



Covering paper on proposed
amendments to the

Ngāti Koata Trust and Te Pātaka a Ngāti Koata Trust Deeds



Hard copy available from the NKT office by contacting:

03 5481639 | 0800 KOATACALL | pa@ngatikoata.com

The two Deeds largely mirror each other with some exceptions – the main being that the Ngāti Koata Trust Deed has charitable status and the Te Pātaka a Ngāti Koata Trust Deed was set up solely to receive Ngāti Koata Treaty settlement assets and interests – otherwise all bar one (annual audit of TPNKT) of the clauses proposed to be amended for the 2024 Annual General Meeting are the same across both Deeds.

This paper therefore only includes those clauses proposed to be amended in the following sections of the Deeds. It is divided into two parts: a Tracked Changes version (pp. 2-12) and a Clean version (pp. 12-19)

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Highlighted **text** is information covering notes for the reader and are not to be read as proposed amendments.

Note that clause numbering for remainder of section 4 after clause 4.6 will be renumbered depending on the voting outcome of proposed amendments to clause 4.6.

If you wish to view both current Deeds, click on the respective Deed links at <https://www.ngatikoata.com/our-organisation/>

A. TRACKED CHANGES VERSION

PARTIES: Kyle Rae Edmonds, ~~Hori Turi Elkington, Pono Wahanui Hemi, Frank Jarom Hippolite, Nadia Cheryl Keogh, Melanie Hinekohu McGregor, Thomas Mark Speers Roma Hippolite, Caroline Palmer, Regan Ngawari Paul, Richard Tainui Robinson~~ [Names to be updated post AGM]

BACKGROUND

[...]

A. This Deed amends and restates the previous trust deed of the Ngāti Koata Trust dated 23 September 2017. The amendments to this Deed were approved as being amendments for the collective benefit of all Members of Ngāti Koata by a resolution put and passed at a General Meeting in accordance with clause 8.23(b)(ii) on 16 October 2021, and on 18 November 2023, in line with clause 14 of this Deed. [Amend to include the date of the 2024 AGM if proposed amendments passed at AGM]

[...]

1 INTERPRETATION OF TRUST TERMS

Definitions

1.1 In this Deed, unless the context otherwise requires:

[...]

Replacement Trustees means the person ~~confirmeds elected or appointed under Schedule 1 and/or appointed~~ under clause 4.45(i).

Residents of New Zealand means those individuals who live permanently in New Zealand. [Will be included if the 'residents' proposed amendment passed at 2024 AGM]

Senior Manager means a senior manager, who may be a General Manager or a Chief Executive Officer (or a person holding an equivalent title), appointed under clause 5.6 to manage the day-to-day administration of the Trust and any other entity or entities within ~~the Te Ohu a~~ Ngāti Koata ~~Group~~ in accordance the terms of the appointment.

[...]

4 APPOINTMENT OF TRUSTEES

Number of Trustees

4.1 The Trust must have (at a minimum) 4 Trustees, but may have up to 7 Trustees, of which, 4 Trustees must be registered Adult Members of Ngāti Koata Trust. All Trustees must be residents of New Zealand. At all times, all Trustees must comply with their duties under clauses 5.1 and 5.2, meet the eligibility requirements under this Deed, be 18 years of age or over and represent the interests of all Members of Ngāti Koata, irrespective of where those Members reside.

[Cl. 51.-5.2 refer to Mandatory and Default duties (deriving from the Trusts Act 2019); thus Mandatory Duties are defined in the Deed and failure to comply would be in breach of the Trusts Act 2019. 'Residents of NZ' and adult members having to be registered are subject to separate voting resolutions]

4.2 All Trustees must be elected by Adult Members in accordance with Schedule 1 (or appointed in accordance with clause 4.4(c)), including the Trustees that signed this amended Deed as Trustees, and those Trustees will remain in office until the earlier of the following:

- (a) the expiry of their term in accordance with clause 4.4(a); or
- (b) they cease to hold office as Trustees pursuant to clause 4.6.

4.3 For the avoidance of doubt, it is intended, subject to the provisions of the respective trust deed, that the Trustees of the Trust will at all times be the same Trustees as those of the Te Pātaka a Ngāti Koata Trust.

Term of Office (including for Replacement Trustee)

4.4 All Trustees will be elected on a rotational basis. Trustee terms of office will therefore be as applicable below:~~The term of each Trustee will be as follows:~~

~~(a) subject to clause 4.4(c) and the provisions of this Deed, each Trustee will be permitted to hold office for a term of three years from their election, after which they must retire; and. To clarify, for the Trustees that have signed this amended and restated Deed, their current terms will expire as follows:~~

~~(b) for those Trustees elected in 2019, their term will expire in 2022;~~

~~(c) for those Trustees elected in 2020, their term will expire in 2023; and~~

~~(d)(a) for those Trustees elected in 2021, their term will expire in 2024.~~

~~(e)(b)~~ a person that has retired as a Trustee in accordance with clause 4.4(a) may be eligible for re-election for a further term, provided that:

~~(i) in respect of the Trustees that that were elected at the General Meetings in 2019 and 2020, where those persons have held office as a Trustee for two consecutive terms, they must retire at the completion of their second consecutive term and will not be eligible for re-election for a period of one calendar year, after which time they will be eligible to be nominated for election;~~

~~(ii)(i) in respect of any other Trustees not described in clause 4.4(b)(i), where those persons have held office as a Trustee for three consecutive terms, they must retire at the completion of their second-third consecutive term and will not be eligible for re-election for a period of one calendar year, after which time they will be eligible to be nominated for re-election; and~~

~~(ii)(ii)~~ that person meets any eligibility requirements in this Deed to be re-elected as a Trustee;

~~(f)(c)~~ where a Trustee is a Replacement Trustee, appointed ~~or elected~~ in accordance with clause 4.5:

- (i) that Replacement Trustee will hold office for the remainder of the term of the outgoing Trustee that they have been appointed or elected to replace;
- (ii) following the expiry of that term, the Replacement Trustee must retire; and
- (iii) the time that the Replacement Trustee has held office for pursuant to clause 4.4(c)(i) will not constitute a term for the purposes of considering whether a Trustee has served the maximum number of consecutive terms in accordance with clauses 4.4(b)(i) or (ii), as applicable.

(d) where a Replacement Trustee is not appointed to an Extraordinary Vacancy or Vacancies and the requirements under clauses 4.5b(i)(bb) and 4.5b(ii) are applied by the Board and elections for those vacancies are deferred accordingly, then to ensure ongoing rotation of terms for those Extraordinary Vacancies:

- (i) that Trustee or Trustees elected to replace those Extraordinary Vacancies will hold office for the remainder of the term of the outgoing Trustee that they have replaced; and
- (ii) following the expiry of that term, the Trustee or Trustees affected, must retire; and
- (iii) if the Trustee or Trustees has held office pursuant to clause 4.4(d)(i), it will not constitute a term for the purposes of considering whether a Trustee has served the maximum number of consecutive terms in accordance with clauses 4.4(b)(i) or (ii), as applicable.

Time of Elections

4.5 Vacancies in the office of a Trustee will be filled in accordance with the following provisions:

(a) Ordinary vacancies

Where a Trustee retires in accordance with clause 4.4(a) or 4.4(c)(i), the Trustees must hold a General Meeting for the purpose of electing a new Trustee or Trustees before or upon the cessation of the term of office for that Trustee or Trustees, pursuant to the provisions in the Schedule 1 to this Deed.

(b) Extraordinary vacancies

Where a Trustee ceases to hold office in accordance with clauses 4.6(b) to (h), the vacancy will be filled as follows:

- ~~(i) where the remainder of the outgoing Trustee's term is less than 6 months, the Trustees may, by resolution, shall decline to hold an election or appoint a Replacement Trustee confirmed in accordance with Schedule 1, for the remainder of the term; or~~
- ~~(ii)(i) the Trustees may procure the election or appointment of a person (a Replacement Trustee) to replace the outgoing Trustee, in the following manner:~~

(aa) in the first instance, the Trustees ~~may appoint the first unsuccessful/next highest polling nominee from the most recent election of Trustees to~~ shall appoint the current Replacement Trustee, provided that:

A. ~~the Replacement the first unsuccessful/next highest polling nominee from the most recent election of Trustees~~ must consent to their appointment and remain eligible to hold office as a Trustee; and

B. the appointment of the Replacement Trustee ~~first unsuccessful/next highest polling nominee from the most recent election~~ would not conflict with clause 4.1 requirement for a minimum of four Trustees to be Adult Members of Ngāti Koata Trust; ~~and~~

~~C. the first unsuccessful/next highest polling nominee from the most recent election is eligible to be a Trustee under the provisions of this Deed; and~~

(bb) if the Replacement Trustee ~~first unsuccessful/next highest polling nominee from the most recent election of Trustees~~ is unable to be appointed ~~as a Replacement Trustee for any of the reasons set out in~~ accordance with clause 4.5(i)(aa)(b)(ii) then, ~~unless the Extraordinary Vacancy affects the minimum number of Trustees who are Ngāti Koata Members as set out at clause 4.1, the Extraordinary Vacancy shall remain until the next notified General Meeting where an election shall be held the Trustees will conduct an election in accordance with the process set out in~~ Schedule 1 ~~of this Deed.~~

(ii) For the avoidance of doubt where:

(aa) No Replacement Trustee is confirmed at a General Meeting where an election has been held; or

(bb) The Replacement Trustee has already been appointed to an Extraordinary Vacancy or has been unable to fill the position,

then unless the Extraordinary Vacancy affects the minimum number of Trustees who are Ngāti Koata Members as set out at clause 4.1, then the Extraordinary Vacancy shall remain, until the next notified General Meeting where an election shall be held in accordance with Schedule 1.

Ineligibility, or ceasing, to be a Trustee

4.6 A person is ineligible to be a Trustee or will cease to be a Trustee if they:

(a) retires as a Trustee in accordance with clauses 4.4(a) or 4.4(c)(i); or

~~(b) are not 18 years of age or over;~~ **[moved from cl. 4.1]**

~~(b)(c)~~ resign as a Trustee by:

(i) giving notice in writing to the Trust; or

(ii) ceasing to hold office as a Trustee in accordance with this Deed, in which case that person will be deemed to have also resigned as a Trustee; or

(d) fail or neglect to attend three consecutive meetings of the Trustees without leave or absence, unless it appears to the other Trustees at their first meeting after the last of such absences that there is a proper reason for such non-attendance; or

(e) becomes disqualified from being a Trustee under section 36B of the Charities Act 2005; or

(f) becomes disqualified from being a Trustee under section 96 of the Trusts Act 2019; or

(g) is the subject of a Special Resolution passed at a General Meeting removing that individual as a trustee; or

(h) is or has been removed as a Trustee of a Trust by Order of a Court on the grounds of breach of trust, lack of competence, or failure to carry out the duties of a trustee satisfactorily; or

(i) is subject to a compulsory Treatment Order under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

~~(e) dies, becomes of unsound mind, becomes a person in respect of whose affairs subject to a property order made under section 21 or section 30 of the Protection of Personal and Property Rights Act 1988 is made, or otherwise becomes unfit or unable to act as a Trustee; or~~

~~(j)~~

~~is or becomes a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or (i) is or has ever been convicted of an offence:~~

~~(i) where, regardless of the type of offence, that person has been sentenced to imprison for a terms of two or more years, unless that person has obtained a pardon; or~~

~~is or has ever been convicted of an offence where, regardless of the type of offence, that person has been sentenced to imprison for a terms of two or more years, unless that person has obtained a pardon or (ii) is eligible under the Criminal Records (Clean Slate) Act 2004; or (ii) involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or~~

~~(iii) an offence under section 373(4) of the Companies Act 1993,~~

~~unless that person is eligible under the Criminal Records (Clean Slate) Act 2004; or~~

~~is or has ever been disqualified from being a director of a company under the Companies Act 1955 or the Companies Act 1993; or~~

~~is or has been removed as a Trustee of a Trust by Order of a Court on the grounds of breach of trust, lack of competence, or failure to carry out the duties of a trustee satisfactorily; or~~

~~(iii) is or has been subject to a compulsory Treatment Order under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or~~

~~(d) is the subject of a Special Resolution passed at a General Meeting removing that individual as a trustee; or~~

~~(e) die.~~

4.78 Subject to the provisions of this Deed, The Trustees may act notwithstanding any vacancy in their body. ~~For the avoidance of doubt, where, but if and so long as~~ the number of Trustees holding office is less than 4, the continuing Trustees ~~shall~~ may act only for the purposes of holding elections and increasing the number of Trustees, that number shall be in accordance with clause 4.51.

[...]

Trustee-Director

4.412 A Trustee may be appointed to a Board of a Corporate Entity established by the Trust pursuant to clause 9.7 and subject to meeting the criteria for appointment as a Director under the Companies Act 1993.

[...]

5 DUTIES AND POWERS OF TRUSTEES

[...]

Management Appointments

5.6 The Trustees may, on such terms as the Trustees determine, employ or contract a Senior Manager to manage the day-to-day administration of the Trust, and any other entity or entities within ~~the Te Ohu a~~ Ngāti Koata ~~Group~~ (in accordance the terms of the appointment), including without limitation the implementation of the Trustees' planning, reporting, and monitoring obligations under this Deed.

5.7 The Trustees may from time to time:

- (a) appoint, remunerate and dismiss officers or employees of the Trust, unless, either generally or in a particular case, they will have for the time being delegated any one or more of the powers of appointment, remuneration, or dismissal, as the case may be, to a person holding the position of Senior Manager of the Trust; but
- (b) in accordance with Kaupapa 3 of the Act, Members of Ngāti Koata will have no right to vote in respect of the appointment of employees of the Ngāti Koata Trust appointed in accordance with clauses 5.6 and 5.7.

5.8 A Trustee ~~may~~ shall not:

- (a) hold the position of Senior Manager of the Trust; or
- (b) be an employee of the Trust or of any Corporate Entity, except where a Trustee is appointed by the Trust Board as a Director on a Corporate Entity; or
- (c) be party to a contract with, or otherwise be paid for services for, the Trust except as otherwise provided for in this Deed.

Trustee Remuneration

5.9 A Trustee ~~or an employee of the Trust may shall~~ not receive remuneration for services provided to the Trust whether through an incorporated or unincorporated entity or otherwise except in accordance with clause 5.47.

5.10 For the avoidance of doubt:

(a) a Trustee may be remunerated in accordance with clause 5.47 ~~for such reasonable expenses that they may incur as a Trustee and with such Trustee fees as have been approved by the Trustees and in accordance with this Deed.~~

(b) so long as the Trust has an operative policy on koha, payment of reasonable koha paid directly to a Trustee, employee, or Director, or any incorporated or unincorporated entity in which a Trustee, employee, or Director has a direct or indirect interest will not be considered to be a payment for services for the purposes of this Deed. However, where there is no operative policy on koha, then clause 5.10(a) shall apply.

[...]

Meetings of Trustees [re quorum]

[...]

5.17 The quorum for a meeting of Trustees will be a majority of the Trustees who, for the time being, ~~have been elected or otherwise holding~~ office in accordance with this Deed under clause 4.1. In absence of a quorum the Trustees shall not be able to undertake business and or exercise their powers under this Deed at that meeting and the meeting shall be deemed vacated.

[...]

Keeping Accounts and Holding Audits [TPNKT Deed only]

[...]

5.29 The accounts of the Trust will be audited at least once a year by a chartered accountant (not being a Trustee) appointed in that capacity by the Trustees, unless the audit is deferred on the terms and conditions presented and approved by a resolution of lwi members at an Annual General Meeting.

[...]

No Private Pecuniary Profit (or financial gain)

5.47 No private pecuniary profit may be made by any person from the Trust in connection with the affairs of the Trust, except that:

(a) any Trustee may receive full or part reimbursement for all actual and reasonable costs and expenses properly incurred by that Trustee in connection with the affairs of the Trust;

(b) the Trust may in each Financial Year pay its Trustees remuneration for their

services as may be reasonable having regard to their duties and responsibilities as Trustees.

~~(b) the Trust may pay reasonable remuneration to any Trustee, officer, or employee of the Trust in return for their services rendered to the 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 Trustee or by any entity of which that Trustee is a partner, member, employee, or associate in connection with the affairs of the Trust;~~

~~(d) any Trustee may retain any remuneration properly paid to them by any entity with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatsoever, notwithstanding that that Trustee's connection with that entity is in any way attributable to that Trustee's connection with the Trust; provided that:~~

~~(ec)~~ before any such reimbursement paid to a Trustee:

~~(i) (i) — reimbursement paid to a Trustee may be regarded as properly incurred; or it must be approved in advance of the cost to be reimbursed being incurred in accordance with Board policy, or~~

~~(ii) where there is no policy it is approved in advance of the cost to be reimbursed being incurred by the [Ngati Koata General Manager? Chair?]; and~~

~~(iii) _____ is subsequently approved by a resolution of Trustees, except no Trustee receiving any reimbursement referred to in clause 5.47(a) shall take part in any deliberations or proceedings relating to the payment or otherwise of that reimbursement,~~

for the avoidance of doubt where the reimbursements do not comply with subclauses (aa)-(bb) the Trust shall not be obligated to pay the reimbursement to the Trustee.

~~(d) approval of any remuneration under clause 5.47(b) will be subject to confirmation of:~~

~~(i) remuneration paid to a Trustee ~~may~~ must be regarded as reasonable or properly payable based upon the duties required of the Trustees in that Financial Year; and~~

~~(ii) a monetary sum per annum payable to all Trustees taken together; or~~

~~(iii) _____ a monetary sum per annum, is also payable to any person from time to time that holds office as a Chairperson, or Deputy Chairperson; and~~

~~(iv) the Trustees shall obtain from an independent party an assessment in writing that the proposed payment does not exceed market value or such other value recognised nationally as an appropriate level of payment in the circumstances; and~~

~~(iii) any such charges may be regarded as usual; then~~

~~(iv) — the amount of that reimbursement, remuneration or charge must be approved as such by a resolution of Trustees (ef)~~ the Trustees disclose in their Annual Report referred to in clause 8.5 next published after payment of that disbursement or, remuneration, ~~or charge~~, in respect of all such reimbursements or, remuneration ~~or charges~~:

- (i) the amount thereof received by each Trustee or any such entity;
- (ii) the nature of the reimbursement and the nature and extent of the services ~~rendered~~rendered, or time expended;
- (i) the criteria set or utilised in method of calculation ~~of~~ the reimbursement, or remuneration, ~~or charge~~; and—
- (ii) a summary of any recommendations from any independent market assessment of Trustee remuneration contemplated under clause 5.47(d)(iv).

7 REGISTER OF MEMBERS OF NGĀTI KOATA

The Members' Register

7.1 The Trustees must:

(a) have, and maintain in a current state, a register of Members of Ngāti Koata:

[...]

(iii) that is available for inspection by a parent, legal guardian, or other person standing in the stead of a parent, who may view the registration details of any child, ward, or other ~~dependant~~dependent under 18 years of age who was registered by such persons, whichever the case may be;

[...]

SCHEDULE 1 – ELECTIONS AND VOTING

[...]

PART B: All Votes

[...]

Counting votes (for Elections)

16. On completion of the voting in an election, the Returning Officer will:

(a) reject as informal:

(i) any vote for which there is reasonable cause to believe that the Voting Paper was not prepared by the Trust for the purposes of the election; and

- (ii) any vote that does not clearly indicate the nominee for which the voter intended to vote; provided that no vote will be rejected as informal by reason of some informality in the manner in which it was dealt with by the voter if the vote is otherwise regular and if the intention of the voter is clearly indicated;
- (b) then:
- (i) count the number of votes cast in an election received for each nominee; and
 - (ii) count the number of votes rejected as informal;
- (c) determine the number of highest polling nominees required to fill all vacancies in the office of Trustee and declare those highest polling nominees as duly elected Trustees; and
- (d) determine the ~~two~~ next highest polling nominees and declare ~~that person~~~~hem~~ as duly ~~-elected-confirmed~~ Replacement Trustees for the purpose of this Deed in order of votes; and
- (e) where there is an equality of votes in an election such that the number of highest polling nominees required to fill all vacancies in the office of Trustee cannot be determined, ~~and where the nominees so tied cannot agree amongst themselves who will be elected as Trustee, the Chairperson, Deputy Chairperson, or other officeholder of the Trust, who is not one of the nominees,~~ the Returning Officer will draw lots to determine who is to be elected as Trustee.

Notifying Election Results

[...]

18. Within 10 Working Days of the Trustees receiving the report from the Returning Officer, the Trustees will notify Members of the results of an election through the Ngāti Koata Trust website, pānui, and other electronic media declaring the names of the nominees who sought election, ranking of nominees by the number of votes received, and distinguishing the elected Trustees and confirmation of the Replacement Trustees.

B. CLEAN VERSION

PARTIES: Kyle Rae Edmonds, Hori Turi Elkington, Pene Wahanui Hemi, Frank Jarom Hippolite, Nadia Cheryl Keogh, Melanie Hinekohu McGregor, Thomas Mark Speers [Names to be updated post AGM]

BACKGROUND

[...]

- A. This Deed amends and restates the previous trust deed of the Ngāti Koata Trust dated 23 September 2017. The amendments to this Deed were approved as being amendments for the collective benefit of all Members of Ngāti Koata by a resolution put and passed at a General Meeting in accordance with clause 8.23(b)(ii) on 16 October 2021 and on 18 November 2023, in line with clause 14 of this Deed. [Amend to include the date of the 2024 AGM if proposed amendments passed at AGM]

[...]

1 INTERPRETATION OF TRUST TERMS

Definitions

- 1.1 In this Deed, unless the context otherwise requires:

[...]

Replacement Trustee means the person confirmed under Schedule 1 and/or appointed under clause 4.5(i).

Residents of New Zealand means those individuals who live permanently in New Zealand. [Will be included if the 'residents' proposed amendment passed at 2024 AGM]

Senior Manager means a senior manager, who may be a General Manager or a Chief Executive Officer (or a person holding an equivalent title), appointed under clause 5.6 to manage the day-to-day administration of the Trust and any other entity or entities within Te Ohu a Ngāti Koata in accordance the terms of the appointment.

[...]

4 APPOINTMENT OF TRUSTEES

Number of Trustees

- 4.1 The Trust must have (at a minimum) 4 Trustees, but may have up to 7 Trustees, of which, 4 Trustees must be registered Adult Members of Ngāti Koata Trust. All Trustees must be residents of New Zealand. At all times, all Trustees must comply with their duties under clauses 5.1 and 5.2, meet the eligibility requirements under this Deed, and represent the interests of all Members of Ngāti Koata, irrespective of where those Members reside.

[Cl. 51.-5.2 refer to Mandatory and Default duties (deriving from the Trusts Act 2019); thus Mandatory Duties are defined in the Deed and failure to comply would be in breach of the Trusts Act 2019. 'Residents of NZ' and adult members having to be registered are subject to separate voting resolutions]

4.2 All Trustees must be elected by Adult Members in accordance with Schedule 1 (or appointed in accordance with clause 4.4(c)), including the Trustees that signed this amended Deed as Trustees, and those Trustees will remain in office until the earlier of the following:

- (a) the expiry of their term in accordance with clause 4.4(a); or
- (b) they cease to hold office as Trustees pursuant to clause 4.6.

4.3 For the avoidance of doubt, it is intended, subject to the provisions of the respective trust deed, that the Trustees of the Trust will at all times be the same Trustees as those of the Te Pātaka a Ngāti Koata Trust.

Term of Office (including for Replacement Trustee)

4.4 All Trustees will be elected on a rotational basis. Trustee terms of office will therefore be as applicable below:

(a) subject to clause 4.4(c) and the provisions of this Deed, each Trustee will be permitted to hold office for a term of three years from their election, after which they must retire; and

(b) a person that has retired as a Trustee in accordance with clause 4.4(a) may be eligible for re-election for a further term, provided that:

- (i) where those persons have held office as a Trustee for three consecutive terms, they must retire at the completion of their third consecutive term and will not be eligible for re-election for a period of one calendar year, after which time they will be eligible to be nominated for re-election; and
- (ii) that person meets any eligibility requirements in this Deed to be re-elected as a Trustee;

(c) where a Trustee is a Replacement Trustee appointed in accordance with clause 4.5:

- (i) that Replacement Trustee will hold office for the remainder of the term of the outgoing Trustee that they have been appointed or elected to replace;
- (ii) following the expiry of that term, the Replacement Trustee must retire; and
- (iii) the time that the Replacement Trustee has held office for pursuant to clause 4.4(c)(i) will not constitute a term for the purposes of considering whether a Trustee has served the maximum number of consecutive terms in accordance with clauses 4.4(b)(i) or (ii), as applicable.

(d) where a Replacement Trustee is not appointed to an Extraordinary Vacancy or Vacancies and the requirements under clauses 4.5b(i)(bb) and 4.5b(ii) are applied by the Board and elections for those vacancies are deferred accordingly, then to ensure ongoing rotation of terms for those Extraordinary Vacancies:

- (i) that Trustee or Trustees elected to replace those Extraordinary Vacancies will hold office for the remainder of the term of the outgoing Trustee that they have replaced; and
- (ii) following the expiry of that term, the Trustee or Trustees affected, must retire; and
- (iii) if the Trustee or Trustees has held office pursuant to clause 4.4(d)(i), it will not constitute a term for the purposes of considering whether a Trustee has served the maximum number of consecutive terms in accordance with clauses 4.4(b)(i) or (ii), as applicable.

Time of Elections

4.5 Vacancies in the office of a Trustee will be filled in accordance with the following provisions:

(a) Ordinary vacancies

Where a Trustee retires in accordance with clause 4.4(a) or 4.4(c)(i), the Trustees must hold a General Meeting for the purpose of electing a new Trustee or Trustees before or upon the cessation of the term of office for that Trustee or Trustees, pursuant to the provisions in the Schedule 1 to this Deed.

(b) Extraordinary vacancies

Where a Trustee ceases to hold office in accordance with clauses 4.6(b) to (h), the vacancy will be filled as follows:

- (i) the Trustees shall appoint a Replacement Trustee confirmed in accordance with Schedule 1, to replace the outgoing Trustee, in the following manner:
 - (aa) in the first instance, the Trustees shall appoint the current Replacement Trustee, provided that:
 - A. the Replacement Trustee must consent to their appointment and remain eligible to hold office as a Trustee; and
 - B. the appointment of the Replacement Trustee would not conflict with clause 4.1 requirement for a minimum of four Trustees to be Adult Members of Ngāti Koata Trust.
 - (bb) if the Replacement Trustee is unable to be appointed in accordance with clause 4.5(i)(aa) then, unless the Extraordinary Vacancy affects the minimum number of Trustees who are Ngāti Koata Members as set out at clause 4.1, the Extraordinary Vacancy shall remain until the next notified General Meeting where an election shall be held in accordance with Schedule 1.
- (ii) For the avoidance of doubt where:
 - (aa) No Replacement Trustee is confirmed at a General Meeting where an election has been held; or
 - (bb) The Replacement Trustee has already been appointed to an

Extraordinary Vacancy or has been unable to fill the position,
then unless the Extraordinary Vacancy affects the minimum number of Trustees who are Ngati Koata Members as set out at clause 4.1, then the Extraordinary Vacancy shall remain, until the next notified General Meeting where an election shall be held in accordance with Schedule 1.

Ineligibility, or ceasing, to be a Trustee

4.6 A person is ineligible to be a Trustee or will cease to be a Trustee if they:

- (a) retire as a Trustee in accordance with clauses 4.4(a) or 4.4(c)(i); or
- (b) are not 18 years of age or over; **[moved from cl. 4.1]**
- (c) resign as a Trustee by:
 - (i) giving notice in writing to the Trust; or
 - (ii) ceasing to hold office as a Trustee in accordance with this Deed, in which case that person will be deemed to have also resigned as a Trustee; or
- (d) fail or neglect to attend three consecutive meetings of the Trustees without leave or absence, unless it appears to the other Trustees at their first meeting after the last of such absences that there is a proper reason for such non-attendance; or
- (e) becomes disqualified from being a Trustee under section 36B of the Charities Act 2005; or
- (f) becomes disqualified from being a Trustee under section 96 of the Trusts Act 2019; or
- (g) is the subject of a Special Resolution passed at a General Meeting removing that individual as a trustee; or
- (h) is or has been removed as a Trustee of a Trust by Order of a Court on the grounds of breach of trust, lack of competence, or failure to carry out the duties of a trustee satisfactorily; or
- (i) is subject to a compulsory Treatment Order under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (j) dies.

4.8 Subject to the provisions of this Deed, the Trustees may act notwithstanding any vacancy in their body. For the avoidance of doubt, where the number of Trustees holding office is less than 4, the continuing Trustees shall act only for the purposes of holding elections and increasing the number of Trustees, that number shall be in accordance with clause 4.1.

[...]

Trustee-Director

4.12 A Trustee may be appointed to a Board of a Corporate Entity established by the Trust

pursuant to clause 9.7 and subject to meeting the criteria for appointment as a Director under the Companies Act 1993.

[...]

5 DUTIES AND POWERS OF TRUSTEES

[...]

Management Appointments

5.6 The Trustees may, on such terms as the Trustees determine, employ or contract a Senior Manager to manage the day-to-day administration of the Trust, and any other entity or entities within Te Ohu a Ngāti Koata (in accordance the terms of the appointment), including without limitation the implementation of the Trustees' planning, reporting, and monitoring obligations under this Deed.

5.7 The Trustees may from time to time:

- (a) appoint, remunerate and dismiss officers or employees of the Trust, unless, either generally or in a particular case, they will have for the time being delegated any one or more of the powers of appointment, remuneration, or dismissal, as the case may be, to a person holding the position of Senior Manager of the Trust; but
- (b) in accordance with Kaupapa 3 of the Act, Members of Ngāti Koata will have no right to vote in respect of the appointment of employees of the Ngāti Koata Trust appointed in accordance with clauses 5.6 and 5.7.

5.8 A Trustee shall not:

- (a) hold the position of Senior Manager of the Trust; or
- (b) be an employee of the Trust or of any Corporate Entity, except where a Trustee is appointed by the Trust Board as a Director on a Corporate Entity; or
- (c) be party to a contract with, or otherwise be paid for services for, the Trust except as otherwise provided for in this Deed.

Trustee Remuneration

5.9 A Trustee shall not receive remuneration for services provided to the Trust whether through an incorporated or unincorporated entity or otherwise except in accordance with clause 5.47.

5.10 For the avoidance of doubt:

- (a) a Trustee may be remunerated in accordance with clause 5.47.
- (b) so long as the Trust has an operative policy on koha, payment of reasonable koha paid directly to a Trustee, employee, or Director, or any incorporated or unincorporated entity in which a Trustee, employee, or Director has a direct or indirect interest will not be considered to be a payment for services for the purposes of this Deed. However, where there is no operative policy on koha, then clause 5.10(a) shall apply.

[...]

Meetings of Trustees [re quorum]

[...]

5.17 The quorum for a meeting of Trustees will be a majority of the Trustees who, for the time being hold office in accordance with this Deed. In absence of a quorum the Trustees shall not be able to undertake business and or exercise their powers under this Deed at that meeting and the meeting shall be deemed vacated.

[...]

Keeping Accounts and Holding Audits [TPNKT Deed only]

[...]

5.29 The accounts of the Trust will be audited at least once a year by a chartered accountant (not being a Trustee) appointed in that capacity by the Trustees, unless the audit is deferred on the terms and conditions presented and approved by a resolution of Iwi members at an Annual General Meeting.

[...]

No Private Pecuniary Profit (or financial gain)

5.47 No private pecuniary profit may be made by any person from the Trust in connection with the affairs of the Trust, except that:

- (a) any Trustee may receive full or part reimbursement for all actual and reasonable costs and expenses properly incurred by that Trustee in connection with the affairs of the Trust;
- (b) the Trust may in each Financial Year pay its Trustees remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees.

provided that:

- (c) before any such reimbursement paid to a Trustee:
 - (i) it must be approved in advance of the cost to be reimbursed being incurred in accordance with Board policy, or
 - (ii) where there is no policy it is approved in advance of the cost to be reimbursed being incurred by the [Ngati Koata General Manager? Chair?]; and
 - (iii) is subsequently approved by a resolution of Trustees, except no Trustee receiving any reimbursement referred to in clause 5.47(a) shall take part in any deliberations or proceedings relating to the payment or otherwise of that reimbursement,

for the avoidance of doubt where the reimbursements do not comply with subclauses (i)-(ii) the Trust shall not be obligated to pay the reimbursement to the

Trustee.

- (d) approval of any remuneration under clause 5.47(b) will be subject to confirmation of:
 - (i) remuneration paid to a Trustee must be regarded as reasonable or properly payable based upon the duties required of the Trustees in that Financial Year; and
 - (ii) a monetary sum per annum payable to all Trustees taken together; or
 - (iii) a monetary sum per annum, is also payable to any person from time to time that holds office as a Chairperson, or Deputy Chairperson; and
 - (iv) the Trustees shall obtain from an independent party an assessment in writing that the proposed payment does not exceed market value or such other value recognised nationally as an appropriate level of payment in the circumstances; and
- (e) the Trustees disclose in their Annual Report referred to in clause 8.5 next published after payment of that disbursement or remuneration in respect of all such reimbursements or remuneration:
 - (i) the amount thereof received by each Trustee or any such entity;
 - (ii) the nature of the reimbursement and the nature and extent of the services rendered, or time expended;
 - (iii) the criteria set or utilised in calculating the reimbursement or remuneration; and
 - (iv) a summary of any recommendations from any independent market assessment of Trustee remuneration contemplated under clause 5.47(d)(iv).

7 REGISTER OF MEMBERS OF NGĀTI KOATA

The Members' Register

7.1 The Trustees must:

- (a) have, and maintain in a current state, a register of Members of Ngāti Koata:

[...]

- (ii) that is available for inspection by a parent, legal guardian, or other person standing in the stead of a parent, who may view the registration details of any child, ward, or other dependent under 18 years of age who was registered by such persons, whichever the case may be;

[...]

SCHEDULE 1 – ELECTIONS AND VOTING

[...]

PART B: All Votes

[...]

Counting votes (for Elections)

16. On completion of the voting in an election, the Returning Officer will:

(b) reject as informal:

- (i) any vote for which there is reasonable cause to believe that the Voting Paper was not prepared by the Trust for the purposes of the election; and
- (ii) any vote that does not clearly indicate the nominee for which the voter intended to vote; provided that no vote will be rejected as informal by reason of some informality in the manner in which it was dealt with by the voter if the vote is otherwise regular and if the intention of the voter is clearly indicated;

(c) then:

- (i) count the number of votes cast in an election received for each nominee; and
- (ii) count the number of votes rejected as informal;
- (f) determine the number of highest polling nominees required to fill all vacancies in the office of Trustee and declare those highest polling nominees as duly elected Trustees; and
- (g) determine the next highest polling nominee and declare that person as duly confirmed Replacement Trustees for the purpose of this Deed in order of votes; and
- (h) where there is an equality of votes in an election such that the number of highest polling nominees required to fill all vacancies in the office of Trustee cannot be determined, the Returning Officer will draw lots to determine who is to be elected as Trustee.

Notifying Election Results

[...]

18. Within 10 Working Days of the Trustees receiving the report from the Returning Officer, the Trustees will notify Members of the results of an election through the Ngāti Koata Trust website, pānui, and other electronic media declaring the names of the nominees who sought election, ranking of nominees by the number of votes received, and distinguishing the elected Trustees and confirmation of the Replacement Trustee.