



**NGĀTI MAKINO HERITAGE  
TRUST**

**TRUST DEED**

**DATED the            day of May 2013**

**THIS DEED** is made the                      day of May 2013

**BETWEEN**

**AWHIMATE AWHIMATE**

**LAURENCE TAMATI**

**HARE WIREMU**

**MARGARET HINEPO WILLIAMS**

**STEWART NGATAI**

**PAERARO AWHIMATE**

**TE NGARU AWHIMATE**

("the Trustees")

**RECITALS**

- A. The Ngati Makino Heritage Trust ("the Trust") was established to advance discussions with the Crown and before the Waitangi Tribunal on behalf of Ngati Makino to seek the settlement of Historic Ngati Makino Treaty claims and the return of certain forestry lands held pursuant to the Crown Forests Assets Act 1989.
- B. The persons above named as parties were elected as Trustees at a hui of Ngāti Makino held on 20 February 2008 to, hold assets for and on behalf of Ngāti Makino that will be returned to them by the Crown whilst overseeing negotiations and representing .
- C. Settlement Negotiations with the Crown of Historic Claims have been concluded which has resulted in the establishment of the Ngati Makino Iwi Authority which will manage, administer and use settlement assets on behalf and for the benefit of Ngati Makino.
- D. The Ngati Makino Heritage Trust will continue in existence to maintain and revitalize the Heritage and future aspirations of Ngati Makino by using and

administering resources that might be allocated to it in a way that promotes the educational, environmental, social and cultural development of Ngati Makino.

#### **KAUPAPA**

- E. The Claimants wish to establish this Trust to be known as the Ngāti Makino Heritage Trust ("the Trust") to:
- (i) Use and administer such assets that might be transferred to it for the purposes of conducting or undertaking Development Activities.
  - (ii) represent the interests of Ngāti Makino in discussions and negotiations with the Crown or Local Government on issues that may impact upon Ngati Makino;
  - (iii) represent the interests of Ngāti Makino in the event of return of the Forestry land;
  - (iv) represent the interests of Ngāti Makino in operational matters arising out of Crown Forest Licences;
  - (v) receive and administer the Forestry Land and Rental for the benefit of Ngāti Makino; and
  - (vi) receive any other Crown assets in settlement of any or all of the claims of Ngāti Makino.

#### **NOW THIS DEED WITNESSETH:**

##### **1. DEFINITION AND INTERPRETATION**

1.1 In this Trust Deed, the following terms have the meanings given to them below:

**"Beneficiary"** means the living individuals and their descendants as at the date of this Deed who are members of Ngāti Makino.

**"Board"** means the persons referred to in clause 4.

**"Chair"** means the person elected as the Chair of the Board under clause 4.2.

**"Development Activities"** are those activities which are promote the protection and improvement of the health, education, environmental well being of Ngati Makino in the interests of their social, cultural and economic welfare.

**“Executive Officers”** means the Chairperson, the secretary and the Treasurer elected or appointed in accordance with clauses 4.2 and 4.3.

**“General Meetings”** means meetings of the beneficiaries of Ngāti Makino as recognized by the Ngāti Makino Heritage Trust comprising Annual General Meetings and Special General Meetings, as provided for under clause 5.

**“Marae”** means Waitaha-a-Hei Marae, Otamarakau; Houmaitawhiti Marae, Rotoiti; Uruika Marae, Rotoiti; Te Awhe Marae, Maketu and Tawakemoetahanga Marae, Pukehina or as amended by resolution of the Trust from time to time pursuant to this Trust Deed.

**“Ngāti Makino”** means the iwi, or collective group, composed of individuals descended from one or more of the Ngāti Makino tupuna Hei, who belong to Ngāti Makino. This definition may be amended by resolution of the Trustees from time to time pursuant to this Trust Deed.

**“Secretary”** means the secretary of the Board as the context requires of Ngāti Makino Heritage Trust appointed under clause 4.2.

**“Special Resolution”** means a resolution (whether of the Board or of a General Meeting) passed by not less than 80% of those Representatives present and entitled to vote.

**“Treasurer”** means the person elected from time to time in accordance with the provisions of clause 4.3.

**“Trustees”** means the trustee or trustees for the time being of the Trust, and, where the trustees of the Trust have incorporated as a board under the Charitable Trusts Act 1957 and the Charities Act 2007, the trustee or trustees for the time being constituting the board, whether original, additional or replacement.

**“Trust property”** means the sum of \$100 that they have received for the Trust together with any other property which may be paid to or held under the control of or vested in or acquired by the Trustees for the Trust from any source on or after the date of this deed and whether by way of gift, bequest, devise, purchase, exchange or otherwise.

- 1.2 In this Trust Deed headings are inserted for convenience only and shall not affect interpretation, and the singular includes the plural and vice versa.

## **2. NAME**

2.1 The name of the Trust is the **Ngāti Makino Heritage Trust**.

## **3. OBJECTS OF THE TRUST**

3.1 The Board shall stand possessed of the Trust Property UPON TRUST and subject to the powers and provisions of the Trust Deed.

3.2 The Trustees stand possessed of the Trust Property for the benefit of Ngāti Makino for exclusively charitable purposes in accordance with the law of New Zealand, including any one or more of the following objects and purposes which are declared to be the objects and purposes of the Trust, namely:

- (a) TO be the representative body of Ngāti Makino in all aspects that relate to the social, environmental and educational development of Ngati Makino and other Development Activities.
- (b) TO be a vehicle for the development of understanding of all peoples of the history and tikanga of Ngāti Makino.
- (c) TO administer Trust Property for and on behalf of Ngāti Makino and other persons who Ngāti Makino recognise as appropriate to receive the benefit of charitable purposes allowed for under this Deed.

3.3 In carrying out the objects of the Trust, the Trustees shall give consideration to, but not be bound by, those matters outlined in Schedule 1 attached to this Deed.

3.4 The Trustees are empowered to carry out any one or more of the objects or purposes of the Trust independently of any other object or purpose of the Trust.

## **4. THE BOARD**

4.1 The Board shall comprise a total of no more than eight (8) Trustees and no less than three (3) Trustees all of whom shall be appointed by the Ngati Makino Iwi Authority in accordance with the Ngati Makino Iwi Authority Trust Deed.

4.2 The Board shall from time to time elect one of their number to be the Chair of the Board and one of their number to be the Secretary of the Board.

4.3 The Board may from time to time appoint one of their number, or any other person who is appropriately qualified for the position, to be the Treasurer.

4.4 The Executive Officers appointed under clauses 4.2 and 4.3 shall hold office from the time of their appointment until the Board has elected a new Executive following the next Annual General Meeting of Ngāti Makino Heritage Trust subject to the provisions of clauses 4.5 and 4.6.

4.5 The office of an Executive Officer or Trustee shall be vacated automatically if the relevant individual:

- (a) dies, or becomes mentally disordered or the subject of any order made under the Protection of Personal and Property Rights Act 1988; or
- (b) resigns by written notice to, in the case of the Chair or the Treasurer, the Secretary, and in the case of the Secretary and other Trustees to the Chair (such notice effective at the time it is received unless a later time is specified); or
- (c) is removed from office under clause 4.6; or
- (d) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (e) commits any offence involving dishonesty or acts dishonestly in relation to the affairs of Ngāti Makino Heritage Trust; or
- (f) acts or enters into any other contract, relationship or activity that could bring the Executive Officer or Trustee into conflict with his or her obligations or adversely affects that Executive Officer's or Trustee's duty of fidelity to Ngāti Makino Heritage Trust; or
- (g) if he or she fails to attend three consecutive meetings without approval or leave of the Board.

4.6 An Executive officer may be removed from that position by special resolution of the Board.

4.7 If the office of an Executive Officer is vacated under clauses 4.5 or 4.6 then the Board shall appoint one of its number to fill that office.

## **5. PROCEEDINGS OF THE BOARD**

5.1 Except as provided in this Trust Deed, the Board may regulate its own procedure.

5.2 The following provisions shall apply in relation to meetings of the Board (except where otherwise agreed by all members of the Board in relation to any particular meeting or meetings):

**5.3 Notification**

- (a) Notices of meeting shall be sent by the secretary in each case to such addresses as each Trustee notifies to the Secretary from time to time. Notices of a meeting may be sent by letter, facsimile transmission, or e-mail or other means from time to time;
- (b) Each notice of a meeting shall specify the date, time and place of the meeting, and the business to be considered.

**5.4 Ordinary Meetings**

- (a) Meetings of the Board shall be convened in each case by the Chair quarterly or at times specified by him or her, or, if the office of the Chair has been vacated, by the Secretary;
- (b) A notice of an Ordinary Meeting of the Board shall be provided by the secretary in writing to the Trustees, such notice to be received by the Trustees no less than five working days prior to the meeting taking place.

**5.5 Special Meetings**

- (a) In addition to the meetings specified in 7.4, the Secretary of the Board shall within five days of receiving a written request submitted by not less than six Trustees of the Board convene a meeting of the Board. Any request submitted under this paragraph shall state the purpose of the meeting.
- (b) The Secretary shall in each case give not less than five days' notice of a meeting to each Trustee (except in circumstances of urgency requiring shorter notice).

**5.6 Annual General Meeting**

- (a) The Chair of the Board shall convene an Annual General Meeting no earlier than 30 June and no later than 31 August in each calendar year to report back to the beneficiaries ("AGM").

- (b) Every notice of an Annual General Meeting shall state the place, date and time of the meeting, and the nature of the business to be conducted at the meeting.
- (c) The business of the Annual General Meeting shall include (but shall not be limited to) the receipt and consideration of the accounts of Ngāti Makino Heritage Trust, the auditors report on those accounts, an annual plan and an annual report.

#### **5.7 Proceedings at Annual, General and Special Meetings**

- (a) A meeting whether Annual, Ordinary or Special may be held either by a quorum being assembled together at the place, date and time appointed for the meeting, or by means of audio, or audio and visual, communication by which all members of the Board participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- (b) Subject to clause 5.7(c) of this Trust Deed, a quorum for a meeting of the Board is not less than a majority of Trustees in office. No business may be transacted at a meeting if a quorum is not present.
- (c) If no quorum, as set out in clause 5.7(b) of this Trust Deed, is present within half an hour from the time appointed for the commencement of an Ordinary Meeting, subject to clause 5.7(i), the meeting shall be deemed to be adjourned to a date, time and place appointed by the Chair and the Trustees present at that adjourned meeting shall be deemed to constitute a quorum.
- (d) Every Trustee is entitled to attend and speak at a meeting of the Board.
- (e) A resolution may be passed in writing by a quorum and shall be as valid and effective as if it had been passed at a meeting. Any such resolution is to be signed by the Chair and/or the Secretary. Any such resolution may consist of several documents in like form and may be transmitted by facsimile or similar means of communication. A copy of any such resolution shall be entered in the minutes.
- (f) The Board shall ensure that minutes are kept of all proceedings at their meetings. Minutes which have been signed correct by the Chair are prima facie evidence of the proceedings of that meeting.



- (g) The accidental omission to give notice of an Annual, Ordinary or Special Meeting to, or the non-receipt of notice of a General Meeting shall not invalidate the proceedings at that meeting.
- (h) The Chair may not adjourn any Annual, Ordinary or Special Meeting from time to time and from place to place unless consented to by no fewer than six trustees. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. It shall not be necessary to give any further additional notice of an adjourned meeting or of the business to be transacted at an adjourned meeting.
- (i) At any Annual, Special or Ordinary Meeting a resolution put to the vote shall be deemed to have been carried if a majority of the Board present at the meeting vote in favour of the resolution. However, the Chair shall use his or her best endeavours to ensure that all resolutions are made by consensus.
- (j) At an Annual General Meeting or Hui-a-lwi called by Trustees, resolutions may be passed by a majority of the beneficiaries present who are over the age of 18 years with a quorum for an annual general meeting to be 20 beneficiaries.
- (k) Voting on a resolution shall be on a show of hands by Trustees unless the Chair deems it appropriate that a poll or ballot be conducted whether that be by means of audio, or audio and visual, or post ballot. The Chair shall be entitled to specify the manner in which any such poll or ballot shall be conducted.
- (l) The Chair shall declare whether a resolution has been carried or lost, and an entry to that effect in the minute book of Ngāti Makino Heritage Trust shall be conclusive evidence of that fact.
- (m) Trustees are obliged to declare any actual or potential conflict of interest and will not take part in discussion or voting on any issue in respect of which they have a conflict of interest.

## **6. FUNCTIONS OF THE BOARD**

- 6.1 The business and affairs of the Ngāti Makino Heritage Trust shall be managed by or under the direction or supervision of the Board.

- 6.2 The Board may from time to time delegate to any executive committee or sub-committees of the Board, or to particular members of the Board, all or any of its powers, duties and responsibilities upon such terms and conditions as it thinks fit. Subject to the requirements imposed by the Board in relation to the operation of the committee, the provisions of this Trust Deed relating to proceedings of the Board shall, with appropriate modification, apply to meetings of such committees.
- 6.3 The Board has the power to appoint persons who are not Trustees to assist in managing the operations and affairs of the Ngāti Makino Heritage Trust ("Management"). The Board may delegate particular duties, responsibilities or roles to be carried out by Management upon such terms and conditions as the Board thinks fit. On appointment, the Board will set clear guidelines on the duties, responsibilities and role of Management, and will ensure that Management operates under the supervision of, and regularly reports back to, the Board. A member of the Board may be appointed to a Management position or committee.
- 6.4 The Board may appoint a person or persons to act as an attorney or attorney of the Ngāti Makino Heritage Trust whether generally or in relation to a specified matter. Any such power of attorney may contain such provision for the protection of persons dealing with the attorney as the Board thinks fit.

## **7. POWERS**

- 7.1 The Trustees will promote the charitable kaupapa/objects and purposes of the Trust described in clause 3.2.
- 7.2 In addition to all other powers hereinbefore contained and conferred by law the Board shall have the following powers and authorities so promoting and giving effect to the said charitable kaupapa/objects and purposes of the Trust but not otherwise: -
- (a) To receive, hold and apply funding and property from the Crown and elsewhere for the purposes of the negotiations.
  - (b) To receive any property transferred by the Crown as part of a Treaty of Waitangi settlement, and to hold or invest those assets for and on behalf of the Trust.
  - (c) To carry on any business undertaking or operation which is capable of being conveniently or profitably carried on in connection with or in

furtherance of and subject to the kaupapa/objects and purposes herein stated and not inconsistent or contrary thereto.

- (d) To purchase, take on lease, take in exchange, hire or otherwise acquire any real and personal property.
- (e) To borrow or raise money or secure the payment of money or the satisfaction or performance of any obligation or liability incurred or undertaken by the Trust in such manner as is reasonable and appropriate and in particular by the mortgage or charge or lien upon the whole or any part of the Trust's property or assets (whether present or future) and to purchase, redeem or pay off any such securities.
- (f) To invest and deal with the moneys or assets of the Trust not immediately required in such manner as is reasonable and appropriate and in particular to invest the same on mortgage or purchase of real leasehold or personal property shares or securities or by depositing the same with any bank, company, firm, Trust or person at interest and from time to time to vary such investments.
- (g) To apply for, promote and obtain any Act of Parliament to enable the Trust to carry out any or all of its objects.
- (h) To collect and raise funds by lawful means and to solicit, receive and enlist financial or other aid subsidy or grant from individuals and organisations, the New Zealand Government or any council Board Body or State Agency or any International or Local Organisation.
- (i) To apply for incorporation under the Charitable Trusts Act 1957. Upon incorporation, the powers and discretions conferred upon the Trustees by law or by this Deed shall be conferred on the Trustees as a trust board.
- (j) To apply for registration as a charitable entity with the Charities Commission under the Charities Act 2005.
- (k) Employ any financial adviser, lawyer, accountant or other expert or professional person and act upon any opinion, advice or information obtained therefrom.

- (l) Apply the whole or part of the assets of the Trust as the Trustees decide towards the payment of any liabilities incurred by the Trustees under this Deed.
- (m) Establish companies or acquire shares in companies or such other legal entities as the Trustees deem necessary to promote the objects of the Trust.
- (n) Failing any practicable mechanism under the Act to vest the forestry lands upon return of the forestry lands to apply to the Maori Land Court to establish a trust or incorporation under Te Ture Whenua Maori Act 1993 or its successor or to retain the land as general land.
- (o) To do all such things as appear to be necessary or conducive for the attainment of the kaupapa/objects and powers of the Trust but not otherwise and the exercise of any of the powers herein contained.

**7.3 Income, Benefit or Advantage to be applied to Charitable Purposes**

- (a) Any income, benefit or advantage shall be applied to the charitable purposes of the Ngāti Makino Heritage Trust.
- (b) No Trustee or any person in a relationship with a Trustee shall participate in or materially influence any decision made by the Ngāti Makino Heritage Trust in respect of the payment to or on behalf of the Trustee or associated person of any income benefit or advantage whatsoever. Any income paid shall be reasonable and relevant to that which would be paid in an arms-length transaction.
- (c) The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.
- (d) Nothing in this Trust Deed shall empower the Ngāti Makino Heritage Trust to, and it shall not:
  - i) carry on any operation, whereby any Trustee may make any pecuniary gain, contrary to the provisions of the Income Tax Act 1994; or
  - ii) do any other things which it is prohibited from doing by virtue of the Income Tax Act 1994 or any other enactment.

#### **7.4 Eligibility for Tax Provisions**

- (a) The Board must do all things necessary to ensure that the Trust, and the Trustees in connection with the Trust, are and will remain eligible for the benefit of each of the Concessionary Provisions.
- (b) Without limiting the generality of clause (a) the Trustees must do all things necessary to ensure that:

  - (i) the Trust, and the Trustees in connection with the Trust, are and will remain qualified to register, and registered, as a charitable entity with the Charities Commission under the Charities Act 2005;
  - (ii) the Trustees and any other person in connection with the Trust comply with all relevant obligations under the Charities Act 2005, including obligations relating to;
  - (iii) notifying the Charities Commission of changes to registry information regarding the Trustees and the Trust;
  - (iv) filing annual returns (including any financial reporting requirements in respect of those returns) with the Charities Commission;
  - (v) disclosure of the registration number of the Trustees on request by any collector raising funds by telephone or internet on behalf of the Trustees in connection with the Trust; and
  - (vi) providing to the Charities Commission any information or document required to be provided upon written notice from the Charities Commission; and
  - (vii) the Trustees and any other person in connection with the Trust comply with all relevant obligations under the Income Tax Act 2004, the Estate and Gift Duties Act 1968, the Goods and Services Tax Act 1985 and the Tax Administration Act 1994, and in particular any record-keeping and filing obligations under the legislation, including the retention of records in relation to the source and application of the funds derived or received by the Trustees in connection with the Trust.

## **8. SCOPE OF OBJECTS AND POWERS**

8.1 Subject to clause 8.2, the objects and powers set out in clauses 3 and 7 above shall not be restrictively construed. The widest interpretation reasonably applicable to those objects and powers shall be given to them and, except where the context otherwise requires, none of the objects and powers set out above shall be limited or restricted by reference to, or by inference from, any other object or power set out in those sections.

8.2 None of the objectives or powers set out in clauses 3 and 7 shall be interpreted as being subsidiary or ancillary to any of the other objects and powers set out in those clauses, and the Ngāti Makino Heritage Trust shall be fully empowered to achieve or exercise, or to endeavour to achieve or exercise, all or any of those objects or powers.

## **9. FINANCE**

9.1 The funds of the Ngāti Makino Heritage Trust shall be under control of the Board, who shall delegate responsibility for management of such funds to the Treasurer.

9.2 The Treasurer shall ensure that proper books of account are kept to show the assets, liabilities and financial position generally of the Ngāti Makino Heritage Trust, in compliance with the provisions of the Act. Such accounts shall be audited by a firm of chartered accountants which is a member of the New Zealand Society of Accountants and which is elected and appointed from time to time by the Executive. Each auditor so appointed shall hold office until the next Annual General Meeting of the Ngāti Makino Heritage Trust, and such appointment shall be automatically continued following such Annual General Meeting unless otherwise resolved by the Executive.

9.3 It shall be the duty of the auditor to report to the Trustees as to whether the accounts and balance sheet of the Ngāti Makino Heritage Trust present a true and fair view of the financial affairs of the Ngāti Makino Heritage Trust. The Trustees shall ensure that the beneficiaries are informed of the auditor's report.

9.4 The auditor's remuneration shall be paid out of the funds of the Ngāti Makino Heritage Trust.

9.5 A copy of the latest accounts together with the auditors report thereon shall be sent to the Trustees together with notice of each Annual General Meeting.

- 9.6 All funds received by or on behalf of the Ngāti Makino Heritage Trust must be paid into the bank account of the Ngāti Makino Heritage Trust, to be maintained at a bank, and at a branch, approved from time to time by the Executive. All cheques and other instruments operating the bank account of the Ngāti Makino Heritage Trust must be signed by not less than two members of the Board designated from time to time by resolution of the Board.
- 9.7 The Trust property profits and other income (if any) of the Trust from wherever derived shall be applied solely in promoting the kaupapa/objects and powers herein, except as provided in clause 9.8.
- 9.8 No private pecuniary profit shall be made by any person from the Ngāti Makino Heritage Trust, except that:
- (a) any Trustee may receive full reimbursement for all expenses properly incurred by them in connection with the affairs of the Ngāti Makino Heritage Trust, including travelling, hotel and other expenses, provided that any such reimbursement must be approved by the Board;
  - (b) the Ngāti Makino Heritage Trust may pay reasonable and proper remuneration to any Trustee or servant of the Ngāti Makino Heritage Trust in return for services actually rendered to the Ngāti Makino Heritage Trust;
  - (c) any Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that person or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Ngāti Makino Heritage Trust;
  - (d) any trustee may be paid an allowance for attending meetings at a rate to be agreed upon by the Trustees as well as a travel allowance at Public Service levels for travel of 20 kilometres or more.
- 9.9 Notwithstanding anything contained or implied in this Trust Deed, any person who is a Trustee or an associated person (as defined by the Income Tax Act 1994) of a Trustee shall not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence in any way the determination of the nature or the amount of any benefit or advantage or income of the

circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person.

## **10. COMMON SEAL**

- 10.1 The common seal of the Ngāti Makino Heritage Trust shall be kept in the custody of the Executive Officers and the seal shall be affixed to such documents as may be approved from time to time by the Board. The affixing of the seal shall be witnessed by not less than two of members of the Board approved for that purpose by resolution of the Board.

## **11. ALTERATIONS**

- 11.1 Subject to the provisions of the Charitable Trust Act 1957, the provisions of this Trust Deed may be altered or added to at any special meeting of the Board subject to the following conditions:

- (a) No alteration shall be made which shall render the kaupapa and purposes of the Trust non charitable or not to be in harmony with the spirit and concept for which this Trust has been established.
- (b) No less than five working days' written notice, stating the date of the calling of the meeting and enclosing the proposed alteration addition or variation.
- (c) Any such proposed alteration may be amended at any meeting called for the purpose of considering them.
- (d) The provision herein contained as to special meetings shall otherwise be observed.
- (e) The alterations or additions must be approved by resolution passed by the majority present at a Ngāti Makino hui-a-iwi called with at least seven working days' prior notice.
- (f) The resolution effecting the alterations or additions must be passed by all of the members of the Board, voting in person.

## **12. NGĀTI MAKINO HERITAGE TRUST BUSINESS**

- 12.1 It shall be lawful for any business, undertaking, operation or activity hereby authorised to be carried out by the Trust to be conducted and/or carried out under



such name or names, trade description or calling that the Board may from time to time decide upon or consider appropriate.

**13. TRUSTEE LIABILITY**

- 13.1 In the professed execution of the Trusts and powers hereof no Trustee shall be liable for any loss to the Trust fund arising by reason of any improper act made in good faith or for the negligence or fraud or delay of any agent, officer or servant employed by the Board or by any member of it (notwithstanding that the employment of such agent, officer or servant was not strictly necessary or expedient and notwithstanding any statutory provision or rule of law to the contrary) nor shall any Trustee be liable for any matter relating to the Trusts of this Trust Deed not attributable to his or her own dishonesty or wilful breach of the trust.

**14. BY-LAWS**

- 14.1 The Board may at any Annual, Ordinary or Special General Meeting by resolution passed by six members of the Board present make by-laws in addition hereto provided that no such by-laws shall be valid -

(a) If they in any way conflict or are inconsistent with the provisions herein contained; and

(b) Unless a copy of such proposed by-laws are forwarded to each Trustee not less than seven days prior to the meeting called to consider such proposals.

**15. REGISTERED OFFICE**

- 15.1 The registered office of the Ngāti Makino Heritage Trust shall be at Shop 4, Ground Floor, Palmer Court, 48 Jellicoe Street, Te Puke, or such other place as the Board may from time to time determine and due notice of any change of office shall be given to the Registrar of Charitable Trusts or as may be prescribed by any other legislative enactment.

**16. WINDING UP**

- 16.1 The Ngāti Makino Heritage Trust may be wound up under the provisions contained in sections 24 and 25 of the Charitable Trusts Act 1957 and/or according to the law and the grounds for winding up applicable at that time such winding up is sought and desired.

16.2 On the winding up of the Ngāti Makino Heritage Trust, or on its dissolution by the Registrar, all surplus assets administered by it (after the payment of costs, debts and liabilities) will be given to other charitable organisation/s that further the interests of Ngāti Makino as the Board will decide. If the Ngāti Makino Heritage Trust is unable to make such a decision, the surplus assets will be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 or subsequent enactment.

IN WITNESS WHEREOF this Deed has been executed the day and year first hereinbefore written

SIGNED by AWHIMATE AWHIMATE )



\_\_\_\_\_ as Trustee )

in the presence of: )

SIGNED by LAURENCE TAMATI )



\_\_\_\_\_ as Trustee )

in the presence of: )

SIGNED by HARE WIREMU )



\_\_\_\_\_ as Trustee )

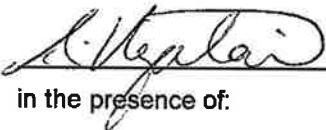
in the presence of: )

SIGNED by **MARGARET HINEPO WILLIAMS** )

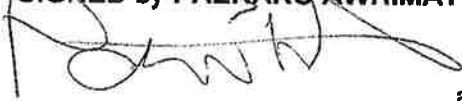
Retired )

  
\_\_\_\_\_ as Trustee )  
in the presence of: )

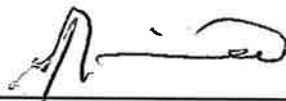
SIGNED by **STEWART NGATAI** )

  
\_\_\_\_\_ as Trustee )  
in the presence of: )

SIGNED by **PAERARO-AWHIMATE** )

  
\_\_\_\_\_ as Trustee )  
in the presence of: )

SIGNED by **TE NGARU AWHIMATE** )

  
\_\_\_\_\_ as Trustee )  
in the presence of: )

## SCHEDULE 1

### Guiding Principles

1. The Trustees must uphold the tikanga of Ngāti Makino at all times.
2. The Trustees acknowledge that the kaumatua uphold the mana of Ngāti Makino.
3. The overriding objectives of the Ngāti Makino Treaty of Waitangi historical claims are:
  - 3.1 To promote a correct understanding of the history of Ngāti Makino;
  - 3.2 To restore the mana and identity of Ngāti Makino;
  - 3.3 To restore the mana of Hei;
  - 3.4 To seek remedy from the Crown for the Treaty of Waitangi grievances of Ngāti Makino, including the loss of Ngāti Makino mana, people, lands, fisheries, forests and other taonga;
  - 3.5 To protect and enforce the guarantees that the Crown made to Ngāti Makino pursuant to the Treaty of Waitangi.
4. The overriding objectives of obtaining a settlement are:
  - 4.1 To restore to Ngāti Makino ownership and control of their ancestral lands, resources and taonga tuku iho;
  - 4.2 To establish an economic base for the iwi of Ngāti Makino;
  - 4.3 To promote the education, health, employment and commercial opportunities of the people of Ngāti Makino;
  - 4.4 To promote and protect the tikanga, kawa, culture and Te Reo of Ngāti Makino.
5. The Trustees are inspired by the whakatauki:

**Nga porootai o Waitaha.**

### **Operation of Trustees**

6. The Trustees are responsible for developing a strategy for entering into and progressing Treaty negotiations and governing the negotiations with the Crown on behalf of Ngāti Makino.
7. The Trustees are responsible for maintaining regular communication with Ngāti Makino to ensure that Ngāti Makino are kept informed of progress and are empowered through being given the opportunity to participate in the decision-making process.
8. The Trustees will report back to Ngāti Makino on a six monthly basis, or more often if required.
9. The Trustees will at all times be accountable to Ngāti Makino.

## SCHEDULE 2

### Policy on resolution of disputes

#### Purpose

1. The purpose of this policy is to enable the resolution of general disputes that any beneficiary of Ngāti Makino may raise with the Ngāti Makino Heritage Trust:
  - (a) Any complaint that the conduct or intended conduct of the Trust or a Trustee or officeholder under this Trust Deed is or has been or will be contrary to the provisions of this Trust Deed or otherwise injurious to the Trust or to Ngāti Makino or to any Beneficiary or group of Beneficiaries;
  - (b) Any dispute between or among Beneficiaries or between Beneficiaries and the Trust or a Trustee or officeholder relating to matters arising from the negotiations for the settlement of Ngāti Makino Treaty claims.

#### Context

2. All disputes with Ngāti Makino Heritage Trust will be dealt with in a manner consistent with the core values to which Ngāti Makino Heritage Trust subscribes.
  - (a) **Whakapapa** – our ancestral origins, relationships, traditions, whanau, hapu and iwi.
  - (b) **Wairuatanga** – our connections with our atua, tipuna, maunga, awa, moana and marae.
  - (c) **Mana whenua/mana moana** – the authority that has been passed down to us by our ancestors and that we exercise in our own rohe as well as in conjunction with others.
  - (d) **Rangatiratanga** – our role in exercising leadership and fulfilling self determination, being humble and our sense of fairness and justice.
  - (e) **Kaitiakitanga** – our role in caring for members of our whanau, hapu and iwi as well as the natural, physical, spiritual and secular worlds around us.
  - (f) **Kotahitanga** – the unified purpose that enables us to move forward confidently.
  - (g) **Te reo Maori** – the preferred way of expressing our Ngāti Makinotanga.

- (h) **Matauranga o Ngāti Makino** – the skills, knowledge and experience that are shaped by our Ngāti Makinotanga.
- (i) **Manaakitanga** – the respect we have for our iwi, hapu, whanau, ourselves and others, and treating all people with dignity.
- (j) **Whanaungatanga** – recognising and respecting the relationships between whanau, hapu and iwi while also respecting the rights, responsibilities and obligations that come with them.

### **General Dispute Matters**

- 3. Every complaint or dispute by a Beneficiary shall be submitted by notice in writing to the Secretary and the Secretary shall acknowledge receipt in writing within 10 Business Days of the date of receipt of the notice.
  - 3.1 If a complaint or dispute is not withdrawn or resolved through discussions between the parties and the Board within 30 Business Days of the receipt of written notice, the complaint or dispute shall be dealt with in accordance with clause 3.2 or clause 3.3 as appropriate.
  - 3.2 **Matters of Tikanga:** Where the complaint or dispute relates to the Tikanga, history, korero or Whakapapa of Ngāti Makino, the complaint or dispute will be referred to the kaumatua of Ngāti Makino for resolution.
  - 3.3 **Dispute Committee:**
    - (a) Where the complaint or dispute relates to a matter under this Trust Deed that is not governed by Schedule 2 clause 3.2 the complaint or dispute shall be referred to the Board.
    - (b) The Board shall appoint a Dispute Committee which shall consist of three people, one of whom must be the Chair, who, in the view of the Board, have the necessary skills and expertise to deal with the relevant complaint or dispute. The role of the Dispute Committee in dealing with the complaint or dispute shall be to facilitate and make findings and decisions on the complaint or dispute referred to it.
    - (c) In dealing with any complaint or dispute the Dispute Committee shall, subject to meeting the requirements of natural justice and having due regard to Tikanga, have the sole discretion to call for

evidence and determine the matter in which a complaint or dispute before it should be dealt with.

3.4 In meeting the requirements of natural justice, the kaumatua of Ngāti Makino as elected by the Ngāti Makino Heritage Trust or the Dispute Committee, as the case may be, shall:

- (a) Provide the complainant with the opportunity to attend a meeting for the purpose of presenting a detailed account of the matter in dispute including any evidence in support of the matters raised, and naming any other party or parties involved;
- (b) Where the complaint or dispute concerns the actions of an individual Trustee or officeholder:
  - i) Sufficiently inform the Trustee or officeholder of the nature of the complaint; and
  - ii) Inform the Trustee or officeholder that a copy of the decision regarding the complaint shall be provided to the Trust who may take further action in relation to the actions of the Trustee or officeholder; and
  - iii) Provide him or her with the opportunity to attend a meeting for the purpose of presenting a detailed account of the matter in dispute including any relevant evidence.

### 3.5 **Decision Final**

Subject to the provisions of any relevant Act or rule of law, any findings and decision of the kaumatua of Ngāti Makino as elected by the Ngāti Makino Heritage Trust or the Disputes Committee on any complaint, dispute or appeal as the case may be shall be final and binding on the parties including the Board.

### 3.6 **Notification of Outcome**

The kaumatua of Ngāti Makino as elected by the Ngāti Makino Heritage Trust or the Disputes Committee as the case may be shall give its findings and decision, together with the reasons therefore, in writing to all parties and to the Trust.



**Mediation:**

4. The parties to any complaint or dispute may at any time agree to refer the complaint or dispute to mediation or other alternative dispute resolution in which case:
  - 4.1 The parties shall notify the Secretary in writing that the complaint or dispute is to be referred to mediation or other alternative dispute resolution;
  - 4.2 If the Board, a Trustee or officeholder is a party to the complaint or dispute, they shall participate in any mediation or alternative dispute resolution and may otherwise participate in any mediation or alternative dispute resolution at the request or with the consent of the parties;
  - 4.3 The costs of the mediation or alternative dispute resolution shall be met by the parties to the complaint or dispute, unless the Trustees resolve by Special Resolution to meet some or all of the costs the mediation or alternative dispute resolution;
  - 4.4 The referral of the complaint or dispute to or the consideration of the complaint or dispute by the kaumatua of Ngāti Makino as elected by the Ngāti Makino Heritage Trust or the Disputes Committee, as the case may be, shall be deferred until such time as the parties notify the Secretary in writing that the mediation or alternative dispute resolution has been concluded and that the complaint or dispute remains unresolved;
  - 4.5 If the complaint or dispute is resolved through mediation or alternative dispute resolution, that resolution shall only be binding on the Trust if:
    - (a) The Trust participated in the mediation or alternative dispute resolution either as party or at the request or with the consent of the parties and agreed to the resolution reached in the mediation or alternative dispute resolution; or
    - (b) The Trustees subsequently resolve by Special Resolution to accept the resolution reached in the mediation or alternative dispute resolution.

