

Te Kapu o Waitaha Charter

Recommended Changes

Change Topic	Clause	Proposed Change	Reasons for Change
Defined Terms	1.1	References to “Waitaha-A-Hei” changed to “Waitaha” throughout definitions where necessary for consistency with main definitions.	The definition of “Waitaha” and Members of Waitaha refers to individuals who descend from Waitaha-A-Hei. That has not changed. In other places, Waitaha-A-Hei has been used when it should have just been Waitaha.
		Inserted definition of “Group Assets” to include all of the assets of the Te Kapu o Waitaha group.	The Charter required major transactions to have regard to “Group Assets” but did not have a definition for that term. .
		Definition of “Major Transaction” updated so that instead of saying the clause should be interpreted “as if” referring to Group Assets. The clause now directly refers to Group Assets	Deed simplified by use of direct term.
		Nga Koeke Group. The Koeke, who advise on matters of tikanga, reo, kawa, korero and whakapapa have been structured to be a group of up to five persons who have the knowledge, experience and availability to advise the Trust on those matters.	This is to be create an identified group of Koeke who will work with the Trust, who will understand the role of the Koeke group, and establish a clear relationship between that group and the Trust, rather than having reference to the Koeke and having no direct roles. .
		The definition of “Related Person” now identifies direct family members who will come within a “conflict relationship”	The definition of “Related Person” previously referred to a now deleted reference in the Income Tax Act 2007. This makes it hard to use. Definition now not reliant on external tax legislation but states clearly the close personal relationships for the purposes of conflict and other similar trusts.
		The definition of “Settlement Date” is deleted.	This definition was no longer used anywhere in the

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			current Deed.
		The definition of “Te Kapu o Waitaha Group” inserted.	The Group is referred to but was not previously expressly defined.
		The definition of “Waitaha Charitable Activities” changed to be a definition of “Waitaha Charitable Trust”, including a description of its activities	This makes more sense in the context of the Deed, noting that the Waitaha Charitable Trust is a beneficiary of Te Kapu o Waitaha.
Interpretation	1.2	An interpretation has been added at clause 1.2(m) to specify when notice is deemed to be given for the purposes of notices provided under the Deed. Electronic notices are deemed to be given on the day they are sent and published advertisements in third party media is on the date of publication.	This has been inserted for the purposes of interpretation assistance for notices
Committees	3.4(b)	An additional provision added so that Committees may co-opt persons onto Committees for the purposes of consultation and advice where those persons are not Trustees. A majority of the members of the Committee must be Trustees.	This is to ensure that Trustees have access to expertise and information necessary to complete the delegated tasks of the Committee. The Committees do not gain extra powers and are still acting strictly under the authority from the Trust.
Trustee Remuneration	3.5(b)	Deleted	This is now redundant as it related to Trustees appointed before the first AGM.
Trustee Expenses	3.6	Reimbursement of expenses to Trustees needs to be in accordance with Trust policy at the time the expense is incurred.	The Trust has policies in respect of the types of expenses that can be incurred and reimbursed, and Trustee expenditure should be consistent with those policies. This recognises those policies which are now required and will allow the Trustees to act with certainty as to what is appropriate.
Gender References	4.2 and subsequent	“Him or her” changed to “them” and “his or her” changed to “their”.	Updates language to appropriate current usage and is easier to read.

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Nga Koeke Group	5.1	The wording has been changed to include the ability to advise Management as well as trustees and clarifies that the advice must be taken into consideration in respect of matters on which advice is received.	This is a clarification of the role of Nga Koeke and the way in which advice is received is to be considered.
Nga Koeke Group	5.1	The definition of “Registrar-General of Land” deleted.	This definition is not used in the current Deed.
Trust Entities (subsidiaries)	6.1(c)	The maximum number of Board members on a subsidiary entity will be two (reduced from three) and there is no requirement or a majority of the Board to be Waitaha.	This recognises that the subsidiary trust entities are working in areas of specialist commercial development and the changes are intended to ensure that Waitaha has access to a strong skills-based board with connection to the Trust through Trustee Board members and that the Trust is not otherwise constricted in seeking expertise for its boards. The overall strategic governance and direction remains with the Trust. The criteria for Board appointment still require knowledge of Waitaha
Trust Entities	6.2 – 6.4	Clauses have been separated into more sections with separate headings. The need to follow Trust policy with the appointment procedure has been added with a new criteria for directors for understanding of the Waitaha settlement,	This has been done to ensure that the management of Trust entities information is more easily located and given sufficient prominence in the Charter and to ensure consistency of process, which can be updated through policy over time. .
Waitaha Charitable Trust settlements	6.7	The clause is changed to past tense.	The actions referred to in clause 6.7 have already occurred and so have been changed to past tense. The references to the Waitaha Charitable Trust have been retained as the history of the transfers is important, as is the authority for those transfers which is recorded in clause 6.7.

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Trust Entities – Remittance of Income to the Trust	7.1	Clarification that the remittance of income can be as agreed or as consistent with a SIPO approved by the Trustees.	The Trust has agreed SIPO statements with the Trust entities and there should not need to be a separate agreement outside of the SIPO for income remittance where the SIPO has been approved.
Initial Annual Plan and 5 Year Plans	8.3	Deleted.	This is now redundant as relating to a past period.
Reporting by Trust Entities	10.3(b)	Deleted reference to the Financial Reporting Act 1993 and replaced with generic requirement.	The legal requirements for financial reporting change regularly and this allows the Charter to keep up without amendment. .
Disclosure of Trust Information	11.1	Details of the current Trustees have been added to the information required to be disclosed. Reference to a specific constitution at clause 11.1(i) has been deleted.	This is more consistent with information required to be disclosed under the Trusts Act 2019, plus the general strategy and plans of the Trust. Reference to “the company constitution” is misleading and has been excluded.
Disclosure of Trust Information	11.2	This clause has been amended to refer to the requirements of the Trusts Act 2019.	Updates Charter to new Law.
Trust Disclosure	11.3	Wording tidied up for clarity.	Updates Charter to new Law.
Trust Disclosure	12	Additional wording added to clarify information that the Trustees may keep confidential and not disclosure the purpose.	The amended wording is consistent with current trust deed drafting under the Trusts Act 2019.
Notice of Annual General Meeting	13.3	updated to allow notice by way of social media and the Trust’s App. The meetings can be held in person or electronically or by a mixture of both. Notices will need to identify this. The Trustees must determine how the meeting will be held before notice is given.	These changes are to bring the Trust up to modern practice and to reflect the way the Trust conducts business, particularly in light of the ongoing pandemic and any future similar circumstances. .
Disclosure of Interest	14.1(b)	Clause added to clarify that membership in a hapū is not in itself an interest that needs to be disclosed as a conflict if that is the same interest as other hapū members.	This is a matter that would have been implied previously but has been made clearer as a result of the conflict requirements in the Trusts Act 2019.

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Disclosure of Interest	14.1(d)	The reference has been changed to the “Related Person” definition.	The “Related Person” definition is now the appropriate reference from which conflict of interest should be addressed.
Interested Trustee Not to Participate	15.2(b)	In the event that three of the five Trustees are conflicted, the remaining two Trustees will constitute a quorum.	This reflects the fact that the Trustees will be related and often closely related to the same people.
Advice to Trustees	18.3	New clause requiring records for departure from professional legal or accounting advice to be kept.	This will protect the Trustees in the event of challenge and ensure that advice is not disregarded without clear reason. This is also best practice and should be adopted in any event.
Disrepute	21	<p>New clauses 21.3, 21.4 and 21.6 have been added. These address the need for ongoing disclosure of matters that could cause reputational harm and the prospect of suspension, as well as censure and removal, being an option. The clauses address process for making these decisions and require natural justice to be applied.</p> <p>Members can be notified of a censure, suspension or removal at an AGM, SGM or by such other means as the Trustees consider appropriate.</p>	The purpose of these changes is to avoid dispute as to whether or not conduct which has resulted in investigation and pending charges is something considered to be “an act” of a trustee that may bring the Trust into disrepute. It may be appropriate for suspension, including voluntary suspension, depending upon the circumstances involved. Any such process needs to be subject to natural justice to protect the trustee concerned. There also needs to be clarity as to the effect of a suspension. All of these matters are dealt with in the new clauses introduced.
Amendments to Charter	25.3 & 25.4	Clause 25.4 has been simplified. If a proposed change is contrary to the requirements of clause 25.2 (prohibited changes), no further action is required. Clause 25.4 has been simplified. If a proposed change is contrary to the requirements of clause 25.2 (prohibited changes), no further action is required	Clarifies existing process.

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Trust Period/Perpetuities	28	The Settlement Act provides that the Trust, as the settlement entity for Waitaha, is not to have a perpetuity (limitation) period.	Updates Charter originally written before the Settlement Act. The clause has been updated to record what the Act says.
Archiving of Records	29	This clause has been clarified so that “current” records are held for 7 years and then archived. Archived records are not destroyed but may be held in an archive format.	This clarifies what is intended by “archiving” records and is consistent with the Trusts Act 2019 which requires Trust records to be retained.
Dispute Resolution	30.1	This clause has been clarified to refer to decisions by the Membership Validation Committee.	Clarification in drafting only.
Review of Charter	31	The review and report to the AGM by the Trustees will be every 7 years commencing in 2022.	Ongoing review requirement. Was originally one review after 5 years only.
First Schedule Register Details	2.1	Details to be included in the Register will include email addresses, telephone numbers and an election as to the preferred communication method where that is relevant or applicable.	Updating to record details needed
Membership Register	3.1/5.3	Includes email address and telephone numbers.	Updating to record details needed
Members Register	5.4(b)	New clause inserted to clarify permitted use of the Register.	This is to clarify when information from the Register of Members may be used. Includes for Voting and meeting notices, upcoming Trust activities and opportunities consistent with the purposes of the Trust. This would include things such as contacting members where resources are available for their health and wellbeing in circumstances such as the ongoing pandemic and other activities which relate to the protection and enhancement of Waitaha. This clause is deliberately broad and will run in tandem with the Trust’s privacy policy.
Second Schedule			

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Number of Trustees	2.3	The trust will have 5 Trustees. If the numbers drop, then the Trustees are to increase the number back to 5 as soon as reasonably practicable, but can continue to operate during that process.	Sets trustee number at 5.
Rotation of Trustees	4.2	New clause added to allow Trustees to provide for a reduced term for any election in order to bring the rotation cycle back into sync.	This is a remedial provision to take into account the fact that sometimes vacancies are filled in a way which creates a lack rotation, and this can be addressed now by making an adjustment to a Trustee term to bring the rotation back into order. Provision is made to reduce the term rather than extend the term because Trustees should themselves not have the ability to put forward an extended Trust term without approval of the Membership.
Trustee Election – Eligibility of Retiring Trustees	4.5	Amended to include provision that no Trustee will hold office for more than three consecutive terms, after which they must stand down for a minimum period of 3 years. A specific exception has been created for trustees standing in 2022 for what would be their fourth term. After that, the standard rules apply	It is unusual in trusts of this nature to allow Trustees to continue to hold office without having to have a period of standdown. This is part of a good rotational practice and ensures that new trustees are brought on from time to time.
Casual Vacancies	4.6	The casual vacancy process has been replaced so that if a vacancy occurs within 6 months, the second highest polling candidate will be appointed without the cost of a further election. If the vacancy occurs after that, or if there is no next highest polling candidate the Trustees can co-opt someone on to the Trust or hold an election. If someone is co-opted that can only be till the end of the vacant term or until the next AGM. If the election is not yet due, the Trustees can co-opt again.	This updates the casual vacancy regime to have a bit more flexibility and to avoid unnecessary expenditure. A person who is co-opted onto the trust would serve out only the balance of the term and would need to stand again to get elected. A new process for advertising and selecting persons to fill the vacancy will be developed by policy.

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		The deed requires a policy to be adopted and notified that addresses how vacancies are to be advertised and filled using a skills based appointment process.	
Term of Casual Appointments	4.7	Old clause 4.7 has been deleted as it has been incorporated into clause 4.6.	Redundant clause
Elections following a Vote of No Confidence	4.7	New clauses have been added to provide for a process for re-election of all positions in the event of a vote of no confidence at an SGM. . Because this would destroy the rotation, following the election, two positions will be reduced to 2 years by agreement (or by lot) so as to re-establish the rotation.	New process to address situation identified.
Nominee Process	6.5	A new clause added which provides for a candidate nomination form which will be available on the website.	This will enable consistency between applicants. and for candidates to provide all appropriate information
Eligibility for Nomination	6.7	Skill sets for nominees have been updated to include an understanding of the Waitaha Treaty Settlement, the ability to think strategically and direct strategy and for general computer literacy.	General updating of expectations consistent with good practice.
Candidates Meeting	6.8	The Candidates Meeting has been changed from a meeting open to all adult members of Waitaha to a meeting at which two representatives from each of the 12 whanau groups will attend. Whānau representatives must consider the information represented at the meeting and may not vote on predetermined voting lines	New processes introduced to candidates meeting. The intent is to ensure a fair and considered hearing for the candidates and ensure a focus on reviewing eligibility in a more structured environment.
Third Schedule			

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Written Resolutions Without Meetings	7	Written resolutions without meetings can be passed by a majority of Trustees as compared to requiring unanimous resolution.	This enables business to be conducted efficiently and with urgency where required without needing to actually assemble.
Cessation of Postal Voting	8.1	New clauses have been added to provide that where a member of Waitaha is unable to participate in electronic voting, they can apply to the Trust to be put on a postal register. The Trust will work with that person to resolve the electronic accessibility issues, but postal voting can continue for that person, if they choose , for a further period of 3 years or until their access issues are resolved. The timeframe for this extension of postal voting can be extended at future AGMs .	Concern has been raised as to whether or not the cessation of postal voting, although approved in an earlier deed change, will exclude some members, particularly Kaumatua who may not have access to electronic voting resources. Any such person can identify themselves and the Trust will work with them to assist them with electronic voting where appropriate. They may choose to continue on a postal register. . This will remove the fear that some members of Waitaha will be excluded from voting processes and provide a clear process for ensuring that all members are assisted with moving towards the electronic voting processes which will include use of the iwi app.