

**14.4 Certification of result of review**

At the conclusion of the Electoral Review Officer's consideration of the review he or she shall determine whether the election was valid. If it is determined that the election was not valid and that the election should be conducted again, the ERO shall forthwith certify his or her decision with reasons to the Trustees. The Trustees shall then give notice of the result of the review and advise the candidates of the outcome. In the event that the Electoral Review Officer decides that the election should be conducted again, the Trustees shall call a further election in accordance with this Schedule with any necessary amendment.

**14.5 Decision to be final**

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

**15. TERMINATION OF OFFICE OF TRUSTEES****15.1 Termination of office of Trustees**

Notwithstanding the forgoing rules of this Schedule, a Trustee shall cease to hold office if he or she:

- (a) retires from office by giving written notice to the other Trustees;
- (b) completes his or her term of office and is not re-elected;
- (c) refuses to act;
- (d) is absent without leave from three consecutive ordinary meetings of the Trustees without good reason or without the permission of the Chairperson;
- (e) is removed from office pursuant to clause 19.3 (Trustees not to bring the Trust or any member of the Development Group into disrepute);
- (f) becomes physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Trustee;

- (g) becomes bankrupt or makes any composition or arrangement with his or her creditors; or
- (h) is:
  - (i) convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible person for the purposes of the Criminal Records (Clean Slate) Act 2004; or
  - (ii) convicted of an offence punishable by more than 3 years imprisonment; or
- (i) dies.

Where any question arises as to the eligibility of a Trustee to hold office, their eligibility will be determined in the first instance by the other Trustees. In the event that a dispute arises that dispute will be determined in accordance with the disputes resolution procedure at clause 24 of this Deed.

## **16. RECORD OF CHANGES OF TRUSTEES**

### **16.1 Record of changes of Trustees**

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

**THIRD SCHEDULE**  
**PROCEEDINGS OF TRUSTEES**

**1. TRUSTEES TO REGULATE MEETINGS**

**1.1 Regulation of meetings**

The Trustees shall meet together not less than three times in an Income Year at not greater than four-monthly intervals for the dispatch of business. Any two Trustees may at any time by notice in writing to the other Trustees summon a meeting of the Trustees and the Trustees shall take such steps as are necessary to convene such meeting.

**2. NOTICE OF MEETING**

**2.1 Notice to Trustees**

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

**2.2 Content of notice**

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

**2.3 Waiver of notice**

The requirement for notice of a meeting may be waived if all the Trustees who are at the time entitled to receive notice of the meeting give their written consent to such a waiver. Any written consent to waive notice can be either hand-delivered, posted or sent by facsimile or by electronic means.

**2.4 Meeting limited to notified business**

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

## **2.5 Deficiency of notice**

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

## **3. QUORUM**

### **3.1 Quorum**

Four (4) of the Trustees holding office for the time being shall constitute a quorum at meetings of the Trustees.

## **4. OFFICE HOLDERS**

### **4.1 Trustees to elect**

At the first meeting of the Trustees following an election the Trustees shall appoint one of their number to be chairperson ("**Chairperson**") and (at their discretion) one to be deputy chairperson ("**Deputy Chairperson**"), one person to be treasurer ("**Treasurer**") and one person to be secretary ("**Secretary**").

### **4.2 Voting on election**

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

### **4.3 Termination of office**

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

## **5. PROCEEDINGS AT MEETINGS**

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

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

### **5.2 Chairperson**

The Chairperson shall take the chair at all the meetings of the Trustees. If the Chairperson is not present then the Deputy Chairperson, if there is one, shall take the Chair. If there is no Deputy Chairperson or the Deputy Chairperson is also not present then the Trustees present shall elect one of their number to be chairperson of the meeting. In the case of an equality of votes the chairperson of the meeting shall have a second or casting vote.

### **5.3 Vacancies**

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

### **5.4 Attendance of Adult Registered Members**

All Adult Registered Members shall be entitled to attend meetings of the Trustees provided that where there is any matter to be discussed that is commercially or culturally or otherwise sensitive or that requires confidentiality the Trustees may at their discretion decide to conduct that part of their meeting in camera.

### **5.5 Defects of appointment**

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



## **5.6 Unruly meetings**

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

## **6. ADVISORY TRUSTEES**

### **6.1 Trustees may appoint Advisory Trustees**

The Trustees may appoint any person, including kaumatua, as Advisory Trustees to provide advice on the administration of the Trust generally or on any matter or matters relating to the Trust as required by the Trustees.

### **6.2 Role of Advisory Trustees**

The role of any Advisory Trustee appointed pursuant to rule 6.1 is solely to provide advice to the Trustees, and it is at the discretion of the Trustees whether or not to follow that advice. For the sake of clarity it is recorded that any Advisory Trustee is not a Trustee, and as such shall not:

6.2.1 be counted in the quorum of the Trustees;

6.2.2 have any trust property vested in them; or

6.2.3 have any rights, powers, obligations or liabilities of a Trustee.

## **7. DELEGATION BY TRUSTEES**

### **7.1 Trustees may delegate**

The Trustees may from time to time as they think expedient for carrying out any of the of the Trust's Purposes delegate any one or more of their powers under this Deed to a committee, Trustee, employee or other person.

## **7.2 Trustees to remain responsible**

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

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

## **7.3 Regulation of procedure by committees**

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

## **8. RESOLUTIONS**

A resolution in writing, signed or assented to by at least three-quarters of the Trustees entitled to vote on that resolution, is as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held. Each Trustee must be given notice of the form of the proposed resolution. Any such resolution may consist of several documents (including facsimile, electronic or other similar means of communication) in like form, each signed or assented to by one (1) or more Trustees. A copy of any such resolution must be entered in or kept with the minutes of the proceedings at Trustee meetings.

## **9. MINUTES**

### **9.1 Minutes to be kept**

The Trustees shall keep proper minutes of all decisions taken and business transacted at every meeting of the Trustees.

**9.2 Minutes to be evidence of proceedings**

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

**9.3 Minutes to be evidence of proper conduct**

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

**10. TELECONFERENCE OR VIDEOCONFERENCE MEETINGS**

For the purposes of these rules a Teleconference or Videoconference Meeting between a number of Trustees or committee members who constitute a quorum shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to Teleconference or Videoconference Meetings so long as the following conditions are met:

- (a) all of the Trustees or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a Teleconference or Videoconference Meeting and to be linked for the purposes of such a meeting. Notice of a Teleconference Meeting may be given on the telephone;
- (b) throughout the Teleconference or Videoconference Meeting each participant must be able to hear each of the other participants taking part;
- (c) at the beginning of the Teleconference or Videoconference Meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (d) a participant may not leave the Teleconference or Videoconference Meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's express consent. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the Teleconference or

Videoconference Meeting unless he or she leaves the meeting with the chairperson's express consent;

- (e) a minute of the proceedings at the Teleconference or Videoconference Meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting.

## **11. FORMS OF CONTRACTS**

### **11.1 Contracts by deed**

Any contract which, if made between private persons, must be by deed, shall, if made by the Trustees, be in writing signed by three Trustees on behalf of or by direction of the Trustees.

### **11.2 Contracts in writing**

Any contract which, if made between private persons, must be in writing signed by the parties to be bound by the contract shall, if made by the Trustees, be in writing signed by two Trustees on behalf of or by direction of the Trustees.

### **11.3 Oral contracts**

Any contract which, if made by private persons, may be made orally, may be made in the same manner by or on behalf of the Trust by any Trustee, in either case acting by direction of the Trustees.

### **11.4 Contracts pursuant to resolution**

Notwithstanding anything to the contrary in this rule 12, no contract made by or on behalf of the Trustees shall be invalid by reason only that it was not made in the manner provided by this rule, if it was made pursuant to a resolution of the Trustees.

**FOURTH SCHEDULE**  
**PROCEDURE FOR PASSING SPECIAL RESOLUTION**

**1. THIS SCHEDULE TO APPLY**

**1.1 Special Resolution required**

A Special Resolution to:

- (a) approve a Major Transaction in accordance with clause 2.5;
- (b) remove any assets from the Fifth Schedule in accordance with clause 21;
- (c) amend this Deed in accordance with clause 22;
- (d) wind up the Trust in accordance with clause 23;
- (e) approve any proposal relating to the disposal of Income Shares or Fisheries Settlement Quota in accordance with clause 25;
- (f) settle or resettle the Trust in accordance with clause 29, or
- (g) ratify any Deed of Settlement.

shall only be passed as set out in this Schedule.

**2. POSTAL VOTING AND SPECIAL GENERAL MEETING**

**2.1 Voting by ballot**

Voting on a Special Resolution shall occur either by:

- (a) placing voting forms into a ballot box in person at the Special General Meeting held for the purposes of considering the Special Resolution,
- (b) by post; or
- (c) by electronic means (where available and at the discretion of the Trustees)

### **3. VOTING**

#### **3.1 Approval for a Special Resolution**

In order for a Special Resolution to be passed it must receive the approval of not less than 75 percent of those Adult Members of Te Aupouri who validly cast a vote in favour of the proposed Special Resolution in accordance with this Schedule with the exception of a special resolution for the ratification of any Deed of Settlement in which case whether or not a sufficient degree of approval has been given will be agreed as between the Trustees and the Crown following the completion of this special resolution procedure.

#### **3.2 Obligation of Trustees to comply with Special Resolution**

The Trustees must comply with any Special Resolution passed in accordance with this Schedule and do everything necessary to give effect to any such resolution.

#### **3.3 Eligibility to vote on specific Special Resolutions**

Each Adult Member of Te Aupouri is eligible to vote in accordance with this Schedule, provided that:

- (a) each such Adult Member of Te Aupouri will only be eligible to cast one vote;
- (b) each such Adult Member of Te Aupouri must either be an Adult Registered Member of Te Aupouri or complete and send a Registration Form with their voting form .

#### **3.4 Provisional votes**

Where an Adult Member of Te Aupouri is not also an Adult Registered Member of Te Aupouri, and has voted in accordance with rule 3.2(b) of this Schedule:

- (a) such vote is provisional until such time as the Registration Form is approved by the Whakapapa Validation Committee as set out in the First Schedule; and
- (b) where the Registration Form is declined in accordance with the First Schedule, the said vote will be invalidated.

#### **4. SPECIAL GENERAL MEETING REQUIRED**

##### **4.1 Calling a meeting**

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

#### **5. NOTICE**

##### **5.1 Notice of Special General Meeting**

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

##### **5.2 Method of giving notice**

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

- (a) in writing sent to all Adult Registered Members by the means specified by each such Adult Registered Member in accordance with rule 7.2 of the First Schedule, or where no means is specified, to the last postal address shown on the Te Aupouri Register for each such Adult Registered Member, and to any other Member of Te Aupouri who is 18 years of age or older years who has made a written request for a notice;
- (b) Advertised prominently in any major metropolitan newspapers circulating in New Zealand and in any provincial newspapers circulating in regions where the Trust consider that a significant number of Members of Te Aupouri reside; and
- (c) by such other means as the Trustees may determine

##### **5.3 Content of notice to members**

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

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

#### **5.4 Content of advertisement**

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

## **6. POSTAL VOTING**

### **6.1 Other details to accompany vote**

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

### **6.2 Timing of postal votes**

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



### **6.3 Votes may be received at the Special General Meeting**

Voting forms may be delivered to the Chief Returning Officer at the Special General Meeting, rather than being posted.

## **7. ELECTRONIC VOTING**

### **7.1 Other details to accompany vote**

Each electronic vote case must be accompanied by information that is sufficient to identify the voter.

### **7.2 Timing of electronic votes**

Votes must be cast no later than the closing date and time for electronic voting for the election of Trustees to which the electronic vote relates.

## **8. APPOINTMENT OF CHIEF RETURNING OFFICER**

### **8.1 Appointment of Chief Returning Officer**

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

### **8.2 Chief Returning Officer to receive voting forms**

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

### **8.3 Chief Returning Officer to be present at Special General Meeting**

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

### **8.4 Only one vote to be cast**

The Chief Returning Officer must ensure that appropriate measures are in place to ensure that only one vote is cast by each Adult Registered Member of Te Aupouri and/or each Adult Member of Te Aupouri who is eligible to vote on the Special Resolution.

**8.5 Recording of votes**

A record shall be kept by the Chief Returning Officer of all votes received and/or cast by electronic means (if applicable).

**9. COUNTING OF VOTES****9.1 All votes to be counted**

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

**9.2 Certification and notifying result**

Subject to rule 9.3 of this Schedule, once all votes have been counted and the result of the Special Resolution determined by the Chief Returning Officer, the Chief Returning Officer shall certify the result of the Special Resolution and communicate the result to the Trust.

**9.3 Provisional votes**

Where, in respect of any Special Resolution, one or more provisional votes have been cast in accordance with rule 3.2(b) of this Schedule:

- (a) If the validity or otherwise of the provisional votes may affect the outcome of the Special Resolution, the Chief Returning Officer must not certify the result of the Special Resolution until the validity of the provisional votes has been confirmed pursuant to rule 3.3(a) of this Schedule and any valid provisional vote has been counted; or
- (b) If the validity or otherwise of the provisional votes will not affect the result of the Special Resolution, the Chief Returning Officer may certify the result notwithstanding that the validity of the provisional votes have not been confirmed pursuant to rule 3.3(a) of this Schedule and the provisional votes have not been counted. In the event that the Chief Returning Officer certifies the result in accordance with this rule he or she does not need to confirm the validity of any provisional votes. Provided however that nothing in this rule affects the obligation of the Trustees to determine every application for registration as a Member of Te Aupouri in accordance with the First Schedule.

**10. PROCEEDINGS AT SPECIAL GENERAL MEETING**

Except as otherwise set out in this Schedule the provisions of clause 12 shall apply to the holding of any Special General Meeting called for the purposes of considering a Special Resolution and the meeting shall be conducted accordingly.

**FIFTH SCHEDULE  
CULTURAL ASSETS**

**EXECUTED** as a Deed on this                         day of   2010:

**SIGNED**   )  
as Trustee in the presence of:                     )  
   )  
\_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Witness Address

**SIGNED**   )  
as Trustee in the presence of:                     )  
   )  
\_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Witness Address

**SIGNED**

as Trustee in the presence of:

)  
)  
)

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Witness Signature

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Witness Name

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Witness Occupation

---

Witness Address

**SIGNED**

as Trustee in the presence of:

)  
)  
)

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Witness Signature

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Witness Name

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Witness Occupation

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Witness Address

**SIGNED**

as Trustee in the presence of:

)  
)  
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Witness Signature

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Witness Name

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Witness Occupation

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Witness Address