

Māori Land Court Standard Ahu Whenua/Whenua Toopū Trust Order Checklist
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The purpose of this checklist is to provide a reference to the terms within this draft trust order which require further consideration by the owners.

Page no.	Term	Description
2	1.1	Trust Name
	1.4	Registry of the Court and address for service of the trust
3	2.2(g)	If the owners wish to support specific Māori community purposes, to list those purposes
11	7.1(e)	Registry of the Court at which the accounts are to be filed
12	9.1	The frequency of General Meetings
	9.2	Threshold of number/percentage of beneficial owners required to requisition a General Meeting
14	10.3	Number of months required for convening a Special General Meeting (dispute resolution)
15	12.4	Twenty-one (21) days prior notice is required for General or Special Meeting.
16	13.1	Quorum requirement of Beneficial Owners for General Meetings
17	14.1(a)	The method of voting is by show of hands. Voting threshold for a poll vote (for voting on the basis a shareholding interest)
19	16(1)	Set trustee numbers (minimum and maximum)
	16.2 - 16.5	Set the length of the term of appointment of trustees and whether rotation process
20	18.3	Notice requirement for number of days notice of any trustee meeting unless the meeting is convened in an emergency
24	20.4(g)(iii) (aa) & (bb)	Determine the length of any licence or lease or occupation order
25	20.4. (g)(v) (bb)	Determine the period to give effect to the licence or lease or occupation order
28	23.2	Trustee honorarium options
30	26.1	Determine year for initial trust review
35	Schedule 1	Trust Land and Trust Property: Corpus Land, Other Land and Other Property - review
36	Schedule 2	Proxy Voter Form (refer to paragraph 15.1(d) at page 18) – witness is to be a person twenty (20) years or older.

NOTE:

1. The enclosed terms of trust are an **example** of a **COMPREHENSIVE** trust order which you may use for your Ahu Whenua or Whenua Tōpū trust. The actual content of the trust order may differ depending on your circumstances and you may customise this **example** to best fit any terms of trust you have set for your trust.
2. You should read through each clause carefully and alter, amend or delete where appropriate to suit your circumstances.
3. Please note that this **example** is intended to provide you with general information only. The Ministry of Justice makes no warranty, express or implied, nor assumes any legal liability or responsibility for the accuracy, correctness, completeness or use of any information contained herein.
4. Any final terms of trust are subject to confirmation by the Māori Land Court in accordance with sections 219 or 244 of Te Ture Whenua Māori Act 1993.
5. If you require assistance, please contact your local Māori Land Court office.

MĀORI LAND COURT

**STANDARD [AHU WHENUA OR WHENUA
TOOPŪ]**

TRUST ORDER

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INTRODUCTION

- A. The Māori Land Court ("**Court**") has constituted an ahu whenua trust for the purposes set out in this Trust Order ("**Order**").
- B. The Trustees have consented to become the Trustees of this Trust subject to the powers, duties and obligations set out in this Order.
- C. The Trustees have acknowledged that familiarity with this Order is critical to their role as trustee.
- D. The Court gives the Trustees control of the Trust Property so that the Trustees can deal with the Trust Property, for the benefit of the Beneficial Owners. How the Trustees may hold and deal with the Trust Property is subject to the terms of this Trust.
- E. It is likely that further property may from time to time be acquired by the Trustees for the purposes of the Trust and this property is also Trust Property.
- F. The Trustees must recognise that they must make all decisions on behalf of the Trust and are not bound by resolutions of the Beneficial Owners.

PART A - NAME AND PURPOSES

1. TRUST NAME

Trust Name

- 1.1 The trust created by this Court order shall be known as **[INSERT TRUST NAME]** ("the Trust").

Trust not a separate legal entity

- 1.2 If the Trust is to enter into any legally binding agreements, arrangements or understandings with one or more third parties, it is the Trustees who are legally bound on behalf of the Trust. The Trust is not a separate legal entity. If the Trustees wish to avoid personal liability for the debts of the Trust, they will need to do so expressly by contract. See Chapter 21 for the Trustees' rights to have the Trust pay for any costs and liability incurred by the Trustees on behalf of the Trust.
- 1.3 Any assets acquired or contracts entered into by the Trustees on behalf of the Trust must be used and held for the benefit of the Trust and not for the personal benefit of the Trustees.

Communications

- 1.4 All communications respecting the Trust may be directed to the attention of the Secretary at the address below or such other address as is notified by the Trustees to the Registrar of the Court at the **[]** Registry from time to time:

[Address of Trust].

Trust definitions and interpretation

- 1.5 For a full list of definitions used throughout this Order and the interpretation principles, see Chapter 27.

Comment Box

1. If the Trustees, on behalf of the Trust, enter into a contract ("**Trust contract**") with a third party (e.g. a building company), it is a contract between the Trustees as individuals in their own name and the third party. The Trust contract is not a contract between the **[enter the name of the Trust]** as a separate legal entity and the third party. Because a Trust contract is between the Trustees and the third party, it is the Trustees themselves who are liable under that contract (subject to their right to be indemnified by the Trust out of its assets and money).

2. PURPOSES OF THE TRUST (OBJECTS)

2.1 All Trust Property, including any income that is derived from Trust Property, is held by the Trustees in trust for the Beneficial Owners in proportion to the Beneficial Owners' several interests in the Corpus Land.

2.2 Subject to clause 2.1, and subject to any specific restrictions elsewhere in this Order (e.g. in respect of the alienation of Corpus Land), the Trustees hold the Trust Property in trust to use and dispose of as they see fit, provided that the use or disposition is made exclusively for one or more of the Purposes of:

- (a) retaining the Corpus Land;
- (b) promoting and facilitating the effective management, use, and development of all Trust Land and Trust Property to best advance the interests of the Beneficial Owners;
- (c) protecting and safeguarding any wāhi tapu, including urupā, historical sites and sites of significance in accordance with the relevant tikanga Māori
- (d) providing for better habitation and use of Trust Land by the Beneficial Owners;
- (e) promoting, maintaining, supporting, or carrying on one or more businesses, undertakings or enterprises, or other commercial activities:
 - (i) on Trust Land and Trust Property or any part of it; and/or
 - (ii) in connection with a user or users of Trust Land or certain industries, whether they involve Beneficial Owners of the Trust or not;
- (f) representing the Beneficial Owners on all Trust Land related matters such as matters relating to the use and enjoyment of Trust Land and its facilities by those Beneficial Owners; and
- (g) the income of the Trust may be used to advance Māori community purposes set out in section 218 of the Act [or, if the owners wish to support specific Māori community purposes only, list the specific purposes].

Comment Box

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| <p>1. The task of the Trustees is to give effect to the purposes of this Trust. These purposes set the scope for how the Trustees may use Trust Property for the benefit of the Beneficial Owners.</p> |
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2. Even though the powers of the Trustees are very extensive, they can only be used to give effect to the purposes of this Trust. Unless it is expressly stated elsewhere in this Order that doing so is permitted, Trustees must not use or dispose of Trust land or other Trust Property for the benefit of a trust other than this Trust. This is so even if the beneficiaries of each trust are similar.
3. If the Trust includes Māori community purposes, Trust income may be used to give effect to these Māori community purposes. Because Māori community purposes are much broader than other purposes of the Trust, the use of Trust income does not have to be linked to benefiting a specific Beneficial Owner. For example, if this Order empowers the Trustees to use Trust income for Māori community purposes, the Trustees may use that income to fund healthcare for the local hapū/iwi members, even where those individuals are not Beneficial Owners of this Trust.

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PART B - TRUSTEE DUTIES

3. TRUSTEE DUTIES

- 3.1 A Trustee must always comply with the trustee duties. The trustee duties are a set of general and specific obligations that both the law and the terms of this Order impose on the Trustees.
- 3.2 Failure of a Trustee to comply with and perform his or her trustee duties satisfactorily may lead to a Trustee being removed from his or her position as a Trustee.
- 3.3 A breach of trust occurs where a Trustee acts contrary to, or fails to act consistently with a trustee duty. Where a Trustee breaches one or more of his or her trustee duties he or she can be liable for any damage, loss or other costs that the breach causes to the Trust, Trust Property and Trust interests.
- 3.4 The general and specific trustee duties are set out below at Chapters 4 to 9.

Comment Box

1. The Trustees have been entrusted with the task of managing and making use of the Trust Land and Trust Property for the benefit of the Beneficial Owners.
2. The Trustee duties are the main set of rules that govern how the Trustees are to behave. They are there to ensure that the Trust Land and Trust Property are managed and looked after by the Trustees prudently and to ensure that they are used for the benefit of those who are entitled to benefit, namely the Beneficial Owners.

4. GENERAL TRUSTEE DUTIES

- 4.1 The general trustee duties that the Trustees must comply with include the:
- (a) ***duty to be thoroughly familiar with the terms of this Trust***, including this Order and all documents, deeds, contracts and papers that relate to or affect the Trust Land and Trust Property;
 - (b) ***duty to comply with the terms of this Order***, regardless of what the Beneficial Owners or other Trustees ask them to do otherwise;
 - (c) ***duty to act honestly and in good faith***;
 - (d) ***duty to always act in the Beneficial Owners' best interests***, a duty which requires that the Trustees consider what is in the Beneficial Owners' best interests.

- (e) ***duty to act fairly and impartially***, a duty which requires that the Trustees act without favouritism towards their own family members, friends or themselves;
- (f) ***duty not to profit from a position as a Trustee of this Trust***, (subject to a number of express exceptions);
- (g) ***duty to act for no reward***. A Trustee must not take any reward for acting as a Trustee but this does not affect the right of a Trustee to be reimbursed for the Trustees' legitimate expenses and disbursements in acting as a Trustee;
- (h) ***duty to be active***, in attending to the performance of the Trust and trustee duties. Accordingly each and every Trustee must actively participate in Trust-related decision making (unless conflicted). Each Trustee must think about each action and decision of the Trustees and cannot simply rely on the other Trustees to determine whether an action or decision should be undertaken;
- (i) ***duty to comply with orders and directions of the Court***,
- (j) ***duty to notify the Court of change to contact address***. The Trustees are required to notify the Court of any change to the contact address for the Trust.

Comment Box

1. The Trustees must never act in a way that does not comply with the terms of this Order.
2. The duty to be active includes the requirement that a Trustee apply to the Māori Land Court for directions without delay when they notice that one or more of the other Trustees has or is going to commit a breach of trust. The failure to do so is a breach of the duty to be active.
3. While the Trust Land and Trust Property is to be held and used for the benefit of the Beneficial Owners, the Beneficial Owners are not the legal owners and they have no right (legal or otherwise) to instruct the Trustees how to manage and deal with Trust Land and Trust Property. The Beneficial Owners can, however, express their views at General Meetings and seek to influence the Trustees' decisions in that way.
4. For further comment on trustees' honoraria and expenses, see chapter 23.

5. DUTY TO AVOID CONFLICTS OF INTEREST

- 5.1 All Trustees have a duty to recognise and manage conflicts of interest and conflicts of duties ("**Conflict**") in accordance with clause 5.2 below.

What to do where there is a Conflict

- 5.2 Where a Trustee has a Conflict he or she must:

- (a) disclose the nature and extent of the Conflict to:
 - (i) the other Trustees; and
 - (ii) the Beneficial Owners where the Conflict touches on a matter discussed at a General Meeting or Special Meeting; and
- (b) cease to participate in any discussions and decisions that relate to the Conflict; and
- (c) leave and remain absent from any meeting of the Trustees where discussions and decisions relate to the Conflict.

5.3 Where the Conflict concerns either any matter that directly or indirectly:

- (a) affects a Trustee's remuneration or the terms of the Trustee's employment as a servant or officer of the Trust; or
- (b) affects any contract in which a Trustee may be interested or concerned other than as a trustee of another trust,

that Trustee must not vote or participate in the discussion of that matter.

5.4 Where a Trustee is aware that, or reasonably believes that, another Trustee has or may have a Conflict, he or she must require the other Trustee to comply with clause 5.2 or to demonstrate that he or she has no Conflict.

What constitutes a conflict

5.5 A Trustee has a Conflict where the Trustee:

- (a) in a capacity, other than as Trustee of this Trust is involved, interested, or concerned in (directly or indirectly), any property, undertaking, business or commercial activity; and
- (b) that property, undertaking, business or commercial activity is one in which the Trust is or may be involved (as Trust Property or otherwise), interested, or concerned in.

For the purposes of clause 5.5(a), a Conflict can arise indirectly where the person involved, interested or concerned in the property, undertaking, business or commercial activity is the Trustee's spouse, partner, child, parent or sibling.

5.6 No person shall be disqualified from being appointed Trustee or from holding office as a Trustee or representative of the Trust because they:

- (a) are employed as a servant or officer of the Trust; or
- (b) are interested or concerned in any contract made by the Trustees; or
- (c) are a Beneficial Owner of the Trust.

5.7 The Trust and any Trust Associated Entity are entitled to engage, contract or otherwise enter into an agreement or arrangement with any Trustee to provide goods and services to the Trust. However, the Trustees may only make the decision to enter into such an arrangement where:

- (a) doing so is commercially prudent, and in the best interests of the Beneficial Owners of this Trust; and
- (b) a Trustee when providing the Trust goods or services is paid only a reasonable fee for doing so.

5.8 The Trustees must keep an Interests Register that records any interest of the Trustees in Trust Property or any transaction or proposed transaction with the Trust.

Comment Box

1. If the Trustees are discussing and/or deciding whether to grant a right to occupy, a license or lease of Trust land to a Trustee ("**Trustee X**") or someone related to Trustee X, then Trustee X has a Conflict. Trustee X must then follow clause 5.2 above.
2. If the Trustees are discussing and/or deciding whether to enter into a contractual arrangement with a company that a Trustee ("**Trustee X**") or someone related to Trustee X has an interest in, then Trustee X has a Conflict. Trustee X must then follow clause 5.2 above.
3. In the example at 2 above, declaring the nature and extent of the interest would require the Trustee to inform his or her fellow Trustees of:
 - a. how they are interested in that company (e.g. by declaring that they are a shareholder or a director of that company); and
 - b. the extent of their interest (e.g. how many shares they own in the company, or if they are a director, by declaring their remuneration including bonuses and the basis on which they are paid).
4. A Trustee is deemed to have a Conflict when any decision, transaction or other matter of this Trust will affect, in any way (directly or indirectly), the interests of that Trustee or a spouse, partner, child or parent of that Trustee:
 - a. as an employee or contractor of the Trust;

- b. as a party, or an individual with an interest in a party to the decision, transaction or other matter;
- c. as an individual whose financial interests are dependent on the decision, transaction or other matter;
- d. as a director, shareholder, member, official, partner, trustee of another entity that is party to or who has financial interests that are affected by or somehow related to the decision, transaction or other matter; or
- e. is otherwise directly or indirectly interested in the matter or transaction.

6. GENERAL DUTY TO ACT PRUDENTLY

6.1 When doing any act on behalf of the Trust, the Trustees must exercise the same diligence, care and prudence that would be expected of an ordinary and careful business person when looking after the affairs of others, and in doing so must:

- (a) actively ensure that they always understand and are aware of all Trust Property and any liabilities that are associated with the Trust Property;
- (b) actively seek out, identify and assess the risk associated with each decision (including a decision not to do anything), that the Trustees make;
- (c) take care to identify any situation where the Trustees do not have the necessary knowledge or expertise to properly assess the risk and consequences of any decision;
- (d) obtain the necessary advice (such as from a lawyer, accountant, or financial adviser), when the Trustees lack the necessary expertise; and
- (e) take steps to actively identify, consider and take into account all relevant things (including any cultural and commercial considerations) that the Trustees must and should consider, and ignore all irrelevant things when making any decisions or doing any act on behalf of the Trust.

Sustainability of the Trust

6.2 The Trustees must actively promote and ensure the long term sustainability and financial wellbeing of the Trust so as to ensure that the Trust can continue to operate and benefit both the current and future Beneficial Owners. This includes ensuring that the Trust's assets (and in particular its Corpus Land) are not subjected to any unreasonable level of risk.

Considering the views of Beneficial Owners

- 6.3 The Trustees must consider the support or opposition to a given matter concerning the Trust as expressed by the resolutions of the Beneficial Owners at a General or Special meeting of the Beneficial Owners. The Trustees are not bound by the Beneficial Owners' resolutions at such meetings but must give consideration to the Beneficial Owners' views.

Duties when distributing Trust assets

- 6.4 The Trustees must pay all expenses, charges, rates and taxes that have been incurred on behalf of the Trust, which if properly incurred are to be met from income of the Trust.
- 6.5 These expenses, charges, rates and taxes must first be paid before any payments, distributions, reserves or other provision out of Trust funds can be made in favour of any Beneficial Owners for any of the purposes of the Trust.

Comment Box

1. Where the Trustees are considering making use of Trust assets for a commercial transaction, or a transaction that involves a large sum of Trust money or the Trust incurring a large amount of risk, the Trustees should (except where they themselves have the necessary expertise) seek professional advice. The Trustees should:
 - a. get professional advice in the above circumstances before they make a decision (especially where there is more than an insignificant amount of risk);
 - b. unless there is a good reason to do otherwise, abide by that advice; and
 - c. where there is still uncertainty, either not proceed or seek directions from the Court.
2. Other than in unusual circumstances, it would not be prudent for the Trustees to make a loan to a Beneficial Owner on terms that included no interest being paid, a long term of repayment and no security against repayment, because a loan of that type could:
 - a. mean that the Trust does not earn income that it could otherwise earn;
 - b. subject the Trust capital to undue risk; and
 - c. compromise the interests of other Beneficial Owners.
3. Investing Trust funds in speculative ventures is not acting prudently; it puts the Trust funds at risk, endangering its sustainability.

7. FINANCIAL MANAGEMENT DUTIES

Keeping accounts

7.1 The Trustees must keep proper accounts and prepare annual financial statements for each Financial Year which:

- (a) are to be audited:
 - (i) where the Trust's gross annual income or gross annual expenditure (excluding depreciation) is more than \$25,000 but less than \$100,000, unless the accounts and financial statements have been prepared by an accountant who is a current member of Chartered Accountants Australia and New Zealand (CA ANZ) the New Zealand Institute of Chartered Accountants; or
 - (ii) where the Trust's gross annual income or gross annual expenditure (excluding depreciation) is \$100,000 or more;
- (b) are to include the number of trustee meetings held in that Financial Year;
- (c) are to detail each individual payment made by the Trust or a Trust Associated Entity to Trustees in that Financial Year, including any travel expenses, fees or any other payments;
- (d) are to be made available to the Beneficial Owners at least 14 days before an Annual General Meeting and produced at each Annual General Meeting for discussion; and
- (e) are to be filed with the **[insert]** registry of the Court no later than one (1) month after the Annual General Meeting has taken place.

Controlling Trust funds

7.2 The Trustees must ensure that all money received by or on behalf of the Trust is paid without delay into the Trust's bank account.

7.3 The Trustees must keep a detailed record of all receipts and payments of Trust funds.

7.4 No debt is to be incurred by the Trustees other than by approval prior to the incurring of the debt, or at the Trustee Meeting that immediately follows the incurring of the debt on their behalf.

- 7.5 All payments from the Trust's bank account must be approved in advance by a meeting of the Trustees. The authority of at least two Trustees is required where a Trust cheque is issued or a withdrawal or a transfer of funds from the Trust account is to be made. No cheque is to be pre-signed by the Trustees and left blank as to either or both of the payee and the amount of the cheque

Comment Box

1. Trustees must prepare a statement of the Trust property that adequately identifies the assets, liabilities, and income and expenses of the Trust, and that is appropriate to the value and complexity of the Trust's property and activities.

8. DUTY OF DISCLOSURE

- 8.1 Upon request by any Beneficial Owner, the Trustees must make available to that Beneficial Owner:

- (a) a copy of this Order and any amendment to it;
- (b) the Annual Accounts of the Trust for any preceding financial years;
- (c) the Minutes of any General Meeting or Special Meeting;
- (d) the Minutes of any Trustee Meeting (except those parts of the Minutes that are confidential);
- (e) the Annual Accounts of any Trust Associated Entity for any preceding financial years (except for those parts of such accounts as are confidential).

- 8.2 In clause 8.1 above accounts are confidential only if, and to the extent that, the accounts contain commercially confidential material. A Beneficial Owner who is dissatisfied with a decision to decline a request for accounts on the grounds of confidentiality can apply to the Court for disclosure. If the Trustees are of the view that accounts are confidential, they must notify the requesting Beneficial Owner of his or her right to apply to the Court for a disclosure order.

9. DUTY TO CALL MEETINGS

Calling General Meetings and Special Meetings

- 9.1 The Trustees must call a General Meeting of the Beneficial Owners at least once every [] year[s].

9.2 The Trustees must also call a Special Meeting of the Beneficial Owners within 3 months of receiving written notice requesting that a Special Meeting be held that is signed by at least [] Beneficial Owners ([] percent of the Beneficial Owners) and which states the purpose of the Special Meeting.

9.3 The Trustees must take all reasonable steps at the General and Special Meetings of the Beneficial Owners to accurately determine the Beneficial Owners' support or opposition to any matters that are properly discussed at these meetings. A failure to do so can amount to a breach of trust.

Calling Trustee meetings

9.4 The Chairperson is required to call a meeting of the Trustees.

9.5 All Trustees must attend trustee meetings unless they have a reasonable excuse for their absence. The Trustees must prepare adequately for trustee meetings and in doing so must acquaint themselves with any material and documents necessary for a given meeting.

Complete procedures for meetings

9.6 For the procedural and substantive requirements that Trustees must comply with for:

- (a) General and Special Meetings of Beneficial Owners, refer to Chapters 13 to 17;
- (b) Trustee meetings, refer to Chapter 18.

9.7 Trustees must become acquainted with and ensure that the correct meeting procedures are complied with.

10. ADDRESSING GRIEVANCES

10.1 If any Trustee or Beneficial Owner is aggrieved by a decision, action or omission of the Trustees ("**Applicant**"), that person may first give written notice of the grievance to the Trustees.

10.2 If the Applicant's grievance is not satisfactorily addressed within a reasonable period of time, the Applicant may in writing, notify the Trustees of his or her intention to have his or her grievance referred to a Special Meeting of the Beneficial Owners in accordance with clause 9.2.

10.3 If the Trustees fail to convene a Special Meeting of the Beneficial Owners within [] months of receiving the written notice specified above at clause 10.2, the Applicant may

file in Court an application pursuant to section 238 of the Act or section 68 of the Trustee Act 1956 requesting that the Court:

- (a) review any decision, action or failure to act of the Trustees; and/or
- (b) give directions in relation to any action or failure to act or contemplated action or failure to act of the Trustees; and/or
- (c) grant an injunction preventing the Trustees from taking any further steps in relation to the decision, action, or failure to act.

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PART C - MEETINGS

11. GENERAL AND SPECIAL MEETING PROCESS

11.1 Subject to clause 11.2 below, the Trustees, when convening and holding a meeting of Beneficial Owners must recognise the importance of General and Special Meetings as the:

- (a) Resolutions passed at these meetings are considered the official expression of the Beneficial Owners' view on the matter voted on in each Resolution;
- (b) Resolutions passed are the only means by which the Trustees may determine the views of the Beneficial Owners; and
- (c) views arrived at by the Beneficial Owners by passing Resolutions at these meetings will only be considered valid and relevant if they are determined in accordance with proper and fair processes.

11.2 For the avoidance of doubt, resolutions passed at General and Special Meetings do not bind the Trustees, but must be given consideration in accordance with clause 6.3 above.

12. NOTIFYING BENEFICIAL OWNERS OF A GENERAL OR SPECIAL MEETING

12.1 The Trustees must take all reasonable steps to notify the Beneficial Owners that a General or Special Meeting of Beneficial Owners is to be held ("**Notice**"). Notice may be facilitated by:

- (a) notifying Beneficial Owners directly in writing by a preferred method such as by letter or email where it is reasonable to do so (e.g. where the Trust has the mail and email addresses of the Beneficial Owners and doing so is inexpensive); and
- (b) where direct notification is not possible, by publishing notice in any one or more of the following ways:
 - I. in a daily newspaper circulating in the district where the Corpus Land is situated;
 - II. by any electronic means (such as a website) associated with the Trust and the Beneficial Owners;
 - III. broadcasting over the local iwi radio station.

12.2 The notice must specify:

- (a) the agenda for the meeting with sufficient detail to accurately inform the Beneficial Owners of all matters that are to be discussed and voted on at the meeting, and where the agenda:
 - (i) includes the nomination, replacement and/or removal of Trustees, the notice must state:
 - (aa) the names of the Trustees to be replaced or removed and the basis for their proposed replacement or removal; and
 - (bb) the number of Trustee vacancies to be filled and the process for nominating Replacement Trustees.
 - (ii) includes consideration of, and voting on variations or other changes to this Order, the notice shall include a summary of the proposed changes and shall state that a full copy of the proposed change can be obtained from the Secretary, and providing contact details for the Secretary.
- (b) how voting is to be conducted, including, where Proxy votes are to be allowed, the formal requirements that must be met when voting by these means (see Chapter 14 for the specific requirements of these forms of voting).

12.3 The notice must invite the Beneficial Owners to submit a matter to be added to the agenda.

12.4 In all cases the trustees must give 21 days prior notice of the time and place of the General or Special Meeting.

13. CONDUCTING A GENERAL OR SPECIAL MEETING

13.1 The number of Beneficial Owners required to be at a General or Special Meeting in order to conduct the business of that meeting ("**Quorum**") is [] Beneficial Owners of this Trust present for the duration of the meeting.

13.2 At the General Meeting the Trustees must present to the Beneficial Owners the reports and financial statements for the Financial Year that immediately preceded the current General Meeting.

13.3 The Trustees must keep a record of the General or Special Meeting ("**Minutes**") that accurately describes the events of the meeting, starting with a list of attendees, a statement of the issues considered by the Beneficial Owners and other attendees, and a reasonable summary of exchanges made by attendees on those issues. The Minutes risk

being considered flawed if they fail to provide a proper indication of the views expressed by the Beneficial Owners.

- 13.4 The person who chairs the meeting must call for the Beneficial Owners to vote on matters that are to be decided at the General or Special Meeting by majority vote ("**Resolutions**"). When a Resolution is passed it is the official expression of the Beneficial Owners' views on each matter to which a Resolution relates.

Comment Box

1. The Minutes of a meeting of Beneficial Owners must provide an accurate summary of the opinions and views voiced by persons present at the meeting in relation to any matter that is discussed and/or voted on. In doing so the Minutes must indicate the views both for and against an item for discussion.
2. A failure to accurately record these views in summary form risks undermining the weight that can be given to any Resolution that is passed as there will be no valid and accurate evidence as to what the actual views of the Beneficial Owners were. Such a failure could be a breach of trust and may be cause for the removal of some or all of the Trustees.

14. VOTING ON RESOLUTIONS AT GENERAL OR SPECIAL MEETINGS

- 14.1 When a Resolution is put to a General or Special Meeting for a vote by the Beneficial Owners:

- (a) voting will be by a show of hands provided that if no less than **[25 percent]** of the Beneficial Owners present call for a Poll, the vote shall be determined in accordance with the voting Beneficial Owner's interests in this Trust;
- (b) the Trustees must determine before a General or Special Meeting commences, which of the people attending the meeting are entitled to vote (either as a Beneficial Owner entitled to vote or a Proxy), by:
 - (i) checking that each attendee is entitled to vote;
 - (ii) where an attendee holds a Proxy, by checking that the Proxy voting right is validly given and that the Proxy possesses all the necessary documents to prove this; and
 - (iii) by formally registering each individual present entitled to vote.

- 14.2 For the purposes of a vote by show of hands, where the trustees of another trust are collectively a Beneficial Owner of the Trust (e.g. a Whānau Trust) then only one of their

number may vote on behalf of that trust. Where more than one of the trustees of that trust are in attendance at the meeting of the Trust they must inform the Trustees which of them is to exercise the vote of that Trust. In the absence of a Proxy or failing agreement between them, none of the trustees of that trust is entitled to vote on that trust's behalf at the meeting of the Trust.

15. PROXY VOTES AT A GENERAL OR SPECIAL MEETING

Certifying Proxy votes

- 15.1 Where Proxy votes are allowed, a Proxy voter for a Beneficial Owner is entitled to attend and vote at a Special or General Meeting only if the:
- (a) Proxy voter is 20 years or older and of capacity;
 - (b) Proxy voter is appointed by a notice in writing in accordance with the form provided in Schedule 2 of this Order;
 - (c) Notice is received by the Trustee nominated as Chairperson or Secretary (see clause 18.2), at least one hour before the meeting begins;
 - (d) Notice is signed by the Beneficial Owner on whose behalf the Proxy voter is voting and is witnessed in accordance with the form provided in Schedule 2 of this Order;
 - (e) Notice states the particular meeting for which the Proxy voter is appointed; and
 - (f) Chairperson determines whether the notice is valid (if it is decided that the notice is invalid the Chairperson must provide reasons for that determination and record those reasons on the notice presented by the Proxy voter).
- 15.2 The Chairperson may on request, allow any person entitled to vote to inspect any notice.
- 15.3 The notice of any Proxy voter will lapse if the Beneficial Owner who authorises it dies, gives a written notice that it is cancelled prior to the meeting for which the Proxy was issued, or is present at the meeting for which the Proxy was issued.

PART D - TRUSTEES

16. NUMBER AND TERMS OF TRUSTEES

16.1 The Trust must at all times have no less than [] Trustees and no more than [] Trustees.

16.2 A Trustee who wishes to retire continues to hold office until replaced or removed by order of the Court.

[Where Trustees are to be appointed for a term the following clauses may apply].

16.3 Each Trustee is appointed for a term of [] years.

16.4 At the General Meeting held in every second year following the constitution of the Trust one third of the Trustees shall retire ("the Retiring Trustees") and an election shall be held to nominate replacement trustees. OR At each General Meeting, two (2) Trustees shall retire ("**the Retiring Trustees**") and an election should be held to nominate replacement trustees.

16.5 The Retiring Trustees shall be selected in the following order:

- (a) Any Trustee who wishes to retire and does not offer to stand for re-election;
- (b) The Trustee who has been longest in office since his or her last election but as between persons who were last elected Trustees on the same day the Trustee to retire is to be determined by lot.

16.6 Every Retiring Trustee is eligible for re-election.

17. REMOVAL OF TRUSTEES

17.1 Without limiting the jurisdiction of the Court, the Court may remove a Trustee where:

- (a) The Trustee is an undischarged bankrupt;
- (b) The Trustee is or will become incapable of carrying out his or her duties satisfactorily because of physical or mental illness or incapacity or prolonged absence or where he or she is subject to a property order under the Protection of Personal Property Rights Act 1988;
- (c) The Trustee has been absent for three (3) consecutive trustee meetings without reasonable excuse;

- (d) The Trustee is convicted of any offence whereby he or she is sentenced to prison and is still serving such sentence or is convicted of a criminal offence involving dishonesty.

18. TRUSTEE MEETINGS

- 18.1 The number of Trustees required to attend a trustee meeting in order to conduct the business of that meeting (“**Quorum**”) is a majority in number of the Trustees appointed by the Court. If the Trustees agree, a Trustee who cannot attend in person may do so by teleconference or other digital or electronic means, provided that they can and do remain in contact with the other Trustees at all times throughout the meeting.
- 18.2 After being appointed by the Court, the Trustees must at their first meeting appoint a Trustee to be Chairperson and another Trustee to be the Secretary.
- 18.3 Unless a Trustee meeting is convened in an emergency, at least [] working days notice of any meeting shall be given to all Trustees.
- 18.4 Trustee meetings will be based primarily on a pre-prepared agenda, the preparation of which is the responsibility of the Chairperson. The other Trustees also have the right to submit items for inclusion on the agenda and should endeavour to submit items at the earliest opportunity.
- 18.5 Trustee meetings are held with the expectation that all Trustees have prepared for them adequately and will participate in all discussions at all times, in a manner that is consistent with behaviour that is considered acceptable.
- 18.6 The Trustees must keep Minutes of all trustee meetings in accordance with the requirements of clause 13.3, copies of which must go to all Trustees and any other persons that the Trustees determine should receive them. The Chairperson shall be responsible for ensuring that a record of all Resolutions (and the votes for and against) is recorded.
- 18.7 The Trustees, when conducting Trust business, will make all decisions that they are empowered to make on behalf of this Trust by a majority vote of the Trustees. The Chairperson does not have a casting vote; in the case of a tied vote on a resolution, the resolution is to be treated as having been defeated. All acts and proceedings that follow the vote on any decision will be valid and of good effect as if all Trustees concurred.
- 18.8 Where any Trustee dissents in writing from the majority decision of the Trustees before the decision is implemented, that Trustee is absolved from any personal liability arising out of the implementation of that decision. Any such dissent shall be sent to the

Chairperson or to the Secretary. Where the dissenting Trustee is the Chairperson, notice must be given to the Secretary; where the dissenting Trustee is the Secretary, notice must be given to the Chairperson; where both the Chairperson and the Secretary dissent, they must give notice to at least one other Trustee who is a member of the majority.

19. GENERAL TRUSTEE POWERS

Trustees' powers to be used for purposes of the Trust

- 19.1 The Trustees' powers may only be used by the Trustees to give effect to any one or more of the Purposes of the Trust set out above at Chapter 2. Where a Trustee power is exercised for any other reason or purpose it is not a valid use of the power and the Trustee(s) responsible is/are accountable for any loss or damage caused by the invalid exercise of power.

General power of Trustees

- 19.2 To achieve the Purposes of the Trust, the Trustees have, in the administration, management and investment of the Trust Land and Trust Property, the power to do all or any of the things which they would be entitled to do if they were the absolute owners of the Trust Land and Trust Property except that:
- (a) they must comply with clause 19.3; and
 - (b) in respect of the specific powers set out in clause 20, they must comply with such conditions and limits that are placed on those powers by clause 20.

Exceptions to general power of Trustees

- 19.3 The Trustees must not:
- (a) sell or gift any of the Corpus Land except by way of exchange of land effected by order of the Court or by a settlement of a proposed acquisition pursuant to the Public Works Act 1981 or similar statutory authority;
 - (b) use any of their powers for a purpose that is not one set out above at Chapter 2.

Role of Beneficial Owners' views

- 19.4 When exercising their powers, the Trustees are not bound by, or required to comply with, the Resolutions made by Beneficial Owners at a General or Special Meeting of Beneficial Owners. The Trustees are, however, required to give consideration to the Beneficial Owners' views in accordance with clause 6.3 above.

20. SPECIFIC TRUSTEE POWERS

Limits on Trustees' specific powers

20.1 The specific powers that the Trustees have and may use when administering, managing and making use of Trust Land and Trust Property are listed below:

- (a) to clarify and provide examples of what particular kinds of actions and decisions are within the Trustees' general power (set out above at clause 19.2); and
- (b) to place express limitations and restrictions on the Trustees' general power set out above at clause 19.2 as permitted by section 226(2) of the Act.

20.2 Subject to clauses 19.2 and 19.3 above and except where expressly limited or restricted in clause 20.4 below, it is possible for actions and decisions of Trustees to still fall within the general power of the Trustees even if they are not specifically listed in clause 20.4 below. For this reason the specific powers set out below are not a complete list of all the actions and decisions that Trustees are empowered to make in relation to the Trust Property.

Power to delegate

20.3 In addition to the powers conferred by the Trustee Act 1956, the Trustees have the following powers of delegation:

- (a) The Trustees have the power to delegate any powers of the Trustees to any one of, or a committee of, the Trustees;
- (b) Any Trustee or committee acting under a power delegated to them by the Trustees must comply with the terms of this Order and, in the absence of proof to the contrary, shall also be presumed to be acting within the terms of the delegation;
- (c) The Trustees may revoke wholly or partly any delegation of the powers of the Trustees at any time;
- (d) The Trustees may, in delegating the powers of the Trustees, provide restrictions or rules by or within which such delegated powers are to be exercised;
- (e) Subject to any directions given by the Trustees, any Trustee or committee who has been delegated powers of the Trustees may conduct that Trustee's or the committee's affairs as they wish in accordance with this Order.

Comment Box

1. Although clause 20.3 allows Trustees to delegate, they must still exercise supervision over the person or committee that powers have been delegated to. A poor decision to delegate or a failure to supervise can lead to the Trustees being liable for losses or damages caused by the person or committee that powers have been delegated to.

List of Specific Powers

20.4 The Trustees have the powers to:

- (a) **Carry on a business** on the Trust Land, or in relation to Trust Property and are allowed to do all things necessary (subject to the duties contained in this Order), in the process of carrying on that business or businesses.
- (b) **Promote title improvement** by:
 - (i) granting or acquiring any type of right or interest in land;
 - (ii) subdividing any land;
 - (iii) bringing any application to the Māori Land Court that might facilitate the operation of this Trust and the improvement of title to land (held by the Trustees on behalf of the Trust), including applications under Part 14 of the Act; and
 - (iv) forwarding to the Registrar of the Māori Land Court in relation to the above any instruments, titles, plans or other relevant documents for the purpose of maintaining the records of title and ownership of such land.
- (c) **To buy** any land or interest in land, shares or assets whatsoever whether by way of lease purchase exchange or otherwise AND to acquire, sell, hire or otherwise deal in vehicles, shares, plant, chattels or equipment.
- (d) **To subdivide** or partition the Trust Lands in any manner permitted by law into such subdivisions or parts as the Trustees think fit, provided that in doing so they comply with the trustee duties clauses, in particular (but not limited to) clauses 6.1 to 6.5.
- (e) **To improve**; to develop and improve the Trust Land and to erect thereon such buildings, fences, yards and other constructions or erections of whatsoever nature as the Trustees may think fit.

- (f) **To insure** all or any of the Trust property against any risks that the Trustees shall think fit with such companies and on such terms as the Trustees shall think fit in the name of the Trust.
- (g) **Grant the right to occupy** in relation to any part or parts of the Trust Land by granting a licence to occupy or lease, or by consenting to the Court granting an occupation order to one or more of the Beneficial Owners, their descendants or (where the Beneficial Owner is deceased) their successors, provided that:
- (i) the Trustees must consult with the Beneficial Owners before setting the policy concerning the terms of occupation of the land, especially when the terms are more favourable than on the open market (e.g. a reduced rent);
 - (ii) the Trustees, in making their decision to grant the rights to occupy, have assessed the:
 - (aa) interests of other Beneficial Owners (compared to the one they propose to grant the rights to); and
 - (bb) the availability of other possible sites on Trust Land for occupation;
 - (iii) the term of:
 - (aa) any licence or lease is no more than [] years or the lifetime of the licence or lease holder (whichever comes sooner);
 - (bb) any occupation order must be no more than [] years and this may be succeeded to;
 - (iv) where the proposed occupier is a whānau trust or a beneficiary of a whānau trust, the consent of the trustees of the whānau trust;
 - (v) the occupier must:
 - (aa) obtain any necessary resource consent and/or building consent prior to building; and
 - (bb) must build a dwelling on the occupation site within [] year(s) of the licence or lease or occupation order being granted failing which the licence or lease or occupation order may be cancelled.

- (h) **Consent to the erection of dwellings** on any part of the Trust Land by the Beneficial Owners, their descendants or any other person that has been granted the right to occupy the land by the Trustees in accordance with clause 20.4(g) without partitioning their interests.
- (i) **To lease** in accordance with the limitations and restrictions imposed by the Act the whole or any part of Trust Land on whatever, terms, covenants and conditions that the Trustees think fit and to renew, vary, transfer, assign and accept the surrender of any leases thereof PROVIDED THAT no lease shall provide for payment of compensation for improvements to a lessee or grant to the lessee a right to purchase the land AND FURTHER PROVIDED THAT no lease shall be for a period greater than [] years, unless a longer period is approved by the Beneficial Owners for the purpose at a General or Special Meeting (which approval can be specific to the lease or can be general in nature).
- (j) **To grant forestry rights;** to grant, renew, vary, transfer, assign or accept the surrender of any forestry right or joint venture deforestation agreement in respect of the Trust Land and to sell or mortgage any such forestry right or forest products PROVIDED THAT:
- (i) the Trustees have first made provision for the Beneficial Owners' occupation of the land under clause 20.4(g);
 - (ii) the term is no longer than 52 years;
 - (iii) the forestry right or agreement shall not provide for payment of compensation for improvements;
 - (iv) no mortgage may be granted over the land; and
 - (v) professional foresters shall be engaged to supervise all aspects of the forests on the land.
- (k) **To enter into conservation covenants;** to enter into, vary and accept surrender of conservation covenants such as with regional and territorial authorities, government departments, Ngā Whenua Rāhui, and the Queen Elizabeth The Second National Trust PROVIDED THAT any such covenants shall not be for a term of more than 25 years.
- (l) **To engage and employ;** to engage, employ and dismiss employees, contractors, agents, professional advisors and any other supplier of products or services required by the Trustees in order to pursue the Purposes of this Trust.

The Trustees may engage or employ a professional trustee PROVIDED THAT the procedures for dealing with Conflicts (set out in clauses 5.1 to 5.8) have been followed, the remuneration does not exceed market rates and the amount paid is identified separately in the financial statements of the Trust in accordance with clause 7.1.

- (m) **To operate with others;** to enter into agreements or contracts in the name of this Trust or jointly (including joint venture agreements) or in partnership with any other person or entity.
- (n) **To form companies;** to form companies and to subscribe for and acquire shares in companies under the Companies Act 1993 and to adopt and change their constitutions to further the interests of the Trust.
- (o) **To represent the Beneficial Owners and the Trust;** to initiate and respond to and to represent the Beneficial Owners and the Trust in respect of any proceedings or process whatsoever before any court, tribunal, inquiry, arbitration, council hearing, select committee hearing or any other forum in relation to matters that affect or are likely to affect the land or the use and enjoyment of the land or any activities situated thereon or the affairs of the Trust and to represent the Beneficial Owners in any negotiations or questions of compensation for lands taken under the Public Works Act or other statutory authority with the government or any local authority.
- (p) **To borrow;** to borrow and to repay money with or without security over all or any real or personal property of the Trust PROVIDED THAT the Trustees shall not grant security by way of mortgage or otherwise over the Corpus Land.
- (q) **To set aside cash reserves;** to set aside such cash reserves as the Trustees think prudent (in accordance with clauses 6.1 to 6.5) from the net proceeds for contingencies (even if doing so will result in a distribution not being made to the Beneficial Owners) or for capital expenditure or for expansion, provided that in doing so the Trustees:
 - (i) comply with the trustee duties; and
 - (ii) consider that their decision to do any of the above will advance the Purposes of this Trust.
- (r) **To lend or invest;** to lend or invest all or any money coming into the Trustees hands in such a manner and upon any securities in which trust funds may be

invested by trustees in accordance with the Trustee Act 1956 or in accordance with any other statutory authority (in accordance with clauses 6.1 to 6.5).

- (s) **To distribute and apply net proceeds** subject to the Trustees first being satisfied that proper provision has been made for reserves in accordance with clause 20.4(q):
- (i) to distribute to the Beneficial Owners in accordance with their shares the whole or any part of the net proceeds by way of a dividend;
 - (ii) to apply the whole or any part of the net proceeds for Māori community purposes in terms of section 218 of the Act following consultation with the Beneficial Owners.

21. INDEMNITY OF TRUSTEES

Indemnity of Trustees

- 21.1 Each Trustee or former Trustee is entitled to a full and complete indemnity from the Trust assets for any liability that Trustee or former Trustee may reasonably and properly incur or has reasonably and properly incurred, in any way, out of or in connection with that Trustee acting on behalf of the Trust.
- 21.2 For the avoidance of doubt, a Trustee is not entitled to the above indemnity where his or her liability is attributable to that Trustee's or former Trustee's own dishonesty, or to the wilful commission or omission by that Trustee or former Trustee of an act known by that Trustee or former Trustee to be a breach of trust or where that Trustee or former Trustees acted in reckless disregard of whether it was a breach of trust, or where such liability is not reasonable or has not been incurred with the authority of his or her co-Trustees.
- 21.3 The indemnity in 21.2 may not be met out of the Corpus Land of the Trust, except with the approval of the Court.

Comment Box

1. Under general trust law principles, trustees of a trust are entitled to be indemnified for liabilities they reasonably and properly incur on behalf of the beneficiaries of their trust. However, usually they will not have an indemnity for unreasonable or improper expenses, nor for where they have acted fraudulently or recklessly. This clause follows that general position.
2. Because of the unique nature of the Act, and the importance of preserving Corpus Land, the trustee indemnity given by clause 21 is not available in respect of Corpus Land except with Court approval.

22. INSURANCE

22.1 The Trustees may purchase and maintain indemnity insurance to cover themselves, or any individual Trustee requiring cover, in respect of:

- (a) any actual or alleged liability attaching to a Trustee in respect of any negligence, default, breach of duty or breach of trust (other than where the actual or alleged liability arises out of an act or omission that either the trustee knew to be a breach of trust or a breach of duty or was committed in reckless disregard of whether it was a breach of trust or a breach of duty);
- (b) all costs, charges and expenses which may be incurred by the Trustee in connection with any actual or alleged liability; and
- (c) all costs of a successful defence to proceedings (civil or criminal) against the Trustee.

23. EXPENSES, HONORARIA AND DIRECTORS' FEES

23.1 The Trustees are entitled to be reimbursed for Trustee's legitimate expenses and disbursements in acting as a Trustee which includes their reasonable travel and accommodation expenses in attending trustee meetings, General and Special Meetings, and in attending other meetings to transact the business of the Trust.

23.2 *[If trustees are to be paid an honorarium then either:*

Each Trustee is entitled to an honorarium by way of a Trustee fee of \$[] gross per trustee meeting up to a maximum of [] meetings per annum.

OR

The Trustees as a whole are entitled to an honorarium of \$[] gross per annum. The Trustees shall agree on how the honorarium is to be allocated amongst the Trustees, failing which the Trustees shall seek directions from the Court.

OR

Each Trustee is entitled to an honorarium by way of trustee fee per meeting or per year as fixed at a General or Special Meeting. In fixing the honorarium, the Beneficial Owners shall have regard to the nature of the Trust's activities and in particular their commercial nature, the profitability of the Trust, the number of Trustees and the likely cost of such fees as a reasonable and viable part of the Trust's operation.]

- 23.3 A Trustee who is a director of a company in which the Trust has a shareholding must hold any directors' fees or remuneration that he or she receives as Trust Property, unless (and to the extent) the Beneficial Owners resolve otherwise by resolution at a General or Special Meeting.
- 23.4 All amounts paid to Trustees in the terms of clause 23.1, 23.2 and 23.3 must be set out in the financial statements in accordance with clause 7.1(c) of this Order.

Comment Box

1. It is a general principle of trust law that trustees act gratuitously (that is, for no reward). Accordingly, the Trustees can only take expenses, fees and honorarium to the extent permitted by the Trust Order.
2. Trustees who are directors of companies in which the Trust holds shares are required to hold those fees for the benefit of the Trust. This reflects the basic principle of trust law that a trustee should not profit from his or her office. It will be open to the Court or the beneficial owners to recognise additional responsibilities of trustee-directors by the amount of the honorarium they receive as Trustees.

PART E - MISCELLANEOUS

24. ADVISORY TRUSTEES

24.1 **Advisory Trustee:** An Advisory Trustee may be appointed and removed in the same manner as a Trustee.

25. UNCLAIMED DIVIDENDS

25.1 Where the Trustees have declared a dividend in accordance with clause 20.4(s) and a dividend remains unclaimed after 12 months or the Trustees have set a minimum distribution figure before payment of the dividend is effected (in either case "**the Unclaimed Dividends**"):

- (a) the Trustees shall pay all Unclaimed Dividends into a separate interest bearing account ("**the Pūtea Account**");
- (b) any interest earned on the Unclaimed Dividends in the Pūtea Account shall belong to the Trust and may be used for the business of the Trust;
- (c) the Trustees shall pay any Unclaimed Dividend (without interest) to a Beneficial Owner or his or her legal representative upon the Unclaimed Dividend being lawfully claimed or upon the minimum distribution figure being met.

26. TRUST REVIEW AND REPORTS

Trust reviews

26.1 The Trustees shall by [] apply to the Court for a review of the Trust.

26.2 When the Court reviews the Trust the Court may by order:

- (a) make directions to the Trustees as it thinks fit;
- (b) confirm the Trust Order without variation;
- (c) vary the terms of the Trust Order in such manner as it thinks fit; or
- (d) make an order terminating the Trust.

26.3 After the Court has conducted the review referred to in clause 26.1, it shall fix the date by which the Trustees shall next apply for a review. If the Court fails to fix such a date, the date shall be [5] years after the date of the Court's review.

Court ordered reports

26.4 It is the Trustees' duty to comply with any direction by the Court to:

- (a) file a written report to the Court as directed; and
- (b) make themselves available to the Court for questioning on:
 - (i) the report;
 - (ii) any other matter that relates to the management, administration or performance of the Trust; and/or
 - (iii) the performance by the Trustees of their trustee duties.

27. DEFINITIONS AND INTERPRETATION

27.1 Definitions:

In this deed, unless the context otherwise requires:

"Act" means Te Ture Whenua Māori Act 1993.

"Alienation" has the meaning given in section 4 of the Act.

"Beneficial Owners" means the persons beneficially entitled to the Corpus Land in accordance with sections 215(5) and 243(5) of the Act and as set out in the record of ownership maintained by the Registrar of the Court in accordance with section 127 of the Act.

"Chairperson" means the Trustee who is appointed by his or her fellow Trustees (in accordance with clause 18.2), to be responsible for:

- (a) acting as facilitator at trustee meetings to ensure that no Trustee dominates discussion, that appropriate discussion takes place and that relevant opinion among Trustees is forthcoming;
- (b) calling trustee meetings;
- (c) setting the agenda of trustee meetings and in doing so must liaise with other Trustees;
- (d) ensuring that the Trustees behave consistently with their own rules, procedures, obligations and policies (including this Order);

- (e) ensuring that at trustee meetings, Trustees discuss only the content and issues which, according to the agenda and the Trust's rules and policies (including this Order), are matters for the Trustees to discuss and decide upon;
- (f) ensuring that all information that the Trustees require or should receive is provided to them;
- (g) ensuring that Trustees as a whole comply with all of the obligations that are imposed on them (by law and this Order);
- (h) act as the main liaison officer between the Trustees and the Beneficial Owners, and in doing so respond to queries and requests from the Beneficial Owners (including requests for information); and
- (i) dealing with conflicts and issues that are referred to the Chairperson.

"**Clause**" is, unless otherwise qualified, a reference to a clause of this Order.

"**Company**" includes a corporation or other body corporate and a body of persons (whether incorporated or not).

"**Corpus Land**" means:

- (a) the land that was the subject of the original Trust Order constituting the Trust; and
- (b) any land acquired out of the original assets of the Trust in terms of section 243(8) of the Act; and
- (c) land that was acquired out of the revenues derived from the operation of the Trust and the subject of an order under section 243(2) of the Act.

"**Court**" means the Māori Land Court.

"**General Meeting**" means a meeting of the Beneficial Owners that is convened by the Trustees every year where:

- (a) the Trustees report to the Beneficial Owners the activities, progress, concerns or any other matters of concern or interest to the Beneficial Owners;
- (b) the Beneficial Owners discuss the matters set out in the agenda;
- (c) the Beneficial Owners vote on any of those matters and pass resolutions based on the outcome of those votes; and

- (d) the Beneficial Owners discuss the plans for the Trust in the future, in particular for the coming year.

"Income" means the income of the Trust.

"Person" and words importing a person or persons include a company, firm, organisation or trust and any state, government or governmental agency.

"Property" means any real or personal property of any kind or nature and includes any right or interest in that property.

"Resolution" means a matter that is voted on by Beneficial Owners at a General or Special meeting of the Beneficial Owners in accordance with Chapter 14.

"Secretary" means the Trustee that is appointed (in accordance with clause 18.2), to assist the Chairperson in carrying out his or her duties as Chairperson.

"Special Meeting" means a meeting of the Beneficial Owners that is called in accordance with clause 9.2.

"Trust" means the Trust established by this Order.

"Trust Associated Entity" includes an entity (which, for the purposes of this definition, includes, but is not limited to, a company or a trust) if:

- (a) this Trust directly or indirectly controls the management of that entity; or
- (b) that entity directly or indirectly controls the management of this Trust; or
- (c) this Trust is entitled to:
 - (i) in the case of an entity that is a company, appoint a director to the board of that entity; or
 - (ii) in the case of an entity that is a trust, appoint a trustee of that entity; or
- (d) that entity is entitled to appoint a Trustee of this Trust; or
- (e) this Trust owns directly or indirectly:
 - (i) in the case of an entity that is a company registered under the Companies Act 1955, 20 percent or more in nominal value of the equity share capital (as defined in section 158 of that Act) of that entity; or
 - (ii) in the case of an entity that is a company registered under the Companies Act 1993, 20 percent of the issued shares of that entity, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (f) this Trust is entitled to:

- (i) in the case of an entity that is a company, receive more than 20 percent of every dividend paid on shares issued by that entity, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (ii) in the case of an entity that is a trust, receive a significant level of current or future ownership benefits, including the reduction of ownership losses, which arise from the activities of that entity.

"Trustees" means the Trustees for the time being of the Trust, whether original, additional or substituted. Trustees are the individuals or bodies who the Court has authorised to be the legal owners of the Trust Property for the purpose of administering and managing that property on behalf of, and for the benefit of, the Beneficial Owners.

"Trust Property" means the Trust Land and other property listed as Trust Property at the time the Trust was created and any further property which may in the future be acquired by the Trustees from any source for the purposes of the Trust. Such property may include the moneys and investments held by the Trustees on behalf of the Trust from time to time.

27.2 Interpretation:

In this Order:

- (a) except as otherwise expressly provided by this Order, the powers or discretions as to the administration of the Trust or as to the distribution of the income and the capital of the Trust fund vested in the Trustees by any clause shall not in any way be limited or restricted by the interpretation of any other clause;
- (b) unless the context otherwise requires:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing one gender include the other genders;
 - (iii) words denoting natural persons include companies;
 - (iv) references to a statute shall be deemed to be references to that statute as from time to time amended or re-enacted or substituted;
- (c) headings and comment boxes have been inserted for guidance only and shall not be deemed to form part of the context of this Order.

SCHEDULE 1

The Trust Land and Trust Property

Corpus Land:

Other Land:

Other Property:

DRAFT

SCHEDULE 2

Proxy Voter Form

I, **[NAME]**, being a beneficial owner of the **[TRUST NAME]** Trust, hereby appoint **[PROXY VOTER'S NAME]** ("**Proxy Voter**") to be my Proxy Voter at the General or Special Meeting of Beneficial Owners to take place on **[STATE DATE AS ACCURATELY AS POSSIBLE]** ("**Meeting**").

I direct my Proxy Voter to:

1. vote as he or she decides;
2. vote for/against the resolution(s) (specify) proposed for determination at the Meeting.

Dated this _____ day of _____ 20____

Signed by:

Full name of Beneficial Owner

Signature

In the presence of:

Full name of Witness

Signature

Occupation

Address

The completed notice is to be received by the Trustee nominated as Chairperson or Secretary at least one hour before the meeting begins.