

# Terms of Reference for the proposed Representative Body

for the Successors to the

Hawea/Wanaka SILNA Land

for the period prior to their receipt of the

Hawea/Wanaka Substitute Land

This document sets out terms of reference for the proposed unincorporated body of persons to represent the Successors to the Hawea/Wanaka SILNA Land. This body is to be comprised through the 2023 voting process organised by the Office for Māori Crown Relations - Te Arawhiti and Te Puni Kōkiri for Successors identified by the Māori Land Court.

Square-brackets in this document indicate actions or events that are yet to occur at the commencement of the 2023 voting process.

Should a body be formed in line with these terms of reference, the title page will reflect the name of the body chosen by the members which comprise it. Where text is square bracketed in this template, the details will be inserted upon formation of the body.

**Disclaimer of Liability:** The Office for Māori Crown Relations - Te Arawhiti and Te Puni Kōkiri accept no liability arising from the use of this document.

## BACKGROUND

- A.** The South Island Landless Natives Act 1906 ('SILNA') was revoked in 1909. This left some SILNA Lands, which had been allocated to individuals but for which no titles had been issued, untransferred. This included the Hawea/Wanaka SILNA Land otherwise known as 'The Neck'.
- B.** In the 1990s the Crown and Ngāi Tahu negotiated a settlement of historical Treaty of Waitangi claims. The Hawea/Wanaka SILNA Land was not available for transfer.
- C.** Section 15 of the Deed of Settlement entered by Ngāi Tahu and the Crown in 1997 ('the Ngāi Tahu Deed') and the subsequent Ngāi Tahu Claims Settlement Act 1998 ('the settlement Act') provided for, amongst other things, the vesting of the Hawea/Wanaka Substitute Land, by way of substitution for the original Hawea/Wanaka SILNA Land.
- D.** Clauses 15.6.2 and 15.6.3 of Section 15 set out a Māori Land Court process to identify the Successors to the intended original beneficiaries to the original Hawea/Wanaka SILNA Land, and to apportion their share interests. The Māori Land Court is yet to fulfil clauses 15.6.2 and 15.6.3 of Section 15, but has released from time-to-time lists of Successors identified to-date.
- E.** In accordance with Section 15.7 of the Ngāi Tahu Deed, the Successors need to determine whether the Hawea/Wanaka Substitute Land should vest as Māori freehold land or general land; and in whom the land will vest, whether that is in the Successors as tenants in common with an undivided share, a Māori Incorporation, ahu whenua trust, or any other manner. Decision-making practices for the Successors on these matters is to be in accordance with Part 9 of the Te Ture Whenua Maori Act 1993 which entails compliance with the regulations issued under section 179 (currently the Maori Assembled Owners Regulations 1995).
- F.** In 2019, Ministers of the Crown agreed that there was a need for interim representation of the Hawea/Wanaka SILNA Successors identified to-date; being a person(s) authorised to discuss with the Crown and other parties issues associated with the Hawea/Wanaka Substitute Land, to explore options, seek independent advice, and to make recommendations to the Successors at large.
- G.** [The Office for Māori Crown Relations – Te Arawhiti ('Te Arawhiti') and Te Puni Kōkiri ran a voting process in [ MONTHS/2023 ] for the Successors as identified to-date by the Māori Land Court. The purpose of the voting process was for the Successors to elect members to form a body for their representation for the period until the Hawea/Wanaka Substitute Land vests in accordance with the Ngāi Tahu Deed].
- H.** [The above voting process invited Successors identified by the Māori Land Court to nominate themselves, or another Successor, to be on the proposed representative body. Successors were then invited to vote on up-to five of the nominees to comprise the representative body. The process involved the engagement of an independent returning officer to calculate the outcome of the votes cast either by confidential postal or web-based ballot. The votes were weighted by share interest in alignment with the 1995 Regulations which will apply to decision-making by the Successors under Section 15 of the Ngāi Tahu Deed].

I. [The independent returning officer determined that the voting Successors had voted by share interest for the following [five] nominees to comprise the Representative Body as set out in these draft Terms of Reference]:

1. NAME
2. NAME
3. NAME
4. NAME
5. NAME

J. On [ ] DATE, the Minister for Treaty of Waitangi Negotiations and the Minister for Māori Development recognised the outcome of the voting process run in [MONTH/YEAR] as having given a mandate to the body to represent the Hawea/Wanaka SILNA Successors until the Hawea/Wanaka Substitute Land vests in accordance with the Ngā Tahu Deed, with a particular interest in the purpose of engaging with the Crown on issues associated with the Hawea/Wanaka Substitute Land to reach agreements on how those issues might be resolved.

K. On DATE at a meeting convened by Te Arawhiti of the persons elected [insert number ] of those persons elected passed a motion to form the Representative Body in accordance with signed these Terms of Reference and the outcome in Background, Paragraphs I and J above. As such, the membership is set out in Section 6 of these Terms of Reference.

L. The Representative Body takes over the roles of the working group formed at a Māori Land Court meeting of Successors of 12 February 2014, as well as taking on the roles prescribed by these Terms of Reference].

## 1. Name

1.0 The name of the unincorporated body is [THE REPRESENTATIVE BODY FOR THE FUTURE OWNERS OF STICKY FOREST], referred to herein as the Representative Body.

## 2. Definitions

2.0 Terms or phrases used in these Terms of Reference and their meanings herein are:

- 'agreement in-principle' means an agreement reached between representatives for the parties which is their final agreement, but which is subject to a voting process by the Successors to endorse the agreement.
- 'Crown representative' means a person authorised to represent the Crown in discussions with the representative body on agreed issues, or an official responsible for the Office of Māori Crown Relations – Te Arawhiti involvement in implementing Section 15.
- 'Hawea/Wanaka SILNA Land' means the area of land described in the Native Land Register compiled by Mackay and Smith referred to in the Appendix to the Journals of the House of Representatives of New Zealand 1905, Volume III, G-2 as "All that area containing by estimation 1658a, 2r, 22p situated in the Mid-Wanaka Survey District, being part of run 338a bounded on the south by run 338G, on the west by

the brow of Lake Wanaka foreshore and on the north east and east by other parts of Run 338a".

- 'Hawea/Wanaka Substitute Land' means 50.6742 hectares, more or less, being Section 2 of 5 Block XIV Lower Wanaka Survey District. Part record of title 18C/473 for the fee simple estate. Being the same land as referred to by this term in Section 15 of the Ngāi Tahu Deed. See the map **attached** to these Terms of Reference.
- 'member' or 'members' means elected members and co-opted members.
- 'Ngāi Tahu Deed' means the Deed of Settlement executed on 21 November 1997 by the Crown and Te Rūnanga o Ngāi Tahu.
- 'officials' working group' means those officials from the Office for Māori Crown Relations – Te Arawhiti, the Ministry of Justice, and Te Puni Kōkiri working together to facilitate implementation of Section 15 of the Ngāi Tahu Deed.
- 'original beneficiary' means any of those 57 persons listed in the Native Land Register compiled by Mackay and Smith and referred to in the Appendix to the Journals of the House of Representatives of New Zealand 1905, Volume III, G-2, and allocated the Hawea/Wanaka SILNA Land.
- 'Section 15' means Section 15 of the Ngāi Tahu Deed.
- 'Successor' or 'Successors' means those individuals identified by the Māori Land Court in accordance with clauses 15.6.2-15.6.3 of the Ngāi Tahu Deed of Settlement, as persons entitled to succeed to the interest of an original beneficiary in the Hawea/Wanaka SILNA Land, and as listed on a list released by the Māori Land Court from time-to-time, and subject to change until the Hawea/Wanaka Substitute Land vests, or the Māori Land Court deems it finalised.
- 'Successors at large' means all the Successors as identified by the Māori Land Court at that moment in time.
- 'surplus assets' means any funds the Representative Body has received from a government agency or other source towards the Purpose which have not be applied at the time of wind up of the Representative Body and which do not need to be paid back to that government agency or providing source pursuant to the funding terms. It does not include any funds which are required to go towards work commissioned by the Representative Body prior to wind-up but in relation to which the Representative Body is yet to be invoiced.
- 'Terms of Reference' means this document and the stipulations herein specified as to the formation, purpose and operations of the Representative Body.

### **3. Purpose of the Representative Body**

3.0 The Representative Body is an unincorporated body of persons.

3.1 The purpose of the Representative Body is:

- i) To represent the Successors as to their interests in the Hawea/Wanaka Substitute Land up until the time that the Hawea/Wanaka Substitute Land transfers in accordance with the Ngāi Tahu Deed.
- ii) To source and compile information to inform the decisions required of the Successors, as referred to in the Background to these Terms of Reference, Paragraph E.
- iii) To develop advice and recommendations to the Successors as to the decisions they need to make as referred to in the Background to these Terms of Reference, Paragraph E.

### **4. Functions of the Representative Body**

4.0 The functions of the Representative Body are:

- i) To negotiate in the interests of the Successors with the Crown on matters affecting the Hawea/Wanaka Substitute Land prior to its transfer to the Successors.
- ii) To receive funding for the purpose of the Representative Body and to receive disclosure from Te Arawhiti as to the Hawea/Wanaka Substitute Land.
- iii) To request Te Arawhiti arrange a meeting of the members, or to request Te Arawhiti arrange a meeting of the members with a Crown representative to discuss matters of relevance to the Purpose or Powers of the Representative Body identified in these Terms of Reference.
- iv) To speak for the interests of the Successors to the media, the Crown, or other parties, whilst noting that:
  - a. individual Successors will hold their own views;
  - b. decisions as to the receipt of the land will ultimately be determined by the Successors in accordance with the process set out in the Ngāi Tahu Deed;
  - c. decisions as to the future-use of the land will be for the owners to determine upon receipt of the land;
  - d. any in-principle agreements reached by the Representative Body with the Crown or other parties as to issues associated with the Hawea/Wanaka

Substitute Land will not be automatically binding on the Successors but will be put to the Successors at large for their consideration;

- v) To seek legal or other expert advice, commission research or other forms of work in line with the purpose of the Representative Body.
- vi) To communicate with Successors, directly and through various forms of communication.
- vii) To prepare for and attend meetings with Crown agencies and other parties on behalf of the Successors at large.
- viii) To form a view of the Representative Body in line with clauses 5.3, 5.4 and 10.3 of these Terms of Reference.
- ix) To be consulted by Crown agencies on behalf of the Successors at large, including as to:
  - a. how Crown agencies should best fulfil their obligations under Section 15 of the Ngāi Tahu Deed as to the Successors; and
  - b. decision-making in relation to the Crown's administration of the Hawea/Wanaka Substitute Land while it is Crown ownership.
- x) To seek the views of the Successors on specified matters or proposals, especially to inform any of the actions that might be taken outlined above.
- xi) To encourage persons who believe they are entitled to succeed to an original beneficiary to apply to the Māori Land Court to have their succession verified.
- xii) To continue the kaupapa of the working group formed on 12 February 2014, being to:
  - a. "...provide whakapapa to the Māori Land Court to ensure that the list is up to date;
  - b. look at the options and legal issue"
- xiii) To provide contact details received for Successors to the Māori Land Court and thereby the agencies comprising the officials' working group for future communications on Section 15 and associated matters, in accordance with consent and privacy obligations.

## 5. Authority

5.0 The affairs of the Representative Body shall be managed and controlled by the members specified in Section 6.0 and co-opted under Section 6.1 of these Terms of Reference.

- 5.1 The Representative Body has the management and control of the funds available for the Purpose of the Representative Body and other property (for example, reports commissioned in line with the Purpose) of the Representative Body.
- 5.2 The Representative Body will not purchase capital items.
- 5.3 The Representative Body may pass motions as to the view(s) of the Representative Body on the matters related to their Purpose (Section 3) and Functions (Section 4), and including as:
  - i) to recommendations to the Successors at large.
  - ii) to commission or contract work or services in line with the Purpose and their Powers.
  - iii) to positions they might hold in negotiations with the Crown or other parties, or to enter an agreement in-principle with the Crown or other parties for consideration by the Successors at large.
  - iv) to messages they might communicate to the public or media or other external parties.
  - v) to positions they might hold in external decision-making processes.
- 5.4 A view of the Representative Body will only be a view of the Representative Body if it has been confirmed by a motion passed with a majority of votes. In voting on the views of the Representative Body, members must give consideration to a breadth of views amongst the body of Successors and to this end, seek to be informed as to what those views are.
- 5.5 The Representative Body may appoint from amongst their membership or an external party/parties to be a lead negotiator(s) or the purposes of engaging with the Crown as to matters associated with the Hawea/Wanaka Substitute Land on behalf of the Successors. Any negotiation outcome reached between the Crown and a Lead Negotiator appointed by the Representative Body, must be endorsed by the Representative Body (in accordance with clause 10.3), before it deemed to be the position of the Representative Body.
- 5.6 The Representative Body may pass motions to set a meeting fee to be paid to:
  - i) the individual members for their time preparing for and participating in meetings of the Representative Body; and
  - ii) to the individual members for their time preparing for and participating in meetings with the Crown as to matters affecting the Hawea/Wanaka Substitute Land.
  - iii) In doing so, the Representative Body will give consideration to funding policies under which government agencies might provide a contribution towards costs, to ensure that the Representative Body operates within its financial limits and does not incur costs that cannot be paid.
- 5.7 The assets of the Representative Body (namely funds received from government agencies towards fulfilling the Purpose) shall not be distributed to individual Successors, but for the provisions of clause 5.5, 5.6, 5.8 and 5.9.
- 5.8 If a member or Successor is commissioned in a commercial capacity by the Representative Body to perform a specified service for the Representative Body they

will be entitled to service fees, in accordance with the contract entered into and/or the Representative Body's purchasing parameters, upon provision of that service.

- 5.9 To avoid a conflict of interest, a commissioning decision as to the commercial services of a member or their whānau member, will be conducted in accordance with clause 10.6.
- 5.10 Should the Representative Body reach an in-principle agreement with the Crown as to a matter affecting the Hawea/Wanaka Substitute Land, that in-principle agreement must be considered by the Successors before it can become binding on any of the parties. This also applies to any in-principle agreement reached between the Crown and a Lead Negotiator appointed by the Representative Body, and then subsequently endorsed by the Representative Body. A process for the Successors at large to consider any such in-principle agreement would be best considered alongside those decisions required to effect vesting (see Paragraph E, Background to these Terms of Reference).

## **6. Elected membership**

- 6.0 The following persons elected (Background, Paragraph I), passed a motion in a meeting on [ DATE ] to comprise the Representative Body as per these terms :

1. NAME
2. NAME
3. NAME
4. NAME
5. NAME

- 6.1 These persons above listed are thereby the members of the Representative Body upon signing of these Terms of Reference.
- 6.2 In signing these Terms of Reference, the persons listed in clause 6.0 affirm they are Successors as identified by the Māori Land Court.

### **6.1 Co-opted membership**

- 6.1.0 The elected members have the right to invite up-to two additional persons to be members of this Representative Body on the basis they support the purpose of the Representative Body and agree to be bound by these Terms of Reference.
- 6.1.1 Before a person can be invited by the Representative Body to join the Representative Body as co-opted member, a decision by the elected membership only needs to be passed in accordance with clause 10.3.
- 6.1.2 A co-opted member does not have to be a confirmed Successor.
- 6.1.3 A co-opted member shall have voting rights as to motions considered by the Representative Body in accordance with clause 10.3.
- 6.1.4 Co-opted members participation in meetings of the Representative Body will contribute to quorum under clause 10.4.

- 6.1.5 A co-opted member may be removed from the Representative Body by a motion passed in accordance with clause 10.3 by the elected membership only, or by the co-opted member providing written notification to the Representative Body.
- 6.1.6 For the avoidance of doubt, the Representative Body may invite Te Arawhiti officials, Crown advisors, or a Crown representative to attend their meetings to provide information or advice, or discuss issues, but those persons will not be members nor co-opted members.

## **6.2 Minimum number of members**

- 6.2.0 The Representative Body must at all times have at least three members, whether they are elected or co-opted members. If the number of members is reduced to less than three members (for whatever reason), the remaining members must co-opt a further member in accordance with Section 6.1.
- 6.2.1 If the number of members cannot be maintained at a minimum of three members in accordance with Section 6.2.0, the remaining members may seek assistance from the officials' working group to convene another voting process for the Successors at large.

## **7. Disqualification of members**

- 7.0 The office of a member shall become vacant if a member is:
  - i) Convicted of a criminal offence or under investigation in relation to allegations of fraud or mismanagement of funds.
  - ii) Permanently incapacitated by ill health or death.
  - iii) Absent without apology from more than three meetings in a calendar year, or, if meetings are only held six-monthly, if they are absent without apology from two sequential meetings.
  - iv) an elected member under Section 6.0 but is no longer deemed to be a Successor by the Māori Land Court. This will not apply if the member is co-opted under Section 6.1.

## **8. Communication with Successors**

- 8.0 Under the Ngāi Tahu Deed, the Māori Land Court is responsible for identifying the Successors. The Māori Land Court provided to Te Arawhiti and Te Puni Kōkiri a contact database for the Successors for the purposes of communication by Crown agencies with the Successors as to their rights and issues associated with the Hawea/Wanaka Substitute Land. It is understood the officials' working group will consult with the Representative Body on planned future communications with the Successors at large and may ask the Representative Body to assist with those communications.
- 8.1 It is hoped that the working group formed on 12 February 2014 will provide hand-over to the Representative Body. This hand-over may or may not include the contact details for Successors that the working group has compiled.

- 8.2 The Representative Body will aim to communicate with the Successors at large as to:
  - i) messages or updates that the Representative Body may want to convey to the Successors; and
  - ii) views of the Successors that the Representative Body may want to solicit.
- 8.3 Should the Representative Body wish to communicate with the Successors at large, they can request that Te Arawhiti arrange for a process by which they can do that.

## **9. Roles of members**

- 9.0 The Representative Body shall pass a motion to determine who of the members: will be the Chairperson. They may also appoint a Secretary or Treasurer.
- 9.1 The Chairperson is responsible for:
  - i) Ensuring that the Terms of Reference are followed.
  - ii) Convening Meetings and establishing whether or not a quorum is present.
  - iii) Chairing Meetings, facilitating who may speak and when.
  - iv) Overseeing the operations of the Representative Body.
  - v) Speaking for the Representative Body, but only in line with the views of the Representative Body.
  - vi) Delegating to another member of the Representative Body authority to speak for the Representative Body, if the Chairperson is not able to.
  - vii) Ensuring that the task of taking minutes at a meeting of Representative Body is in hand.

## **10. Proceedings of Representative Body**

- 10.0 The Representative Body shall meet together for the dispatch of business at least every three months.
- 10.1 The Representative Body should settle on how often meetings are to be held at a minimum. That meeting frequency shall be informed by the terms of engagement agreed with Te Arawhiti as to the timeframes within which the parties want to reach any agreements, and with a view to ensuring that transfer of the Hāwea/Wānaka Substitute Land to the Successors occurs as soon as possible.
- 10.2 The Chairperson has the authority to convene *ad hoc* meetings for specific matters previously notified to the members.
- 10.3 Motions of the Representative Body must be decided by a majority of votes. For the avoidance of doubt a majority shall constitute:

- i) no less than three votes from members, if the Representative Body is comprised of the five members only;
- ii) no less than four votes, if the Representative Body is then comprised of six or seven members (i.e. with co-opted members).

10.4 A quorum for a meeting of the Representative Body (i.e. the number in attendance for the meeting of the Representative Body to pass motions) shall be the number required to pass a motion as specified in clause 10.3.

10.5 If the Chairperson is not able to attend a meeting they have convened, he/she/they can delegate the role to another member in advance so that the meeting can go ahead. The Acting Chairperson shall only be in that role for the purpose of chairing that particular meeting.

10.6 A member of the Representative Body having a direct or indirect pecuniary interest in a contract or proposed contract with the Representative Body must disclose the nature and extent of that interest to the other members, and shall not vote with respect to that contract or proposed contract.

10.7 If negotiation strategy is under discussion, any representative of the Crown or Te Arawhiti may be asked to leave the room for the duration of that discussion and that representative must comply with that request.

## **11. Meetings**

11.0 Meetings of the Representative Body are to be convened by the Chairperson in accordance with clauses 9.1 and Section 10. The Chairperson may request that Te Arawhiti organise a meeting of the Representative Body and that an official (either from Te Arawhiti or Te Puni Kōkiri) take minutes.

11.1 Members may propose to the Chairperson that a meeting of the Representative Body be convened outside of meetings planned under clauses 10.0 and 10.1.

11.2 A meeting can occur either in person, or via video or teleconference, or a mix of these mediums.

11.3 If a meeting is had with the Crown by the Lead Negotiator or some (but not all) of the members of the Representative Body, the attendees must report back to the Representative Body on the meeting.

## **12. Minutes**

- 12.0 Proper minutes of all proceedings of meetings of the Representative Body shall be kept.
- 12.1 The Chairperson can ask an official from Te Arawhiti or Te Puni Kōkiri (if invited to attend) or a member to take the minutes of a meeting of the Representative Body.
- 12.2 The minutes kept pursuant to these Terms of Reference must be confirmed by the members of the Representative Body, at the conclusion of the proceedings, or at a subsequent meeting.

## **13. Dispute resolution**

- 13.0 The Representative Body should determine the relevance of Section 13 of these Terms of Reference to the operations of the Representative Body. This should include what type of disputes to which Section 13 applies.
- 13.1 The dispute resolution procedure set out in these Terms of Reference are for disputes related to the application of these Terms of Reference, and apply to disputes between the parties, being:
  - i. a member and another member;
  - ii. a member and the Representative Body, as a whole.
- 13.2 The parties to the dispute must meet and discuss the matter in dispute and, if possible, resolve the dispute within 30 days after the dispute comes to the attention of all of the parties to the dispute.
- 13.3 If the parties are unable to resolve the dispute at the meeting the parties may choose to meet and discuss the dispute before an independent third person agreed to by the parties.
- 13.4 If there is an enduring matter of dispute, it is beholden on the members concerned to consider standing-down from their role as a member or taking the matter to a meeting of Successors convened.

## **14. Accounts to be kept**

- 14.0 The Representative Body shall keep and retain such accounting records as are necessary to correctly record and explain the costs incurred by the Representative Body to ensure that costs are not incurred beyond what will be funded through Te Arawhiti.

- 14.1 All members will have the right to seek to see the accounts at any time (within reason), noting they are all equally jointly and severally liable as members.
- 14.2 If utilising the financial management and accounting services of an existing legal entity, the Representative Body will remain responsible for ensuring the Representative Body does not incur costs beyond the funding available from the Crown.

## **15. Winding up**

- 15.0 The Representative Body will wind up at the time a new body or entity is formed to represent the Successors to the Hawea/Wanaka SILNA Land in accordance with resolutions passed by the Successors.
- 15.1 The Representative Body must be wound up at the time that the Hawea/Wanaka Substitute Land vests in accordance with the Ngāi Tahu Deed.
- 15.2 Upon being wound up, the obligations of the Representative Body as outlined in these Terms of Reference will end.

## **16. Application of surplus assets**

- 16.0 If at the winding up of the Representative Body there remains surplus assets after all outstanding invoices are paid, these shall be transferred to the party that the Successors have determined should receive the Hawea/Wanaka Substitute Land vests in accordance with the Ngāi Tahu Deed.
- 16.1 The surplus assets shall not be distributed to members or former members, or associates of those persons.

## **17. Terms of Reference**

- 17.0 These Terms of Reference must align with the draft as considered by the Successors in voting process held [MONTHS/YEAR] as recorded in the Background, Paragraphs G and H.
- 17.1 These Terms of Reference may only be altered (including an alteration to the Representative Body's name) by resolution passed at a meeting of the Successors convened by either the Māori Land Court or facilitated by the officials' working group.
- 17.2 These Terms of Reference come into effect on the date that the elected members sign this document.

Attachment: Map of Hāwea/Wānaka Substitute Land

