

**Constitution of
Te Rūnanga o Ngāti Apa
Custodian Trustee Company
Limited**



1. NATURE OF COMPANY BUSINESS

Custodian Trustee

- 1.1 The sole function of the company is to act as a custodian trustee pursuant to section 50 of the Trustee Act 1956 and to hold property, invest funds, dispose of benefits and otherwise generally act in accordance with resolutions of the Trustees of Te Rūnanga o Ngāti Apa.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions:

In this constitution, unless the context otherwise requires:

“**Act**” means the Companies Act 1993.

“**Board**” means:

- (a) Directors who number not less than the required quorum, acting together as a board of Directors; or
- (b) if the company has only one Director, that Director.

“**Direction**” means a resolution passed by a majority of the Trustees.

“**Person**” includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

“**Share**” means the share issued, or to be issued, by the company, as the case may require.

“**Shareholder**” means:

- (a) the person whose name is entered in the Share Register as the holder for the time being of the share;
- (b) until the person’s name is entered in the Share Register, a person named as the Shareholder in an application for the registration of the company at the time of registration of the company; and

“**Share Register**” means the share register for the company kept in accordance with the Act.

“**Special Resolution**” means a resolution approved by the Shareholder when entitled to vote and voting on the question.

“**Trust**” means Te Rūnanga o Ngāti Apa.

“**Trustees**” means the duly elected natural trustees for the time being of Te Rūnanga o Ngāti Apa.

“Trust Deed” means the Trust Deed setting out the terms of the Trust, also known as the Te Rūnanga o Ngāti Apa Charter.

2.2 Interpretation:

In this constitution, unless the context otherwise requires:

- (a) headings, and descriptions relating to sections of the Act are inserted for convenience only and shall be ignored in construing this constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) “written” and “in writing” include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act have the same meaning in this constitution;
- (f) where any word or expression is defined in this constitution, any other grammatical form of that word or expression has a corresponding meaning;
- (g) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this constitution, unless stated otherwise.

2.3 Constitution to Prevail over the Act:

If there is any conflict between:

- (a) a provision in this constitution and a provision in the Act which is expressly permitted to be altered by this constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this constitution,

the provision, word or expression in this constitution prevails and the provisions of the Act are accordingly negated, modified, adopted and extended as provided by this constitution.

2.4 Constitution to Give Effect to the Trust Deed:

If there is any apparent conflict between a provision in this constitution and a provision in the Trust Deed, this constitution shall be interpreted in the manner most appropriate to give effect to that provision of the Trust Deed.

3. NO CHANGE TO CONSTITUTION

- 3.1 This constitution may not be modified or negated except by a resolution of the Shareholder acting pursuant to a 75% resolution of the Trustees.
- 3.2 No amendment may be made to this constitution that would have the effect of rendering it in conflict with the Trust Deed or the Māori Fisheries Act 2004.

4. ISSUE OF SHARE

- 4.1 The company shall have one share.
- 4.2 The Share at the date of certification of this Constitution will be issued to the Shareholder, as the person named in the Application for Registration of the Company and no further shares may be issued.

5. TRANSFER OF SHARE

Freedom to Transfer is Qualified

- 5.1 Every change in the ownership of the Share in the capital of the company shall be subject to the limitations and restrictions hereinafter provided.
- 5.2 The Share may only be owned by a person who is a Trustee and who is nominated as the Shareholder by a resolution of the Trustees. If the Shareholder ceases to be a Trustee, or is requested, by resolution of the Trustees (such resolution to exclude the Shareholder) to relinquish the Share for any other reason, he or she must immediately transfer his or her Share as directed by that resolution as provided by this constitution.

Transfer

- 5.3 The Share in the capital of the company shall only be transferred pursuant to a resolution of the Trustees (such resolution to exclude the Shareholder).

Terms of Transfer

- 5.4 Any transfer shall adhere strictly to the terms set down in any such resolution.

No Right of Refusal to Register Transfer

- 5.5 The Director(s) may not refuse or delay the registration of any transfer according to the terms of any such resolution.

Nominated Shareholder to Complete all Necessary Documentation

- 5.6 Prior to receiving the Share in the company, the person nominated by the Trustees to be the Shareholder must deliver to the Trust a signed form of share transfer, and shall sign all other documents and do all other things necessary to effect a transfer of the Share as directed by a resolution of the Trustees (such resolution to exclude the Shareholder).

Power of Attorney

- 5.7 Upon receiving the Share in the company, the Shareholder is deemed to appoint the Deputy Chairperson of the Trustees as his or her attorney to execute all documents

and do all things necessary to give effect to a transfer of the Share. The Shareholder hereby declares that this power of attorney shall have full force and effect and shall be irrevocable until the Shareholder ceases to be the Shareholder of the company.

- 5.8 The Deputy Chairperson shall not execute any document pursuant to clause **Error! Reference source not found.** unless the Trustees (not including the Shareholder) have, by resolution, given their prior approval for him or her to do so in the particular instance.

6. TRANSMISSION OF SHARE

Death of Shareholder

- 6.1 If the Shareholder dies the company shall only recognise the Nominated Receiver (as set out below) as having any title to or interest in the Share but nothing in this clause shall constitute a release of any lien which the company may have in respect of the Share.

Bankruptcy of Shareholder

- 6.2 If the Shareholder becomes bankrupt the company shall only recognise the Nominated Receiver (as set out below) as having any title to or interest in the Share but nothing in this clause shall constitute a release of any lien which the company may have in respect of the Share.

Nominated Receiver

- 6.3 If the Shareholder dies or is adjudged bankrupt, the remaining Trustees shall, by resolution, nominate a person (the Nominated Receiver) who shall receive the Share.

Personal Representative

- 6.4 Any personal representative of a deceased or bankrupt Shareholder shall do all such things and sign all such documents as are required to transfer the Share to the Nominated Receiver.

7. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

First Schedule Modified

- 7.1 The First Schedule to the Act is modified as hereinafter provided.

Meetings only at Written Direction

- 7.2 No meeting of the Shareholder may be called except pursuant to a Direction.

Resolutions in lieu of meeting

- 7.3 A Shareholder's resolution in lieu of meeting authorised by section 122 of the Act may be delivered to the company by facsimile, such facsimile being valid and effectual as the original signed document with effect from completion of its transmission.

Decisions

- 7.4 All decisions at a Shareholder meeting, or by way of resolution in lieu of meeting, shall be on such terms as directed by the Trustees by way of Direction.

8. DIRECTORS

Number of Directors

8.1 The company shall have one director.

Tenure of Office

8.2 The director of the company shall hold office until:

- (a) removal in accordance with the constitution; or
- (b) vacation of office pursuant to section 157 of the Act.

Appointment and Removal of Director

8.3 Section 153 of the Act is qualified as hereinafter provided.

Appointment and Removal at Written Direction

8.4 The director may be appointed and removed only by a Direction.

Professional Directors

8.5 The director may act by himself or herself or for his or her firm in a professional capacity for the company, and the director or firm shall be entitled to remuneration for professional services as if he or she were not the director provided that nothing herein contained shall authorise the director or his or her firm to act as auditor to the company.

Alternate Director

8.6 The director shall have the power from time to time to nominate, by notice in writing to the company, any person not already a director and who is acceptable to all the Trustees to act as an alternate director in his or her place either for a specified period or generally during the absence from time to time of the director and in like manner to remove any such alternate director. Unless otherwise provided for by the terms of his or her appointment, an alternate director shall have the same rights, powers and privileges (including the right to receive notice of meetings of directors but excluding the power to appoint an alternate director) and shall discharge all the duties of and be subject to the same provisions as the director in whose place he or she acts. An alternate director shall not be remunerated otherwise than out of the remuneration of the director in whose place he or she acts and shall ipso facto vacate office if and when the director in whose place he or she acts vacates office. Any notice appointing or removing an alternate director may be given by delivering the same or by sending the same through the post or by facsimile to the company and shall be effective as from the date of written acceptance of the nomination.

Proceedings of Directors

8.7 The provisions of the Third Schedule to the Act are negated and replaced as hereinafter provided.

Meetings Only at Written Direction

8.8 No meeting of directors may be called except pursuant to a Direction.

Resolution in writing

- 8.9 A resolution in writing, signed by the director for the time being entitled to receive notice of a meeting of the board, shall be as valid and effectual as if it had been passed at a meeting of the board duly convened and held.

Facsimile Resolutions

- 8.10 A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from completion of its transmission. A copy of any such resolution must be entered in the minute book of board proceedings.

Decisions

- 8.11 All decisions at a meeting of the board, or by way of resolution in lieu of meeting, shall be on such terms as directed by a Direction, except where this constitution or any other provision or rule of law requires a resolution by all or 75% of the Board, in which case, the resolution authorising the action must be passed by that percentage of the Trustees.

Minutes

- 8.12 The director shall ensure that minutes are kept of all proceedings at meetings of the board.

9. MANAGEMENT OF COMPANY

Management by Trustees

- 9.1 Except as provided in this constitution, the business and affairs of the company shall be managed by, or under the direction or supervision of, the Trustees.

Company as Shareholder

- 9.2 To the extent that the company is a shareholder in any other entity, its powers and functions as a shareholder may be exercised only pursuant to a resolution of the Trustees.

10. DIRECTOR'S INDEMNITY

Indemnity authorised

- 10.1 The company is hereby expressly authorised to indemnify and/or insure any director or employee against liability for acts or omissions and/or costs incurred in connection with claims relating thereto of the type specifically contemplated by subsections (3), (4) and (5) of section 162 of the Act to the maximum extent permitted by those subsections.

11. NOTICES

Service

- 11.1 A notice may be served by the company upon the director or Shareholder either personally or by posting it by fast post in a prepaid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a

document exchange or by facsimile to the facsimile telephone number of such director or shareholder.

Time of Service by Facsimile

- 11.2 A notice served by facsimile shall be deemed to have been served on the day following completion of transmission thereof.

Time of Service by Post

- 11.3 A notice sent by post or delivered to a document exchange shall be deemed to have been served:

- (a) in the case of a person whose last known address is in New Zealand, at the expiration of five days after the envelope or package containing the same was duly posted or delivered in New Zealand; and
- (b) in the case of a person whose last known address is outside New Zealand, at the expiration of seven days after the envelope or package containing the same was duly posted by fast post in New Zealand.

Proof of service

- 11.4 In proving service by post or delivery to a document exchange it shall be sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it shall be sufficient to prove that the document was properly addressed and sent by facsimile.

Service on personal representatives

- 11.5 A notice may be given by the company to the person or persons nominally entitled to the Share in consequence of the death or bankruptcy of the Shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

12. LIQUIDATION

Distribution of Surplus Assets

- 12.1 Subject to the terms of issue of the Share in the company and to clause **Error! Reference source not found.**, upon the liquidation of the company the assets, if any, remaining after payment of the debts and liabilities of the company and the costs of winding up ("the surplus assets") shall be distributed in accordance with a resolution of the Trustees pursuant to the relevant provisions of the Trust Deed.

Distribution in Specie

- 12.2 Upon liquidation of the company, the liquidator, acting pursuant to a resolution of the Trustees and in accordance with any other sanction required by law (including the relevant provisions of the Trust Deed), shall distribute in kind the whole or any part of the assets of the company as so directed.

13. REMOVAL FROM THE NEW ZEALAND REGISTER

Director May Apply for Removal

13.1 In the event that:

- (a) the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with the Trust Deed, this constitution and the Act; or
- (b) the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation;

the director may, pursuant to a resolution of the Trustees, request the Registrar to remove the company from the New Zealand Register.

