

3.

TRUST ORDER
NGATI TE WHITI WHENUA TOPU TRUST

An amalgamation of

**BAYLY ROAD TRUST and
PUKE ARIKI LAND TRUST**

Dated 21 February 2014



4.

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1. TITLE

This Trust shall be known as the **NGATI TE WHITI WHENUA TOPU TRUST** ("Trust") and shall apply to Lot 1 DP 17494 Part Section 2345 New Plymouth (Old Railway Station) contained in Computer Freehold Register TNJ3/660 Registry and Lot 1 DP 18771 Block IV Paritutu Survey District being all the land contained in Computer Freehold register TNK2/399 Taranaki Registry, and any other assets, land, company shares or other assets whatsoever.

2. OBJECTS

Except as hereinafter may be limited the objects of the Trust shall be:

- (a) To provide for the use, management and alienation of the land and any other property or assets of the Trust to the best advantage of the beneficial owners;
- (b) To make provision for the better utilisation of the land by arrangement of titles or the like;
- (c) To make provision for the better habitation or use of the lands by the beneficial owners by making appropriate divisions of the land or in any other manner to maintain, support or develop communal facilities upon or near the land which are directly or indirectly to the advantage of the beneficial owners including marae, papakainga and/or housing;
- (d) To promote, maintain, support or to carry on any one or more businesses, undertakings or enterprises either upon the land or upon any part or parts thereof, or upon the land containing any communal facilities or in connection with some user of the land or in connection with such industries that might involve a number of the beneficial owners resident in the area;
- (e) To represent the beneficial owners on all matters relating to the land and to the use and enjoyment of the facilities therewith;
- (f) To promote Ngati Te Whiti Hapu history and association with its lands to beneficial owners and other communities; and
- (g) To identify, promote, maintain, support or to carry on projects and activities that furthers Ngati Te Whiti Hapu as defined in any Trust planning documents.

3. INTERPRETATION

In this Trust Order:

"Act" means Te Ture Whenua Maori Act 1993.

"Adult Beneficial Owner" means every individual referred to in paragraph (b) of the definition of Ngati Te Whiti Hapu.

"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.

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"Beneficial Owner" means every individual referred to in paragraph (b) of the definition of Ngati Te Whiti Hapu.

"Business day" means any day in which registered banks are open for business in the Taranaki region.

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

"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 9 of the Second Schedule; or
- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with rule 7.(a) or the Fourth Schedule.

"Confidential Information" means any information which the Trustees consider on reasonable grounds is of a commercially sensitive nature and the release of which could be detrimental to the interests of the Trust.

"Court" means Maori Land Court.

"Crown" has the meaning given to it in section 2 of the Public Finance Act 1989.

"Deputy Chairperson" means the deputy chairperson elected from time to time, in accordance with rule 4 of the Third Schedule.

"Disputes Committee" means the committee formed in accordance with Order 14.(c).

"Income year" means any year or accounting period ending on the balance date.

"Kaumatua Kaunihera" means the committee of that name appointed from time to time by the Trust in accordance with this Trust Order.

"Land" means any land held by the Trust, including the land known as Lot 1 DP 17494 Part Section 2345 New Plymouth (Old Railway Station) contained in Computer Freehold register TNJ3/660 Registry and Lot 1 DP 18771 Block IV Paritutu Survey District being all the land contained in Computer Freehold register TNK2/399 Taranaki Registry or any other land from time to time vested in the Trust.

"Major Transaction" means any single transaction, distribution, expenditure, acquisition, or lease of Trust property or grant of security over Trust property that exceeds more than half (50%) of the value of the Trust property, or any sale of Trust property.

"Ngati Te Whiti Hapu" means:

- (a) the collective group composed of individuals referred to in paragraph (b) of this definition; and
- (b) every individual who is descended from a Tupuna of Ngati Te Whiti Hapu as listed in the Ngati Te Whiti Hapu Tupuna list.

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“**Ngati Te Whiti Tupuna List**” means the list of Ngati Te Whiti Hapu as determined from time to time by the Ngati Te Whiti Whakapapa Committee, and which shall be used for the purposes of applications for registration on the Trust’s register.

“**Ngati Te Whiti Whakapapa Committee**” means the committee appointed in accordance with rule 4 of the First Schedule.

“**Ngati Te Whiti Whenua Topu Trust register**” means the register of beneficial owners that is to be maintained by the Trust in accordance with the First Schedule to this Trust Order.

“**Public Notice**” means a notice:

- (a) in a newspaper generally circulating in the relevant area or areas; and
- (b) may also be by panui or electronic media, including radio and television.

“**Registered adult beneficial owner**” means an adult beneficial owner whose whakapapa to Ngati Te Whiti Hapu has been validated by the Ngati Te Whiti Whakapapa Committee, accepted by the Trust, and whose contact details have been included on the Trust’s register.

“**Registration Form**” means the form used from time to time by the Trustees to enter the details of beneficial owners on the Trust’s register.

“**Special Resolution**” means a resolution that has been passed with the approval of not less than 75% of the registered adult beneficial owners who validly cast a vote in accordance with the process set out in the Fourth Schedule.

“**Trust**” means the whenua topu trust established and governed by this Trust Order.

“**Trust Property**” means all the assets and liabilities (including the land, any other property and income) that are from time to time held by the Trustees under this Trust Order howsoever received.

“**Trustees**” mean the Trustees elected from time to time in accordance with the Second Schedule of this Trust Order to represent Ngati Te Whiti Hapu and to act as the Trustees for the time being of the Trust and Trustee shall mean any one of those persons.

“**Whangai**” means those persons who do not affiliate to Ngati Te Whiti Hapu by descent from a Ngati Te Whiti Tupuna but who are adopted by a beneficial owner of Ngati Te Whiti in accordance with the tikanga of Ngati Te Whiti Hapu.

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 person include corporations and unincorporated bodies of persons, governments or other public bodies or agencies whether or not having a separate legal personality;
- (d) references to a statute shall be deemed to be references to that statute as amended, re-enacted or substituted from time to time;

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(e) references to an Order, a clause, a rule or schedule shall be to an Order, a clause, a rule or schedule in this Trust Order;

(f) the schedules to this Trust Order shall form part of this Trust Order;

(g) headings appear as a matter of convenience only and shall not affect the interpretations of this Trust Order;

(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.

4. POWERS

The Trustees are empowered:

(a) General

In furtherance of the objects of the Trust and except as hereinafter may be limited to do all or any of the things which they would be entitled to do if they were the absolute owners of the land PROVIDED THAT the Trustees shall not alienate the whole or any part of the fee simple by gift or sale other than in accordance with Te Ture Whenua Maori Act 1993.

(b) Specific

Without limiting the generality or the foregoing but by way of emphasis and clarification as well to extend the powers it is declared that the Trustees are empowered:

(i) *To buy*

To acquire any land or interest in land, shares or assets whatsoever whether by way of lease, purchase, exchange, or otherwise AND to acquire, sell, hire or otherwise deal in vehicles, shares, plant, chattels or equipment.

(ii) *To receive*

To receive any other assets and/or gifts on behalf of beneficial owners.

(iii) *To subdivide*

To subdivide or partition the land in any manner permitted by law into such subdivisions or parts as the Trustees shall think fit.

(iv) *To acquire interests*

To acquire the interests in any lands the subject of this Trust Order off any of the beneficial owners for the benefit of all or some of the beneficial owners affected by this Trust Order.

(v) *To improve*

To develop and improve the Trust lands and to erect thereon such buildings, fences, yards and other constructions or erections of whatsoever nature as the Trustees may see fit.

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- (vi) *To employ*
To engage, employ and dismiss managers, secretaries, servants, agents, workmen, solicitors, accountants, consultants, surveyors, engineers, valuers and other professional advisors required to carry out the Trust Orders or the powers of the Trustees and to fix their remuneration.
- (vii) *To borrow*
To borrow money for the purpose of the furtherance of any of the Trust Orders or powers of the Trustees with or without security over all or any real or personal property of the Trust.
- (viii) *To set aside cash reserves*
To set aside cash reserves as the Trustees shall think fit for contingencies or for capital expenditure of the expansion in accordance with the objects of the Trust.
- (ix) *To invest*
To invest all or any of the money coming into their hands in such manner and upon any securities as the Trustees shall think fit in accordance with the powers of investment given to the Trustees by the Trustee Act 1956, PROVIDED THAT the Trustees shall have the right to retain the initial assets of the Trust and any assets transferred to the Trust and without the obligation to diversify investments.
- (x) *To operate with others*
To enter into arrangements, agreements or contracts in the name of the Trust or jointly or in partnership with any other person or organisation.
- (xi) *To pay own costs*
From the revenues derived from the operation of the Trust to pay all costs, expenses and disbursements incurred by them including the costs of any person employed by them in the administration of the Trust or in the furtherance of any of the objects of the Trust and, if approved by the Court, payment by the Trust Accident Compensation levies and associated expenses of the Trustees including any fees, costs or other incidental expenses and the reasonable travelling expenses incurred on Trust business.
- (xii) *To insure*
To insure all or any of the property or any risks that the Trustees shall think fit including indemnity insurance for the Trustees with such companies and on such terms as the Trustees shall think fit in the name of the Trust and/or the Trustees
- (xiii) *To distribute*
To distribute, from time to time, net proceeds for the collective benefit of beneficial owners as the Trustees shall determine.
- (xiv) *To permit occupation and enjoyment by the beneficial owners*
To reserve in any lease or licence to any beneficial owner as the Trustees think fit PROVIDED THAT such proposal is consistent with the Trust's Objects and has been approved by a Special Resolution in accordance with the Fourth Schedule to this Trust Order.
- (xv) *To lease*
To lease the land or other assets from time to time held by the Trustees on such terms and conditions as the Trustees shall think fit without restriction on the term of any lease subject to any restriction imposed by statute.

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(xvi) To take over existing leases

To assume all the rights, duties, powers and obligations heretofore held by the lessors under any lease having force or effect of any of the lands or of any part or parts thereof with power to enter into variations of any such lease and/or to negotiate and accept a surrender of any such lease whether in whole or in part and to obtain and enforce any judgment, decision or ruling or to effect any settlement or compromise with regard hereto.

(xvii) To represent beneficial owners

To prosecute from time to time in the appropriate tribunal or Court such applications or objections that may impact on the Trust, its assets, and/or beneficial owners howsoever as the Trustees in their absolute discretion may determine, and to represent the beneficial owners on any negotiations or questions of compensation of lands taken under the Public Works Act or other statutory compensation for lands taken under the Public Works Act or other statutory authority with the Government of any local authority.

(xviii) To form companies and acquire shares in companies

To form companies and to subscribe for and acquire shares in companies under the Companies Act 1993 and to adopt and change their constitutions to further the interests of the Trust to enable the company to be managed to facilitate the overall objects of the Trust PROVIDED THAT a Trustee may be paid directors' fees including those based on fees expected to be paid to directors in commercial enterprises of similar businesses which the directors are involved and the Trustees are entitled to retain the same provided such fees are approved by the beneficial owners at the Annual General Meeting of the Trust.

5. MAORI COMMUNITY PURPOSES

- (a) The Trustees may apply the whole or any part of the specified portion of the Trust income for Maori community purposes or for such Maori community purposes as the Court may specify and, in such a case, the Trustees may apply any part of such specified portion of the Trust income in accordance with Section 218 of the Act.
- (b) The Trustees are permitted to set aside Trust funds for the education purposes of the beneficial owners.
- (c) The Trustees may sponsor the establishment of a separate Charitable Trust for general charitable purposes (excluding education) to be incorporated under the Charitable Trusts Act 1957 and may assign assets or income to the Charitable Trust as may be authorised by a resolution of the beneficial owners at a general meeting subject to confirmation by the Court under section 245 of the Act in respect of any individual assignment.
- (d) The Trustees may, from time to time and at their absolute discretion, set aside Trust funds for welfare payments that recognise individual beneficial owners who excel in their chosen field and/or welfare payments that include assistance with tangi and hui.

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6. ELECTION, POWERS AND MEETINGS OF TRUSTEES**(a) Election in accordance with the Second Schedule**

Subject to any variance of this Trust Order under Order 16 or section 244 of the Act, 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.

(b) Proceedings of Trustees

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

7. NGATI TE WHITI WHENUA TOPU TRUST NOT TO BE BROUGHT INTO DISREPUTE**(a) Trustee not to bring Trust into disrepute**

No Trustee shall act in a manner which brings or is likely to bring the Trust into disrepute.

(b) Trustee may be censured or removed

Any Trustee that acts in a manner that brings or is likely to bring into disrepute the Trust may, by a resolution passed by a majority of not less than 75% of the other Trustees, be formally censured or be made the subject of an application to the Court for removal from office.

(c) Censure or removal to be notified

The censure or application for removal of a Trustee in accordance with this Trust Order shall, together with reasons, be reported to the beneficial owners of the Trust at the next Annual General Meeting of the Trust following such censure or removal.

(d) Effect of Removal

A Trustee removed from office in accordance with an application under Order 7.(b) shall not be entitled to be re-elected as a Trustee for a period of not less than six (6) years following his or her removal.

(e) Replacement of Trustee

The removal of a Trustee in accordance with Order 7.(b) shall give rise to a casual vacancy which shall be filled in accordance with rule 3.(b) of the Second Schedule.

8. TRUSTEE REPORT**(a) To Report to the Court**

Any Trustee at any time, upon being required to by the Court, shall file in the Court a written report and make him/herself available to the Court for questioning on the report or any matter relating to the administration of the Trust or to the performance of his/her duties as a Trustee.

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9. ADVICE TO TRUSTEES**(a) Trust may rely on advice**

The Trust 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:

- (i) An employee of the Trust whom the Trust believes on reasonable grounds to be reliable and competent in relation to the matters concerned; and
- (ii) A professional advisor or expert in relation to matters which the Trust believes on reasonable grounds to be within the person's professional or expert competence.

(b) Trust may obtain barrister's opinion

If the Trust is in doubt over any matter relating to the management and administration of the Trust property, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister of the High Court of New Zealand of at least seven (7) years standing. This right to obtain and act upon a barrister's opinion, however, will not restrict any right on the part of the Trust to apply to the Court for directions.

10. PERSONAL INTERESTS OF TRUSTEES

(a) Notwithstanding any general rule of law to the contrary, all employees of the Trust shall be disqualified from being appointed or from holding office as Trustee or as a representative of the Trust.

(b) Definition of Interested Trustee

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

- (i) is a party, or will derive a material financial benefit from that matter;
- (ii) has a material financial interest in another party to the matter;
- (iii) is a director, officer or Trustee or another party to, or person who will or may derive a material financial benefit from the matter, not being a party that is wholly owned by the Trust or any Corporate Entity or Subsidiary;
- (iv) is the parent, child, spouse or sibling or another party to, or person who will or may derive a material financial benefit from the matter; or
- (v) is closely connected and/or related to the person who will or may derive a material financial benefit from the matter, as determined from time to time by the Trustees.

(c) Dealings with "interested" Trustees

An interested Trustee as defined by Order 10.(b) shall disclose the nature and extent of that Trustee's interest to the other Trustees, and shall not take part in any deliberations or decision of the Trustees concerning any matter in which that Trustee is or may be interested other than as a Trustee of the Trust, and shall be disregarded for the purpose of forming a quorum for any such deliberation or decision.

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(d) Recording of interest

A disclosure of interest by a Trustee shall be recorded in the minute book of the Trust. Immediately following his or her appointment as a Trustee, each Trustee must enter into the minute book and must disclose in writing to the other party, and the Trustee must also, at any time after his/her appointment, enter into the minute book and disclose to the next meeting of the Trustees, any interest of which that Trustee becomes aware.

(e) Interest not different in kind

Notwithstanding Orders 10.(a) to (c), no Trustees will be interested in a matter where that Trustee is a member of Ngati Te Whiti Hapu and where his/her interest is not different in kind from the interests of other members of Ngati Te Whiti Hapu.

11. TRUSTEES' PROTECTION, LIABILITY AND INDEMNITY**(a) Protection**

Where any Trustee is of the opinion that any direction, determination or resolution of a meeting of the Trustees or general meeting of the beneficial owners conflicts or is likely to cause conflict with the terms of this Trust or with any rule of law or otherwise to expose the Trustees to any personal liability or is otherwise objectionable then, and in reliance upon Section 238 of the Act and of the Trustee Act 1956, he/she may apply to the Court for directions in the matter PROVIDED HOWEVER that nothing herein contained shall make it necessary for the Trustee to apply to the Court for any such directions.

(b) Liability

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

(c) Indemnity and insurance

- (i) Any Trustee, officer or employee of the Trust may be indemnified or have their insurance costs met by the Trust against any liability which he/she incurs in defending any civil or criminal proceedings issued because of his/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/she was acting in good faith in a manner that he/she believed to be in the best interests of the Trust with the aim of fulfilling the objects of the Trust.
- (ii) All indemnities and insurance costs may only be provided to the extent that the Trustees in their discretion think just and equitable.
- (iii) If any assets are held by the Trust 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.

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- (iv) 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.

12. PROTECTION OF MINORITIES

In any case where any Trustee or beneficial owner feels aggrieved by any decision, determination or resolution of a meeting of the Trustees or any act or omission of the Trustees, the Trustee or beneficial owner may:

- (a) give to the Trustees notice of his/her intention to have the matter complained of referred to the beneficial owners and then PROVIDED THAT within 14 days thereafter the Trustee or beneficial owner is able to file a requisition supporting that notice executed by not fewer than 20 beneficial owners then the Trustees shall fix a time and place and convene a general meeting accordingly in the manner hereinafter provided; PROVIDED FURTHER that if the Trustees fail to convene a general meeting within a reasonable time or the Trustee or beneficial owner is dissatisfied with the resolution of this matter by the general meeting he/she may;
- (b) give to the Trustees notice of intention to have the matter complained of referred to the Court PROVIDED THAT he/she shall within 14 days thereafter file an application pursuant to Section 238 of the Act and Section 68 of the Trustee Act 1956 requesting that the Court review any such act or omission of the Trustees and/or give directions as to any contemplated act of the Trustees arising from the resolution of the general meeting of beneficial owners or any other reason; OR pursuant to Section 244 of the Act for the variation of this Trust Order to make particular provision for the matter in dispute and in either case serve a copy thereof upon the Trustees AND upon and following receipt of a notice of intention as aforesaid and for as long as the matter remains unresolved, but then PROVIDED THAT the further particulars are filed within 14 days, and except as may be necessary for the avoidance of an action by any third party affected or as may be directed by a Court on application for injunction, directions of the like, the Trustees shall take no steps or no further steps as the case may be to implement or otherwise give effect to or enable the continuance of the matter complained of.

13. GENERAL MEETING

(a) Trust to hold annual general meeting

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

- (i) report on the operations of the Trust during the preceding Income Year;

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- (ii) present the audited financial statements;
- (iii) appoint the Trust's accountant and auditor;
- (iv) announce the names of any newly appointed Trustees;
- (v) undertake all other notified business; and
- (vi) at the discretion of the Chairperson, undertake any other general business raised at that meeting.

(b) Notice of general meeting

Subject to the specific notice requirements described in the Schedules to this Trust Order, the Trust shall not give less than 28 working days' notice of the holding of the Annual General Meeting, such notice to be posted (or sent by electronic means) to:

- (i) all registered adult beneficial owners at that last address shown for each such beneficial owner on the Trust's Register; and
- (ii) any adult beneficial owner who has made a written request for private notice of any annual general meeting.

Notice of the meeting shall also be inserted in any provincial newspapers circulating in the region/s where the Trust considers that a significant number of beneficial owners reside, or in any other media as the Trustees may determine from time to time. All such notices shall contain:

- (i) the date, time and place of the meeting;
- (ii) an agenda of matters to be discussed at the meeting;
- (iii) details of where copies of any information to be laid before the meeting may be inspected; and
- (iv) any other information specified by or under the Act.

(c) Notice of special meeting

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

- (i) any three (3) Trustees appointed for the time being to the Trust; or
- (ii) 20 registered adult beneficial owners of the Trust.

Subject to the specific notice requirements described in the Fourth Schedule, 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 full 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 Trust shall not be required to give notice calling the meeting until such a statement with agenda items has been received.

(d) Special 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.

16.

(e) **Invalidation**

The accidental omission to give notice to, or a failure to receive notice of, any Annual or Special General Meeting by a registered adult beneficial owner does not invalidate the proceedings for that meeting.

(f) **Deficiency of notice**

Subject to Order 13.(e), a deficiency of irregularity in a notice of any Annual or Special General Meeting will not invalidate anything done at the meeting if:

- (i) the deficiency or irregularity is not material; and
- (ii) the registered adult beneficial owners who attend the meeting agree by a simple majority to waive the deficiency or irregularity.

(g) **Quorum**

The quorum required for any Annual or Special General Meeting of the Trust shall be 20 registered adult beneficial owners present in person including among those a majority of Trustees currently holding office.

(h) **Chairing Meetings**

The Chairperson for the time being of the Trust 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 or holding a meeting, then the Deputy Chairperson shall be the chairperson. If the Deputy Chairperson is also not present, the Trustees shall elect one of their number to substitute as the chairperson for that meeting.

(i) **Adjourned Meetings**

If within 30 minutes of the time appointed for an Annual or Special General Meeting a quorum is not present, the meeting will stand adjourned to be reconvened within one month 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 registered adult beneficial owners present will constitute a quorum. Notice of the adjourned meeting shall be given no less than 14 working days before the date of the adjourned meeting by placing an advertisement in media circulating within Taranaki.

(j) **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 or orderly manner, or if any meeting in the opinion of the chairperson becomes unduly protracted, the chairperson may adjourn the meeting without further discussion, and may direct that any uncompleted items of business of which notice was given and which, in his/her opinion, requires to be voted upon, be put to the vote by a poll, without further discussion.

(k) **Minutes**

The Trust shall keep a proper record in a minute book of all decisions taken and business transacted at all Annual General and Special General Meetings.

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(l) 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 as a true and accurate record of that meeting, shall be evidence of those proceedings.

(m) 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 Order then, until the contrary is proven, the meeting shall be deemed to have been properly convened and its proceedings to have been conducted properly.

14. REPORTS AND ACCOUNTS

- (a) The Trustees shall prepare Annual Reports and audited financial statements of the assets and liabilities and of the income and expenditure for each year of the Trust's operation.
- (b) At each Annual General Meeting the Trustees shall produce reports and audited financial statements for each year in respect of which the Trustees have not earlier presented reports and accounts to a general meeting.
- (c) The Trustees shall file with the Court a copy of the Trust's audited financial statements within one (1) month of the Trust's Annual General Meeting.

15. DISPUTE RESOLUTION**(a) Notice of Dispute**

All disputes relating to matters under this Trust Order shall be submitted to the Trust by notice in writing and the Trust shall acknowledge receipt in writing within ten (10) working days of the date of receipt of the notice.

(b) No derogation of rights

The provisions of this Order 15 shall be derogate from the rights or obligations of the Trust or of any beneficial owner pursuant to the Act, the Trustee Act 1956, or any other act or provision of law or equity.

(c) Appointment of Disputes Committee

If a dispute is referred to the Trust under Order 15(a) then a Disputes Committee shall be appointed by the Trust to consider the dispute. The Disputes Committee shall consist of three (3) Trustees and two (2) Ngati Te Whiti Kaumatua, provided however that if the dispute relates to registration such members shall not have been members of the Ngati Te Whiti Whakapapa Committee that considered the registration application.

(d) Removal of appointees of Disputes Committee

At their discretion, the Trust may remove appointees to the Disputes Committee and replace those appointees accordingly.

(e) Role of Disputes Committee

The role of the Disputes Committee in dealing with the dispute shall be to facilitate a resolution of, or failing resolution to make recommendations on, the relevant dispute.

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(f) **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 and determine the procedures applicable to the facilitation and resolution of the dispute before it.

(g) **Recommendations or Decisions**

Nothing in this Trust Order shall be deemed or construed so as to make recommendations or decisions of the Disputes Committee binding on the parties including the Trust.

(h) **Notification of outcome**

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

16. REVIEW OF TRUST

(a) **Regular Reviews**

The Trustees shall, in the fifth year after the constitution of the Trust and at five (5) yearly intervals thereafter, make application to the Court for a review of the Trust.

(b) **Order by Court**

On any such review the Court may by order give such directions to the Trustees as it thinks fit, confirm the Trust Order without variation, vary the terms of the Trust Order in such manner as it thinks fit, or make an order determining the Trust.

17. VARIATION OF TRUST

Nothing in this Trust Order shall restrict the right of the Trustees to apply to the Court pursuant to the provisions of section 244 of the Act for a variation of the Trust Order PROVIDED THAT adult beneficial owners have had sufficient notice of any such application and there is a sufficient degree of support for the variation among registered adult beneficial owners.

18. WINDING UP

This Trust may be wound up in accordance with section 241 of the Act upon the establishment of an entity with similar objects by the registered adult beneficial owners of a new governance entity to represent beneficial owners and to hold and administer property, including the Trust property, on behalf of beneficial owners.

FIRST SCHEDULE: TRUST REGISTER**1. TRUST TO KEEP REGISTER****(a) Trustee to maintain Register**

The Trust shall establish and maintain a register of the beneficial owners of Ngati Te Whiti Whenua Topu Trust.

(b) Register to comply with this Schedule

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

2. CONTENTS OF REGISTER**(a) Register to contain Beneficial Owners' details**

The Trust Register shall record in it the full names, dates of birth, contact details of beneficial owners, and the name of each beneficial owner's Tupuna.

(b) Beneficial Owner Registration Number

The Trust will allocate a beneficial owner registration number to each registered adult beneficial owner. The Trust will in the next notice or communication following the first allocation of beneficial owner registration numbers, notify the relevant registered adult beneficial owner of his/her registration number.

3. APPLICATIONS FOR REGISTRATION**(a) Form of Applications**

All applications for registration as a beneficial owner of the Trust must be made on the Trust's registration form. The application must contain:

- (i) the full name, date of birth and contact details of the applicant;
- (ii) such evidence as the Trust may from time to time require as to that applicant's whakapapa to Ngati Te Whiti Hapu, including the name of at least one Ngati Te Whiti Tupuna and the generational blood connections to that Tupuna.

(b) Entitlement to make Applications

An application for registration as a beneficial owner of the Trust may be made by:

- (i) adult beneficial owners – on their own behalf or by their legal guardian;
- (ii) beneficial owners from Ngati Te Whiti Hapu who are under the age of 18 years – by a person on their behalf who is their parent or legal guardian; or
- (iii) beneficial owners from Ngati Te Whiti Hapu by a person on their behalf who in the opinion of Ngati Te Whiti Whakapapa Committee, stands in the stead of a parent or legal guardian of that person.

(c) **Compliance with Trust Order**

All beneficial owners who apply to register and are registered on the Trust Register are, by their application and registration, deemed to agree to the terms of this Trust Order, including the disputes procedure set out in Orders 15.(a) to (h) inclusive and the election, voting, and meeting procedures set out in the Second, Third and Fourth Schedules respectively.

4. **DECISIONS AS TO ACCEPTANCE ON THE TRUST REGISTER**

(a) **Whakapapa Committee to be established**

The Trust shall establish a Ngati Te Whiti Whakapapa Committee to make recommendations to the Trust on all applications made pursuant to rule 3.(a) of this Schedule by any person whose whakapapa is to Ngati Te Whiti Hapu.

(b) **Ngati Te Whiti Tupuna List**

Upon establishment, and as required from time to time, the Ngati Te Whiti Whakapapa Committee shall determine the list of Ngati Te Whiti Tupuna.

(c) **Composition of the Whakapapa Committee**

The Whakapapa Committee shall comprise not less than three (3) and up to seven (7) Kaumatua, appointed by the Trust from time to time. Trustees with the required expertise and knowledge of Ngati Te Whiti whakapapa may be appointed.

(d) **Consideration of applications**

All applications for membership pursuant to rule 3.(a) of this Schedule, together with any supporting evidence, shall be forwarded to the Whakapapa Committee.

(e) **Decisions to be made on applications**

Upon receipt of an application for membership in accordance with rule 3.(a) of this Schedule, the Whakapapa Committee shall consider the application and shall make a recommendation to the Trust as to whether the application should be accepted as to the applicant's status as a beneficial owner of the Trust.

(f) **Successful applications to be notified and registered**

In the event that the Whakapapa Committee recommends an application should be accepted, and the Trust accepts that application, then the Trust shall notify the applicant and enter the applicant's name and other relevant details in the appropriate part of the Trust Register.

(g) **Notification of unsuccessful applicants**

In the event that the Whakapapa Committee recommends declining an application, then such recommendation shall be conveyed in writing to the Trust together with the reasons for that recommendation. If the Trust accepts the recommendation declining an application, it shall then notify the applicant in writing of the decision together with the reasons for that decision.

21.

(h) 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 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 any previous application) as to the applicant's whakapapa belonging to a Ngati Te Whiti Tupuna.

(i) Assistance in identifying membership

In maintaining the Trust Register, the Trust shall develop policies for assisting in the identification and registration of those from Ngati Te Whiti Hapu who, for the time being, are not on the Trust Register. Such policies shall include policies as to the nature of the assistance that the Trust will provide to those persons who believe their whakapapa is to Ngati Te Whiti Hapu but for whatever reason are not able to establish such whakapapa.

(j) Responsibility of Beneficial Owners to the Trust

Notwithstanding rules 6.(a) and (b) of this Schedule, it shall be the responsibility of each registered beneficial owner (or in the case of those persons under 18 years, the parent or legal guardian of that person) to ensure that his or her full contact details for the time being is provided and updated. If the Trust receives additional information that has the potential to alter a decision of the Trustees on an existing registrant, that information shall be referred to the Whakapapa Committee for reconsideration and recommendation back to the Trustees.

(k) Consequences of registration

Registration of any person in the Trust Register, whose whakapapa has been validated by the Whakapapa Committee and whose application to register has been accepted by the Trust, shall be conclusive evidence of that person's status as a registered beneficial owner of the Trust under whose name he or she is recorded.

5. NGATI TE WHITI WENUA TOPU TRUST REGISTER**(a) Information from existing beneficial owners**

The Trust shall include on the Trust Register the full names, dates of birth, and contact details of every beneficial owner whose name and other details are, immediately before the date of this Trust Order, on the register of members maintained by the Puke Ariki Land Trust.

(b) Register available for inspection

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 Trust shall ensure that the Trust Register is available to be inspected during business hours by all beneficial owners, provided that each beneficial owner shall have access to:

- (i) inspect their own full personal details on the Register; and
- (ii) inspect only the names of other beneficial owners on the Register.

SECOND SCHEDULE: ELECTIONS OF TRUSTEES**1. PROCEDURE****(a) 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**(a) Restrictions on Trustees**

A person shall not be permitted to be a Trustee if he or she:

- (i) is not a registered adult beneficial owner of the Trust; or
- (ii) is an undischarged bankrupt; or
- (iii) has ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean State) Act 2004); or
- (iv) has ever been removed as a trustee of a trust by order of a Court on the grounds of breach of trust, lack of competence, being unfit, or failure to carry out the duties of a trustee satisfactorily; or
- (v) is subject to a property order made under section 30 or section 31 of the Protection of Personal Property Rights Act 1988.

(b) Trustees not to be Trust employees

A Trustee shall not be employed as an employee of the Trust

(c) Number of Trustees to be limited

There shall be five (5) trustees.

3. TERM OF OFFICE**(a) Term of office**

Subject to rule 3.(d) of this Schedule, 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 Trustees shall hold office for longer than three years without facing re-election.

(b) Casual vacancies

Should any casual vacancy arise as a result of a Trustee ceasing to hold office prior to the expiry of that Trustees' term of office, then that vacancy shall be filled by the holding of a further election in accordance with this Schedule provided that the Trust shall have the discretion not to hold such an election if the casual vacancy occurs less than six (6) months before the original Trustee's term was due to expire.

23.

(c) **Term of casual appointments**

In the case of a Trustee elected pursuant to rule 3.(b) of this Schedule, the Trustees thereby appointed shall hold office for the balance of the term of office of the Trustee that he or she has replaced.

(d) **Retirement and rotation of Initial Trustees**

The initial persons elected as Trustees of this Trust ("Initial Trustees") shall retire from office with elections having been held for their respective positions as Trustees as at the date of the Annual General Meeting of the Trust in the first Income Year following the date of this Order, all of the Initial Trustees shall retire and an election shall be held for five vacant Trustee positions.

(e) **Term following retirement of Initial Trustees**

Following this retirement of the Initial Trustees in accordance with rule 3.(d) of this Schedule, each Trustee shall hold office until the conclusion of the Annual General Meeting of the Trust in the third income year following his or her appointment.

4. TIMING OF ELECTIONS(a) **Timing**

The elections for Trustees in any given Income Year must, except in the case of elections to fill casual vacancies under rule 3.(b) of this Schedule, be conducted by the date of the Annual General Meeting of the Trust in that Income Year.

5. MAKING OF NOMINATIONS(a) **Calling for nominations**

The Trust shall give notice calling for nominations for those Trustee positions for which elections are required at least three (3) months before the date of the election, and in any event in sufficient time for the election to be conducted in accordance with rule 4 of this Schedule. Such notice shall specify the method of making nominations, and the latest date by which nominations must be made and lodged with the Trust or such other person as the notice directs.

(b) **Timing for nominations**

All nominations must be lodged with the Trust no later than two (2) months before the date of the election.

(c) **Form of notice**

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

- (i) by post (or electronic means if requested) to each adult beneficial owner;
- (ii) by newspaper advertisement published on at least two (2) separate days and inserted in any major metropolitan newspapers and/or provincial newspaper circulating in regions where the Trust considers that a significant number of beneficial owners of Ngati Te Whiti reside; and
- (iii) by such other means as the Trust may determine.

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(d) Inclusion of invitation to register

Any such notice under rule 5(a) of this Schedule shall also invite applications from persons who wish to be nominated or wish to nominate another person but are not registered adult beneficial owners for inclusion of their names in the Trust Register, and shall set out the date upon which the registrations for those wishing to be nominated or wish to nominate another person close, being the same date as that fixed for the latest date for making and lodging nominations in accordance with this Schedule.

(e) Nominations to be in writing

The nominations of a candidate for election as a Trustee shall be in writing on the nomination form used from time to time by the Trust and signed by not less than two (2) adult beneficial owners shown on the Trust Register as being entitled to vote in respect of the election of that candidate.

(f) Consent of nominee

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

6. HOLDING OF ELECTIONS**(a) Mode of voting at elections**

Subject to rule 7.(c) of this Schedule, voting at all elections shall be by way of secret postal ballot or by any electronic voting method as deemed appropriate by the Trustees.

(b) No election where one nominee

In the event that the total amount 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.

(c) Eligibility to vote

Each adult beneficial owner is eligible to vote in an election, provided that:

- (i) Each such adult beneficial owner will only be eligible to cast one vote in an election;
- (ii) Each such adult beneficial owner is either registered on the Trust Register or has completed and sent with their voting form a Registration Form.

(d) Provisional votes

Where an adult beneficial owner is not on the Trust Register, and has voted in accordance with rule 7(c) of this Schedule:

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

7. NOTICE OF ELECTIONS**(a) Notice to be given**

Immediately after the closing date for nominations the Trust shall, where an election is required, fix a closing date for the election (being the last day upon which a vote may be validly cast in the election).

(b) Period of notice

The Trust shall give not less than four (4) weeks' notice of the closing date for the elections and the method by which votes may be cast as set out in rule 6.(a) of this Schedule.

(c) Method of giving notice

Notice under rule 7.(b) of this Schedule shall be given by:

- (i) posting notice (or sent by electronic means, if requested) to each registered adult beneficial owner and to any other owner who has made a request for a notice;
- (ii) inserting an advertisement on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trust considers that a significant number of beneficial owners reside; and
- (iii) advertising on a radio station/s broadcasting in the district or districts where the Trust considers that a significant number of beneficial owners reside.

(d) General content of notices

Every notice given in accordance with rules 7.(c)(i) of this Schedule shall contain:

- (i) a list of candidates for election as Trustees; and
- (ii) the method by which votes may be cast as set out in rule 6(a) of this Schedule.

(e) Additional content of postal notice

Every notice given in accordance with rule 7.(c)(i) of this Schedule shall also contain:

- (i) a voting form that complies with rule 8.(a) of this Schedule;
- (ii) details of the procedure to be followed in making a vote by post, including the date by which the voting form must be received by the Chief Returning Officer; and
- (iii) the address to which the voting form shall be posted or delivered to the Chief Returning Officer.

(f) Additional information in other notices

Each notice given in accordance with rules 7.(c)(ii) and (iii) of this Schedule shall also describe where voting forms may be obtained and where any relevant explanatory documents may be viewed or obtained.

8. POSTAL VOTING**(a) 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.

(b) Timing of postal votes

Votes must be made no later than the closing date for the election of 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 (3) days after the closing date for the election, but only if the envelope containing the voting form is date stamped on or before the closing date for the election.

9. APPOINTMENT OF THE CHIEF RETURNING OFFICER**(a) Appointment of the Chief Returning Officer**

For the purposes of the elections the Trust 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 coordinating 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.

(b) Chief Returning Officer to receive voting forms

All voting forms must be addressed to the Chief Returning Officer

(c) 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 beneficial owner who is eligible to vote and votes in the relevant election.

(d) Recording of votes

A record shall be kept by the Chief Returning Officer of all votes received, including separate records of votes from registered and unregistered beneficial owners.

10. RESULT OF ELECTION**(a) Counting of votes**

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

(ii) The candidate or candidates (not exceeding the number of Trustees to be elected) receiving the highest number of valid votes in favour of his or her election will be deemed to be elected as Trustees of the Trust.

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(b) Certification and notification of the 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 give notice of the same at the Annual General Meeting of the Trust in accordance with clause 13.(a)(iv).

Following the confirmation of the result of an election the newly elected Trustees, with the assistance of the incumbent Trustees, with the assistance of the incumbent Trustees, must apply to the Court under section 222 of the Act for formal appointment of the newly elected Trustees. This application must contain sufficient information to inform the Court:

- (i) of the ability, experience and knowledge of the newly elected Trustees;
- (ii) that the appointments are broadly acceptable to registered adult beneficial owners; and
- (iii) that the newly elected Trustees consent to their appointments.

(c) Provisional votes

Where, in respect of any election, one or more provisional votes have been cast in accordance with rule 6.(c) of this Schedule:

- (i) If the validity or otherwise of the provisional votes may affect the outcome of the election, 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 6.(d)(i) of this Schedule and any valid provisional vote has been counted; or
- (ii) 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 6.(d)(i) of this Schedule and the provisional votes have not been counted.

11. RETENTION OF ELECTION RECORDS**(a) 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.

(b) Retention and disposal of sealed election packets

Subject to rule 11.(a) of this Schedule, the sealed election packets received from the Chief Returning Officer shall be safely kept unopened by the Trust for a period of one (1) year from the closing date for voting in the election to which the packet relates. Upon expiry of that one (1) year period the packets shall be destroyed unopened.

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12. REVIEW OF ELECTION RESULTS**(a) Candidates may seek review**

Any candidates 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 by making an application to the Court.

13. TERMINATION OF OFFICE OF TRUSTEES**(a) Termination of office of Trustees**

Notwithstanding the foregoing rules of this Schedule, a Trustee shall cease to hold office, and the Trust will make an application to the Court to this effect, if he or she:

- (i) dies;
- (ii) retires from office by giving written notice to the Trust;
- (iii) completes his or her term of office and is not re-elected;
- (iv) completes two successive terms of office as Trustees;
- (v) refuses to act;
- (vi) is absent without leave from three (3) consecutive ordinary meetings of the Trustees without good reason or without the permission of the Chairperson;
- (vii) becomes physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Trustee;
- (viii) becomes bankrupt or makes any composition or arrangement with his or her creditors;
- (ix) is convicted of an indictable offence;
- (x) is or has ever been convicted of an offence involving dishonesty as defined in section 2(1) of the Crimes Act 1961, or an offence under section 373(4) of the Companies Act 1993 (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slates) Act 2004; or
- (xi) is disqualified from being a director of a company registered under the Companies Act 1955 or the Companies Act 1993; or
- (xii) is removed as a trustee of a trust by order of a court on the grounds of breach of trust, lack of competence, being unfit, or failure to carry out the duties of a trustee satisfactorily; or
- (xiii) becomes subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988.

14. RECORD OF CHANGES OF TRUSTEES**(a) Record of changes of Trustees**

Upon notification of every appointment, retirement, re-appointment or termination of office of any Trustee, the Trust 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****(a) Regulation of meetings**

The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Any two (2) Trustees may at any time by notice in writing to the Trust summon a meeting of the Trustees and the Trust shall take such steps as are necessary to convene such meeting.

2. NOTICE TO TRUSTEES**(a) Notice to Trustees**

Written notice of every meeting shall be hand-delivered, posted, or sent by facsimile or by electronic means to each Trustee at least seven (7) days before the date of the meeting. However, it shall not be necessary to give notice of a meeting of Trustees to any Trustee 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.

(b) 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.

(c) 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.

(d) 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.

(e) Deficiency of notice

Subject to rule 2.(d) 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**(a) Quorum**

The quorum for a meeting of the Trustees shall be three (3) Trustees who, for the time being have been appointed as Trustees in accordance with this Trust Order.

(b) Proxy Voting

Voting by way of proxy at any general or special meeting of the Trust is not permitted.

4. CHAIRPERSON AND DEPUTY CHAIRPERSON**(a) Trustees to elect**

At the first meeting of the Trustees following an Annual General Meeting, the Trustees shall appoint one (1) of their number to be chairperson ("Chairperson") and at their discretion one (1) of their number to be deputy chairperson ("Deputy Chairperson").

(b) Voting on election

Where there is more than one candidate for Chairperson (or as the case may be Deputy Chairperson) 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).

(c) Termination of office

The Chairperson (or Deputy Chairperson) will cease to hold office in the event that he or she may resign 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 a Chairperson (or Deputy Chairperson) ceases to hold that office then a further election shall be held for the position.

5. PROCEEDINGS AT MEETINGS**(a) Decisions to majority vote**

Unless stated otherwise in this Trust Order, questions arising at any meeting of the Trustees shall be decided by a majority of votes. In the case of an equality of votes, the Chairperson shall not have a second casting vote.

(b) 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.

(c) Vacancies

The Trustees may act notwithstanding any vacancy in their number, 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.

(d) 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.

(e) **Unruly meetings**

If any meeting of the 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 uncomplicated 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. RESOLUTIONS

(a) **Resolutions**

A written resolution signed by all the Trustees or by all the members of a committee shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees or of that committee (as the case may be). Such a resolution may comprise several duplicated documents, each signed by one or more of the Trustees or members of the committee (as the case may be).

7. MINUTES

(a) **Minutes to be kept**

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

(b) **Minutes to be evidence of proceedings**

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

(c) **Minutes to be evidence of proper conduct**

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

8. TELECONFERENCE, VIDEOCONFERENCE AND WEB-BASED MEETINGS

(a) **Teleconference, Videoconference and Web-based meetings**

For the purposes of these rules a Teleconference, Videoconference or Web-based (such as Webcam or Skype) meeting between a number of Trustees or committee members who constitute a quorum, together with the Secretary or another person acting as the Secretary, shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All provisions in these rules relating to meetings shall apply to Teleconference, Videoconference or Web-based meetings so long as the following conditions are met:

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- (i) 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, Videoconference or Web-based meeting and to be linked for the purpose of such meeting;
- (ii) throughout the Teleconference, Videoconference or Web-based meeting each participant and the Secretary or person acting as a Secretary must be able to hear and, in the case of Video or Web technology, see each of the other participants;
- (iii) at the beginning of the Teleconference, Videoconference or Web-based meeting each participant must acknowledge his or her presence for the purpose of that meeting to all other participants;
- (iv) a participant may not leave the Teleconference, Videoconference or Web-based meeting by disconnecting his or her 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, Videoconference or Web-based meeting unless he or she leaves the meeting with the Chairperson's express consent; and
- (v) A minute of the proceedings at the Teleconference, Videoconference or Web-based meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the participants of that meeting.

9. FORMS OF CONTRACTS

(a) Contracts by deed

Any contract which, if made between private persons, must be by deed shall, if made by the Trust, be in writing.

(b) 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 Trust, be in writing signed by two Trustees on behalf or by direction of the Trust.

(c) Oral Contracts

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

(d) Contracts pursuant to resolution

Notwithstanding anything to the contrary in this rule 9 of this Schedule, no contract made by or on behalf of the Trust 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 Trust.

FOURTH SCHEDULE: PROCEDURE FOR PASSING SPECIAL RESOLUTIONS**1. THIS SCHEDULE TO APPLY****(a) Special Resolution required**

A Special Resolution to:

- (i) approve a Major Transaction;
- (ii) permit the occupation, enjoyment or to make other special provisions for beneficial owners in accordance with Order 4(b)(xiv);
- (iii) amend this Trust Order in accordance with Order 17; or
- (iv) wind up the Trust in accordance with Order 18

shall only be passed as set out in this Schedule.

2. POSTAL VOTING AND SPECIAL GENERAL MEETING**(a) Voting by ballot**

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

3. VOTING**(a) Approval for a Special Resolution**

Subject to rule 3.(b) of this Schedule, in order for a Special Resolution to be passed it must receive the approval of not less than 75% of adult beneficial owners.

(b) Specific Special Resolutions

In order for Special Resolutions to be passed which relate to amendments to this Trust Order in accordance with Order 17, they must receive the approval of not less than 75% of those adult beneficial owners who validly cast a vote in favour of the proposed Special Resolution in accordance with this Schedule.

(c) Eligibility to vote on specific Special Resolutions

Each adult beneficial owner is eligible to vote in accordance with rule 3.(b) of this Schedule, provided that:

- (i) each such adult beneficial owner will only be eligible to cast one vote; and
- (ii) each such adult beneficial owner must be registered on the Trust Register at the time of casting his or her vote.

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4. SPECIAL GENERAL MEETING REQUIRED**(a) 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 a Special General Meeting.

5. NOTICE**(a) Notice of a Special General Meeting**

The Trust shall give not less than four (4) weeks' 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).

(b) Method of giving notice

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

- (i) in writing and posted to all registered adult beneficial owners at the last address shown for each such registered adult beneficial owner on the Trust Register and to any other adult beneficial owner who has made a written request for a notice;
- (ii) advertised in any major metropolitan newspapers circulated in New Zealand and in any provincial newspapers circulating in regions where the Trust considers that a significant number of registered beneficial owners reside; and
- (iii) advertised on a radio station or radio stations broadcasting in the district or districts where the Trust considers that a significant number of registered beneficial owners reside.

(c) Content of notice to beneficial owners

All notices given in accordance with rule 5(b)(i) of this Schedule shall contain:

- (i) the date, time and place of the Special General Meeting called for the purposes of considering the Special Resolution;
- (ii) details of the proposed Special Resolution;
- (iii) details of the reasons for the proposed Special Resolution and the effects that the Special Resolution will have;
- (iv) details of the procedure to be followed in making a postal vote, including the date postal voting closes;
- (v) a statement that postal votes may either be delivered to the Chief Returning Officer at the Special General Meeting, or posted; and
- (vi) a voting form.

(d) Content of advertisement

All advertisements published in accordance with rules 5.(b)(ii) and (iii) of this Schedule shall contain the matters referred to in rules 5.(c)(i) and (ii) of this Schedule together with details of how and where any further information can be obtained.

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6. POSTAL VOTING**(a) Other details to accompany vote**

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

(b) Timing of postal votes

Votes must be cast no later than the closing date for voting. Votes validly cast are valid and able to be counted if they are received by the Chief Returning Officer no later than three (3) days after the closing date, but only if the envelope containing the voting form is date stamped on or before the date for closing closes.

(c) Postal votes may be received at the Special General Meeting

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

7. APPOINTMENT OF THE CHIEF RETURNING OFFICER**(a) Appointment of the Chief Returning Officer**

For the purposes of the Special Resolution, the Trust shall appoint 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.

(b) Chief Returning Officer to receive voting forms

All voting forms must be addressed to the Chief Returning Officer

(c) 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.

(d) 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 beneficial owner who is eligible to vote and votes on the Special Resolution.

(e) Recording of votes

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

8. COUNTING OF VOTES**(a) 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.

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(b) **Certification and notifying result**

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

9. PROCEEDINGS AT A SPECIAL GENERAL MEETING

(a) **Proceedings**

Except as otherwise set out in this Schedule, the provisions of Order 13.(c) 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.

1/27/11
MA