
Constitution of Te Putea Whakatapu Trustee Limited

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PART A: INTRODUCTION

INTERPRETATION

1 Defined terms

In this constitution:

1.1 The following terms have the following meanings:

Board means the board of directors of Te Putea Whakatupu Trustee;

Companies Act means the Companies Act 1993;

Iwi has the meaning given to that term by the Maori Fisheries Act;

Mandated Iwi Organisation has the meaning given to that term by the Maori Fisheries Act;

Maori Fisheries Act means the Maori Fisheries Act 2004;

Relevant Organisation means any Mandated Iwi Organisation, Recognised Iwi Organisation or Representative Maori Organisation;

Single Share means the share in Te Putea Whakatupu Trustee;

Subcompany has the meaning given to that term by the Maori Fisheries Act;

Te Putea Whakatupu Trust means the trust established by Te Ohu under section 79(1) of the Maori Fisheries Act;

Te Ohu means Te Ohu Kai Moana Trustee Limited;

Te Putea Whakatupu Trustee means Te Putea Whakatupu Trustee Limited;
and

Trust Deed means the trust deed under which Te Putea Whakatupu Trust is established, and Te Putea Whakatupu Trustee is appointed Trustee, pursuant to the Maori Fisheries Act.

2 Maori Fisheries Act and Companies Act terms

In this constitution terms defined in the Companies Act or the Maori Fisheries Act (whether generally, or for the purposes of one or more particular provisions) have the meanings given to them by the relevant Act, and where there is inconsistency between those Acts in relation to the meaning of a term then the Maori Fisheries Act meaning prevails.

3 Construction

3.1 In this constitution, unless the context otherwise requires:

- (a) a reference to an enactment is a reference to that enactment as amended from time to time, or to any enactment made in substitution for or consolidation of that enactment; and
- (b) if there is a conflict between the Schedule and another provision of this constitution, then that other provision of this constitution prevails.

3.2 The Schedule forms part of this constitution.

RELATIONSHIP BETWEEN THE CONSTITUTION AND OTHER ACTS

4 Effect of the Companies Act and the Maori Fisheries Act on this Constitution

4.1 To the extent that a provision of this constitution is inconsistent with the Maori Fisheries Act, the provision has no effect.

4.2 Te Putea Whakatupu Trustee, each Director and the holder for the time being of the Single Share have the rights, powers, duties, and obligations set out in the Companies Act except to the extent, as permitted by the Companies Act, they are negated or altered by this constitution, or are negated or altered by the Maori Fisheries Act or any other Act.

5 Alteration of the Constitution

5.1 This constitution may be altered by a special resolution (as defined in the Companies Act). However, the board of Te Ohu (as the holder of the Single Share) must not authorise the passing of that resolution unless a special resolution (as defined in the Maori Fisheries Act) of Te Ohu has authorised that resolution; and at least 1 month's notice of the intended alteration has been given to the Board and all Relevant Organisations, or by public notice.

ACTIVITIES OF TE PUTEA WHAKATUPU TRUSTEE

6 Trustee Role

6.1 As and to the extent required by section 87(2)(a) of the Maori Fisheries Act, the role of Te Putea Whakatupu Trustee is restricted to acting as trustee of Te Putea Whakatupu Trust.

6.2 Generally, Te Putea Whakatupu Trustee must perform the obligations imposed on it by the Maori Fisheries Act, the Companies Act, any other Act and the Trust Deed.

7 Functions of Te Putea Whakatupu Trustee

As prescribed by section 83 of the Maori Fisheries Act, as a means to further the purpose of Te Putea Whakatupu Trust, Te Putea Whakatupu Trustee must perform the functions set out in that section.

SINGLE SHARE**8 Single Share**

Te Putea Whakatupu Trustee has only one share which must always be held jointly by the board of Te Ohu for the time being. The joint interest of a Te Ohu board member in the Single Share does not constitute the personal property of that board member.

9 No More Shares

The Board must not issue additional shares or any options, convertible securities or any other equity securities.

10 Voting Rights

The Single Share confers on the holders jointly the right to one vote on a poll at a meeting of Te Putea Whakatupu Trustee on any resolution of the shareholder. The vote must be exercised by the chairperson pursuant to a resolution or Special Resolution of the Board as the case may require.

11 No Distribution Rights

The Single Share does not confer any right to dividends or other distributions whether on the liquidation of Te Putea Whakatupu Trustee or otherwise.

12 Other Rights

12.1 Subject to clause 12.2, the Single Share confers on the holders jointly the right to one vote on any resolution to:

- (a) alter this constitution; or
- (b) approve an amalgamation under the Companies Act.

12.2 The board of Te Ohu must, before entering into a resolution to do any of the matters in clause 12.1, give 15 working days' notice (including a copy of the proposed resolution) to all of the directors of Te Ohu of the shareholder's intention to do any of the matters in clause 12.1.

13 Other Rights Negated

Except as provided in clauses 10 and 12.2, all of the rights specified in section 36(2) of the Companies Act are hereby negated in relation to the Single Share.

14 No Transfer of Share

Neither the Single Share nor any interest in that share is capable of being sold, transferred, exchanged or otherwise disposed of.

15 Change in Board Membership

A change in membership of the board of Te Ohu does not constitute the sale, transfer, exchange or other disposal of that Single Share or any interest in it. Nor does any change in the board of Te Ohu membership require any share transfer or other notice or (subject to clause 16.2) evidence of change in the registered holder of the Single Share.

16 Share Register

16.1 As required by section 87 of the Companies Act, Te Putea Whakatupu Trustee must maintain a share register that records the Single Share as the only share issued by the company.

16.2 The board of Te Ohu must ensure that that register is promptly updated whenever there is any change in membership of the Board.

DIRECTORS**17 Number of Directors**

Te Putea Whakatupu Trustee must have three Directors.

18 Te Ohu Must Appoint Directors

18.1 Te Ohu must appoint, in accordance with the criteria specified in clause 20, the directors of Te Putea Whakatupu Trustee. Accordingly, any person who is not disqualified by the Companies Act, the Maori Fisheries Act or this constitution from holding office as a director of Te Putea Whakatupu Trustee may be appointed as a Director by a written notice to Te Putea Whakatupu Trustee signed on behalf of Te Ohu.

18.2 In appointing the Directors, Te Ohu must consult with the National Urban Maori Authority in order to ensure that the Directors have knowledge of, and are able to represent, the interests of Maori who reside in urban areas of New Zealand.

18.3 Clause 18.2 does not limit the power of Te Ohu to consider the views of any other person or organisation that it considers has knowledge that is relevant to the interests of Maori who live in urban areas.

18.4 The persons named in the application to register as directors on the date of its registration under the Companies Act are deemed to have been appointed as Directors pursuant to this constitution.

19 Term of Appointment

19.1 Subject to clauses 19.2 and 19.3, each Director may be appointed for a term not exceeding 4 years.

19.2 At the end of his or her term of appointment a Director shall be eligible for reappointment for one further term not exceeding 4 years.

19.3 A Director:

- (a) who has held office for two consecutive full terms (disregarding any appointment to fill a vacancy arising during the term of another Director) is not eligible to be reappointed as a Director within 2 years after holding office; and
- (b) whose term of office expires, continues in office until his or her successor is appointed in accordance with the Maori Fisheries Act and this constitution.

20 **Criteria for Appointment**

20.1 Each Director must be a Maori.

20.2 Having regard to the purpose of Te Putea Whakatupu Trust, Te Ohu must appoint Directors who, collectively:

- (a) are well versed in matters of tikanga Maori;
- (b) are experienced in working with Maori and Maori organisations; and
- (c) have expertise and experience in human resource development, education, and training.

21 **Eligibility for the Office of Director**

21.1 Not more than one director of Te Ohu may also be a Director of Te Putea Whakatupu Trustee.

21.2 The following persons shall not be eligible to hold office as a Director:

- (a) a person who is, or who has been within the previous 2 years, a member or alternate member of Te Kawai Taumata; or
- (b) a director of Aotearoa Fisheries Limited; or
- (c) a director of a Subcompany of Aotearoa Fisheries Limited; or
- (d) a director of Te Wai Maori Trustee Limited.

21.3 Where a person who holds office as a Director becomes ineligible to hold that office by virtue of (a), (b), (c) or (d) above then that person must, within 5 working days, resign as a Director failing which, he or she will be deemed to have resigned as a Director at the end of that 5 working day period.

22 Te Ohu May Remove Directors

Any Director may be removed from office by Te Ohu, without compensation, at any time for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of Te Ohu.

23 Method of Appointment or Removal of Directors

23.1 The appointment or removal of a Director pursuant to this constitution and/or the Maori Fisheries Act must be effected by a written notice to Te Putea Whakatupu Trustee signed by or on behalf of Te Ohu.

23.2 Any notice of appointment or removal of a Director takes effect from the time it is served on Te Putea Whakatupu Trustee, or from such later time as the notice states that it is to take effect.

24 Office of Director Vacated in Certain Cases

The office of Director is vacated if the person holding that office:

- (a) dies; or
- (b) is declared bankrupt or otherwise becomes disqualified from being a director pursuant to the Maori Fisheries Act, the Companies Act or this constitution; or
- (c) (without limiting clause 24(b)) is deemed by any clause of this constitution or any Act to have resigned from that office; or
- (d) resigns from that office in accordance with this constitution; or
- (e) is removed from office in accordance with this constitution.

25 Directors' Resignation Procedure

A Director may resign from office:

25.1 by signing a written notice of resignation and delivering it to the address for service of Te Putea Whakatupu Trustee, the notice being effective when it is received at that address or at a later time specified in the notice; or

25.2 in any other manner permitted by the Companies Act.

26 Vacancy does not Affect Powers and Functions

The functions and powers of Te Putea Whakatupu Trustee are not affected by a vacancy in the membership of the Board if clause 27 applies; but the quorum required in clause 9 of the Schedule remains at 3.

27 Extraordinary Vacancy does not Cause Breach

An extraordinary vacancy in the office of Director does not create a breach of this constitution, so long as a new director is appointed to fill the vacancy within 3 months of the vacancy arising.

CHAIRPERSON**28 Appointment of Chairperson**

Any Director may be appointed as chairperson of the Board by a resolution of the majority of the Board so long as that Director is not also the chairperson or deputy chairperson of Te Ohu. The candidate for appointment is not entitled to vote on that resolution.

29 Term of Office

The term of appointment of chairperson shall not exceed 1 year but a chairperson whose term of appointment expires shall be eligible for reappointment as chairperson for one or more further terms of up to 1 year each.

30 Board May Remove Chairperson

The Board may remove a chairperson of the Board from that office at any time and with or without reason, by Special Resolution. The chairperson concerned is not entitled to vote on that resolution.

31 Deemed Resignation

If the chairperson of Te Putea Whakatupu Trustee becomes the chairperson or deputy chairperson of Te Ohu then, unless within 5 working days of becoming the chairperson or deputy chairperson of Te Ohu he or she resigns from that office, he or she is automatically deemed to have resigned as chairperson of Te Putea Whakatupu Trustee at the end of that 5 working day period.

32 No Casting Vote

In the case of equality of votes on a resolution of the Board or at a shareholder meeting or at a general meeting then the chairperson of the meeting does not have a casting vote.

MANAGEMENT OF TE PUTEA WHAKATUPU TRUSTEE**33 Board to Manage Te Putea Whakatupu Trustee**

Te Putea Whakatupu Trustee's business and affairs must be managed by, and under the direction or supervision of, the Board, except to the extent that the Companies Act or this constitution provides otherwise.

34 Board has Powers Necessary to Manage Te Putea Whakatupu Trustee

The Board has all the powers necessary for managing, and for directing and supervising the management of, Te Putea Whakatupu Trustee's business

and affairs, except to the extent that the Companies Act, the Maori Fisheries Act, the Trust Deed or this constitution provides otherwise.

PROCEEDINGS OF THE BOARD

35 Meetings of the Board

The Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Companies Act does not apply to proceedings of the Board.

36 Written Resolutions of Directors Permitted

A written resolution signed or assented to by all 3 of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

37 Written Resolutions may be in Counterparts

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

DELEGATION OF POWERS

38 Boards' Right to Delegate its Powers

Subject to the restrictions on delegation in the Companies Act, the Board may delegate any one or more of its powers to a committee of Directors, a Director, an employee of Te Putea Whakatupu Trustee or any other person.

39 Delegates to Comply with Regulations

In exercising the Boards' delegated powers, any committee of Directors, Director, employee or employees of Te Putea Whakatupu Trustee or any other person must comply with any regulations that the Board may impose.

40 Committee Proceedings

The provisions of this constitution relating to proceedings of the Board also apply to proceedings of any committee of the Board, except to the extent the Board determines otherwise.

INTERESTED DIRECTORS

41 Interests of Directors

41.1 Immediately following his or her appointment as a Director, the Director must enter into the interests register, and must disclose to the Board:

- (a) the name of any Iwi of which he or she is a Member; and/or

- (b) any Relevant Organisation of which he or she is a director, trustee of officeholder or in respect of which he or she performs another role.

The Director must also, at any time after his or her appointment, enter into the interests register and disclose to the Directors the name of any Relevant Organisation of which he or she becomes a director, trustee or officeholder or in respect of which he or she performs another role.

41.2 A Director is deemed to be interested in any transaction or proposed transaction which Te Putea Whakatupu Trustee enters into or proposes to enter into with that Iwi or Relevant Organisation (irrespective of whether or not the required entry and disclosure has been made).

41.3 In addition to the disclosure requirement imposed by clause 41.1, each Director must:

- (a) comply with the provisions of section 140 of the Companies Act (relating to disclosure of interest of directors either generally or in relation to a specific transaction or matter).
- (b) disclose to the Board any other potentially relevant conflict of interest that that Director believes he or she has, or may have, in relation to a specific transaction or matter being considered by the Board.

41.4 Where a Director discloses a potentially relevant conflict of interest pursuant to clause 41.3(b) then, for the purposes of clause 41, that conflict of interest is not to be treated as being relevant to the specific transaction or matter being considered by the Board unless a majority of the other Directors resolve or agree in writing that such conflict of interest is relevant.

42 **Failure to Disclose Does Not Affect Validity of Transaction**

Failure to comply with clause 41 does not affect the validity of a transaction entered into by Te Putea Whakatupu Trustee, but, if applicable, the transaction may be avoided under clause 44.

43 **Interested Director May Not Vote**

43.1 Subject to clause 43.2, a Director who is interested (whether under the Companies Act or under clause 41.1 or 41.2) in, or pursuant to clause 41.3(b) has disclosed a potential conflict of interest (which is treated under clause 41.3(b) as being relevant) in respect of, a transaction entered into, or proposed to be entered into, by Te Putea Whakatupu Trustee may nevertheless attend that part of a meeting of the Board at which a matter relating to the transaction arises and be included among the Directors present at a meeting for the purposes of a quorum for that matter; but must be taken to have abstained from any vote on the matter.

43.2 Where a Director is a member of any Iwi (but not an officeholder of that Iwi or any Relevant Organisation representing that Iwi), and that Iwi benefits or is likely to benefit from the transaction entered into, or to be entered into by Te Putea Whakatupu Trustee, the Director is not prohibited (by virtue of the Director's membership of that Iwi) from voting unless the Director receives or is likely to receive, a benefit that is more advantageous than the benefit conferred on the other members of that Director's Iwi.

43.3 Notwithstanding clause 43.1, a Director may vote in relation to:

- (a) remuneration or any other benefit given to a Director in accordance with this constitution; or
- (b) an indemnity given or insurance provided to the Directors in accordance with this constitution.

44 Te Putea Whakatupu Trustee May Avoid Transaction if Director Interested

Sections 107(3) and 141 of the Companies Act (relating to transactions in which a Director is interested) applies to Te Putea Whakatupu Trustee. In addition, a transaction may be avoided by virtue of the constitution as if each of those sections was set out in this constitution and the meaning of the Companies Act term "interested" was extended so as to include:

- (a) each interest that is required to be disclosed under clauses 41.1, 41.2 and 41.3(a); and
- (b) each conflict of interest which is disclosed under clause 41.3(b) and which is treated as being relevant under clause 41.4.

45 Directors Not to Authorise Benefits for Directors

45.1 The Directors must not authorise:

- (a) the making of loans by Te Putea Whakatupu Trustee to a Director;
- (b) the giving of guarantees by Te Putea Whakatupu Trustee for debts incurred by a Director; and
- (c) the entering into of a contract to do any of the things set out in this clause.

BOARD REMUNERATION

46 Remuneration and Expenses

46.1 Te Putea Whakatupu Trustee may, out of the funds of Te Putea Whakatupu Trust:

- (a) remunerate a Director for services as a Director; and

- (b) reimburse a Director for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director.
- 46.2 Any payments made under clause 46.1 to any Director, or any firm or company of which the Director is a partner, director or an employee must be:
- (a) in accordance with the Trust Deed and a protocol agreed to by Te Ohu; and
 - (b) separately accounted for by Te Putea Whakatupu Trustee (as a separate item in the financial statements of Te Putea Whakatupu Trustee for the financial year in which the payments are made or incurred); and
 - (c) published in the annual report of Te Putea Whakatupu Trust which reports on that financial year.

47 No Compensation for Loss of Office

No Director shall be entitled to compensation by reason of his or her ceasing to be a Director whether by reason of his or her removal from office as a Director deemed or actual resignation as a Director or the expiry of his or her term of appointment as a Director or otherwise.

INDEMNITY AND INSURANCE

48 Indemnification of Directors and Employees

Te Putea Whakatupu Trustee may, with the prior approval of Te Ohu, out of the funds of Te Putea Whakatupu Trust, indemnify a Director or employee of Te Putea Whakatupu Trustee or a related company for any liability or costs for which a director or employee may be indemnified under the Companies Act. Te Ohu may determine the terms and conditions of any such indemnity.

49 Insurance for Directors and Employees

Te Putea Whakatupu Trustee may, with the prior approval of Te Ohu, effect insurance out of the funds of Te Putea Whakatupu Trust for a Director or employee of Te Putea Whakatupu Trustee or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Companies Act. Te Ohu may determine the amounts and the terms and conditions of any such insurance.

GENERAL

50 Manner of Execution of Deeds

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of Te Putea

Whakatupu Trustee in writing signed under the name of Te Putea Whakatupu Trustee by -

50.1 two or more Directors; or

50.2 a Director or any other person authorised by the Directors whose signature must be witnessed; or

50.3 one or more attorneys appointed by Te Putea Whakatupu Trustee in accordance with *clause 51*.

51 Appointment of Attorneys

Te Putea Whakatupu Trustee may, by an instrument in writing executed in accordance with clause 50.1 or 50.2, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with that instrument binds Te Putea Whakatupu Trustee.

52 Liquidation of Te Putea Whakatupu Trustee

52.1 Te Putea Whakatupu Trustee may only be put into voluntary liquidation if Te Putea Whakatupu Trust is terminated. If that occurs, the Directors must then pass a resolution under section 214(2)(b) of the Companies Act appointing a liquidator of Te Putea Whakatupu Trustee.

52.2 On the liquidation of Te Putea Whakatupu Trustee any surplus assets of Putea Whakatupu Trustee shall be distributed to the same persons, and in the same proportions, as any surplus assets of Putea Whakatupu Trust are distributed on its termination.

53 Certificate and Signing of Documents

The Board is entitled to rely on, and is not obliged to question or verify the accuracy or authenticity of, any document, certificate or other written material, and any signing process or signature, that is presented to it under this constitution that it has no reasonable evidence to believe is not accurate or authentic. In the absence of reasonable evidence to the contrary, the Board can treat the contents of any such document, certificate or other written material as conclusive evidence of the facts stated therein.

SCHEDULE: BOARD MEETING PROCEDURES**1 Construction**

In this Schedule, unless stated otherwise, references to paragraphs are references to paragraphs in this Schedule.

2 Director's Power to Convene Meetings

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

3 Notice to be Sent to Director's Address

The notice of meeting must be a written notice delivered to the Director, or sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which the Director provides to Te Putea Whakatupu Trustee for that purpose, or if an address or facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to Te Putea Whakatupu Trustee.

4 Notice to Contain Certain Details

The notice of meeting must include the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters.

5 Period of Notice Required to be Given to Directors

At least five days' notice of a meeting of the Board must be given pursuant to paragraph 3 unless the chairperson of the Board (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given.

6 Directors Absent from New Zealand

If a Director who is for the time being absent from New Zealand, supplies Te Putea Whakatupu Trustee with a facsimile number or address or electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director at that address. Otherwise notice need not be given to any Director for the time being absent from New Zealand.

7 Directors May Waive Irregularities in Notice

Any irregularity in the notice of a meeting, or failure to comply with *paragraphs 2 to 6* of this Schedule, is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

8 Methods of Holding Meetings

A meeting of the Board may be held either:

- 8.1 by a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 8.2 by means of audio, or video, communication by which a quorum of Directors participating can simultaneously hear each other throughout the meeting.

9 Quorum for Board Meeting

The quorum necessary for the transaction of business at a meeting of the Board is 3 Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

10 Meeting Adjourned if No Quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the same day in the following week at the same time and place. Chairperson to Chair Meetings

11 Chairperson to Chair Meetings

The chairperson of the Board will chair all meetings of the Board at which he or she is present. If the office of chairperson of the Board is vacant, or if at a meeting of the Board the chairperson of the Board is not present within 60 minutes from the time appointed for the meeting, then the Directors present may elect one of their number to chair the meeting.

12 Voting on Resolutions

Each Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Companies Act.

13 Chairperson Does Not Have Casting Vote

As stipulated in clause 32 of this constitution, in the case of an equality of votes, the chairperson of the Board does not have a casting vote.

14 Directors Must Keep Minutes of Proceedings

The Board must ensure that minutes are kept of proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

15 **Board May Regulate Other Procedures**

Except as set out in this Schedule, the Board may regulate its own procedure.