



DEED OF TRUST

Te Puna Ora o Mataatua Charitable Trust

Incorporated:	1993-12	Charities Status:	2008-06
Deed Version number:	2020-01	Date of adoption:	29 July 2020
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INTRODUCTION

- A. Te Puna ora o Mātaatua Charitable Trust is a charitable trust incorporated on 17 December 1993 under number 600374 and registered with the Charities Commission on 25 June 2008 under number CC26592.
- B. Te Puna Ora o Mātaatua Charitable Trust is currently constituted under a deed of trust dated 17 January 2019.
- C. This updated and complete deed of trust replaces all previous deeds.
- D. In executing this present deed, the trustees affirm that nothing in this deed is intended to materially alter or affect the charitable purpose of Te Puna Ora o Mātaatua Charitable Trust.

DATE

The date of this deed is the 17th day of January 2019.

PARTIES

The parties to this deed are noted in Appendix 1.

INTERPRETATION

- A. In this deed:

Adult member	means a person aged 18 years or older with whakapapa to the Iwi of Mātaatua
Customer	means a client of the Trust who is provided with a service of care noted within the strategic plan
Iwi of Mātaatua	means all Iwi under the Mātaatua Waka
Trust	means Te Puna Ora o Mātaatua Charitable Trust, a charitable trust registered with the Charities Commission under number CC26592
Deed	means this document
Trustees	means the trustees for the time being of the Trust, and includes the parties named in Appendix 1

- B. In this deed, -

- (a) Unless the context otherwise requires:
 - (i) words importing the singular include the plural and vice versa; and
 - (ii) words importing one gender include the other gender; and
 - (iii) references to a statute shall be deemed to be references to that statute as amended or re-enacted or substituted from time to time.
- (b) headings have been inserted for guidance only and shall not be deemed to form part of the content of the deed.

PROVISIONS OF DEED

(1) Charitable Purpose

The charitable purpose of the Trust is:

- (a) to raise and enhance the level of health and wellbeing for its customers; and
- (b) to promote and enhance the cultural, spiritual, social, economic and environmental wellbeing for its customers; and
- (c) to promote and provide health and wellbeing services for the iwi, hapū and whanau of Mātaatua rohe; and
- (d) such other charitable purposes as the trustees may from time to time determine.

(2) Role of Trustees

The role of the trustees is to:

- (a) give effect to the purpose of the Trust stated in section 1; and
- (b) be responsible and accountable for the proper and effective governance of the Trust in accordance with the provisions of this deed; and
- (c) discharge the responsibilities, perform the duties, and exercise the rights, conferred on them by or under this deed and by law; and
- (d) ensure the performance of the activities and the achievement of the objectives set out in the strategic plan of the Trust.

(3) Powers of Trustees

- (a) To achieve the purpose of the Trust, the trustees, in carrying out their role:
 - (i) have all the rights, powers and privileges of a natural person; and
 - (ii) may deal with any trust funds as if they were the absolute owners of, and beneficially entitled to, such funds; and
 - (iii) may do any act or thing, or procure the doing of any act or thing, or enter into any obligation.
- (b) To avoid doubt, it is declared that nothing in this deed gives the trustees the power to do any act or thing, or to procure the doing of any act or thing, or to enter into any obligation, which is inconsistent with the charitable purpose of the Trust.

(4) Requirement for trustees

The number of natural persons comprising the trustees shall be between three (3) and seven (7).

(5) Continuing power to act

- (a) Should the number of trustees fall below three (3), the remaining trustees shall have the power to fill any vacant office of trustee in accordance with section 9.
- (b) A replacement appointment in accordance with section 9 must be made as soon as reasonably practicable after the occurrence of the vacancy reducing the number of trustees below three.
- (c) To avoid doubt, it is declared that, if the number of trustees falls below three, the remaining trustees shall retain the power to act as trustees, provided however that such power is exercised solely for the purpose of increasing the number of trustees under subsection (a).

(6) Appointing and replacing trustees

- (a) Every trustee of the Trust must be appointed by ordinary resolution of the trustees.
- (b) An appointment under subsection (a) may be made by the trustees only in respect of a person whom the trustees are satisfied, on reasonable grounds, has the skills, knowledge (including cultural knowledge and awareness) and experience to contribute to—
 - (i) the achievement of the purpose of the Trust; and
 - (ii) the effective governance of the Trust.
- (c) Nothing in this section entitles any person who—
 - (i) is not an adult member; or
 - (ii) is an employee of, or a contractor to, the Trust; or
 - (iii) is disqualified, by the application of section 16 of the Charities Act 2005, from being appointed or holding office as an officer of a charitable entity—
—to be appointed or to hold office as a trustee of the Trust.
- (d) A person may not be appointed as a trustee of the Trust unless he or she has—
 - (i) consented in writing to being a trustee; and
 - (ii) certified that he or she is not disqualified by virtue of subsection (c).
- (e) Every person appointed as a trustee under this section assumes the office of trustee as soon as the resolution referred to in subsection (a) is passed.
- (f) No trustee may hold office—
 - (i) for more than three (3) years without that trustee’s position being subject to a further appointment process in accordance with this section; and
 - (ii) for more than two (2) consecutive terms of three (3) years.
- (g) Despite subsection (f), those trustees holding office on 1 August 2017 are entitled to continue holding office until 31 July 2023.
- (h) To avoid doubt, a person who has previously held office as a trustee of the Trust but who has not held such office for a minimum of three (3) years is eligible for reappointment in accordance with subsection (a).

(7) Cessation of office of trustee

- (a) A trustee may resign by giving notice in writing or electronically to the remaining trustees.
- (b) A trustee ceases to be a trustee if he or she:
 - (i) resigns as a trustee; or
 - (ii) becomes ineligible by virtue of section 6(c) to continue as a trustee; or
 - (iii) breaches section 13; or
 - (iv) has completed two (2) consecutive terms of three (3) years; or
 - (v) fails or neglects to attend three (3) consecutive duly-constituted meetings of the trustees without leave of absence, unless the other trustees, at their first meeting after the last of such absences, resolve that there was a proper reason in each instance for such non-attendance; or
 - (vi) fails to be reappointed under section 6(f)(i); or
 - (vii) dies.

- (c) The trustee concerned shall cease to hold office:
 - (i) in a case where subsection (b)(iv) applies, at 5:00 p.m. on the third anniversary of the trustee's appointment to a second term of office; or
 - (ii) in a case where subsection (b)(v) applies, at the conclusion of the first meeting of the trustees after that trustee's third consecutive absence; or
 - (iii) in a case where subsection (b)(vi) applies, at the conclusion of the meeting at which the failure to be reappointed occurs; or
 - (iv) in all other cases, from the date of the event which causes the cessation of office.
- (d) Upon the cessation of office described in subsections (b)(i) to (b)(vi), the trustee resigning ceases to be a trustee of the Trust except as to the acts or deeds necessary for the proper vesting of any trust funds in the continuing or new trustees.
- (e) The acts or deeds described in subsection (d) shall be done and executed at the expense of the Trust.

(8) Removing trustees

- (a) In exceptional circumstances, a trustee may be removed by a unanimous vote of the remaining trustees.
- (b) A trustee may only be removed under subsection (a) if the remaining trustees are satisfied, on reasonable grounds, that -
 - (i) the continuation in office of the trustee in question is likely to jeopardize the achievement of the Trust's purpose; or
 - (ii) the trustee in question has brought the Trust into serious disrepute.

(9) Trustees' duty of care

When discharging his or her responsibilities as a trustee, or exercising his or her powers as a trustee, or performing his or her duties as a trustee, or otherwise performing his or her role as a trustee, a trustee:

- (a) must act:
 - (i) in good faith; and
 - (ii) in such a way as to promote the achievement of the purpose of the Trust; and
- (b) must observe the prohibitions and restrictions in sections 10 to 13; and
- (c) must avoid conflicts of interest (including, but not limited to, contractual interests and pecuniary interests); and
- (d) must exercise the care, diligence, and skill that a prudent person of business would exercise in the same circumstances in managing the affairs of others.

(10) Prohibition on private pecuniary profit

- (a) No private pecuniary profit may be made by any person from the Trust.
- (b) Despite subsection (a):
 - (i) any trustee, through prior approval, may receive full reimbursement for all expenses reasonably and properly incurred by that trustee in connection with the affairs of the Trust; and
 - (ii) the Trust may pay reasonable remuneration to any officer or servant of the Trust (whether a trustee or not), through prior approval, in return for services actually rendered to the Trust.

- (c) Further to subsection (b), the trustees shall ensure that any payment made to any trustee in connection with the discharge of that trustee's responsibilities under this deed is made in a manner, and is of an amount, that is broadly comparable with payments made to trustees of similar governance entities of neighbouring health-care providers under similar circumstances.
- (d) Notwithstanding anything contained or implied in this deed, the trustees, in determining all reimbursements, remuneration and charges payable in the terms of this section, shall ensure that the restrictions imposed by sections 11 and 13 are strictly observed.

(11) Pecuniary interests

- (a) Despite anything contained or implied in this deed, any person who is:
 - (i) a trustee of the Trust; or
 - (ii) an associated person (as defined by the Income Tax Act 1994) of any such trustee: shall not, by virtue of that capacity, determine, or materially influence in any way (whether directly or indirectly) 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.
- (b) A person who, in the course of and as part of the carrying on of his or her business of a professional practice, renders professional services to the Trust or to any organisation by which any business of the Trust is carried on, shall not, by reason only of his or her rendering of professional services, be in breach of this section.
- (c) Despite subsection (b) a Trustee can render professional services to the Trust by minuted preapproval which clearly describes the scale and scope of services. The minute, and minutes thereafter, will automatically expire after six (6) months and require extended approval if applicable.
- (c) A trustee of the Trust shall not vote on, or take part in the discussion of, any matter before the Trust in which he or she has, either directly or indirectly, any pecuniary interest.
- (d) Any person to whom this section applies must, when the matter is raised before the Trust, declare to the meeting his or her interest in the matter, and the fact of this disclosure is to be recorded in the minutes of the meeting.

(12) Contractual interests

Despite anything contained or implied in this deed, no trustee shall be eligible to tender for, or to provide, or to receive payment for, any service for which the Trust seeks providers (except for the role of a trustee).

(13) Interested trustees

- (a) Notwithstanding anything contained or implied in this deed, any trustee who is or may be in any other capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the Trust is or may be in any way concerned or involved shall disclose the nature and extent of that trustee's interest to the other trustees, and shall not take any part whatever in any deliberations of the trustees concerning any matter in which that trustee is or may be interested other than as a trustee of the Trust.
- (b) To give effect to subsection (a), the Trust shall establish and regularly update a register of the interests of each trustee.

(14) Liability, indemnity and insurance

- (a) No trustee shall be liable for any loss incurred by the Trust which is not attributable to:
 - (i) that trustee's own dishonesty; or
 - (ii) the wilful commission or omission by that trustee of an act known by that trustee to be a breach of trust.
- (b) Each trustee shall be entitled to a full and complete indemnity from the trust's funds for any personal liability which that trustee may incur in any way arising from or in connection with that trustee acting or purporting to act as a trustee of the Trust, provided such liability is not attributable to that trustee's own dishonesty, or to the wilful commission or omission by that trustee of an act known by that trustee to be a breach of trust.

(15) Strategic Plan

- (a) The Trust must, at all times, have in place a current strategic plan under this section.
- (b) The purposes of a strategic plan are to:
 - (i) give effect to the purpose of the Trust; and
 - (ii) provide a framework for:
 - (1) the decisions of the trustees; and
 - (2) the operations of the Trust; and
 - (iii) set out the budget for the operations of the Trust; and
 - (iv) form the basis of the trustees' accountability for the proper and effective governance of the trust.
- (c) A strategic plan adopted under this section must -
 - (i) cover a period of between one (1) and five (5) years; and
 - (ii) be consistent with the charitable purpose of the Trust as set out in section 1; and
 - (iii) be written in plain language.
 - (iv) be updated prior to the beginning of each financial year.
- (d) The trustees must, as soon as reasonably practicable after the adoption of any strategic plan, make the plan available to such parties as the trustees consider appropriate.
- (e) The trustees may amend a strategic plan at any time.

(16) Financial Management

- (a) The financial year of the Trust is from 1 July to 30 June.
- (b) The trustees will ensure that the Trust:
 - (i) complies with generally-accepted accounting principles; and
 - (ii) has in place an appropriate range of financial planning and management policies; and
 - (iii) prepares a full set of audited financial statements at least annually.

(17) General provisions for trustees' meetings

- (a) The trustees must hold the meetings that are necessary for them to carry out their role.
- (b) The trustees must hold meetings at the times and places that they appoint.
- (c) A trustee has, unless lawfully excluded, the right to attend any meeting of the trustees, or of any committee of the Trust.
- (d) A meeting of the trustees must be called and conducted in accordance with:

- (i) this deed; and
- (ii) the governance policies of the Trust; and
- (iii) the standing orders of the Trust.

(18) Ordinary meetings

- (a) An ordinary trustees' meeting may be convened by:
 - (i) the chairperson; or
 - (ii) in the absence of the chairperson, the deputy chairperson; or
 - (iii) a majority of the trustees.
- (b) Notice of an ordinary trustees' meeting shall be given either in writing or electronically to every trustee not less than five (5) days before the date of the meeting.
- (c) A resolution of the trustees setting the date for an ordinary trustees' meeting or adopting a schedule of meetings, duly recorded in the minutes of the meeting or meetings, shall be deemed to constitute notice of the meeting or meetings.
- (d) Reasonable efforts must be made by any person or persons convening an ordinary trustees' meeting to ensure that every trustee receives notice of the meeting.
- (e) A fair representation of the matters to be decided at an ordinary meeting must be notified to every trustee either in writing or electronically not less than three (3) clear business days prior to the meeting.
- (f) To avoid doubt, it is declared that the proceedings of an ordinary trustees' meeting are not invalidated by a minor defect in the giving of notice for the meeting.

(19) Extraordinary meetings

- (a) An extraordinary trustees' meeting may be convened by:
 - (i) the chairperson; or
 - (ii) the deputy chairperson; or
 - (iii) a majority of trustees.
- (b) Notice of an extraordinary trustees' meeting shall be given either in writing or electronically or in person to every trustee at the earliest practical opportunity before the date and time of the meeting.
- (c) Reasonable efforts must be made by any person or persons convening an extra-ordinary trustees' meeting to ensure that every trustee receives notice of the meeting.
- (d) A fair representation of the matters to be decided at an extraordinary trustees' meeting must be notified to every trustee at the time the meeting is notified.
- (e) At every extraordinary trustees' meeting, the first item of business must be a duly-authorized resolution stating:
 - (i) the reasons why an extraordinary trustees' meeting needed to be convened (instead of an ordinary meeting); and
 - (ii) in the absence of any trustee, the remaining trustees' belief that reasonable efforts were made to notify, and to procure the attendance of, every trustee at the meeting.
- (f) To avoid doubt, it is declared that:
 - (i) the proceedings of an extraordinary trustees' meeting are not invalidated by a minor defect in the giving of notice for the meeting; and
 - (ii) only those urgent matters necessitating the convening of an extraordinary meeting may be dealt with at that meeting.

(20) Annual General Meetings.

- (a) In every financial year, the trustees must convene one of their meetings as the annual general meeting of the Trust.
- (b) An annual general meeting will ordinarily take place before 31 March.
- (c) The principal purpose of an annual general meeting is to consider the performance of the Trust (including its financial performance) in achieving its purpose.
- (d) Notice of an annual general meeting must be given to the iwi of Mātaatua, not less than twenty eight (28) days before the date of the meeting, by public notice in media considered appropriate by the trustees.

(21) Conduct of meetings

- (a) The trustees must elect from amongst their number a chairperson and a deputy chairperson.
- (b) Should a chairperson or deputy chairperson cease to be a trustee under section 5(a) and section 6 then the re-election of that position will occur stated in subsection (a)
- (c) The trustees may, from time to time, by majority vote up to three (3) ex-officio advisors, in an institutional or strategic capacity, whose functions will assist in achieving:
 - (i) the purpose of the Trust; and/or
 - (ii) compliance with the provisions of this deed:

and whose appointment will not compromise the proper separation of the governance of the Trust and the management of the Trust.

- (d) The trustees must adopt a set of standing orders for the conduct of their meetings.
- (e) The standing orders of the Trust must not contravene this deed, or any enactment.
- (f) The standing orders of the Trust must provide:
 - (i) that the quorum for meetings of the trustees is a majority of the trustees holding office for the time being; and
 - (ii) that each trustee is entitled to exercise one (1) vote on any proposal to be decided by the trustees; and
 - (iii) in the event of a tied vote on any proposal, the chairperson does not have an additional, casting vote.
- (g) The standing orders of the Trust must specify:
 - (i) the desirability of consensus decision-making by the trustees; and
 - (ii) voting procedures at meetings of the trustees; and
 - (iii) the rights of adult members to attend, and to speak at meetings of the trustees; and
 - (iv) procedures in relation to the keeping of minutes.
- (h) Despite subsection (g)(iv), the following matters must be recorded in writing:
 - (i) all resolutions of the trustees;
 - (ii) all declarations under section 13.

(22) Alternate forms of meeting

- (a) The contemporaneous linking together of the trustees by telephone, videoconferencing or other electronic means of communication shall constitute a meeting of the trustees and the provisions of this deed shall apply to such meetings, provided the following conditions are met:
 - (i) each trustee shall be entitled:
 - (1) to notice of such a meeting as if the meeting were an ordinary meeting or an extraordinary meeting called under either section 18 or section 19; and
 - (2) to be linked for the purposes of the meeting:
 - (ii) each of the trustees taking part in the meeting must be able to hear, for the whole of the meeting, each of the other trustees taking part in the meeting:
 - (iii) at the commencement and conclusion of such meeting each trustee must acknowledge his or her presence for the purpose of the meeting:
 - (iv) no trustee may withdraw from such a meeting without the express consent of the chairperson:
 - (v) a trustee shall be conclusively presumed to have been present and to have formed part of the quorum of such a meeting at all times during the meeting unless that trustee has obtained the consent described in subsection (a)(iv).
- (b) A minute of a meeting described by subsection (a) shall be sufficient evidence of the proceedings of the meeting, provided the minute is duly certified as a correct minute at a subsequent trustees' meeting.

(23) Alternate forms of decision-making

- (a) A resolution, or multiple copies of the same resolution, signed and dated by every trustee holding office for the time being is as valid as if it had been passed at a properly-constituted meeting of the trustees.
- (b) Every resolution under subsection (a) must include an explanation of why the resolution is being made in this alternate form rather than at a properly-constituted meeting of the trustees.

(24) Exclusion of certain persons from meetings

- (a) Notwithstanding any provision in this deed or in the standing orders of the Trust, the trustees may, by resolution passed while the meeting is still open, exclude any person from the whole, or part, of any of their meetings.
- (b) The trustees may exercise the power in subsection (a) if they are satisfied on reasonable grounds that not to do so would be likely to:
 - (i) result in the disclosure of information for which good reason for withholding exists; or
 - (ii) prejudice the orderly conduct of the meeting.

(25) Delegation

- (a) Unless expressly provided otherwise in this deed, or in any other enactment, the trustees may delegate to an individual trustee, or to a committee, or to an employee, or to a contractor, any of their responsibilities, duties, or powers including the power to delegate, except—
 - (i) the power to exercise fiduciary discretions relating to the investment and management of the trust's funds; or

- (ii) the power to borrow money, or purchase or dispose of assets, other than in accordance with any annual plan or budget of the Trust duly authorised by the trustees; or
 - (iii) any power reserved to the trustees under this deed.
- (b) The trustees must, at all times, maintain a register of the responsibilities, duties and powers they have delegated which sets out, for every delegation,—
 - (i) the nature and extent of the delegation; and
 - (ii) the intended outcome of the delegation; and
 - (iii) the nature and method of accountability for the exercise of the delegation.
- (c) The trustees have the power to revoke any delegation at will, and no delegation prevents the exercise of any power or the performance of any duty by the trustees.
- (d) It is not necessary for any person to whom a delegation is made to be a trustee, nor for any group to which a delegation is made to include one or more trustees.

(26) Dispute resolution

In the event of a dispute in relation to the affairs of the Trust, the trustees agree:

- (a) to use their best endeavours to resolve the dispute amongst the trustees themselves;
- (b) in relation to disputes which cannot be resolved under subsection (a) above, to submit the dispute to arbitration by an external arbitrator agreed on by the trustees; and
- (c) In the case of non-resolution after subsection 26(b) a resolution will be put to the trustees for decision by majority.

(27) Restrictions on amendments to deed

The trustees may from time to time amend this deed, provided the amendment is consistent with the charitable purpose of the Trust.

(28) Activities limited to New Zealand

The activities of the Trust are limited to New Zealand.

(29) Winding up of the trust

- (a) If the trustees decide that, for whatever reason, it is no longer practical or desirable to carry out the purpose of the Trust, then the trustees, by unanimous decision, may resolve to wind up the Trust.
- (b) Any resolution to wind up the Trust pursuant to this section must provide for the vesting of the assets of the Trust in such one or more charitable bodies in New Zealand, and for such charitable purposes, and in such manner, and upon such terms, and in such proportions, as the trustees may decide, provided that the assets of the Trust shall be disposed of in accordance with the provisions of the Charitable Trust Act 1957.

AUTHORISATION

This amended deed of trust was adopted by resolution of the trustees of the Trust on 29 July 2020.

SIGNED by **Fiona Wiremu** as Chairperson 
(signature of chairperson)

In the presence of:


(signature of witness)

Dr Chris Tooley
(full name of witness)

APPENDIX 1

Parties to this Trust deed are:

PAUL, Maanu of Whakatāne;

SIMPSON, Brian of Whakatāne;

SMITH, Karl of Kawerau;

TANGITU, Amohaere of Matata;

WIREMU, Fiona of Whakatāne.