

DEED OF TRUST

OF

Te Tāwharau o Te Whakatōhea

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Te Tāwharau o Te Whakatōhea TRUST DEED

Executed as a deed on the day of 20

TIROTIRO WHETŪ: BACKGROUND

WHAKAPAPA

Te Whakatōhea mana motuhake is derived from Ranginui the Skyfather and Papatuanuku the Earthmother which descends to Tāwhaki who ascended the heavens and attained the kete o te wānanga the 3 baskets of knowledge. From Tāwhaki Te Whakatōhea whakapapa to Wekanui the mother of Muriwai. Te Whakatōhea whakapapa from Toi Te Huatahi to Awanuiārangi, to Awaroa to Awatumakiterangi to Parinuitēra to Awamōrehurehu to Irakewa and to Muriwai from whom we Te Whakatōhea derive our name. Our whakapapa connects us to our mountains, our forests, our lands, our rivers, our oceans, and our sky. This is what makes Te Whakatōhea and gives us mana over our region.

TĪPUNA

Waka arrived prior to the Mataatua and brought with them the earlier tribes of Hapūoneone and Ngā Ariki. Rangimātoru was captained by Hape; Ōtūrereao by Tairongo, Pākihihura by Irākewa; Te Araumauma by Taarawa and Tuwhenua by Tamatea-Mātangi. These identities are important to acknowledge in the evolution and the subsequent emergence of Te Whakatōhea te Iwi. Ko Tūtāmure rāua ko Muriwai ngā tīpuna. Whakatōhea members derive their whakapapa through Tūtāmure of the Nukutere waka and Muriwai of the Mataatua waka. The union between Tūtāmure and Hineīkauāia laid the foundation for the Iwi of Whakatōhea on the mana of Te Panenehu and the Mātaatua waka. *"Over succeeding generations, the names of Te Wakanui and Te Panenehu were submerged by the new Iwi of Whakatohea".*

On the eastern boundary at Te Rangi where the Nukutere Waka landed around 1250AD our ancestor Tauturangi disembarked to form one of the original inhabitants of the area, the Te Wakanui people. These were the ancestors of Tūtāmure and his people, the Panenehu. It is said that Tūtāmure's influence extended to the Motu; however, it is evidenced that the eastern and south-eastern boundaries of the Whakatōhea rohe were established during the time of Tūtāmure and the Panenehu people. Tūtāmure was responsible for defining the exercise of mana and rangatiratanga to the eastern and southern boundaries of Te Panenehu.

The **Ngāi Tū people** are descendants of **Taarawa** and settled much of the southern, central and northern regions of the Whakatōhea rohe, including the current Ōpōtiki Township. A number of hapū descend from Ngāi Tū, namely, Ngāti Ngāhere, Ngāti Patumoana, and Ngāi Tamahaua. Amongst some of the well-known descendants of Taarawa were Tamakōmutumutu, Hauoterangi, Tahu and Ruamoko.

On the western Whakatōhea boundary the Mataatua Waka arrived approximately eight generations after Nukutere. It is here our ancestor **Muriwai** disembarked and stayed in her cave below Kohi Point in Whakatane. This area is made famous because of her strength in saving the Mataatua Waka from floating out to sea with her quote "Kia whakatāne au i ahau" and is part of the Mataatua legend. We also see through her travels and the influence of her children the emergence of important bloodlines connecting Mataatua.

Her eldest son **Repanga** married **Ngāpoupereta** daughter of Ranginui-a-tekohu of the Rangimātoru Waka from Ohiwa. Their first son **Tuamutu** had a union with **Ani-i-waho** daughter of Tairongo, a descendant of Hape (Upokorehe Hapū) while their other son

Ruamatarangi was an ancestor of **Ruatakena** (Ngāti Rua Hapū). From Muriwai's other son, **Rangikurukuru** descends the hapū of Ngāti Ira with links to other hapū, Ngāti Ngāhere and Ngāi Tamahaua.

Following the battle of Maungakahia involving his uncle Kahungunu, Tūtāmure returned from there and married Hineīkauīa, the daughter of Muriwai which laid the foundation on the western and northern side of Whakatōhea and the mana ariki (chiefly authority) of the **Mataatua** waka. It is from this union that the hapū of Whakatōhea derives its lineage.

However, Muriwai is known because of her tenacity and stubbornness, from which Whakatōhea derives its name. Her influence is further reinforced through an incident involving the drowning of her two sons Tanewhirinaki and Koau where the saying "Mai Ngā Kuri a Whareī ki Tihirau" originates. This kōrero references the tapu placed on the area because of the drowning of her sons and respect to Muriwai herself.

Whakatōhea today is made up of the 6 hapū, Te Ūpokorehe, Ngāti Ngāhere, Ngāti Ira, Ngāti Ruatakena, Ngāti Patumoana and Ngai Tamahaua.

SETTLEMENT PATHWAY

Ngā kōhi a ngā hapū o Whakatōhea – Te Petihana – Petition to Parliament

On the 14 September 1914, Mēhaka Wātene, Tauhā Nikora and Paora Taia along with 166 others, petitioned Parliament on behalf of Whakatōhea regarding the confiscation of Whakatōhea lands, requesting the establishment of a commission of inquiry. On the 25 December 1914, at Waiau marae, the Whakatōhea tribe met to discuss the unsuccessful petition journey to parliament. It was resolved that the hapū would continue to collect a tax of 2s. 6d per person to support the continuation of the petition up to 1946. A record was kept of the name of every single person who contributed the 2s. 6d including their Hapu affiliation. The book was known as the "sacred book".

Thirty-two years later, in 1946, the Crown finally agreed to grant Whakatōhea compensation of £20,000 for the confiscation of their lands. The funds were received by the Māori Trustee on the 14 November 1946.

Chairman Tua Hudson of the Whakatōhea Tribal Executive met with undersecretary G.P. Shepherd at Omarumutu marae in 1947 who proposed that the fund be spent on the purchase of land. From this meeting the inaugural members of the Whakatōhea Trust Board were elected. These were: Tame Ihimaera, Tū Gage (Ngāti Ngāhere); Raimona Pāpuni, Ngāwai Amoamo (Ngāti Rua); Hōri Taia, Hapua Apanui (Ngai Tama); Pākaha Tairua, Tānara Mihaere (Ngāti Patu); Koroua Tai, George Rangiaho (Ngāti Ira); and J Aramoana and Hūrae Īhaia (Upokorehe).

There was but one objective: "A kāti, ko te moni raupatu me tatū ki te whenua, ā ki roto tonu i Ōpōtiki". Enough, the settlement money shall be applied to the land, within Ōpōtiki. The land was seen as the foundation on which to build a lasting future for all Whakatōhea.

WHAKATŌHEA TRUST BOARD

The Whakatōhea Trust Board (*Trust Board*) was formally recognised by the Whakatōhea tribe when it resolved to purchase J.G Murray's farm on the 1 October 1952. From here several committees such as the finance, farm, executive, building and land trust, Education and Cultural, Advisory trust and administration committees were established to manage the Trust Board's functions.

Throughout the Trust's sixty-eight-year history, there have been several key themes of importance, namely:

- The protection, development, growth, and prosperity of the Whakatōhea farm
- Strategic purchases of land and properties
- Education grants to attend university 20 January 1962
- Cultural grants
- Grants to the six hapū and paid to each marae committee 9 December 1966
- Donations to Ōpōtiki College prizegiving 10 November 1965

The vision of the inaugural members elected sixty-eight years ago remains as a legacy to those who have followed and will continue to follow in their footsteps; and reminds us all, that it has been a long and arduous journey to re-establish Whakatōhea as a thriving and prosperous nation for the future.

SETTLEMENT NEGOTIATIONS

In 1989 the Whakatōhea Raupatu Claim (WAI 87) was lodged with the Waitangi Tribunal by Claude Edwards Chairman of the Whakatōhea Māori Trust Board.

In 1992 Whakatōhea initiated direct negotiations with the Crown.

In 1993 Whakatōhea Raupatu Negotiating Committee was established under Te Ture Whenua Māori Act 1993.

Between 1993 and 1996, the Crown and members of the Whakatōhea Raupatu Negotiating Committee, negotiated a deed of settlement to settle the historical claims of Whakatōhea. The settlement contained a quantum offer of \$40 million.

Concerns among the people of Whakatōhea about the scope of the claims to be settled, the sufficiency of settlement package offered and a lack of agreement on the way forward contributed to the decision not to proceed with negotiations at that time. The 1996 Deed was withdrawn by the Crown in 1998.

In August 2003, an interim working party developed a process report known as the Te Ara Tono mō te Raupatu. This report set out a process by which Whakatōhea could re-engage with the Crown to negotiate a settlement of the Historical Claims. This report was adopted by Whakatōhea at a Hui-ā-lwi on 26 August 2007.

Following the adoption of Te Ara Tono mō te Raupatu, a second group known as the Whakatōhea Raupatu Working Party (WRWP) began the work of preparing Whakatōhea to grant a mandate to a representative entity to negotiate the settlement of the Historical Claims. However, the WRWP was not able to finalise a mandating process before Ngāti Ngāhere, Ngāti Rua, Ngāti Patumoana, Ngāti Ira and Ngai Tamahaua hapū withdrew their representatives from the WRWP.

In 2009 the Hapu Chairs of Whakatōhea held a hui at Waiau Marae to determine the way forward. Karakia Whakawātea i te huarahi mo te Raupatu o Whakatōhea. The Iwi were called together at Opeke Marae Waioweka on 14 August 2010 to join in the recommencement of the process for mandate by way of karakia.

In 2010, Ngāti Ira, Ngāti Ngāhere, Ngāti Rua and Ngāti Patumoana regrouped to consider the next steps. This grouping of hapū became known as the Tu Ake Whakatōhea Collective (the Collective). The Collective sought assistance from the Whakatōhea Māori Trust Board (Trust Board) to engage with Iwi members of Whakatōhea (Whakatōhea uri) to identify the most

appropriate process by which Whakatōhea could provide a mandate to a representative entity to negotiate the settlement of the Historical Claims.

The Trust Board agreed to provide reasonable assistance in accordance with the terms of its governing legislation.

The Collective, with the support of the Trust Board, supported a collective approach, where whānau and hapū were encouraged to work together as Iwi in the context of the settlement of the Historical Claims. Through a robust consultation process which is detailed further in this document, the Collective sought to educate Whakatōhea uri, marae and hapū on the settlement process and options available to Whakatōhea to settle the Historical Claims.

Twenty-three (23) education and consultation hui were held within the Whakatōhea rohe and around the country in order to ascertain the views of Whakatōhea uri and hapū. The overall feedback from participants at those hui was that the information presented gave them a better understanding of the Treaty settlement process, Whakatōhea history, and the options available to Whakatōhea to settle the Historical Claims.

As a result of these consultations with Whakatōhea uri, marae and hapū, the Collective developed the mandate strategy to lead Whakatōhea into negotiations.

Whakatōhea voted to approve the mandate to the Whakatōhea Pre-Settlement Claims Trust to negotiate a deed of settlement with the Crown. Voting was carried out by postal, online and at mandate hui. Special votes were also provided to all Whakatōhea uri who were not on the Whakatōhea Māori Trust Board at the time. Special votes were also provided to all Whakatōhea uri who were not on the Whakatōhea Māori Trust Board tribal database at the time.

The Crown recognised the mandate on 12 December 2016. The mandated negotiators and the Crown:

- by terms of negotiation dated 17 December 2016, agreed the scope, objectives, and general procedures for the negotiations; and
- by agreement dated 18 August 2017, agreed, in principle, that Whakatōhea and the Crown were willing to enter into a deed of settlement on the basis set out in the agreement; and

Since the agreement in principle, have –

- had extensive negotiations conducted in good faith; and
- negotiated and initialled a deed of settlement.
- Throughout negotiations, the mandated negotiators have –
- focussed on achieving Whakatōhea aspirations of mana tangata, mana whenua and mana moana; and
- been guided by the Whakatōhea Transformation Framework, which contains the following four pillars:
 - Mihi Marino Reconciliation with the Crown:
 - Kōpura Regenerating Culture:
 - Te Puta Tieke Intergenerational Development:
 - Te Umutahunoa a Tairongo Practising Hospitality.

LOOKING FORWARD

The establishment of the Te Tawharau o Whakatohea marks a significant step in a long and arduous settlement journey for Whakatōhea and the Crown have acknowledged its violations of the Treaty of Waitangi, its principles and its spirit, and its denigration of Te Mana Motuhake o Whakatōhea.

The Trust is created with a vision to revitalise Te Rangatiratanga o Whakatōhea and build a foundation for the future prosperity of the Whakatōhea peoples.

Draft

1. DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

In this Trust Deed, unless the context otherwise requires:

“Adult Member of Whakatōhea” means a Member of Whakatōhea who is 18 years of age or older;

“Adult Registered Member of Whakatōhea” means an Adult Member of Whakatōhea identified on the Whakatōhea Register;

“Annual Plan” means as the context requires:

- (a) the annual plan of the Trust which is prepared in accordance with clause 12.1; or
- (b) the annual plan of a Subsidiary which is prepared in accordance with clause 14.1(d);

“Annual Report” means the annual report of the Te Tāwharau o Te Whakatōhea Group which is prepared by the Trustees in accordance with clause 13.1;

“Balance Date” means 30 June 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;

“Basic Trust Information” means the basic trust information specified in section 51(3) of the Trusts Act 2019;

“Beneficial Entity” means a legal entity that:

- a) represents only a group of members of Whakatōhea (for example, a hapū of Whakatōhea); and
- b) is approved by the trustees by unanimous resolution

“Business Day” means a day of the week other than:

- (a) Saturday and Sunday;
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, Queens Birthday, Matariki and Labour Day;
- (c) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
- (d) a day in the period commencing with 25 December in any year and ending with 4 January in the following year (both days inclusive); and
- (e) Auckland Anniversary Day;

“Chairperson” means the chairperson from time to time of the Trust appointed by the Trustees 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 10 of the Second Schedule; or
- (b) the person appointed as chief returning officer for the purposes of a Special Resolution in accordance with rule 7.1 of the Fourth Schedule;

“Consolidated Financial Statements” means the consolidated financial statements of the Te Tāwharau o Te Whakatōhea Group prepared by the Trustees in accordance with clause 13.1;

“Core Documents” means the documents specified in section 45 of the Trusts Act 2019;

“Custodian Trustee” means the custodian trustee that may be appointed or incorporated in accordance with clause 28.1;

“Deed” and “Trust Deed” mean this deed of trust and include the background and the schedules to this deed;

“Deed of Settlement” means the deed dated [date] that will be entered into between the Whakatōhea and the Crown recording the settlement of the Whakatōhea Claims;

“Default Duty” has the same meaning as provided in section 9 of the Trusts Act 2019;

“Deputy Chairperson” means the deputy chairperson from time to time of the Trust if one is appointed in accordance of rule 4 of the Third Schedule;

“Disputes committee” means a committee formed in accordance with clauses 34.4 and 34.5;

“Electoral Review Officer” means the person appointed to act as electoral review officer in accordance with rule 13.2 of the Second Schedule;

“Exercised Rangatiratanga” means exercised rights according to tikanga Māori (Māori customary values and practices), including:

(a) rights to occupy land; and

(b) rights in relation to the use and/or regulation of land or other natural or physical resources.

“Five Year Plan” means as the context requires:

(a) the five year plan of the Trust prepared in accordance with clause 12.2; or

(b) the five year plan of a Subsidiary which is prepared in accordance with clause 14.1(c);

“General Manager” means the General Manager of Te Tāwharau o Te Whakatōhea appointed in accordance with clause 7.1;

“Hapū” means the hapū of Whakatōhea listed in the Sixth Schedule of the Trust Deed.

“Income Year” means any year or accounting period beginning 1 July of one calendar year and ending 30 June of the following calendar year or any other 12 month period that the Trustees by resolution adopt;

“Establishment Trustees” means the Trustees identified in clause 3.1;

“Major Transaction” in relation to any member of the Te Tāwharau o Te Whakatōhea Group means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, Property by that member, the value of which is more than half the value of the Trust's Assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, Property by that member, the value of which is more than half the value of the Trust's Assets before disposition; or
- (c) a transaction that has or is likely to have the effect of that member acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the Trust's Assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust's Assets (whether the Assets are held by the Trust or any other member of the Te Tāwharau o Te Whakatōhea Group); or
- (e) any acquisition or disposition of Property by a member of the Te Tāwharau o Te Whakatōhea Group to or from another member of the Te Tāwharau o Te Whakatōhea Group.

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

For the purposes of paragraphs (a) to (c) of this definition of the value of the Trust's Assets shall be calculated based on the value of the assets of the Te Tāwharau o Te Whakatōhea Group;

"Mandatory Duty" has the same meaning as provided in section 9 of the Trusts Act 2019;

"Member of Whakatōhea" means an individual referred to in paragraph (a) of the definition of Whakatōhea;

"Membership Validation Committee" means the committee appointed in accordance with rule 4 of the First Schedule;

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

"Provisional Vote" means a vote cast pursuant to rule 10.4 of the Second Schedule or rule 8.3 of the Fourth Schedule, as the case may be;

"Registrar-General of Land" or **"Registrar-General"** means the Registrar-General of Land appointed in accordance with section 4 of the Land Transfer Act 2017;

"Settlement Act" means such Act or Acts of Parliament that may be passed so as to give effect to the Deed of Settlement and the premises contained therein;

"Settlement Date" means the date defined as the Settlement Date in the Deed of Settlement or Settlement Act;

“Special Resolution” means a resolution that has been passed with the approval of not less than 75% of the Adult Registered Members of Whakatōhea who validly cast a vote in accordance with the process set out in the Fourth Schedule;

“Statement of Intent” means the statements of intent prepared by a Subsidiary in accordance with clause 14.1(a);

“Subsidiaries” or **“Subsidiary”** means any entity or trust that is:

(a) wholly owned; or

(b) controlled directly

by the Trust, and includes any subsidiary of any such entity or trust;

“Taumata Kaumatua” means the Council of Whakatōhea elders referred to in clause 6;

“Te Tohearau - Tikanga Committee” means a Council of Whakatōhea pukenga brought together by the Trust under clause 5.1;

“Trust” means the trust created by this Deed which is to be called the Te Tāwharau o Te Whakatōhea Trust;

“Trust Assets” means the trust fund of the Trust and shall include all assets received or otherwise owned or acquired from time to time by the Trustees, including without limitation all assets received pursuant to the Deed of Settlement and Settlement Act, and any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees;

“Trust Information” has the same meaning as provided in section 49 of the Trusts Act 2019;

“Trust’s Purpose” means the objects and purposes set out in clause 2.4;

“Trustees” means the trustees appointed from time to time in accordance with clause 3.2 and the Second Schedule of this Trust Deed to represent Whakatōhea and act as the trustees for the time being of the Trust and **“Trustee”** shall mean any one (1) of those persons;

“Voting Location” means the place or places nominated by the Trust for the purposes of allowing the Adult Members of Whakatōhea to cast in person their vote on the election of a Trustee elected in accordance with the Second Schedule.

“Whakapapa” means to descend or descent from another person by:

(a) birth; or

(b) legal adoption; or

(c) Māori customary adoption in accordance with tikanga Whakatōhea (customary values and practices).

“**Whakatōhea**” means:

- (a) the collective group composed of individuals who whakapapa to one or more Whakatōhea Ancestors; and
- (b) every whānau, hapū or group to the extent that it is composed of individuals referred to in paragraph (a), including the following groups:
 - a. Ngāti Rua;
 - b. Ngāi Tamahaua;
 - c. Ngāti Patumoana;
 - d. Ngāti Ngāhere;
 - e. Ngāti Ira;
 - f. Te Upokorehe; and
- (c) every individual referred to in paragraph (a);

“**Whakatōhea Ancestor**” means an individual who exercised rangatiratanga by virtue of whakapapa to:

- (a) Muriwai or Tutamure; or
- (b) a recognised ancestor of any of the groups referred to in paragraph (b) of the definition of Whakatōhea; and
- (c) who exercised rangatiratanga predominantly in relation to the Whakatōhea Area of Interest at any time after 6 February 1840;

“**Whakatōhea Area of Interest**” means the Area of Interest of Whakatōhea as identified and defined in the Deed of Settlement;

“**Whakatōhea Claims**” means Whakatōhea historical claims against the Crown in respect of the Crown’s breaches of its obligations to Whakatōhea under the Treaty of Waitangi as identified in the Deed of Settlement;

“**Te Tāwharau o Te Whakatōhea Group**” means the Trust, and its subsidiaries if any;

“**Te Tāwharau o Te Whakatōhea Register**” means the register of Members of Whakatōhea that is to be maintained by the Trustees in accordance with the First Schedule to this Trust Deed;

1.2 Interpretation

In this Trust Deed, unless the context otherwise requires:

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

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

2. CONSTITUTION, STATUS AND OBJECTS OF THE TRUST

2.1 Trust Established:

The Trustees acknowledge that they hold the Trust's Assets upon trust and with the powers set out in this Trust Deed. The Trustees further acknowledge that the trust hereby created shall be known as Te Tāwharau o Te Whakatōhea.

2.2 Trust Administration:

The Trust shall be governed and administered by and in accordance with this Trust Deed.

2.3 Powers of Trust:

The Trustees continue to have all the powers of a natural person and may exercise those powers in accordance with the terms of this Trust and shall be capable of holding real and personal property, of suing and being sued, and shall have all of the rights, powers and privileges of a natural person with the intention that they shall, in their capacity as Trustees, have the fullest powers necessary to do all such things that they consider necessary in their sole discretion to perform or otherwise carry out the Trust's Purpose. The powers of the Trustee include (unless contrary to the terms of this Deed) those set out in sections 57-79 of the Trusts Act 2019 and may exercise those powers in accordance with the terms of this Trust.

2.4 Object and Purpose of the Trust:

The purpose for which the Trust is established is to receive, manage, hold and administer the Trust's Assets on behalf of and for the benefit of the present and future members of Whakatōhea in accordance with this Trust Deed and for any purpose beneficial to Whakatōhea.

2.5 Restriction on Major Transactions:

Notwithstanding clause 2.3 the Trustees must not enter into a Major Transaction; and must ensure that any Subsidiaries are established on terms which provide that such Subsidiaries must not enter into a Major Transaction unless that Major Transaction:

- (a) is approved by way of Special Resolution in accordance with the Fourth Schedule; or
- (b) is contingent upon approval by way of Special Resolution.

3. APPOINTMENT, POWERS AND MEETINGS OF TRUSTEES

3.1 Establishment Trustees:

Pending election and appointment of Trustees in accordance with the Second Schedule, the Trustees from the date of this Trust Deed shall be Establishment Trustees. The Establishment Trustees shall be:

- i) Robert Edwards;
- ii) Tahu Taia;
- iii) Bruce Pukepuke;
- iv) Kate Hudson
- v) Vaughan Payne;
- vi) Graeme Riesterer
- vii) Anau Apanui; and
- viii) Erin Moore

3.2 Number of Trustees:

Subject to clause 3.1, the number of Trustees shall be limited as follows:

- (a) Up to two (2) hapū Trustees for each hapū listed in the Sixth Schedule;
- (b) Up to three (3) general Whakatōhea Trustees; and
- (c) Up to one (1) Rangatahi Trustee.

3.3 Appointment in accordance with Second Schedule:

Subject to clause 3.1 the Trustees of the Trust shall be appointed to office from time to time in accordance with the rules set out in the Second Schedule.

3.4 Trustees to control Trust affairs:

- (a) Subject to any requirements imposed by this Trust Deed, the Deed of Settlement, the Settlement Act and in accordance with law, the Trustees shall control and supervise the business and affairs of the Trust in such a manner as they, in their sole discretion, see fit; and
- (b) Notwithstanding subclause (a) the Establishment Trustees' powers shall be limited to operational and core planning matters relating to:
 - a. signing the Deed of Settlement;
 - b. supporting Whakatohea settlement legislation through Parliament; and
 - c. preparing for and holding the initial elections at the first Annual General Meeting.
- (c) For the avoidance of doubt, clause 3.4(b) expressly modifies the general powers of trustees under section 56 of the Trusts Act 2019, in relation to the Establishment Trustees of the Trust.
- (d) The Establishment Trustees will also not be required to develop the plans set out in clause 12.

3.5 Proceedings of Trustees:

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

3.6 Trustees Remuneration:

Trustees' remuneration must:

- (a) be authorised by a resolution of Adult Registered Members of Whakatōhea in accordance with clause 17.2. In recommending trustee remuneration levels the Trustees must first seek professional advice in that regard; but
- (b) in respect of the Establishment Trustees in clause 3.1, who will be appointed before the first annual general meeting, be set by them for the period they hold office as Establishment Trustees, on the basis of professional advice they must seek.

This clause, as well as clause 17.2, expressly modify the Default Duties in sections 36 to 37 of the Trusts Act 2019.

3.7 Trustee Expenses:

Trustees will be entitled to be reimbursed reasonable expenses incurred in relation to their acting as Trustees.

4. DUTIES OF TRUSTEES

4.1 Guiding principle

In exercising the powers and functions under this Deed, each Trustee must have regard to the context of the Trust and the Trust's Purpose.

4.2 Mandatory duties

Each Trustee is required to comply with the Mandatory Duties. For the avoidance of doubt, each Trustee must:

- (a) know the terms of this Deed;
- (b) act in accordance with this Deed;
- (c) act honestly and in good faith;
- (d) hold or deal with the Trust Assets and otherwise act for the benefit of the Members of Whakatōhea, in accordance with this Deed and the Trust's Purpose; and
- (e) exercise their powers for a proper purpose.

4.3 Other duties

Except where otherwise specified in this Deed, each Trustee must comply with the Default Duties. For the avoidance of doubt and except where otherwise specified in this Deed, each Trustee must:

- (a) when administering the Trust (other than when exercising a discretion to distribute any of the Trust's Assets to Members of Whakatōhea), exercise the care and skill that is reasonable in the circumstances, having regard, in particular to any special knowledge or experience that the Trustee has or holds themselves out as having;
- (b) when exercising any power to invest the Trust's Assets, the Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard, in particular:
 - (i) to any special knowledge or experience that the Trustee has or that the Trustee holds themselves out as having; and
 - (ii) if the person acts as a Trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- (c) not exercise a power of a Trustee directly or indirectly for the Trustee's own benefit;

- (d) consider actively and regularly whether the Trustee should be exercising 1 or more of the Trustee's powers;
- (e) not bind or commit Trustees to a future exercise or non-exercise of a discretion;
- (f) avoid a conflict of interest between the interests of the Trustee and the interests of the Members of Whakatōhea;
- (g) act impartially in relation to the Members of Whakatōhea, and must not be unfairly partial to one Member of Whakatōhea or a group of Members to the detriment of others;
- (h) except as provided for in clauses 3.6 and 16.2, not make a profit from their trusteeship; and
- (i) except as provided for in clauses 3.6 and 16.2, not take any reward for acting as a Trustee.

5. TE TOHEARAU - TIKANGA COMMITTEE

5.1 Appointment of Te Tohearau - Tikanga Committee:

The Trustees may from time to time establish Te Tohearau on such terms of appointment, and subject to such rules and regulations, meeting procedures and processes, as may be prescribed by the Trustees from time to time. The Trustees shall, when making appointments, take into consideration the desirability of Te Tohearau being broadly representative of Whakatōhea.

5.2 Role of Te Tohearau - Tikanga Committee:

Te Tohearau will make determinations and give guidance on any issue of Whakatōhea tikanga, reo, kōrero and/or whakapapa that is referred to it by the Trustees. These determinations will be definitive for the purposes of Whakatōhea, and the Trust will take them into account in the achievement of its objectives and purposes and where appropriate communicate to Whakatōhea at the Annual General Meeting

5.3 Remuneration of Te Tohearau Members:

The Trustees shall determine the remuneration payable to any member of Te Tohearau.

5.4 Trustees not to be members:

A Trustees may not contemporaneously with his or her holding office as Trustee be appointed to or remain part of the Te Tohearau.

6. TAUMATA KAUMATUA

The Taumata Kaumatua are a collective of Whakatōhea Elders that meet from time to time to discuss and be informed of matters important to Whakatōhea. Te Tāwharau o Te Whakatōhea will facilitate and support the Taumata Kaumatua as is required.

7. GENERAL MANAGER AND OTHER EMPLOYEES

7.1 Trustees to appoint General Manager:

The Trustees may (on such terms as the Trustees determine) appoint a General Manager to manage the day to day administration of the Trust including, without limitation, the implementation of the Trustees' planning, reporting and monitoring obligations under this Trust Deed.

7.2 Delegations to General Manager:

The Trustees shall ensure that any General Manager is appointed on terms which require that the General Manager shall be responsible for the employment of all other employees of the Trust and shall exercise such other powers and discretions as are delegated to him or her by the Trustees from time to time.

7.3 Trustee Role:

A Trustee may not hold the position of General Manager nor be an employee of, or a contractor to Te Tāwharau o Te Whakatōhea.

8. TRUSTEES MAY ADD HAPŪ

8.1 The Trustees may add a hapū to the list of hapū in the sixth Schedule:

The Trustees may add a hapū to the list of hapū in the sixth Schedule and thereby increase the number of Trustees if:

- (a) a request to amend the list of hapū in the sixth Schedule has been submitted to the Trustees in writing; and
- (b) the Trustees are satisfied (acting reasonably) that the group:
 - (i) descends from a Whakatōhea Ancestor; and
 - (ii) has active, functioning marae; and
 - (iii) belongs to, or associates with, a maunga (mountain) and awa (river); and
- (c) the Trustees have consulted with the Taumata Kaumatua on the issue; and
- (d) A panel of Te Tohearau established to consider the application has recommended that the request be put to the iwi for consideration;
- (e) the Trustees have supported by majority the recommendation of Te Tohearau; and
 - a. Resolution put to Whakatohea adult members in accordance with clauses 4-8 of the Fourth Schedule and: A majority of Whakatohea members have voted in support of the addition;
 - b. Each of the hapu listed in Schedule 6 hapu, by majority have voted in support of the addition

9 TRUSTEES MAY ESTABLISH SUBSIDIARIES

9.1 Establishment of Subsidiaries:

In receiving, controlling, and supervising the use of the Trust's Assets on behalf of Whakatōhea, whether pursuant to the Deed of Settlement, the Settlement Act or otherwise, the Trustees may establish and oversee the operations of any Subsidiaries.

9.2 Ownership and Control of Subsidiaries:

The Trustees shall ensure that any Subsidiary is established on terms which require the Subsidiary to manage any of the Trust's Assets it holds solely for the benefit of Whakatōhea. The Trustees shall ensure that they have and retain all the shares in any Subsidiary that is a Company and the sole power to appoint and remove the trustees and directors or any responsible body of any Subsidiary.

9.3 Trustees to monitor:

The Trustees shall exercise their shareholding or power of appointment in respect of any Subsidiaries in such a way as to ensure that these entities carry out their activities in a manner which is consistent with the Trust's object and purpose.

9.4 Trustee to fund Subsidiaries:

The Trustees may fund Subsidiaries (if any) by distributing capital or income or by making advances to the Subsidiary or by such other means as is consistent with the Trust's object and purpose.

9.5 Directors responsible for governance:

For the avoidance of doubt, and except as expressly provided by this Deed, all entities or trusts within the Te Tāwharau o Te Whakatōhea Group shall be governed by their respective boards or other responsible bodies and the role of the Trustees in respect of those companies and other entities shall be limited to the exercise of the rights conferred on the Trustees as shareholders or (as applicable) appointor and beneficiary of the relevant entity or trust.

9.6 Remuneration of directors and other trustees:

The Trustees shall ensure that Subsidiaries are established on terms which give the Trustees the power to determine the remuneration payable to any director or trustee or controlling body of any Subsidiary.

9.7 No influence in determining remuneration:

No Trustee receiving any remuneration referred to in clause 9.6 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall the Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

10. APPOINTMENT OF DIRECTORS AND TRUSTEES

10.1 Appointment and removal of directors and trustees:

The Trustees shall ensure that Subsidiaries are established on terms which ensure that the directors and trustees or other controlling body of the Subsidiary shall be appointed and removed by the Trustees.

10.2 Trustees as directors and trustees of Subsidiaries:

No more than 40% of the Trustees then in office may be appointed as directors or trustees of any individual Subsidiary.

10.3 Appointments with regard to skills and expertise:

A director, a trustee or a controlling body of any Subsidiary shall only be appointed by the Trustees if that person has the particular skills and expertise that are necessary for the appointment having regard to the activities that the Subsidiary undertakes or is likely to undertake in the future and the mix of skills and expertise that is necessary on the relevant Subsidiary.

11. APPLICATION OF INCOME

11.1 Trustees may apply income and capital:

Subject to any other requirements in this Trust Deed, the Trustees may:

- (a) provide for the payment, application or appropriation, or decide to pay, apply or appropriate as much of the available income in any Income Year to or for the benefit of Members of Whakatōhea;
- (b) use or apply any capital of the Trust's Assets to or for the benefit of Members of Whakatōhea for the Trust's Purpose without first using or applying the whole or any portion of the income of the Trust's Assets for that year; or
- (c) set aside reserves or accumulations for future use or application by the Trustees, as the Trustees in their sole discretion think fit for or towards the Trust's Purpose.

11.2 Payments out of income:

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

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

11.3 Matters to consider in applying income:

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

- (a) determine how much of the income should cease to be income and be added to and form part of the capital of the Trust's Assets, provided that the Trustees may not in the Income Year convert the entire income of the Trust into capital; and
- (b) endeavour to act fairly in considering the needs and interests of present and future Members of Whakatōhea.

11.4 Accumulation in six months where income not applied:

Any income from any Income Year that is not paid or applied in accordance with this clause 11 during or within the six (6) months from the end of that Income Year shall be accumulated and any income so accumulated shall be added to and form part of the capital of the Trust's Assets and shall be subject to the trusts and powers herein declared in respect of the capital of the Trust's Assets.

12. PLANS

12.1 Trustees to prepare Annual Plan:

In addition to the requirement in clause 12.3, the Trustees shall prepare no later than one (1) month before the commencement of each Income Year an Annual Plan which specifies in respect of that Income Year information including:

- (a) the strategic vision of the Trust for Te Tāwharau o Te Whakatōhea Group, consistent with the longer term vision of Te Tāwharau o Te Whakatōhea Group as identified in the Five Year Plan;
- (b) the nature and scope of the activities proposed by the Trustees for Te Tāwharau o Te Whakatōhea Group in the performance of the Trust's Purpose;
- (c) the ratio of capital to total assets;
- (d) the performance targets and measurements by which performance of Te Tāwharau o Te Whakatōhea Group may be judged;
- (e) the manner in which it is proposed that projected income will be dealt with;
- (f) any proposals for the ongoing management of the Trust's Assets having regard to the interests of all Members of Whakatōhea; and
- (g) any other information as the Trustees in their discretion consider necessary or appropriate.

12.2 Trustees to prepare Five Year Plan:

In addition to the requirement in clause 12.3, the Trustees shall also produce within 18 months following the first election, and update not less than every two (2) years, a Five Year Plan. Such a plan shall set out the longer term vision of the Trustees in respect of the matters referred to in clause 12.1(a) to (g) and shall include a statement by the Trustees of the commercial, management and distribution policies that the Trustees intend to follow in respect of the Trust's Assets.

12.3 Initial Annual Plan and Five Year Plan

In addition to the requirements in clauses 12.1 and 12.2 the Trustees shall, within one (1) year of the first election prepare and produce an Annual Plan and Five Year Plan that comply with the matters in clause 12.1 and 12.2. Those plans shall have effect until such time as they are replaced by new plans as required in clause 12.1 and 12.2.

13. ANNUAL REPORTS, ACCOUNTS AND AUDITOR

13.1 Preparation of Annual Report:

The Trustees must, within five (5) months after the end of each Income Year, and no later than 20 Business Days prior to an annual general meeting, cause to be prepared an annual report on the affairs of Te Tāwharau o Te Whakatōhea Group covering the accounting period ending at the end of that Income Year which includes a comparison of performance against the Annual Plan, and Consolidated Financial Statements including a balance sheet and income and expenditure statement and notes to those documents so as to give a true and fair view of the financial affairs of Te Tāwharau o Te Whakatōhea Group for that Income Year. The Consolidated Financial Statements shall include as a separate item details of any remuneration or fees paid to any Trustee or any Trustee's firm (including without limitation any such payment to any Trustee as a director or trustee of a Subsidiary) and details of any premiums paid in respect of Trustees' indemnity insurance (or any indemnity payments made by an insurer). The annual report shall address all of the matters set out in Kaupapa 7 of Schedule 7 of the Maori Fisheries Act 2004.

13.2 Audit of financial statements:

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

13.3 Appointment of auditor:

The auditor shall be appointed by the Trustees prior to the end of the Income Year to which the audit relates and, where possible, the fee of the auditor shall also be fixed at that time. No Trustee or employee of the Trust (including any firm of which such a person is a member or employee) may be appointed as the auditor. For the avoidance of doubt, the Trust's accountant shall not be appointed as the auditor.

14. SUBSIDIARIES TO PREPARE PLANS AND REPORTS

14.1 Subsidiaries to prepare Plans and Statements of Intent:

The Trustees shall procure that each Subsidiary will:

- (a) within three (3) months of the establishment of the Subsidiary, prepare a Statement of Intent setting out its long term objectives and the general principles by which it proposes to operate;
- (b) as required by the Trustees, update the Statement of Intent to take into account changes in circumstances that may arise from time to time, including without limitation changes to the nature of its business and the business of any of its subsidiaries;
- (c) within three (3) months of the establishment of the Subsidiary, prepare a Five Year Plan which shall be updated not less than every two (2) years, and which sets out its medium term vision and the specific steps that it proposes to take during that period to fulfil the objectives and principles set out in the Statement of Intent referred to in paragraph (a) of this clause;
- (d) no later than one (1) month following the completion of the Five Year Plan referred to in paragraph (c) of this clause, and thereafter no later than two (2) months before the commencement of each Income Year, prepare an Annual Plan setting out the steps to be taken in the relevant Income Year to meet its five year planning objectives and fulfil the objectives and principles of the Statement of Intent;
- (e) in addition to any normal reporting requirements, within two (2) calendar months after the completion of the first, second and third quarter of each Income Year send to the Trustees reports on its operations and financial position together with an unaudited summary of financial results as at the end of that period (such reports to be in such form as the Trustees may require from time to time).

14.2 Trustee approval required:

Prior to being implemented all Statements of Intent, Five Year Plans and Annual Plans must be approved by the Trustees. Such approval shall be given in light of the Trust's overall plans and policies in respect of the Trust's Assets.

14.3 Reports to comply with Companies Act 1993:

The Trustees shall procure that all annual reports by any Subsidiary that is a company comply in all respects with the requirements of the Companies Act 1993, including without limitation:

- (a) the description required by section 211(1)(a) of the Companies Act 1993 of the nature of the business of the company or any of its subsidiaries, or the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise;
- (b) the financial statements (or as appropriate group financial statements) for that Income Year completed and signed in accordance with the Financial Reporting Act 2013;
- (c) the auditor's report of the financial statements (or group financial statements) of the company for that Income Year.

14.4 Subsidiaries to meet Companies Act standard:

All reports of any Subsidiary that is a trust shall be provided to the same standard, including as to form and content, as is required under clause 14.3 as if the Subsidiary was a company.

14.5 Report to include comparison against plans:

In addition to the matters set out in clauses 14.3 and 14.4, the Trustees shall procure that all reports by any Subsidiary include a comparison of its performance against both its respective Annual Plans for that Income Year and its medium and longer term planning objectives (as set out in the Five Year Plan and Statement of Intent).

14.6 Protection of Information:

For the avoidance of doubt, nothing in this clause 14 limits or affects the rights of the Trustees, as shareholders in any Subsidiary that is a company, to agree pursuant to section 211(3) of the Companies Act 1993 not to include information in the annual report of the Subsidiary.

15. DISCLOSURE OF PLANS, REPORTS AND MINUTES

15.1 Documents to be available for inspection:

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

- (a) the Annual Report for each of the preceding three (3) Income Years which shall also be made available in electronic format to any Member of Whakatōhea on request;
- (b) the Consolidated Financial Statements for the preceding three (3) Income Years which shall be made available in electronic format to any Member of Whakatōhea on request;
- (c) the Annual Plan;
- (d) the Five Year Plan;
- (e) the Statements of Intent;

- (f) the minute book kept of all decisions taken and business transacted at every annual general meeting and special general meeting;
- (g) their own personal details on the Register;
- (h) this Deed and any amendment to this Deed; and
- (i) the current constitution or trust deed of any Subsidiary.

15.2 Costs of copying:

Any Member of Whakatōhea shall be entitled to obtain copies of the information referred to in clause 15.1. However, the Trustees shall also be entitled to recover at their discretion all reasonable copying or postage costs (if any).

16. NON DISCLOSURE OF INFORMATION

16.1 Trust Information

The Trustees must, in compliance with sections 51-52 of the Trusts Act 2019 and with regard to the factors in section 53 of that Act, determine whether the presumption to notify Basic Trust Information or provide Trust Information on request does not apply.

16.2 For the avoidance of doubt, but subject to the Trustees reporting and review obligations in clauses 13.1, 15.1(a), 15.1(b), 15.1(f), 16.1, 17.1(a) and 17.1(b), the Trustees may at their sole discretion and having regard to the factors in section 53 of the Trusts Act 2019, limit disclosure of:

- (a) the Basic Trust information; or
- (b) any Trust information, including information about the activities or proposed activities of the Trustees and Te Tāwharau o Te Whakatōhea Group which the Trustees consider on reasonable grounds to be commercially or otherwise sensitive.

17. GENERAL MEETINGS

17.1 Trustees 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 months after the date of the last annual general meeting of the Trust, hold a general meeting for the Members of Whakatōhea, to be called its annual general meeting, and shall at that meeting:

- (a) report on the operations of Te Tāwharau o Te Whakatōhea Group during the preceding Income Year;
- (b) present the Annual Report and duly audited Consolidated Financial Statements;
- (c) present the proposed Annual Plan;
- (d) announce the names of all newly appointed Trustees;
- (e) approve the appointment of the auditor for the next Income Year;
- (f) approve the Trustees' remuneration;

- (g) undertake all other notified business; and
- (h) at the discretion of the chairperson of the meeting, undertake any other general business raised at that meeting.

17.2 Approval of Trustees' remuneration and appointment of auditor:

- (a) No remuneration will be paid to a Trustee in his or her capacity as a Trustee unless that remuneration has been authorised by a resolution of the Adult Registered Members of Whakatōhea present at the annual general meeting. Each such resolution will express the remuneration to be paid to the Trustees as a monetary sum per annum payable either to all Trustees taken together or to any person who from time to time holds office as a Trustee. This clause does not apply to any remuneration paid to any Trustee in his or her capacity as a director or trustee of a Subsidiary and that remuneration shall be determined by the Trustees pursuant to clause 9.
- (b) The appointment of the auditor for the next Income Year must be authorised by a resolution of the Adult Registered Members of Whakatōhea present at the annual general meeting.

17.3 Notice of general meeting:

The Trustees shall give not less than twenty one day's notice of the holding of the annual general meeting, such notice to be posted (including, by electronic form where available) to all Adult Registered Members of Whakatōhea at the last address shown for each such Adult Registered Member of Whakatōhea on the Whakatōhea Register. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must subsequently be sent to the last known physical address. Notice of the meeting shall also be inserted prominently on at least two (2) separate days in appropriate major metropolitan newspapers and in any provincial newspapers circulating in regions where the Trustees consider that a significant number of Members of Whakatōhea reside. All such notices shall contain:

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

17.4 Notice of special meetings:

In addition to the annual general meeting of the Trust, the Trustees shall convene a special general meeting of the Trustees for the Members of Whakatōhea upon the request of:

- (a) the Chairperson and Deputy Chairperson for the time being of the Trust; or
- (b) the majority of the Trustees then in office; or
- (c) 5% of the Adult Registered Members of Whakatōhea.

Notice of such a meeting shall be given in the same manner as for a notice of the annual general meeting and those requisitioning the meeting shall be required to

provide a statement to the Trustees setting out the purposes for which the meeting has been requisitioned and the specific agenda items proposed for such a meeting. The Trustees shall not be required to give notice calling the meeting until such a statement with agenda items has been received.

17.5 Annual general meeting not limited to notified business:

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

17.6 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.

17.7 Invalidation:

The proceedings of a meeting are not invalidated by the accidental omission to give notice to, or a failure to receive notice of an annual or special general meeting by, a Member of Whakatōhea.

17.8 Deficiency of notice:

Subject to clause 17.6, a deficiency or irregularity in a notice of any special or general meeting will not invalidate anything done at the meeting if the deficiency or irregularity is not material.

17.9 Quorum:

The quorum required for any annual or special general meeting of the Trust shall be 25 Adult Registered Members of Whakatōhea present and a majority of Trustees present. Attendance at meetings can be by way of electronic conferencing unless for some reason the trustees determine otherwise. For the avoidance of doubt, if a Trustee is an Adult Registered Member of Whakatōhea he or she is entitled to vote.

17.10 Chairing of 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 for holding a meeting, then the Deputy Chairperson shall be the chair. If the Deputy Chairperson is also not present, then the Trustees present shall elect one (1) of their number to substitute as the chairperson for that meeting.

17.11 Voting:

To the extent that a vote is sought or required at any annual or special general meeting, every Adult Registered Member of Whakatōhea present shall have one (1) vote. All resolutions except Special Resolutions require the approval of not less than a majority of the Adult Registered Members of Whakatōhea who validly cast a vote. Voting may be by voice or on a show of hands. The chairperson of the meeting may also demand a poll on a resolution either before or after any vote, which among other things, requires the Adult Registered Members to verify their eligibility by a process directed by the chairperson of the meeting. However, except as provided in clauses 2.5, 17.1(e), 17.1(f) 17.2, 29.1, 30 and 31 and where Special Resolutions have been passed in accordance with the Fourth Schedule the Trustees shall not be bound by a resolution passed at any annual or special general meeting, but will only be required to give consideration to any such resolution in administering the Trust's Assets and carrying out the Trust's Purpose. The latest version of the Whakatōhea Register will be present at any annual or special general meetings.

17.12 Adjourned meetings:

If after one (1) hour of the time appointed for an annual or special general meeting, a quorum is not present, the meeting will stand adjourned to be re-convened seven (7) days after the date of the meeting. On that later day, the meeting will be held again at the same time and in the same place as the adjourned meeting. If a quorum is not present after one hour from the time appointed for that adjourned meeting, the Adult Registered Members of Whakatōhea present will constitute a quorum.

17.13 Unruly meetings:

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

17.14 Minutes:

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

17.15 Minutes to be evidence of proceedings:

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

17.16 Minutes to be evidence of proper conduct:

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

18. DISCLOSURE OF INTERESTS

18.1 Definition of interested Trustee:

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

- (a) is a party to, or will derive a material financial benefit from, that matter;
- (b) has a material financial interest in another party to the matter;
- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from, the matter, not being a party that is wholly owned, or in the case of a trust controlled, by the Trustees or any other member of Te Tāwharau o Te Whakatōhea Group;
- (d) is the parent, child, whāngai, spouse, de facto or civil union partner of another party to, or person who will or may derive a material financial benefit from, the matter; or
- (e) is otherwise directly or indirectly interested in the matter.

18.2 Disclosure of interest to other Trustees:

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

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

18.3 Recording of Interest:

A disclosure of interest by a Trustee (and the nature and the extent or monetary value of that interest) shall be recorded in the minute book and the interest register of the Trust.

19. DEALINGS WITH "INTERESTED" TRUSTEES

- 19.1** An interested Trustee shall not take part in any deliberation or vote in respect of any matter in which that Trustee is interested, nor shall the Trustee be counted for the purposes of forming a quorum in any meeting to consider such a matter.

20. PROHIBITION OF BENEFIT OR ADVANTAGE

- 20.1** In the carrying on of any business by any member of Te Tāwharau o Te Whakatōhea Group under this Deed, and in the exercise of any power authorising the remuneration of the Trustees, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Person where that Person is able (whether directly or indirectly) to determine, or to materially influence the determination of the nature or amount of that benefit, advantage or income, or the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

20.2 For the purposes of clause 20.1, a person is treated as including:

- (a) their spouse, civil union partner, or de facto partner; or
- (b) their child, whāngai; or
- (c) a child of their spouse, civil union partner, or de facto partner; or
- (d) a spouse, civil union partner, or de facto partner of their child, or of a child of their spouse, civil union partner, or de facto partner.

21. DISCLOSURE OF TRUSTEE REMUNERATION ETC

- 21.1** The Trustees shall, in accordance with clause 13.1, show the amount of any remuneration paid to any Trustee or any Trustee's firm and the amount of any premiums paid out of the Trust's Assets for any Trustee indemnity insurance separately in the financial statements including any payments made pursuant to clause 24.

22. ADVICE TO TRUSTEES

22.1 Trustees may rely on advice:

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

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

22.2 Trust may obtain legal opinion:

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

22.3 Special Trust advisers

In accordance with section 74 of the Trusts Act 2019, the Trustees may, by a resolution passed by a majority the Trustees, appoint a special trust adviser to advise the Trustees on any matter relating to the Trust.

23. LIABILITY OF TRUSTEES

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

24. INDEMNITY AND INSURANCE

24.1 Indemnity and insurance for Trustees:

Any Trustee, officer or employee of the Trust or of any other member of Te Tāwharau o Te Whakatōhea Tāwharau may be indemnified or have their insurance costs met out of Trust's Assets against any liability which he or she incurs in defending any civil or criminal proceedings issued because of his or her actions in relation to Te Tāwharau o Te Whakatōhea, where:

- (a) those proceedings do not arise out of any dishonesty, wilful misconduct, gross negligence or commission or omission of an act which commission or omission he or she knows or should have known to be a breach of this Deed by the Trustee, officer or employee; and
- (b) he or she was acting in good faith in a manner that he or she believed to be in the best interests of the Trust or any member of Te Tāwharau o Te Whakatōhea with the object of fulfilling the Trust's Purposes.

24.2 Indemnity and insurance costs to be just and equitable:

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

24.3 Indemnity and insurance re specific trusts:

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

24.4 Record of decisions

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

25. TE TĀWHARAU O TE WHAKATŌHEA TĀWHARAU NOT TO BE BROUGHT INTO DISREPUTE

25.1 Trustees not to bring into disrepute:

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

25.2 Directors not to bring into disrepute:

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

25.3 Trustee may be censured or removed:

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

25.4 Censure or removal to be notified:

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

25.5 Effect of Removal:

A Trustee removed from office in accordance with clause 25.3 shall cease to hold office as a Trustee forthwith and shall not be entitled to be re-elected as a Trustee for a period of not less than three (3) years following his or her removal.

Each of the Trustees grants a power of attorney in favour of the other Trustees to convey the Trust's Assets to the other Trustees and any replacement trustee in the event that the Trustee is removed from office under clause 25.3.

25.6 Replacement of Trustee:

The removal of a Trustee in accordance with clause 25.3 shall give rise to a casual vacancy which shall be filled in accordance with rule 4.6 of the Second Schedule. The replacement process must take place within three (3) months of any removal of a Trustee in accordance with this clause.

25.7 Trustees to attend meetings:

A Trustee that is absent from three (3) consecutive meetings without obtaining prior leave from the chairperson will be deemed to have abandoned their position. This will give rise to a casual vacancy which shall be filled in accordance with rules 4.6 – 4.9 of the Second Schedule.

26. GIFTS OR DONATIONS

26.1 Trustees may accept specific trusts:

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

26.2 Specific trusts to be Separate:

If the Trustees accept a trust for any specific purpose as outlined in clause 26.1 above they must keep the property subject to such trust and any income derived from it separate from the Trust's Assets, and administer that property and income as a separate specific trust in terms of the trust under which it was accepted.

26.3 Use of specific trust assets:

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

26.4 Expenses of specific trusts:

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

27. RECEIPTS FOR PAYMENTS

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

28. CUSTODIAN TRUSTEE

28.1 The Trustees may appoint or incorporate a Custodian Trustee in respect of all or any part of the Trust's Assets and on any such appointment or incorporation, sections 67-69 of the Trusts Act 2019 and the following provisions shall have effect:

- (a) the Trustees shall require the Custodian Trustee to sign this Trust Deed agreeing to be bound by its terms;
- (b) the Trust's Assets or part of may be vested in the Custodian Trustee as if the Custodian Trustee were sole Trustee;
- (c) the Custodian Trustee holds the title so vested in him or her or it on trust for the Trustees;

- (d) the management of the Trust's Assets and the exercise of all powers and discretions exercisable by the Trustees under this Trust Deed shall remain vested in the Trustees as fully and effectively as if there were no Custodian Trustee;
- (e) the sole function of the Custodian Trustee shall be to hold the Trust's Assets and property, invest its funds and dispose of the assets in accordance with any direction in writing by the Trustees for which purpose the Custodian Trustee shall execute all such documents and perform all such acts as the Trustees in writing direct and if liable to the Trustees for failing to do so;
- (f) the Custodian Trustee shall not be liable for acting on any such direction or any failure of the Trustees provided that if the Custodian Trustee is of the opinion that any such direction conflicts with the trusts or the law or exposes the Custodian Trustee to any liability or is otherwise objectionable, the Custodian Trustee may apply to the Court for directions and any order giving any such directions shall bind both the Custodian Trustee and the Trustees provided the Trustees are made parties to the proceeding;
- (g) the Custodian Trustee shall not be liable for any failure on the part of any of the Trustees to fulfil any of the Mandatory Duties or Default Duties (as applicable) or the Trustees' duties under section 69 of the Trusts Act 2019, provided the Custodian Trustee is not knowingly a participant in any dishonest, willful or grossly negligent breach of trust by such Trustee(s);
- (h) all actions and proceedings touching or concerning the Trust's Assets may be brought or defended in the name of the Custodian Trustee at the written direction of the Trustees and, as between the Trustees and the Custodian Trustee, the Custodian Trustee shall not be liable for the costs and the Trustees shall indemnify the Custodian Trustee for such proceedings; and
- (i) no person dealing with the Custodian Trustee shall be concerned to enquire as to the concurrence or otherwise of the Trustees or be affected by notice of the fact that the Trustees have not concurred.

29. AMENDMENTS TO TRUST DEED

29.1 Special resolution required:

Subject to clause 29.2 and clause 29.3, all amendments to this Trust Deed shall only be made with the approval of a Special Resolution passed in accordance with the Fourth Schedule.

29.2 Limitations on amendment:

No amendment shall be made to this Trust Deed which:

- (a) changes the Trust's Purpose so that the Trustees are no longer required to act for the collective benefit of the present and future Members of Whakatōhea;
- (b) changes this clause 29.2;
- (c) changes clause 31;

- (d) changes the finally agreed definition of Member of Whakatōhea, Whakatōhea Ancestor, Whakatōhea Area of Interest, or Whakatōhea Claims after settlement legislation has been passed;
- (d) changes the requirement for a Special Resolution (as defined from time to time) in clause 29.1;
- (e) changes to membership and beneficiaries of the Trust; and;
- (f) changes rule 3.1 of the Fourth Schedule relating to the voting threshold of 75% of the Adult Members of Whakatōhea.

29.3 Amendment to make definitions consistent with Deed of Settlement and Settlement Legislation:

Notwithstanding any other provision in this Trust Deed to the contrary, this Trust Deed must be amended by the Trustees to make the definition of Member of Whakatōhea, Whakatōhea, Whakatōhea Ancestor or Whakatōhea Claims the same as that set out in the final Deed of Settlement and the Settlement Legislation. If this Trust Deed is amended due to operation of this sub-clause, a Special Resolution passed in accordance with the Fourth Schedule is not required.

29.4 Consideration of proposals:

Every Adult Registered Member of Whakatōhea may put forward for consideration by the Trustees proposals for amendments to this Trust Deed. Any proposal put forward under this clause 29.4 must be in writing and addressed to the Chairperson at the registered office of the Trust. Any proposal put forward under this clause 29.4 must be considered by the Trustees at their next available meeting. If the proposal for an amendment to this Trust Deed complies with clauses 29.2 and 29.4, the Trustees must call a special general meeting to consider the proposal. If the Trustees do not discard the proposal in accordance with clause 29.5 they may, in their discretion, discuss this at the next annual general meeting.

29.5 Proposals to be discarded:

Where a proposal for amendments to this Trust Deed does not comply with clause 29.2 and 29.4, the Trustees may discard the proposal and the Trustees will not be required to call a special general meeting in accordance with the Fourth Schedule.

30. RESETTLEMENT

The Trustees have the power to settle or resettle any or all of the Trust's Assets upon trust in any manner in which, in the opinion of the Trustees is for the advancement or benefit of the present and future Members of Whakatōhea, provided that the resettlement is approved by a Special Resolution.

31. TERMINATION OF TRUST

31.1 Subject to clause 29.2:

- (a) the Trust established by this Trust Deed shall only be terminated or dissolved if the Adult Registered Members of Whakatōhea have, by Special Resolution, resolved to do so; and

- (b) on the termination or dissolution of this Trust under this clause, the Trust's Assets after the payment of costs, debts and liabilities shall be paid to another trust or entity that has been established for the benefit of the present and future Members of Whakatōhea as long as such payment does not offend against the rule against perpetuities to the extent such rule applies to this Trust.

32. DURATION OF TRUST NOT LIMITED

- 32.1** The Settlement Act will provide that the maximum duration of a trust pursuant to the Trusts Act 2019 does not –
- (a) apply to a settlement document; or
 - (b) prescribe or restrict the period during which –
 - (i) the trustee(s) of Te Tāwharau o Te Whakatōhea, being the governance entity, may hold or deal with property; and
 - (ii) Te Tāwharau o Te Whakatōhea may exist

33. KEEPING OF CORE DOCUMENTS

- 33.1 Records to be held for seven years:**
The Trustees must ensure that the Core Documents are held for the duration of the Trust in accordance with section 45-48 of the Trusts Act 2019.

34. DISPUTE RESOLUTION

34.1 Disputes

In the event that a dispute arises between:

- (a) any Members of Whakatōhea; or
- (b) the Trustees and any Members of Whakatōhea

regarding membership or otherwise in connection with the tikanga, reo, kawa, whakapapa and kōrero of Whakatōhea then that dispute shall be referred in first instance to the Trustees.

34.2 Notice of dispute:

All disputes referred to the Trustees in accordance with clause 34.1 shall be submitted to the Trustees by notice in writing and the Trustees shall acknowledge receipt in writing within 10 Business Days of the date of receipt of the notice.

34.3 Reference of dispute:

If a dispute is not settled within 30 days of the receipt by the Trustees of written notice of the dispute in accordance with clause 34.2 then it shall be referred to a Disputes Committee constituted in accordance with clauses 34.4 and 34.5.

34.4 Disputes Committee to be appointed as required:

There shall not be a permanent Disputes Committee. Disputes Committees shall be appointed on a case by case basis, having regard to the precise subject matter of the dispute, in question, and only after the expiry of the 30 day period referred to in clause 34.3.

34.5 Appointment and composition of Disputes Committee:

A Disputes Committee shall comprise three (3) members who shall be appointed by the Trust as follows:

- (a) One (1) independent (non-Whakatōhea member) nominated by the President from time to time of the Waikato Bay of Plenty District Law Society or his or her nominee, such member to be a barrister or solicitor of the High Court of New Zealand with seven (7) or more years' experience, to act as the chair of Disputes committee; and
- (b) two Adult Registered Members of Whakatōhea appointed for their skills and expertise in dealing with the issues that are the subject of the relevant dispute, provided that such members cannot also be Trustees or employees of the Trust.

34.6 Role of Disputes Committee:

The role of a Disputes Committee shall be to facilitate and make findings and decisions on the disputes referred to it.

34.7 Deliberations of Disputes Committee:

In dealing with any dispute, a Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the manner in which a dispute before it should be dealt with. The findings and decisions of a Disputes Committee shall be final and binding on the parties.

34.8 Disputes Committee may convene hui:

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

34.9 Hui to meet notice requirements:

Any general meeting called by a Disputes Committee in order to try to settle any disputes shall be called in accordance with the requirements as to notice and meeting procedure that apply in respect of general meetings of Whakatōhea as set out in this Trust Deed.

34.10 Notification of outcome:

A Disputes Committee shall give its findings and decision, together with the reasons therefore, in writing to the Trustees and any other party to the dispute.

34.11 Exclusion of alternative dispute resolution provisions

Sections 142–147 of the Trusts Act 2019, relating to alternative dispute resolution, are hereby expressly excluded.

35. REVIEW OF TRUST DEED

35.1 Review of trust deed:

The Trustees shall, within four (4) years of the Settlement Date, initiate a review of the terms and operation of this Trust Deed and, in particular, shall review the arrangements relating to the election of Trustees and all other aspects of the representation of Whakatōhea by the Trust.

35.2 Deed review process:

In conducting this review the Trustees shall engage and consult with Whakatōhea in order to seek the views of Whakatōhea on the terms and operation of this Trust Deed and, in particular, the arrangements relating to the election of Trustees and all other aspects of the representation of Whakatōhea by the Trust and shall have regard to the tikanga of Whakatōhea.

35.3 Review to be independently facilitated

The process of engagement and consultation required by clause 35.2 shall be undertaken by an independent facilitator appointed by the Trustees. The role of independent facilitator shall be to:

- (a) liaise with the Trustees in the preparation of any discussion materials to be distributed to Whakatōhea;
- (b) facilitate any hui;
- (c) receive, compile and review any written submissions received from Whakatōhea; and
- (d) make recommendations to the Trustees as to the amendments that should be made to this Trust Deed as a consequence of the information received from the process of engagement and consultation.

35.4 Outcome of review

Following the completion of the review and consideration by the Trustees of the report made by the independent facilitator in accordance with clause 35.3, the Trustees shall recommend amendments (if any) to this Deed and seek the approval of those amendments by Special Resolution in accordance with the Fourth Schedule.

Dr'a

SIGNED BY ROBERT EDWARDS as an Establishment Trustee
in the presence of:

Name: _____

Occupation:_____

Address: _____

SIGNED BY TAHU TAIA as an Establishment Trustee
in the presence of:

Name: _____

Occupation:_____

Address: _____

SIGNED BY BRUCE PUKEPUKE as an Establishment Trustee
in the presence of:

Name: _____

Occupation:_____

Address: _____

SIGNED BY Kate Hudson as an Establishment Trustee
in the presence of:

Name: _____

Occupation:_____

|

Address: _____

SIGNED BY VAUGHN PAYNE as an Establishment Trustee
in the presence of:

Name: _____

Occupation:_____

Address: _____

SIGNED BY ANAU APANUI as an Establishment Trustee
in the presence of:

Name: _____

Occupation:_____

Address: _____

SIGNED BY ERIN MOORE as an Establishment Trustee
in the presence of:

Name: _____

Occupation:_____

Address: _____