

PARE HAURAKI CULTURAL REDRESS LIMITED

Trustee

**DEED OF TRUST ESTABLISHING THE PARE
HAURAKI CULTURAL REDRESS TRUST**

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DEED OF TRUST made [●] 2017

PARTIES

PARE HAURAKI CULTURAL REPRESENTATIVE LIMITED ("Trustee")

INTRODUCTION

- A. The Trust has been established by the Iwi of Hauraki for the purposes of receiving, holding, managing and administering the Cultural Redress to be received by the Trustee on behalf of the Iwi of Hauraki pursuant to the Pare Hauraki Collective Redress Deed on the trusts and subject to the powers and discretions, set out in this deed.
- B. The Trustee declares that it holds so much of the Cultural Redress as is comprised in the Trust Taonga subject to the terms of this deed.

THIS DEED WITNESSES

1. NAME OF TRUST

- 1.1 The trust created by this deed shall be known as The Pare Hauraki Cultural RedressTrust.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions:

In this deed, unless the context otherwise requires:

"**Business Day**" means any day of the week other than Saturday, Sunday or a public holiday in Auckland;

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

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

"**Cultural Redress**" means cultural redress as defined in the Collective Redress Deed.

"**Collective Redress Deed**" means the collective redress deed entered into between the Crown and the Iwi of Hauraki on [●] 2017.

"**Income Year**" means any year or accounting period beginning 1 July of one calendar year and ending 30 June of the following calendar year or any other period that the Trustee decides in accordance with its Constitution;

"**Iwi of Hauraki**" means the collective group comprising the following iwi:

- (i) Hako;
- (ii) Ngāi Tai ki Tamaki;
- (iii) Ngāti Hei;
- (iv) Ngāti Maru;

- (v) Ngāti Paoa;
- (vi) Ngāti Porou ki Hauraki;
- (vii) Ngāti Pūkenga;
- (viii) Ngāti Rāhiri Tumutumu;
- (ix) Ngāti Tamaterā;
- (x) Ngāti Tara Tokanui;
- (xi) Ngaati Whanaunga; and
- (xii) Te Patukirikiri.

“Major Transaction” in relation to the Trust means:

(a) the acquisition of, or an agreement to acquire, whether contingent or not, Property by the Trust the value of which is more than 75% of the value of the Trust’s Taonga before the acquisition; or

(b) the disposition of, or an agreement to dispose of, whether contingent or not, Property by the Trust the value of which is more than than 75% the value of the Trust’s Taonga before disposition; or

(c) a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities the value of which is more than than 75% the value of the Trust’s Taonga before the transaction;

but does not include:

(d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust’s Taonga; or

(e) the vesting of the Cultural Redress by Settlement Legislation;

Nothing in paragraph (c) of this definition applies by reason only of the Trust giving, or entering into an agreement to give, a charge secured over assets of the Trust the value of which is more than than 75% the value of the Trust’s Taonga for the purpose of securing the repayment of money or the performance of an obligation.

“Member of the Iwi of Hauraki” means an individual referred to in paragraph (b) of the definition of Iwi of Hauraki.

“Member Trusts” means the following trusts (including any successor trusts or legal entities):

- a) Hako Tūpuna Trust;
- b) Ngāi Tai ki Tāmaki Trust;
- c) Ngati Hei Iwi Trust;
- d) Ngāti Maru Rūnanga Trust;
- e) Ngāti Paoa Trust;
- f) Ngāti Porou Ki Hauraki Settlement Trust;
- g) Te Tāwharau o Ngāti Pūkenga Trust;
- h) Ngāti Rāhiri Tumutumu Trust;
- i) Ngāti Tamaterā Treaty Settlement Trust;
- j) Ngāti Tara Tokanui Trust;
- k) Ngaati Whanaunga Ruunanga Trust; and
- l) Te Patukirikiri Iwi Trust.

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

"**property**" means any real or personal property of any kind or nature and includes any right or interest therein.

"**Settlement Legislation**" means the legislation passed by Parliament to give effect to the Collective Redress Deed.

"**Special Resolution**" means a resolution that has been passed with the approval of not less than 75% of the Member Trusts who cast a vote in accordance with the process set out in the Schedule;

"**Trust**" means the trust established by this deed.

"**Trustee**" means the trustee or trustees for the time being of the Trust, whether original, additional or substituted.

"**Trust Taonga**" means:

- (a) the following components of the Cultural Redress:
 - (xiii) The Moehau transfer area (refer clause 6.2 of the Collective Redress Deed);
 - (xiv) The Te Aroha transfer area (refer clause 6.97 of the Collective Redress Deed);
 - (xv) The \$3,000,000.00 to be applied to the revitalisation of Te Reo Rangatira (refer clause 9.1 of the Collective Redress Deed);
 - (xvi) The \$500,000 to be applied for co-governance arrangements;
- (b) any other property, rights or interests which may in the future be vested in the Trustee pursuant to the Collective Redress Deed for the purposes of the Trust and any further settlement or property otherwise granted to or acquired by the Trustee from any source whatever for the purposes of the Trust; and
- (c) the moneys and investments from time to time representing such property, and, unless inconsistent with the context, the income received from such property.

2.2 Interpretation:

In this deed:

- (a) except as otherwise expressly provided by this deed, the powers or discretions as to the administration of the Trust or as to the distribution of the income and the capital of the Trust Taonga vested in the Trustee by any clause shall not in any way be limited or restricted by the interpretation of any other clause;
- (b) unless the context otherwise requires:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing one gender include the other genders;
 - (iii) words denoting natural persons include companies;

- (iv) references to a statute shall be deemed to be references to that statute as from time to time amended or re-enacted or substituted;
- (c) headings have been inserted for guidance only and shall not be deemed to form part of the context of this deed.

3. DECLARATION OF TRUST

- 3.1 The Trustee declares and acknowledges that the Trustee holds the Trust Taonga upon the trusts on behalf of the Iwi of Hauraki, and with and subject to the powers and discretions, contained or implied in this deed.

4. POWERS AND DISCRETIONS OF TRUSTEE

- 4.1 **Powers:** To achieve the purpose of the Trust the Trustee shall have in the administration, management and investment of the Trust Taonga all the rights, powers and privileges of a natural person, and, subject always to the trusts imposed by this deed, may deal with the Trust Taonga as if the Trustee was the absolute owner of and beneficially entitled to the Trust Taonga, and accordingly, in addition to any specific powers vested in the Trustee by law, in dealing with the Trust Taonga or acting as Trustee of the Trust the Trustee may do any act or thing or procure the doing of any act or thing or enter into any obligation whatever, including, without limitation, exercising unrestricted powers to borrow and raise money, and to give securities and guarantees.
- 4.2 **Discretions:** Except as otherwise expressly provided by this deed, the Trustee may exercise all the powers and discretions vested in the Trustee by this deed in the absolute and uncontrolled discretion of the Trustee, at such time or times, upon such terms and conditions, and in such manner as the Trustee may decide.
- 4.3 **Restriction on Major Transactions:** Notwithstanding clause 4.1, the Trustee must not enter into a Major Transaction unless that Major Transaction:
 - (a) is approved by way of Special Resolution in accordance with the First Schedule;
 - or
 - (b) is contingent upon approval by way of Special Resolution.

5. PURPOSE OF THE TRUST

- 5.1 **Purpose:** The purpose for which the Trust is established is to receive, manage, hold, administer and care for the Trust Taonga on behalf of and for the benefit of the present and future Members of the Iwi of Hauraki in accordance with this Deed.

Without limiting in any way the generality of the foregoing, the Trustee may:

- (a) maintain and enhance the Trust Taonga of the Iwi of Hauraki;
- (b) tautoko the tikanga of Pare Hauraki, te reo rangatira, mana motuhake, tino rangātiratanga and kaitaikitanga;
- (c) tautoko the Iwi of Hauraki in the management of their ancestral lands, waters, sites, waahi tapu, resources, taonga species and other taonga;
- (d) advance the education and training of the Iwi of Hauraki;

- (e) facilitate appointments to representative bodies involved in administration or governance arrangements referred to in the Collective Redress Deed;
- (f) deal with any other parties, including central and local government, in connection with all matters relating to or in any way impacting on the Collective Redress Deed or Settlement Legislation; and
- (g) promote the tikanga of Pare Hauraki and enhance its mana within the wider community.

5.2 **Means of achieving purpose:** The Trustee may, in order to achieve the purpose of the Trust, in addition to all other powers vested in the Trustee undertake such other activities and enterprises to further the purpose of the Trust as the Trustee may decide.

6. APPLICATION OF TRUST TAONGA

6.1 The Trustee may in any year:

- (a) use or apply, or decide not to use or apply, all or any of the income of or from the Trust Taonga for all or any of the purpose of the Trust;
- (b) use or apply any capital of the Trust Taonga for all or any of the purpose of the Trust without first using or applying the whole or any portion of the income of the Trust Taonga for that year;
- (c) set aside reserves or accumulations for future use or application.

7. MANAGEMENT OF THE TRUST

7.1

- (a) The Trustee shall have the absolute management and entire control of the Trust Taonga.
- (b) The Trustee may from time to time appoint, remunerate and dismiss officers or employees of the Trust.

7.2 **Meetings:** The Trustee shall meet to conduct business at such intervals as the Trustee may decide. The Trustee may invite to such meeting whatever other person or persons as the Trustee may decide will assist with its deliberations.

7.3 **Minutes:** Minutes of the proceedings of all meetings of the Trustee shall be recorded in a book to be kept for that purpose and shall be signed by the Chairperson of the board of directors of the Trustee. Every such minute purporting to be so signed shall be prima facie evidence of the matters recorded.

7.4 **Delegation of powers:**

- (a) The Trustee may delegate to any person or committee, whether or not a Trustee or Trustee, such of the powers of the Trustee as the Trustee may decide;
- (b) Any person or committee acting under delegated power shall act in accordance with the terms of this deed and, in the absence of proof to the

contrary, shall also be presumed to be acting within the terms of the delegation;

- (c) The Trustee may revoke wholly or partly any delegation of the powers of the Trustee at any time;
 - (d) Subject to any directions given by the Trustee, any person or committee to which any powers of the Trustee have been delegated may conduct that person's or the committee's affairs as that person or the committee may decide;
 - (e) The Trustee may, in delegating the powers of the Trustee, provide restrictions or rules by or within which such delegated powers are to be exercised.
- 7.5 Every Trustee that is a company may exercise or concur the exercising any discretion or power conferred on the Trustee by a resolution of its board of directors or governing body or may delegate the right and power to exercise or concur in exercising such discretion or power to one or more members of its board of directors or governing body at any one or more of its officers and agents appointed from time to time by such board of directors or governing body for that purpose.
- 7.6 **Power of Attorney:** The Trustee may appoint any person or persons to be the attorney or attorneys of the Trustee for such purposes and with such powers and on such terms and conditions as the Trustee thinks fit.
- 7.7 **Bank account:** The Trustee shall keep an account or accounts at such bank or banks as the Trustee may decide. Cheques, withdrawals and authorities shall be signed or endorsed, as the case may be, by such person or persons as the Trustee may decide.
- 7.8 **Accounts and audit:** The Trustee shall cause true accounts for each year to be kept in such manner as the Trustee may decide of all receipts, credits, payments, assets and liabilities of the Trust Taonga and all such other matters necessary for showing the true state and condition of the Trust. The accounts of the Trust shall be audited at least once in each year by a chartered accountant appointed in that capacity by the Trustee.
- 7.9 **Annual report:** The Trustee shall within five (5) months after the end of each Income Year cause to be prepared an annual report on the affairs of the Trust covering the accounting period ending at the end of that Income Year which includes financial statements for the Trust, including a balance sheet and income and expenditure statement and a separate item detailing any fees or remuneration paid to the Trustee and its Directors.
- 7.10 The annual report shall be sent to each Member Trust at their known offices following its preparation.
- 7.11 The Trustee must also ensure that the financial statements for each Income Year are audited by a chartered accountant in public practice following their preparation. The auditor shall be appointed by the Trustee prior to the end of the Income Year to which the audit relates. The Trust's or Trustee's accountant shall not be appointed as the auditor.
- 7.12 **Disclosure:** The Trustee shall hold at its offices and make available for inspection by any Member of the Iwi of Hauraki during normal business hours on any Business Day:
- (a) The Annual Report for each of the preceding three (3) Income Years;

- (b) The financial statements for the preceding three (3) Income Years;
- (c) The minute book kept in accordance with clause 7.3;
- (d) This Deed and any amendment to this Deed.

8. LIABILITY AND INDEMNITY OF TRUSTEE

- 8.1 **Indemnity of Trustee:** The Trustee (and any director, officer or employee of the Trustee) shall, to the maximum extent permitted by law, be entitled to a full and complete indemnity from the Trust Taonga or to have their insurance costs met out of the Trust Taonga for any liability that he, she or it may incur in any way arising from or in connection with the Trust, provided such liability is not attributable to that Trustee's (or its directors, officers or employees) own dishonesty, or to the wilful commission or omission by that Trustee (or its directors', officers' or employees') of an act known by such party to be a breach of trust.

9. NO PRIVATE PECUNIARY PROFIT FOR ANY INDIVIDUAL, AND EXCEPTIONS

- 9.1 **No private pecuniary profit:** No private pecuniary profit may be made by any person from the Trust, except that:

- (a) the Trustee may receive full reimbursement for all expenses properly incurred by the Trustee in connection with the affairs of the Trust;
- (b) the Trustee may pay reasonable remuneration to and reimburse the expenses of any director, officer or employee of the Trustee or any officer or servant of the Trust in return for services actually rendered to the Trust;
- (c) the Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by the Trustee;
- (d) the Trustee may retain any remuneration properly payable to the Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which the Trustee has acted in any capacity whatever, notwithstanding that the Trustee's connection with that company or undertaking is in any way attributable to the Trustee's connection with the Trust.

- 9.2 **Trustee to comply with restrictions:** The Trustee, in determining all reimbursements, remuneration and charges payable in the terms of this clause, shall ensure that the restrictions imposed by the following clause are strictly observed.

10. RESTRICTIONS ON BENEFITS TO AND INFLUENCE BY INTERESTED PERSONS

- 10.1 **Recipient not to influence benefits:** Notwithstanding anything contained or implied in this deed, any person who is:

- (a) a Trustee of the Trust; or
- (b) a shareholder or director of any company carrying on any business of the Trust; or

- (c) a settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Trust; or
- (d) an associated person (as defined by the Income Tax Act 2007) of any such settlor, trustee, shareholder or director;

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

- 10.2 **Professional account and influence:** A person who in the course of and as part of the carrying on of his or her business of a professional public practice shall not, by reason only of his or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause.

11. ALLOCATION OF RECEIPTS

- 11.1 **Allocation of payments between capital and income:** If any dividend or distribution is received which in the opinion of the Trustee has been paid or made out of profits other than trading profits of the financial year in respect of which the dividend or distribution has been paid or made, the Trustee may decide how much of that dividend or distribution ought to be treated as capital and how much as income of the Trust Taonga. Such decision shall be made by the Trustee after considering the nature of the profit used to pay or make the dividend or distribution, and the account to which the dividend or distribution has been debited in the books of the person making such payment or distribution. The Trustee shall not be liable to any person in respect of the payment of any moneys in accordance with any decision made by the Trustee under this clause.

- 11.2 **No apportionment in respect of date of payment:** There shall be no apportionment as between capital and income of the Trust Taonga of rents, interest, dividends, or other periodic payments for the period current to the date of commencement of the Trust or for any other period current at the date upon which any interest created under the terms of this deed commences or determines.

12. APPOINTMENT AND REMOVAL OF CUSTODIAN TRUSTEE

- 12.1 The Trustee may at any time by deed appoint any appropriate corporation to be the custodian trustee of the Trust Taonga, or any part of the Trust Taonga, upon such terms as the Trustee may decide, or otherwise to act pursuant to the provisions of Section 50 of the Trustee Act 1956, and the Trustee may at any time by deed revoke any such appointment.

13. OFFICE OF THE TRUST

- 13.1 The office of the Trust shall be at such place as the Trustee from time to time may decide.

14. WINDING UP OF TRUST

- 14.1 The Trust established by this Deed may be terminated or dissolved if the Member Trusts have, by Special Resolution, resolved to do so.

- 14.2 On the termination or dissolution of this Trust under clause 14.1, the Trust Taonga after the payment of costs, debts and liabilities shall be paid to another trust or entity that has been established for the benefit of the present and future Members of the Iwi of Hauraki as long as such payment does not offend against the rule against perpetuities to the extent such rule applies to this Trust.

15. ALTERATION OF TERMS OF DEED

- 15.1 Subject to clause 15.2 and clause 15.3, all amendments to this Deed shall only be made with the approval of a Special Resolution passed in accordance with the Schedule.

- 15.2 No amendment shall be made to the Deed which:

- (a) changes the Trust's Purpose so that the Trustee is no longer required to act for the collective benefit of the present and future Members of the Iwi of Hauraki;
- (b) changes this clause 15.2;
- (c) changes clause 14;
- (d) changes the finally agreed definition of Iwi of Hauraki or Member of Iwi of Hauraki after settlement legislation has been passed;
- (e) changes the requirement for a Special Resolution;
- (f) changes rule 3 of the First Schedule relating to the voting threshold of 75% of the Member Trusts.

- 15.3 Notwithstanding any other provision of this Deed to the contrary, this Deed must be amended by the Trustee to make the definition of Iwi of Hauraki and Member of Iwi of Hauraki the same as that set out in the final Deed of Settlement and the Settlement Legislation. If the Deed is amended due to the operation of this clause 15.3, a Special Resolution is not required.

- 15.4 Any Member Trust may put forward for consideration by the Trustee proposals for amendment to the Deed. Any proposal put forward under this clause 15.4 must be in writing, be counter-signed by at least three other Member Trusts, and addressed to the Trustee at the office of the Trust. Any proposal put forward under this clause 15.4 must be considered by the Trustee at its next available meeting. If the proposal for an amendment to the Deed complies with clauses 15.2 and 15.4, the Trustee must call a special general meeting to consider the proposal.

- 15.5 Where a proposal for amendments to the Deed does not comply with clauses 15.2 and 15.4, the Trustee is not required to consider the proposed amendment or for it to be the subject of a special general meeting.

16. DISPUTE RESOLUTION

- 16.1 In the event that a dispute arises between a Member Trust and the Trustee regarding a matter concerning the administration or management of the Trust or the Trust Taonga then that dispute shall be referred in first instance to the Trustee.

- 16.2 All disputes referred to the Trustee by a Member Trust in accordance with clause 16.1 shall be submitted to the Trustee by notice in writing and be supported in writing by another Member Trust. The Trustee shall acknowledge receipt in writing within 10 Business Days of the date of receipt of the notice.
- 16.3 If a dispute is not settled within 30 days of the receipt by the Trustee of written notice of the dispute in accordance with clause 16.2 then it shall be referred to a Disputes Committee constituted in accordance with clauses 16.4 and 16.5.
- 16.4 There shall not be a permanent Disputes Committee. Disputes Committees shall be appointed on a case by case basis, having regard to the precise subject matter of the dispute in question, and only after the expiry of the 30 day period referred to in clause 16.3.
- 16.5 A Disputes Committee shall comprise three members who shall be appointed by the Board as follows:
- (a) One (1) independent (non-Iwi of Hauraki) member appointed for their skill and experience in dispute resolution; and
 - (b) Two Adult Registered Members of a Member Trust appointed for their skills and expertise in dealing with the issues that are the subject of the relevant dispute, provided that such members cannot also be Directors or employees of the Trustee, or Trustees or employees of a Member Trust.
- 16.6 The role of a Disputes Committee shall be to facilitate and make findings and decisions on the disputes referred to it.
- 16.7 In dealing with any dispute a Disputes Committee shall, subject to meeting the requirements of natural justice, have the sole discretion to call for evidence and determine the manner in which a dispute should be dealt with. The findings of a Disputes Committee shall be not be binding on the parties but be in the form of recommendations to be considered by the Trustee.
- 16.8 A Disputes Committee shall give its findings and recommendations, together with the reasons therefore, in writing to the Trustee and any other party to the dispute.

17. NOTICE

- 17.1 Any notice to be given to the Trust may be given in writing by delivering or posting a copy to the office of the Trust.

SIGNED AS A DEED

SIGNED by **PARE HAURAKI**
CULTURAL REDRESS LIMITED as
Trustee in the presence of:

Signature of witness

Name of witness

Occupation

City/town of residence

FIRST SCHEDULE
PROCEDURE FOR PASSING SPECIAL RESOLUTION

1. A Special Resolution to
 - a. terminate the Trust in accordance with clause 14;
 - b. amend this Deed in accordance with clause 15; or
 - c. approve a Major Transaction in accordance with clause 4.3;shall only be passed as set out in this Schedule.
2. Voting on a Special Resolution shall occur in person at the special general meeting held for the purpose of considering the Special Resolution.
3. In order for a Special Resolution to be passed it must receive the approval of not less than 75% of those Member Trusts who cast a vote in favour of the proposed Special Resolution. Each Member Trust has one vote which may be cast on its behalf by an authorised Trustee of the Member Trust in attendance at the meeting.
4. The Trustee shall give not less than twenty-one (21) days notice of the date, time and place of the special general meeting called for the purposes of considering any Special Resolution.
5. Notice of a special general meeting called for the purposes of considering a Special Resolution shall be given by post (including by electronic form where available) to all Member Trusts at the known address of their offices.
6. All notices given in accordance with rule 5 of this Schedule shall contain:
 - a. the date, time and place of the special general meeting called for the purposes of considering the Special Resolution;
 - b. details of the proposed Special Resolution; and
 - c. details of the reasons for the proposed Special Resolution and the effect that the Special Resolution will have.
7. The Trustee shall convene a special general meeting of the Member Trusts and the Trustee to consider a Special Resolution proposed by the Trustee or by a Member Trust.
8. The quorum required for a special general meeting of the Trust shall be a majority of the Member Trusts present in the form of an authorised Trustee of those Member Trusts.
9. The Trustee shall be responsible for chairing a special general meeting.
10. The Trustee shall be responsible for keeping a written record of all decisions taken at a special general meeting.