

## Appendix 1 - Trust Deed Amendment proposals – Information for Adult Registered Members

For the avoidance of doubt, unless the context requires otherwise, capitalised terms in this appendix will have the meanings given to those terms in the trust deed for the Ngāti Tūwharetoa Fisheries Charitable Trust, signed and dated on 8 January 2007.

### INFORMATION REGARDING THESE RESOLUTIONS

This appendix provides information in relation to certain resolutions to be voted on by registered members of the Ngāti Tūwharetoa Fisheries Charitable Trust (**Trust**) for the upcoming annual general meeting of the Trust. In particular, the resolutions contemplate amendments being made to the current trust deed for the Trust (the **Current Deed**) in the manner set out in the draft amended and restated deed of trust (the **Amended and Restated Deed**).

Copies of the Amended and Restated Deed are downloadable from [www.ntf.maori.nz](http://www.ntf.maori.nz) or can be accessed by contacting the office for the Trust on 07 377 3176, or 0800 889 427 (outside the local calling area).

### Resolutions

1. The Trust seeks the approval of Members Ngāti Tūwharetoa to the following resolutions:

#### **Resolution 1:**

To **approve**:

- (a) amendments to the Current Deed to streamline processes for Hapu and Marae in the manner contemplated in the Amended and Restated Deed; and
- (b) that the amendments contemplated by (a) above are for the collective benefit of all Members of Ngāti Tūwharetoa.

#### **Resolution 2:**

To **approve**:

- (a) all other amendments to the Current Deed that are set out in the Amended and Restated Deed, including amendments to ensure compliance with the Trusts Act 2019 and other applicable legislation, to ensure good governance practices and procedures, and to update certain provisions as required; and
- (b) that the amendments contemplated by sub-paragraph (i) above are for the collective benefit of all Members of Ngāti Tūwharetoa.

### **Resolution 3:**

To **adopt** the Amended and Restated Deed as the new deed of trust for Ngāti Tūwharetoa Fisheries Charitable Trust.

### **Deed of Amendment and Restatement**

2. The amendments proposed by the Trust are set out in the Deed of Restatement and Amendment. The reasons for the changes are more comprehensively discussed in the table below. The amendments can be separated into three different categories:
  - (a) Amendments to streamline processes for Hapū and Marae.
  - (b) Amendments to ensure compliance with the Trusts Act 2019 and other relevant legislation.
  - (c) Amendments to ensure good governance practices and procedures and to update certain provisions as required.

#### *Streamline Hapu process*

3. The Current Deed provides for a number of processes that include Marae and Hapu, including the appointment of Hapu Representatives, meetings between Hapu Representatives and the Trust and holding Hui a Hapu to nominate candidates for elections.
4. These processes, when implemented, impose a financial and administrative burden on the Trust and on the Hapu, when they are followed. Due to this, the processes are not often carried out properly, or in some circumstances, they are not carried out at all.
5. As a result, the Trust is seeking resolutions to streamline the processes relating to Hapu and Marae to relieve some of the administrative (and in some cases) financial burden, as well as to reflect the practices followed by the Trust.

#### *Compliance with Trusts Act 2019 and other legislation*

6. At law, the Trustees are required to comply with a wide range of legislative regimes, including (without limitation) the Trusts Act 2019, the Charities Act 2005 and the Charitable Trusts Act 1957.
7. The Trust has engaged Kāhui Legal to review the Current Deed and provide advice on how it may be more compliant with the relevant legislation. Kāhui have provided a series of recommendations, which ensure ease of reference for the Trustees when considering how they ought to be exercising their powers and functions. This includes (in particular) changes to:
  - (a) include Trustee duties, both mandatory and default duties, as well as any modifications to or exclusions of those default duties;

- (b) include indemnities and limits on liability for Trustees, provided the Trustees do not act in a manner that is dishonest, or that could constitute wilful misconduct or gross negligence;
- (c) include provisions for the appointment of persons to carry out functions on behalf of the Trustees; and
- (d) appropriate provisions to ensure the Trustees comply with their charitable purposes, and maintain the Trust's charitable tax status.

*Good governance practices / procedures and updates*

8. Further to the above, Kāhui have also recommended a number of changes to ensure good governance practices and generally to update provisions of the Current Deed to reflect the current practices and circumstances of the Trust.

As noted above, a more detailed description of these changes is provided in the table below.

**Table of proposed changes to the Trust Deed**

CLAUSE	CHANGES	COMMENT
<b>INTRODUCTION</b>	Changes made to provide reasons for amendments and restatement of the Deed	Changes have been made to reflect the fact that the Deed is an amended and restated version of the original trust deed.
<b>Streamlining processes for Hapū and Marae</b>		
<b>Clause 1.1</b>	Changes have been made to remove the following terms:  “Appointment Certificate”  “Hapu Representatives”  “Marae”	As a consequence of the changes suggested below, these terms have been removed as they are not used otherwise in the Deed.
<b>Previous clauses 5 and 6 and Schedule 5</b>	Removal of clause “Meetings with Hapu Representatives”	This clause has been removed as the process creates extra administrative requirements on the Trustees and the Hapu that are difficult to comply with and incur further costs for the Trust and the Hapu. The process of appointing Hapu Representatives has also been removed as it relates to this.
<b>Clause 9.27 and Schedule 1 - clauses 5, 6, 8, 9 &amp; 10(d)(i) &amp; (ii)</b>	“Appointment of Marae” and other references to “Marae”	The appointment process for candidates at election has been removed as it creates additional administrative processes on the Hapu to call Hui a Hapu. Furthermore, the right to nominate in this format is not often used.

CLAUSE	CHANGES	COMMENT
<b>Compliance with the Trusts Act 2019 and other legislation</b>		
<b>Clause 1.1</b>	Definition of “Charitable Purposes”	The definition has been changed to refer directly to the charitable purposes of the Trust.
<b>New clause 2.3</b>	Amendment to clause related to the registration under the Charities Act 2005 and Charitable Trusts Act 1957	Additional wording has been inserted to ensure that, as a registered charity, the Trustees will comply with the Charities Act 2005 and Charitable Trusts Act 1957.
<b>Clause 4.3(f)</b>	Amendment to clause related to the cessation of office of Trustee	Changes have been made to clarify the reference to the Crimes Act 1961. In particular, that the terminology ‘offence involving dishonesty’ has been changed to ‘crime involving dishonesty’ in that Act.
<b>New clause 6</b>	Insert new clause – “Trustee Duties”	<p>The Trusts Act 2019 has codified a number of different trustee duties into legislation. These include mandatory duties (which must be performed by the Trustees and cannot be modified or excluded by the terms of the Trust Deed) and default duties (which must be performed by the Trustees unless they are modified or excluded by the terms of the Trust Deed).</p> <p>These duties have been included in the Deed to clarify:</p> <ul style="list-style-type: none"> <li>(a) what the duties are for Trustees that are reading the Deed, without the requirement for them to also review the Trusts Act 2019; and</li> <li>(b) to ensure it is clear which default duties are modified or excluded in the Deed, so the Trustees can be clear about the requirements on their exercise of powers and functions.</li> </ul>

CLAUSE	CHANGES	COMMENT
<b>New clauses 7 and 8</b>	Insert new clause – “Trustee Liability”	<p>Clauses have been included to protect Trustees for personal liability and to indemnify the Trustees from the Trust Fund for liabilities that arise, provided that they are not as a result of the Trustees’ breach of trust in a manner that is dishonest, or constitutes wilful misconduct of gross negligence.</p> <p>These are standard clauses included in deeds for trusts of a similar nature to the Trust. They are particularly common since the passing of the Trusts Act 2019 and the restrictions that this Act put on limits of liability / indemnities.</p>
<b>Clause 9.6</b>	Insert subclause for “Management of the Trust – General”	This clause has been inserted to ensure that the Trustees exercise their functions and powers in a manner that maintains the charitable status of the Trust for tax purposes and the Inland Revenue Acts.
<b>Clause 9.18</b>	Amendment to clause “Delegation of powers” to refer to appointment	This clause has been replaced to comply with sections 67 – 73 of the Trusts Act 2019, which clarifies that Trustees may appoint persons to carry out certain of their powers and functions in accordance with terms that provide for scope of appointment, periodic review by the Trustees, exercise of duties of care and the ability to terminate or amend the terms of the appointment if the Trustees consider necessary.
<b>New clauses 9.31 – 9.35</b>	New clauses – “Business income restriction”	These clauses have been inserted to provide for a business income restriction. This ensures that no person with some control over a business carried on by or for the benefit of the Trust is able to direct or divert any amount from the business to provide benefit for themselves or someone else. This is to comply with the Income Tax Act 2007 and restrictions imposed for charities.
<b>Clauses 9.36 and 15.6</b>	Amendment to clauses – “Appointment and removal of Custodian Trustee” and “General Disputes”	These clauses previously referred to the Trustee Act 1956, which has been repealed and replaced with the Trusts Act 2019.

CLAUSE	CHANGES	COMMENT
<b>Previous clause 14.2</b>	Removal of clause – “Perpetuities”	This clause is not required, as the rule against perpetuities does not apply to a charitable trust (i.e there is no maximum duration of a charitable trust). Furthermore it has been repealed by the Trusts Act 2019.
<b>Changes for good governance practice and procedure and to update certain provisions to reflect the Trust’s current practices.</b>		
<b>Clause 1.1 and 1.2</b>	Addition, removal and amendment of definitions and removal of subheadings	<p>These definitions have been added, removed or amended to reflect best practice and / or to provide clarity on the Trustees’ exercise of powers and functions.</p> <p>We have also removed subheadings in clause 2.1 so that it is easier to read.</p>
<b>Clause 1.1, previous Schedules 2 and Schedule 5</b>	<p>Definitions of</p> <p>“Nomination Certificate”</p> <p>“Registration Form”</p> <p>“Voting Form”</p> <p>And prescribed forms provided in the schedules</p>	We have amended these definitions and removed the schedules to ensure the Trust has flexibility to provide for these forms and is not limited to prescribed forms provided in the schedules to the Deed (while maintaining any requirements that might exist for these forms in the Act).
<b>Clause 2.2</b>	Amendment to clause related to the name of the Trust	This clause has been amended to clarify that the Trustees may change the name of the Trust by resolution.

CLAUSE	CHANGES	COMMENT
<b>Clauses 4</b>	Separate out "Appointment of Trustees" as its own clause	This provision has been separated out to ensure the Deed is easier to read.
<b>Clause 4.1</b>	Amendment to clause related to the number of Trustees	Clause 4.1 has been amended to clarify what the composition of the Trust will be. Wording the end of clause 4.1 has been deleted as it is no longer relevant.
<b>Clause 4.3</b>	Amendment to clause related to the cessation of office of Trustee	We have added additional language to align with standard reasons for vacating an office of Trustee. These reasons are commonly included in deeds for trusts of a similar nature to the Trust.
<b>New clause clause 4.6</b>	Insert new clause - Record of Changes of Trustees	We have included this clause to ensure that record is kept of changes of Trustees.
<b>Clause 4.8</b>	Amend clause - Trustees must act for all Ngāti Tuwharetoa	We have made changes to this clause to clarify that it is a reference to the "Tuwharetoa Māori Trust Board"
<b>New clause 5 and clause 9</b>	Separate out "Powers of Trustees" and "Management of the Trust" as their own clauses.	We have separated out these clauses to make the Deed easier to read.
<b>Clause 9.8</b>	Amendment to clause - Meetings of Trustees	This clause has been amended to clarify that it applies to both decisions <i>and</i> resolutions, and that each Trustees has one vote.
<b>Clauses 9.10 and 9.11(a)</b>	Amendment to clauses - Meetings of Trustees	This clause has been amended to update as facsimiles are no longer commonly used and to include notice of Trustee meetings via email.
<b>Clause 9.12</b>	Amendment to clause - Meetings of Trustees	This clause has been amended to clarify that no business will be transacted at any meeting unless a quorum is present.



CLAUSE	CHANGES	COMMENT
<b>Clause 9.14</b>	Amendment to clause - Meetings of Trustees	This clause has been amended to clarify that resolutions will be recorded in the minute book of the Trust
<b>Clause 9.15</b>	Amendment to Chairperson, Deputy Chairperson and Secretary	This clause has been amended to provide clarity on who will chair meetings.
<b>Clauses 9.20 and 9.21</b>	Amendments to clauses - Accounts and Audit	These clauses have been amended to specify that the accounts relate to the Financial Year and that current reporting standards applying to the Trust will be adhered to. Furthermore, the Trustees will file the records with Charities Services that it is required to file at law.
<b>Clause 9.24</b>	Amendment to clause – Reliance on Advice	This amendment clarifies that clause 9.23, which relates to reliance on advice, is subject to restrictions on Trustee limits on liability, ie. that the Trustees cannot be in breach of trust in a manner that is dishonest or constitutes wilful misconduct or gross negligence.
<b>Clauses 9.25 and 9.26</b>	Amendment to clause – Disclosure of Interest	This clause has been amended to clarify that interested Trustees can still attend and be involved in decisions relating to matters where they are not interested. Also the definition of interested has been updated to capture civil union and de facto partners.
<b>Clause 9.30(e)</b>	Amendment to clause – No private pecuniary profit	This clause has been amended to clarify that the value of any payment of income, benefit or advantage to a Trustee must be relative to that which would be paid in an arm's length transaction between two willing parties (or market value). This is standard language used in deeds for trusts that are similar to the Trust, and provides an objective measure for remuneration of Trustees.

CLAUSE	CHANGES	COMMENT
<b>Clause 12.3</b>	Amendment to clause – General Meetings of Members of Ngāti Tuwharetoa.	Part of this clause has been removed as it is no longer relevant.
<b>Clause 12.3(d)</b>	Amendment to clause – General Meetings of Members of Ngāti Tuwharetoa: Quorum	This clause has been amended to clarify that the Trustees can be included in the 40 Adult Registered Members for quorum of a General Meeting.
<b>Clause 12.3(e)</b>	Amendment to clause – General Meetings of Members of Ngāti Tuwharetoa: Adjourned meeting	This clause has been amended to provide for adjourned meetings where quorum cannot be met. This is standard language used in deed for trusts of a similar nature to the Trust.
<b>Clause 16.1</b>	Amendment to clause – Winding up of Trust	This clause has been amended to provide that, if the Trust decides to wind up, it can vest its assets in an entity with similar purposes to the Charitable Purposes, subject to the provisions of clause 16.1.
<b>Clause 17.1(b), 17.3 and 17.4(b)</b>	Amendment to clauses – Alteration of terms of Deed	These clauses have been amended to ensure consistency with the Charitable Trusts Act 1957 and to update, as clause 17.1(b) and 17.4(b) is no longer relevant, given the Trust has been a Mandated Iwi Organisation and the Asset Holding Company has been the Asset Holding Company under the Act for longer than two years.
<b>New clause 19</b>	New clause – Governing Law and Jurisdiction	This clause has been added to clarify that the Deed is governed by New Zealand Law, and the Trustees submit to the non-exclusive jurisdiction of the courts of New Zealand.

