

01

# Deed constituting Te Wānanga o Raukawa Foundation

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Deed dated the 8th day of November 2011

## Parties

- 1 Turoa Kiniwe Royal, of Porirua, Chairperson of Te Wānanga o Raukawa Te Mana Whakahaere.
- 2 Whatarangi Winiata, of Otaki, emeritus professor.
- 3 Ann Mary Selby (also known as Mereana Selby), of Otaki, Tumuaki of Te Wānanga o Raukawa.
- 4 Ani Ngamate Parata, of Raumati South, home executive.
- 5 John Webber Barrett, of Otaki, company director.
- 6 Fiona Parewai Wilson, of Raumati Beach, chartered accountant.
- 7 Matiu Nohorua Te Rei, of Wellington, executive director.
- 8 Pita Fraser Richardson, of Palmerston North, retired.
- 9 Jeanette Hinerangi Grace, of Titahi Bay, manager.
- 10 Ngārongo Iwikātea Nicholson, of Levin, retired.
- 11 Ann-Maree Bukholt, of Otaki, manager.

(all parties hereinafter jointly and severally called "the trustees" which term shall extend to and include the trustees for the time being of the Foundation hereby constituted.)

## Background:

- A In 1981, the iwi of Te Āti Awa, Ngāti Raukawa and Ngāti Toa Rangātira (hereinafter jointly and severally called "the Founding Iwi") established their own wānanga following a decision made in April of

- that year at a hui held at Tukorehe Marae by the Raukawa Marae Trustees.
- B** The wānanga so established was called Te Wānanga o Raukawa and was confirmed, in 1983, as a wānanga by virtue of the Education (Te Wānanga o Raukawa) Order 1993 and continues to fulfil its role as a wānanga under the Education Act 1989.
- C** Te Wānanga o Raukawa was established through the vision, drive, dedication and support of the Founding Iwi through the Raukawa Marae Trustees and Te Wānanga o Raukawa did not receive from the Crown the funding supplied to other university-like institutions.
- D** The lack of funding led to Te Wānanga o Raukawa, along with two other wānanga, bringing a claim before the Waitangi Tribunal under WAI 718.
- E** The claim under WAI 718 concerned the Crown's policies in relation to capital establishment funding for the three wānanga when they were established as tertiary education institutions under Part VIII of the Education Act 1989.
- F** The Waitangi Tribunal enquired into the claim and issued its report and recommendations on 22 April 1999 entitled ("the Wānanga Capital Establishment Report (1999)" ("the Report").
- G** The Report from the Tribunal recommended, amongst other recommendations, that a one-off payment of a capital sum be made to each of the claimant wānanga to compensate each claimant for the expenditure of capital and labour that they invested in establishing their respective wānanga.
- H** By deed dated 15 October 2008 and entitled "Deed of settlement in relation to the Wānanga Capital Establishment Report (WAI 718)" ("the Deed of Settlement"), Te Wānanga o Raukawa and the Crown recorded their settlement of the claim concerning Te Wānanga o Raukawa and, in particular, that the Crown would settle on Te Wānanga o Raukawa (in addition to monies previously vested) a further amount of \$50,649,000 ("the settlement amount").
- I** In recognition of the efforts of the Founding Iwi in establishing Te Wānanga o Raukawa, the Crown and Te Wānanga o Raukawa agreed, in clause 20 of the Deed of Settlement, that \$17,970,000 of the settlement amount ("the agreed portion of the settlement amount") was to be given to an independent charitable trust which would be established and controlled by the Founding Iwi or their representatives for the purposes of assisting Te Wānanga o Raukawa to contribute to the ongoing survival of Maori as a people in its provision of educational services to the Founding Iwi.
- J** Te Wānanga o Raukawa is holding the agreed portion of the settlement amount as Kaitiaki [guardian] of the same until the Secretary of Education has approved the assignment to the charitable trust.
- K** The Secretary of Education has approved the assignment of the agreed portion of the settlement amount subject to conditions, one of which is the signing of a deed establishing the independent trust on the terms set out in the body of this deed.

- L** The purpose of this deed is to establish the independent trust referred to in clause 20 of the Deed of Settlement to receive the agreed portion of the settlement amount for the purposes described in clause 4.1 of this deed and to provide for the trust's control and governance.
- M** The trustees to this deed have been appointed by nomination, reference or office as follows:
- (a) The chairperson for the time being of Te Mana Whakahaere of Te Wānanga o Raukawa, currently being Turoa Kiniwe Royal;
  - (b) The tumuaki for the time being of Te Wānanga o Raukawa, currently being Ann Mary Selby (also known as Mereana Selby);
  - (c) Ani Ngamate Parata and Ann-Maree Bukholt being persons responsible for looking after the interests of the iwi of Te Āti Awa (hereinafter jointly and severally called "the Te Āti Awa Trustees");
  - (d) John Webber Barrett and Pita Fraser Richardson being persons responsible for looking after the interests of the iwi of Ngāti Raukawa (hereinafter jointly and severally called "the Ngāti Raukawa Trustees");
  - (e) Matiu Nohorua Te Rei and Jeanette Hinerangi Grace being persons responsible for looking after the interests of the iwi of Ngāti Toa Rangātira (hereinafter called "the Ngāti Toa Rangātira Trustees");
  - (f) Ngārongo Iwikātea Nicholson being the person appointed by the people for the time being recognised by Te Mana Whakahaere of Te Wānanga o Raukawa as the Purutanga Mauri, (which appointee is hereinafter called "the Purutanga Mauri Trustee");
  - (g) Whatarangi Winiata and Fiona Parewai Wilson being the persons appointed by Te Mana Whakahaere of Te Wānanga o Raukawa as general trustees (who are hereinafter jointly and severally called "the General Trustees").

### **Operative part:**

#### **1 Interpretation**

- 1.1 In this agreement unless the context otherwise requires:

"Te Mana Whakahaere" is the council of Te Wānanga o Raukawa;

"Tumuaki" means chief executive officer;

"Board" means the Board of Trustees under this deed;

"The Foundation" means the charitable foundation established under this deed;

"The Purutanga Mauri" are recognised tikanga Māori authorities invited by Te Mana Whakahaere to be the guiding kaumātua of Te Wānanga o Raukawa;

"The Purutanga Mauri Trustee" is the trustee appointed by the Purutanga Mauri;

“The officials group” comprises the chairperson of Te Mana Whakahaere; the tumuaki of Te Wānanga o Raukawa and the (up to two) General Trustees;

“Tikanga Māori” means Māori custom;

“Kaiāwhina” means voluntary contributors to Te Wānanga o Raukawa of teaching and other skills.

“Kaupapa tuku iho” means the values listed in clause 4.1 of this Deed.

“Te Wānanga o Raukawa” means the institution recognised under that name as a wānanga by virtue of the Education (Te Wānanga o Raukawa) Order 1993 which originated from a decision made in April 1981 at a hui held at Tukorehe Marae by The Raukawa Marae Trustees to establish their own wānanga which they called Te Wānanga o Raukawa.

“The tangata whenua group” comprises the Te Āti Awa Trustees; the Ngāti Raukawa Trustees; the Ngāti Toa Rangātira Trustees and the Purutanga Mauri Trustee.

“nominators” means the nominators named in clause 13.1 as varied from time to time in accordance with clause 13.2

“The Founding iwi” means the iwi of Te Āti Awa, Ngāti Raukawa and Ngāti Toa Rangātira jointly and severally provided that Ngāti Toa Rangātira acts through Te Rūnanga o Toa Rangātira Incorporated so that all notices relating to that iwi shall be given and received by that rūnanga and provided further that any iwi may appoint, pursuant to clause 18.5, their respective

rūnanga or other entity to represent its interests and/or to give and receive notices on its behalf.

“The Founding iwi trustees” means the Te Āti Awa Trustees, the Ngāti Raukawa Trustees and the Ngāti Toa Rangātira Trustees jointly and severally.

## 2 Name

- 2.1 The name of the Foundation shall be “Te Wānanga o Raukawa Foundation” provided that if Te Wānanga o Raukawa changes its name, the name of the Foundation shall change accordingly.

## 3 Offices

- 3.1 The offices of the Foundation shall be the offices of Te Wānanga o Raukawa or as the Board may from time to time determine.

## 4 Purposes and trusts

### Charitable Purposes

- 4.1 The purpose of the Foundation is to promote akoranga, whakatupu mātauranga and whakahaere [These activities describe the three core functions of Te Wānanga o Raukawa, that is, teaching and learning, operations and administration, and the exploration and creation of knowledge] to maximise the contribution of the Foundation to the education and survival of Māori as a people through the provision of financial and other assistance to Te Wānanga o Raukawa and the staff (including kaiāwhina) and students of Te Wānanga o Raukawa as the Board may decide. The purpose shall be fulfilled by the expression of kaupapa tuku iho, in particular, the ten described below, indicative explanations of which are included in brackets. Actual choice of explanation will be context dependent.

- (a) **Manaakitanga**  
[Behaviour featuring generosity, care, respect and reciprocity toward others]
- (b) **Wairuatanga**  
[Acknowledging and understanding the existence of a spiritual dimension to Māori life and to the world that requires regular attention and nourishment]
- (c) **Ūkaipōtanga**  
[Providing a caring and nurturing environment context where Māori are able to contribute in ways that lead to a sense of fulfilment and stimulation]
- (d) **Whanaungatanga**  
[Expressing relationships built on common ancestry and featuring interdependence, reciprocal obligations, support and guidance within rūpū tuku iho (iwi, hapū and whānau, and other groups comprising people with Māori ancestry)]
- (e) **Rangatiratanga**  
[Reflecting chiefly attributes, seen as “walking the talk”, integrity, humility and honesty]
- (f) **Kaitiakitanga**  
[Caring for creation including natural resources, inherited treasures, other forms of wealth and communities, including the Māori as a people]
- (g) **Kotahitanga**  
[Pursuing a unity of purpose and direction where all are able and encouraged to contribute]
- (h) **Pūkengatanga**  
[Knowledge creation, dissemination and maintenance that leads to scholarship and contributes to the mātauranga (knowledge) continuum of Te kākanio i ruia mai i Rangiatea (the Māori people descended from Rangiatea)]
- (i) **Whakapapa**  
[Analysing and synthesising “phenomena” connectivity (as in genealogy) that highlight inter-relationships between people, between people and their heritage and between people and the world around them]
- (j) **Te reo**  
[Essential to Māori survival as a people, this inherited treasure is used to articulate Māori understanding of the world]
- 4.2 All actions taken by the Board shall be in accordance with kaupapa tuku iho.
- Trust Fund**
- 4.3 The trustees hereby acknowledge and declare that the trustees shall stand possessed of all moneys or property of whatever kind hereafter given, bequeathed, paid, transferred to or purchased by (or agreed to be transferred to or purchased by) the trustees to be held upon the trusts hereby declared and any accumulations of income therefrom and all moneys investments and property of whatever kind from time to time representing the same (hereinafter called “the trust fund”) upon the following trusts and with the powers authorities and discretions set out below.

### **Trust**

- 4.4 The trustees shall stand possessed of the trust fund upon trust to pay apply or appropriate the whole or any part of the net income deriving or to be derived therefrom in any income year and/or the whole or any part of the capital thereof (in kind or otherwise) to or for or otherwise howsoever for the purposes set out in clause 4.1 in such manner as the trustees in their discretion shall from time to time by resolution determine.

### **Trust of income**

- 4.5 The trustees may from time to time in their discretion:
- (a) accumulate the whole or any part of the current net annual income from the trust fund in any income year by investing the same and the resulting income thereof to the intent that all such accumulations shall be added as an accretion to the trust fund and shall be held by the trustees upon the trusts and with the powers herein declared in respect of the capital of the trust fund but the trustees may at any time or times resort thereto and may pay apply or appropriate the whole or any part thereof as if income of the trust fund;
  - (b) appropriate any moneys or property or interest in property in anticipation of any such payment or application aforesaid;
  - (c) appropriate in any income year any part or parts or the whole of the income derived or to be derived from the trust fund during that income year whether or not the same shall

have been received by the trustees at the date of such appropriation.

### **Fundraising**

- 4.6 The trustees may raise money by all lawful means; may solicit financial or other assistance and may conduct on such terms and conditions as the trustees deem appropriate campaigns to raise funds for all or any of the purposes of the Foundation.

### **Gifts**

- 4.7 The trustees may at any time invite and receive by way of gift any property either generally for the purposes of the Foundation or for specific purposes being within the authorised purposes of the Foundation and may hold and administer such property upon the trusts and for the purposes for which the same are received provided that:
- (a) the trustees shall keep the property comprised in any such trust for a specific purpose and the revenue derived therefrom separate and distinct from the general assets of the Foundation and in the administration of any such specific trust the trustees shall have and be subject to such powers, authorities, discretions and duties as are conferred and imposed by the instrument creating such specific trust and such other powers and duties not inconsistent therewith as may be conferred and imposed upon the trustees by this deed;
  - (b) such property so vested in the trustees for a specific purpose shall not be available nor in any manner applied to make

good any deficiency, loss or damage or breach of trust which may occur in or about the administration of any other trust accepted by the trustees under the powers conferred by this provision and likewise no other property of the Foundation shall be available or applicable in making good any occurrence as aforesaid in or about the administration of any specific trust;

- (c) each trust for a specific purpose shall bear all costs charges and expenses of the trustees peculiar to such trust in managing and administering the same and shall bear a proportion equitable in the opinion of the trustees of those costs applicable to the funds held for general purposes.

#### **Receipts**

- 4.8 In respect of all or any moneys paid by the trustees pursuant to the trusts of this deed, the receipt of the intended recipient identifying the purpose shall be a sufficient discharge to the trustees who shall not be bound to see to the application of the funds.

### **5 Board of trustees**

#### **Number of Board**

- 5.1 The Board (hereinafter called "the Board") shall consist of the trustees of the Foundation and the initial trustees shall be the trustees who signed this deed.

#### **Term of Board**

- 5.2 Unless otherwise specified in this deed, each trustee shall hold office for so long as the trustee holds the office by virtue of which the trustee is a trustee or until the trustee is

removed as a trustee by notice given by the nominator of that trustee or until the nominator is removed pursuant to clause 13.2 or until the trustee dies or is declared bankrupt or is found to be a mentally disordered person within the meaning of the Mental Health Act 1969 or indicates in writing that the trustee wishes to resign from the Board, whichever shall first occur. Any retiring trustee shall be eligible for re-appointment.

#### **Appointment of new trustees**

- 5.3 The filling of vacancies on the Board shall be carried out as follows:

- (a) in the case of the retirement or replacement of the trustees nominated by Te Mana Whakahaere (the General Trustees) and the Purutanga Mauri (the Purutanga Mauri Trustee), by notice from the relevant nominator with effect from the date specified in the notice or the date the nominator delivers the notice to the Board, whichever shall last occur;
- (b) in the case of the retirement or replacement of ex officio trustees, by their successor in office with effect from the date they take up their appointment to the office; and
- (c) in the case of the retirement or replacement of the Te Āti Awa Trustees, the Ngāti Raukawa Trustees and the Ngāti Toa Rangātira Trustees (jointly and severally called "The Founding iwi trustees"), the provisions of clauses 5.6 and 5.7 shall apply.

### **Substitution of ex officio trustees**

- 5.4 If a person who is an ex officio trustee gives to Te Mana Whakahaere notice that they no longer wish to be a trustee, or if Te Mana Whakahaere gives to the Board notice that a person who is an ex officio trustee is no longer to be a trustee, Te Mana Whakahaere may by notice to the Board ("an appointment notice") appoint a trustee in place of that ex officio trustee with effect from the date specified in that notice (which may not be earlier than the date the appointment notice is received by the Board).
- 5.5 The person so appointed by Te Mana Whakahaere shall be deemed to be an ex officio trustee by virtue of the office of the person who has ceased to be an ex officio trustee and shall hold office accordingly.

### **Nomination and substitution of Founding iwi trustees**

- 5.6 The Ngāti Raukawa Trustees and the Te Āti Awa Trustees named in this deed have been selected to look after the interests of the iwi of Ngāti Raukawa and the iwi of Te Āti Awa as stated in Background clause B (which iwi are individually referred to as "the stated iwi" in this clause) and the filling of vacancies in the case of retirement and the replacement of any of such trustees shall be carried out by notice from the trustee's stated iwi following a hui or other appropriate process so that the Board is satisfied that the nominee has been appropriately selected to represent the stated iwi.
- 5.7 The Ngāti Toa Rangātira Trustees named in this deed have been selected to look after the interests

of the iwi of Ngāti Toa Rangātira as stated in Background clause B and the filling of vacancies in the case of retirement and the replacement of any of such trustees shall be carried out by notice from Te Rūnanga o Toa Rangātira Incorporated.

### **Power to add trustees to ensure Founding iwi representation**

- 5.8 Pending the nomination of a trustee to fill a vacancy that has arisen on the Board amongst the Founding iwi trustees, the Board may nominate any person to be a trustee to fill the vacancy if it considers that the relevant Founding iwi needs such representation on the Board and shall do so by giving notice which also states which Founding iwi (or rūnanga or other entity appointed to represent a Founding iwi) the Board is acting on behalf of (which iwi, rūnanga or other entity is called "the specified entity") in making the nomination and the person so nominated shall be deemed to be a trustee nominated by the specified entity and may be removed and replaced by the specified entity without any consultation with, or consent from, the Board.

- 5.9 The Board may remove trustees it appoints using the power contained in clause 5.8 and may also replace them using the same power. The Board may not remove or replace trustees appointed by, or on behalf of, any of the Founding iwi.

### **Name of the Board**

- 5.10 The name of the Board shall be the "Te Wānanga o Raukawa Foundation Trustees".

## **6 Powers of trustees**

### **General and specific powers**

- 6.1 In addition to the powers implied by the general law of New Zealand or



contained in the Trustee Act 1956, the powers which the Board may exercise in order to carry out its charitable purposes are as follows:

- (a) to use the trust fund as the Board thinks necessary or proper to pay the costs and expenses of the Foundation, including the employment of professional advisers, agents, officers and staff as appears necessary or expedient;
- (b) to purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of attaining the objects of the Foundation and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges;
- (c) to carry on any business whether in its own name or through a company (wholly or partly-owned) or in partnership as the Board may choose;
- (d) to invest surplus funds in any way permitted by law for the investment of trust funds and upon such terms and conditions as the Board thinks fit.
- (e) to borrow or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Board thinks fit;
- (f) to insure any building or other insurable property against loss or damage by fire, earthquake

or otherwise and to insure against any risk, liability or loss as the trustees may decide and to pay the premiums for such insurances;

- (g) to appoint a secretary to the Board for such term and upon such conditions as the Board thinks fit;
- (h) to do all things as may from time to time appear necessary or desirable to enable the Board to give effect to and to attain the charitable purposes of the Foundation; and
- (i) seek incorporation of the Foundation pursuant to the provisions of the Charitable Trusts Act and registration under the Charities Act as and when the trustees deem appropriate.

#### **Employment**

- 6.2 Subject to clauses 7.2 and 7.3, the Board may, pursuant to clause 6.1(a), employ trustees as agents, officers and staff.

#### **7 Income, benefit or advantage to be applied to charitable purposes**

##### **Application of benefit**

- 7.1 Any income, benefit or advantage received by the Board shall be applied to the charitable purposes of the Foundation as set out in clause 4.1.

##### **Influence**

- 7.2 No trustee or person associated with a trustee shall derive any income, benefit or advantage from the Foundation where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:

- (a) professional services to the Foundation rendered in the course of business charged at no greater rate than current market rates; or
- (b) interest on money lent at no greater rate than current market rates.

#### **Reasonableness required**

- 7.3 Any income, benefit or advantage derived by a trustee or associated person shall be reasonable and relative to that which would be paid in an arms-length transaction (being open market value).

### **8 Proceedings of the Board Meetings**

- 8.1 The Board shall meet at such times and places as it determines.

#### **Special meetings**

- 8.2 Three trustees may at any time call a special meeting for any reason.
- 8.3 Te Mana Whakahaere and any of the Founding iwi may also at any time call a special meeting for any reason.

#### **Notice of meetings**

- 8.4 Subject to the provisions for meetings by telephone or video conference, notice of every meeting whether ordinary or special shall be delivered/sent by post or sent by email to each trustee for the time being in New Zealand by the secretary (or other person acting under the direction of the trustees) or (in the case of a special meeting) by or under the direction of the persons summoning it, in either case, at least seven days before the date of the meeting. No notice shall be necessary for adjourned meetings except to trustees not present when the meeting was adjourned.

#### **Contents of notices**

- 8.5 Every notice of meeting shall state the place, date and hour of the meeting and every notice of a special meeting shall state the matter to be discussed at the meeting. Notice of any general or special meeting may be abridged or waived if all trustees who are for the time being in New Zealand consent in writing to such abridgment or waiver.

#### **Adjournment**

- 8.6 If a quorum is not present within thirty minutes after the time appointed for the start of any meeting, the trustee or trustees present may adjourn the meeting. Any meeting may be adjourned by the chairperson upon the adoption of a resolution for its adjournment.

#### **Rescission or variation of resolutions**

- 8.7 Any resolution of the trustees may be rescinded or varied from time to time by the trustees at any ordinary or special meeting.

#### **Chairperson**

- 8.8 The chairperson of the Board shall in the first instance be appointed by notice from Te Mana Whakahaere and shall hold office for a term of two years and shall, thereafter, be elected annually by the trustees. The chairperson shall preside at all meetings of the Board at which she or he is present. In the absence of the chairperson from any meeting, the trustees present shall appoint one of their number to chair the meeting.

#### **Quorum**

- 8.9 At any meeting of the Board, a majority of trustees duly appointed or elected at that time which includes at least one of the tangata whenua group and one of the

officials group shall form a quorum. No business shall be transacted unless a quorum is present.

#### **Minutes**

- 8.10 The Board shall ensure that full and accurate minutes are kept of all proceedings of the Board.
- 8.11 Minutes signed by the chairperson of the meeting recorded in the minutes or by the chairperson of the next succeeding meeting shall be evidence of the proceedings recorded in the minutes.
- 8.12 Where minutes have been made and signed in accordance with the provisions of this part, the meeting shall be deemed to have been duly held and convened and all proceedings at the meeting to have been duly conducted until the contrary is proved.

#### **Decision making**

- 8.13 The trustees shall endeavour to decide all issues put before the Board by universal consensus but all issues shall, unless otherwise specified in this deed, be put as a motion to be decided by a majority of votes provided that no vote shall be passed unless majorities of each of the tangata whenua group and the officials group present at the meeting vote in favour of it. If the voting is tied, the motion shall be lost.
- 8.14 Each trustee shall have one vote and the chairperson shall not have a casting vote.

#### **Unanimous resolutions in writing**

- 8.15 A resolution in writing which incorporates a certificate by the trustees that they consider the resolution is in accordance with their obligation to express kaupapa tuku iho and which is signed by all

trustees shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

- 8.16 Any such resolution may consist of several documents (including facsimiles or other similar means of communication) in like form each signed by one or more trustees.
- 8.17 A copy of such resolution must be entered in the minute book.

#### **Meeting by telephone or videophone**

- 8.18 The contemporaneous linking together by telephone or videophone of a number of the trustees ("the participants") not less than a quorum shall be deemed to constitute a meeting and all provisions of this deed as to meetings shall apply to such meetings by telephone so long as the following conditions are met:

- (a) all trustees have been given reasonable notice of the meeting. Notice may be given by telephone;
- (b) each of the participants must be able to hear the other participants and, at the start of the meeting, each participant must acknowledge his or her presence;
- (c) no participant may disconnect his or her telephone during a meeting, without the prior express consent of the chairperson.

#### **Reports**

- 8.19 The Board shall report regularly on its activities to Te Mana Whakahaere and to each of the Founding iwi and, in particular, shall present a detailed annual report to Te Mana Whakahaere and

to each of the Founding iwi within three months of the end of each financial year. The reports shall also show the Board's performance in giving expression to kaupapa tuku iho.

#### **Guidance**

- 8.20 The Board shall be guided in its decisions by the views, priorities and requirements (financial and otherwise) of Te Mana Whakahaere and each of the Founding iwi as advised by notice to the Board from time to time but shall not be bound to follow or implement those views, priorities or requirements.

#### **Investing**

- 8.21 The Board shall maximise the expression of kaupapa tuku iho subject to financial constraints.

#### **Travelling expenses**

- 8.22 The Board may reimburse trustees for travelling and other expenses incurred in attending meetings and carrying out the work of the Foundation as the Board shall decide, and the Board may fix and pay such reasonable travelling and accommodation allowances as the Board from time to time decides.

### **9 Accounts**

#### **True and fair accounts**

- 9.1 The Board shall cause to be kept full and accurate accounts of all the receipts, disbursements, assets, liabilities and engagements of the Foundation.

#### **Bank accounts**

- 9.2 Bank accounts in the name of the Foundation shall be opened and kept with a bank or banks to be from time to time selected by the Board. All money received on account of the Foundation shall be forthwith paid into such account or accounts unless otherwise expressly

ordered by the trustees. All negotiable instruments and all receipts for money paid to the Foundation shall be signed, drawn, accepted, endorsed or otherwise administered as the case may be in such manner as the Board from time to time determine.

#### **Audit**

- 9.3 The Board shall as soon as practicable after receiving notice to following effect from Te Mana Whakahaere or any of the Founding iwi cause the accounts of the Board and reports against kaupapa tuku iho, for such period as Te Mana Whakahaere or the Founding iwi sending notice shall specify in the notice, to be audited by a suitably qualified tikanga Māori competent chartered accountant appointed for that purpose and the audited accounts and response shall be sent to Te Mana Whakahaere and to the Founding iwi.

#### **Financial year**

- 9.4 The financial and accounting year for the Foundation shall start on 1 April of each year and end on 31 March of the following year and the accounts shall be prepared accordingly.

#### **Custodian trustees**

- 9.5 The Board may appoint persons or companies to be custodian trustees to hold property on behalf of the Board on such terms as the Board may determine and to terminate and generally manage such appointments.

### **10 Power to delegate Power**

- 10.1 The Board may from time to time appoint a committee or committees and may delegate with or without conditions as the Board thinks fit any of its powers and duties to any

such committee or to any person, and the committee or person, as the case may be, may without further confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effects as the Board could itself have exercised or performed the power or duties.

#### **Delegate bound**

- 10.2 Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the Foundation.

#### **Delegation revocable**

- 10.3 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

#### **Delegate need not be trustee**

- 10.4 It is not necessary for persons appointed to be members of any committee or to whom any delegation is made, to be a trustee.

### **11 Common seal**

- 11.1 The Board shall have a common seal which shall be kept in the custody of such person as shall be appointed by the Board and shall be used only as directed by the Board. It shall be affixed to documents only in the presence, and accompanied by the signature, of either the chairperson of Te Mana Whakahaere or the tumuaki of Te Wānanga o Raukawa and at least one other trustee apart from the two office-holders just mentioned.

### **12 Alteration to deed**

- 12.1 The Board may, by universal consensus or pursuant to a motion decided by at least a two-thirds majority of the trustees, by supplemental deed make alterations

or additions to the terms and provisions of this deed provided that no such alteration or addition shall:

- (a) detract from the exclusively charitable nature of the Foundation or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
- (b) take effect to alter the clauses in parts 4, 7, 12 (this part) or 14 unless it is first approved in writing by the Charities Commission.
- (c) alter the purpose of the Foundation so that it is inconsistent with the object of assisting Te Wānanga o Raukawa in the performance of its characteristic functions.

- 12.2 Trustees who abstain from casting a vote on an issue relating to altering and/or adding to the trust deed shall not be counted as opposing the proposed alteration or addition.

### **13 Alteration of nominators**

- 13.1 The present nominators and the number of trustees able to be nominated by each of the nominators are as follows:
- (a) The persons recognised by Te Mana Whakahaere as the Purutanga Mauri may appoint one trustee as the Purutanga Mauri Trustee;
  - (b) Te Mana Whakahaere may appoint up to two trustees as General Trustees; and
  - (c) The iwi of Ngāti Raukawa may appoint up to two Ngāti Raukawa trustees to look after its interests.

- (d) The iwi of Te Āti Awa may appoint up to two Te Āti Awa trustees to look after its interests.
  - (e) Te Rūnanga o Toa Rangātira Incorporated may appoint up to two Ngāti Toa Rangātira Trustees to look after the interests of the iwi of Ngāti Toa Rangātira.
- 13.2 Te Mana Whakahaere and the Founding iwi may jointly, from time to time, by notice to all the trustees then present in New Zealand, add to or remove the nominators listed in clause 13.1 (including any new nominators) and alter the number of trustees each nominator may appoint and every such notice shall be effective as from the date of the notice.
- 13.3 The notice referred to in clause 13.2 shall be effective notwithstanding that it is not served on all trustees then present in New Zealand.
- 13.4 Upon the removal of a nominator, all trustees appointed by that nominator shall forthwith cease to hold office and upon a change to the number of trustees a nominator may appoint, the relevant nominator shall forthwith take such steps as are necessary to comply with the notice.
- 13.5 Where a nominator has nominated more trustees than is permitted, whether through a change notified by Te Mana Whakahaere and the Founding iwi, or otherwise, none of the trustees appointed by that nominator shall be deemed to be duly appointed or nominated and none may vote on any issue until the number of trustees nominated by that nominator are within its current limit.

## 14 Disposition of surplus assets

- 14.1 On the winding up of the Foundation or on its dissolution by the Registrar of the High Court, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisations within New Zealand of a similar nature to the Foundation as Te Mana Whakahaere and the Founding iwi jointly decide to be used for exclusively charitable purposes, or, if Te Mana Whakahaere and the Founding iwi are unable to make such decision, shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957.

## 15 Duty of care

- 15.1 Notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the trustees will from time to time include professional persons, the level of care, diligence and skill to be exercised by trustees in exercising the powers of investment under this deed shall not be that required of such persons by section 13C but shall be the care diligence and skill that a prudent person of business would exercise in managing the affairs of others.

## 16 Liability and indemnity

- 16.1 No trustee acting pursuant to the provisions of this deed shall be liable for any loss not attributable to the trustee's own dishonesty or to the wilful commission or omission by the trustee of an act known by the trustee to be a breach of trust and, in particular, no trustee shall be bound to take or be liable for failure to take any proceedings against a co-trustee for any breach or alleged

breach of trust committed by such co-trustee.

16.2 Any trustee or employee of the Foundation shall be indemnified out of the assets of the Foundation against any liability incurred by the trustee or employee in defending any proceedings whether civil or criminal taken against the trustee or employee by reason of the trustee's or employee's actions in relation to or connection with the Foundation in which judgment is given in the trustee's or employee's favour or in which the trustee or employee is acquitted by Court.

16.3 For the purposes of clause 16.2, proceedings which are abandoned; do not come to a conclusion against the trustee or employee; result in the trustee or employee being discharged without penalty or have an outcome of a similar nature which does not compromise the integrity of the trustee or employee shall be deemed to result in judgments given in the trustee's or employee's favour.

## 17 Disputes

17.1 Trustees shall conduct the affairs of the Foundation so as to give expression to kaupapa tuku iho.

17.2 If any trustee considers that a dispute between the trustees has arisen regarding the affairs of the Foundation, or the duties of the trustees or the interpretation or application of the terms of this deed or any other document affecting the Foundation, they may give notice to the Board and the other trustees of the existence of such a dispute and the particulars of it. Failure to notify all or any of the trustees of the dispute shall not invalidate the process.

17.3 The trustees shall then meet in good faith and seek to resolve the dispute and, if it is not resolved within 14 days of the notice referred to in clause 17.2 being served on the Board, the trustees shall seek to agree on a process for resolving the dispute through means other than litigation or arbitration, such as, conciliation or independent expert determination. If they cannot reach agreement on an alternative dispute resolution process, the trustees shall refer the dispute to mediation and for that purpose they shall use the assistance of an alternative dispute resolution person or organization nominated by the president of the Wellington branch of the New Zealand Law Society.

17.4 The trustees may not use any information or documents produced or obtained through the dispute resolution process for any purpose other than attempting to settle the dispute.

17.5 No trustee may refer a dispute to arbitration or commence proceedings in any court unless the dispute has been referred to a dispute resolution process in accordance with clause 17.3 and the person or organisation selected to facilitate the process certifies that the dispute has been so referred and there appears to be no reasonable likelihood of a resolution of the dispute by that process.

17.6 If the dispute has not been resolved after following the procedures to resolve the dispute contained in clauses 17.2 to 17.5, any trustee may refer the dispute to an arbitration held in New Zealand in accordance with the Arbitration Act 1996, or any enactment in substitution of that Act, by a single

arbitrator appointed by the president of the Wellington branch of the New Zealand Law Society.

- 17.7 Nothing in this part shall preclude any trustee from taking immediate steps to obtain interlocutory relief from a New Zealand Court.

## 18 Notices

### Addresses

- 18.1 All notices given under this deed shall be in writing and delivered or transmitted as follows:

#### **Te Mana Whakahaere and Te Wānanga o Raukawa**

*Physical address*

144 Tasman Road

Otaki

*Postal address*

PO Box 119

Otaki 5542

#### **Te Rūnanga o Ngāti Toa**

**Incorporated**

*Physical address*

**Te Rūnanga o Toa Rangātira**

**Incorporated**

26 Ngatitōa Street

Takapuwahia

Porirua

*Postal Address*

**Te Rūnanga o Toa Rangātira**

**Incorporated**

PO Box 50355

Porirua 5240

#### **Ngāti Raukawa and Te Āti Awa and all trustees**

*Physical address and Postal address*

Such addresses as they may each notify to each other and to the Board and, until an address has been notified, to the last known place of business or residence known to the Board of each trustee and the last known place of

business or residence known to the Board of such persons whom the Board understands hold positions of authority or responsibility within each of the stated iwi or to such other address as each person or entity shall advise to the others by notice.

### Notice effective

- 18.2 A notice given under this agreement shall be deemed to have been duly given:

- (a) on the day of delivery where the notice or communication is delivered between the hours of 9am to 5pm on a Business day;
- (b) on the following Business day where the notice or communication is delivered after 5pm on a Business day or anytime on a day that is not a Business day;
- (c) on the day of despatch where a facsimile message is despatched between the hours of 9am to 5pm on a Business day.

- 18.3 "Business day" means a day on which trading banks are commonly open for business at the place of delivery.

### Founding iwi communications

- 18.4 Notwithstanding anything to the contrary, the Board shall communicate with Founding iwi who have not appointed a rūnanga or other entity to receive notices for them in such ways and through such hui or other processes and persons as the Board deems appropriate for the task.
- 18.5 Each of the Founding iwi may, by notice to the Board, nominate (and revoke and change such



nominations) their respective rūnanga or other entity to be any or both of the following:

- (a) their address for service; in which case, the notice shall specify the physical and postal addresses of the rūnanga or other entity; and
- (b) their representative for all functions provided in this deed for Founding iwi to do or suffer, in which case, all references in this deed to the Founding iwi so nominating shall be read as references to the nominated rūnanga or other entity until such time as the Founding iwi revokes or changes its nomination by notice to the Board to that effect.

18.6 All actions done or suffered by the nominated rūnanga or other entity in accordance with the terms of this deed and prior to notice revoking or changing their nomination being received by the Board, shall be valid and effective.

**Hui details required**

18.7 Notices sent on behalf of the Founding iwi who have not

appointed a rūnanga or other entity to represent them and the Purutanga Mauri shall record details of hui regarding the contents of each notice and be signed by some members of the notifying entity to show support for the contents.

**Best endeavours required**

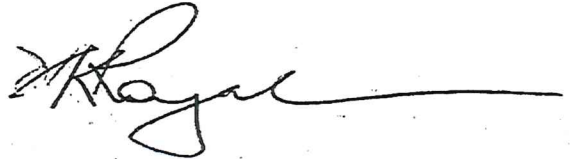
18.8 Pending those Founding iwi who have not appointed a rūnanga or other entity to represent them advising physical and postal addresses for service on themselves, service on their respective designated trustees and any two other adults who are understood on reasonable grounds to be members of those iwi shall be deemed to be effective service.

18.9 No impropriety, failure or lack of care or consultation in or around sending notices to the Founding iwi and trustees or receiving notice from any of them shall invalidate or affect in any way any proceeding, decision, resolution payment or whatever that the Board may decide to do or make.

**Signing:**

The parties have signed this deed:

Signed by Turoa Kiniwe Royal as a Trustee )  
by virtue of his office as chairperson of Te Mana )  
Whakahaere in the presence of: )



Witness's signature: Kohukohu

Occupation: Executive officer

Address: 19 Ngairo Street, Otaki

Signed by Mary Ann Selby (also known as Mereana Selby) as a Trustee by virtue of her office as tumuaki of Te Wānanga o Raukawa in the presence of:

)  
)  
) *Mary Ann Selby*  
)

Witness's signature: *K Kemp*

Occupation: *Executive officer*

Address: *19 Ngairo Street, Otaki*

Signed by Whatarangi Winiata as a Trustee in the presence of:

*Whatarangi Winiata*

Witness's signature: *K Kemp*

Occupation: *Executive officer*

Address: *19 Ngairo Street, Otaki*

Ngamate

Signed by Ani Parata as a Trustee in the presence of:

) *Ani Parata*  
)

Witness's signature: *K Kemp*

Occupation: *Executive officer*

Address: *19 Ngairo Street, Otaki*

Signed by John Webber Barrett as a Trustee in the presence of:

)  
) *John Webber Barrett*

Witness's signature: *K Kemp*

Occupation: *Executive officer*

Address: *19 Ngairo Street, Otaki*

Signed by Fiona Parewai Wilson  
as a Trustee in the presence of:

) *F Wilson*

Witness's signature: *[Signature]*

Occupation: *Executive officer*

Address: *19 Ngaio Street, Otaki*

Signed by Matiu Nohorua Te Rei  
as a Trustee in the presence of:

) *[Signature]*

Witness's signature: *[Signature]*

Occupation: *Executive officer*

Address: *19 Ngaio Street, Otaki*

Signed by Pita Fraser Richardson  
as a Trustee in the presence of:

) *P. Richardson*

Witness's signature: *[Signature]*

Occupation: *Executive officer*

Address: *19 Ngaio Street, Otaki*

Signed by Jeanette Hinerangi Grace  
as a Trustee in the presence of:

) *Jeanette Grace*

Witness's signature: *[Signature]*

Occupation: *Executive officer*

Address: *19 Ngaio Street, Otaki*

Signed by Ngārongo Iwikātea Nicholson  
as a Trustee in the presence of:

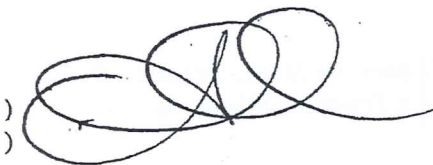
) N. I. Nicholson  
)

Witness's signature: KLUP

Occupation: Executive Officer

Address: 19 Ngaio Street, Otaki

Signed by Ann-Maree Bukholt  
as a Trustee in the presence of:

)   
)

Witness's signature: KLUP

Occupation: Executive Officer

Address: 19 Ngaio Street, Otaki