

DRAFT TE RUAPEKAPEKA DEED OF TRUST

THIS DEED is made on the day of 2012

Trustee Name	Hapu/Iwi	Address
Rebecca Taipari (Chairperson)	Ngāti Hau (Ngāti Kahukuri)	25 McDivitt Street Manurewa MANUKAU 2102
Allan Halliday	Ngāti Hau (Ngāti Kahukuri)	114 Akerama Road RD 2 HIKURANGI 0182
Te Raumoa Kawiti	Ngāti Hine	1 Hihitahi Rise Te Haumi PAIHIA 02002
Te Raa Nehua	Ngāti Hau (Ngāti Kahukuri)	177 Puhipuhi Road RD2 HIKURANGI 0182
Johnson Davis	Ngāti Manu	1 North Road KAWAKAWA 0210
Peeni Henare	Ngati Manu, Ngati Hine	

As Trustees and being appointed representatives of the Hapu and Iwi of Ngati Manu, Ngati Kahukuri (Ngati Hau), Ngati Hine, Te Kapotai and Ngapuhi Nui Tonu.

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WHEREAS

- (a) The parties to this deed wish to establish a charitable trust (“the Trust”) for the objects described in Clause 3 of this deed.
- (b) The parties have agreed to enter into this deed specifying the purposes of the Trust and providing for its control and governance.

THIS DEED WITNESSES**1.0 NAME**

The name of the Trust shall be “Te Ruapekapeka Trust”.

2.0 OFFICE

The office of the Trust shall be c/o Department of Conservation, PO Box 147, Whangarei

3.0 PURPOSE OF THE TRUST

- (a) To protect and preserve the mana whenua and to ensure the taha wairua of Te Ruapekapeka is maintained.
- (b) To ensure that Te Ruapekapeka be maintained, protected and upheld for the future and that Te Ruapekapeka stories are made available to the public ensuring that the taha wairua of the site is retained for the benefit and education of all New Zealanders.
- (c) To work in equitable partnership with the Department of Conservation and co-operatively with other agencies and stakeholders to ensure that Te Ruapekapeka is maintained protected and upheld.
- (d) To uphold the principles and spirit of Te Tiriti o Waitangi.
- (e) To report back to tangata whenua on issues relevant to the management of Te Ruapekapeka.
- (f) To seek funding as a charitable trust for the further development of Te Ruapekapeka and for the educational benefit of all people.
- (g) The activities of the Te Ruapekapeka Trust shall pertain to all of the land contained in the Te Ruapekapeka Historic Reserve (refer to Appendix A and B for map current to January 2010).

3.1 Objectives

1. To heighten the awareness of Te Ruapekapeka through the interpretation and protection of the spiritual, ecological, cultural, archaeological, historic and military values for the benefit of the direct descendants and the general public.
2. To establish, approve and implement management plans for Te Ruapekapeka.

4.0 STRUCTURE OF THE TRUST

The Trust shall be administered by the Management Trust who shall be accountable to and elected by Ngati Manu, Ngati Kahukuri (Ngati Hau), Ngati Hine, Te Kapotai and Ngapuhi Nui Tonu. The committee shall include ex-officio representation of the Department of Conservation

5.0 MEMBERS OF THE MANAGEMENT TRUST

5.1 Number of the Management Trust Members

The Trust shall consist of no less than seven members and no more than eleven members.

5.2 Membership of the Management Trust Committee

The signatories of this deed shall be the trustees of the Trust.

5.3 Retirement of Management Trust Committee Members

A Management Trust member may retire or be replaced by a nominated representative.

5.4 Nomination to Management Trust

Nomination for a position on the Management Trust shall be by way of a letter from the **recognised authority** of Ngati Manu, Ngati Kahukuri (Ngati Hau), Ngati Hine, Te Kapotai or Ngapuhi Nui Tonu and endorsed with the consent of the nominee and given to the Secretary. No member shall be elected who

has not been nominated by the recognised authority of the aforementioned hapu and iwi and who has not consented to being nominated.

5.6 Vacancies

Subject to rule 5.4, the recognised authority from the aforementioned hapu and iwi shall have the power to replace a member onto the Management Trust Committee

5.7 Resignation of Member from the Management Trust

Any member may resign from the Management Trust at any time by giving the Secretary notice in writing to that effect and such notice unless otherwise expressed shall take effect immediately. Any member who fails to attend three consecutive meetings of the Management Trust without apologies shall be deemed to have resigned from the Management Trust and the Secretary shall inform them and also the recognised nominating hapu/iwi authority in writing accordingly. (refer 16.1)

6.0 PROCEEDINGS OF THE MANAGEMENT TRUST COMMITTEE

6.1 Meetings

The Management Trust shall meet at such times and places as it determines, and shall elect a Chairperson from amongst its members at its first meeting and every subsequent biennial meeting.

6.2 Officers

The Management Trust shall appoint the officers of Chairperson, Secretary and Treasurer. The Secretary and Treasurer need not be members of the Management Trust.

6.2.1 Chairperson, Secretary, Treasurer

The trust shall appoint officers after each Biennial meeting

Chairperson

- The Chairperson shall chair all Trustee meetings. If unable to attend, the Trustees present shall select a Chairperson for the meeting who shall exercise all the powers of the elected Chairperson.
- At the Biennial General Meeting, the Chairperson shall provide for the approval of the beneficiaries:
 - a biennial report of the preceding year's Trust affairs
 - a proposal regarding the activities planned for the forthcoming 24 -month period.
- The Chairperson, in consultation with the Trustees shall be the official spokesperson with the press or other news media on all matters concerning the Trust.

Secretary

The Secretary shall;

- Call the Biennial General Meeting and/or Special General Meetings as scheduled by the Trustees, and give 21 clear days prior notice of the time and place of the meeting by providing written notice to each Trustee member and public notification by way of a notice in the Northern Advocate.
- Call all Trustee meetings as scheduled or required by the Trustees.
- Circulate an agenda prior to the commencement of any meeting, ensuring reasonable opportunity for the respective forum to view the same.
- Keep accurate minutes of all General Meetings and all Trustee meetings and shall distribute copies to each Trustee within three weeks of the meeting. At the commencement of any meeting, the Secretary shall read the minutes of the previous meeting and seek confirmation from those in attendance at that meeting.
- Include in the minutes a list of Beneficiaries and Trustees in attendance of any meeting
- Receive and action communications regarding the Trust, file all documents and make information available to the Trustees.

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- Keep an updated schedule listing the trustees, their contact details and their term of office to ensure that all correspondence is strictly monitored

Treasurer

The Treasurer shall;

- Be responsible to receive all monies due to the Trust and to pay all debts contracted by the Trust.
- Pay all monies received into the Trust bank account/s as soon as is possible.
- Table for approval at a meeting of Trustees, all payments made from the Trust bank account/s
- Keep a full and accurate account of the financial receipts and transactions of the Trust and shall present for inspection at all Trustee meetings.
- Submit annual audited financial accounts to an Annual General Meeting. The auditor to be appointed each year at the Annual General Meeting.
- Undertake all such other lawful duties as may usually pertain to the office of Treasurer.

6.3 Tenure

Each biennial meeting shall see the rotation of three Trustees per term. The three longest serving Trustees (date deemed to commence from the date of their most recent election) shall retire and nominations will be received for three Trustees. The retiring trustees shall be eligible for re-nomination and/or election

6.4 Quorum

At any meetings of the Management Trust a minimum of five members shall form a quorum and no business shall be transacted unless a quorum is present

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6.5 Voting

All business before the Management Trust shall be fully discussed and decided by a vote. Decision will be by majority vote. If the voting is tied, the motion shall be lost.

6.6 Minutes

The Secretary shall keep minutes of all the Management Trust committee meetings which shall be available for inspection by iwi and hapu at reasonable times. Committee members will have copies made available to them.

6.7 Attendance

Management Trust meetings will be open meetings and will include nominee/s of the Department of Conservation and other persons who may be invited by the Management Trust. Those persons invited will have speaking rights only.

7.0 POWERS

7.1 General and Specific Powers

In addition to the powers implied by the general law of New Zealand, or contained in the Trustee Act 1956, the powers which the Management Trust may exercise in order to carry out its charitable objectives are as follows:

- (a) To use the funds of the Trust as the Management Trust Committee thinks necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisers, agents, officer and staff as appears necessary or expedient; and
- (b) To purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Committee thinks necessary or expedient for the purpose of attaining

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the objectives of the Trust, and to sell, exchange, bail or lease, with or without option or purchase, or in any manner dispose of any such property rights or privileges as aforesaid provided that the Committee cannot dispose, exchange, mortgage or encumber, sell or transfer any land belonging to the Department of Conservation and any of the antiquities or artefacts of Te Ruapekapeka site held by the Management in trust; and

- (c) To carry on any business; and
- (d) To invest surplus funds in any way permitted by law for investment of trust funds and upon such terms as the Management Trust think fit and the Trust members shall be responsible for the management of all the affairs of Te Ruapekapeka site and may exercise all powers and authorities conferred by those present or by the law and shall have regard to the provisions and spirit of the Treaty of Waitangi; and
- (e) Exercise all powers and authorities conferred by those present or by the law and shall have regard to the principles and the spirit of the Treaty of Waitangi; and
- (f) To do all things as may from time to time appear to be desirable to enable the Management Trust Committee to give effect to and to attain the charitable purposes of the Trust.

7.2 Employment

- (A) Under Rule 7.1(a). The Trustees may act as employees of staff when necessary in order to carry out the objectives of the Trust.

- (b) Any Trustee employed in connection with the Trust's objectives may be paid all such remuneration for his/her services as may be normal, as if he/she had been employed on that behalf and has not been a Trustee hereof **PROVIDED THAT** no such remuneration shall be paid in connection with any business by or on behalf of or for the benefit of the Trust to any person who is:
- (i) A Settler or Trustee of the Trust;
 - (ii) A shareholder or director of a company by which the business is carried on; or
 - (iii) Where a member of the Trust shall participate in or materially influence any decision made by the Trust in respect of payment to or on behalf of that member or person of any income of any of the kinds referred in Section 65(2) of the Income Tax Act 1976. Any such income paid shall be reasonable and relative to that which would have been paid in an arm's length transaction.

8.0 ACCOUNTS

8.1 The Trust Members

Shall cause proper books of account to be kept in which shall be kept full, true and complete records of the financial affairs and transactions of the Trust. The books shall be kept at the Trust Office or at such other place as the Management Trust Committee think fit and shall always be open to inspection by any Trust member.

8.2 Audit

The Trust shall as soon as practicable after the end of every financial year of the Management Trust, cause the accounts of the Trust for that financial year to be audited by an auditor appointed by the Trust for that purpose and the

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Trust shall present the audited accounts to the biennial meeting of the Trust together with an estimate of income and expenditure for the current year.

- 8.3** The accounts of the Trust shall be audited by an auditor who shall be appointed annually by the Management Trust.

9.0 PRIVATE PECUNIARY PROFIT

9.1 No Private Pecuniary Profit for any Individual and Exceptions:

- a) **No private pecuniary profit:** No private pecuniary profit shall be made by any person from the Trust, except that:
- i. Any trustee may receive full reimbursement for all expenses properly incurred by that Trustee in connection with the affairs of the Trust;
 - ii. The Trust may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
 - iii. 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 firm or entity of which that Trustee is a member, employee or associate in connections with the affairs of the Trust;
 - iv. Any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking 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 company undertaking is in any way attributable to that Trustee's connection with the Trust
- b) Trustees to comply with restrictions: The Trustees, in determining all reimbursements, remuneration and charges payable in the terms of the foregoing clause shall ensure that the restrictions imposed by the following clauses are strictly observed.

9.2 Restrictions on benefits to and influence by interested persons:

- a) **Recipients not to influence benefits:** Notwithstanding anything contained or implied in this deed, any person who is:
- i. A settlor or trustee of the Trust; or
 - ii. A shareholder or director of any company carrying on any business of the Trust; or
 - iii. A settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Trust; or
 - iv. An associated person (as defined by the Income Tax Act 2004) of any such settlor, trustee, shareholder or director referred to in paragraphs (i) to (iii) –

Shall not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence in any way the determination of the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person

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

10.0 Business Activities:

- 10.1 To carry on any business whether or not carried on at the commencement of this deed in such manner as the Board deems appropriate including power to use and apply any part of the Trust's fund and/or income thereof as capital in any such business.

11 Conflict of Interest:

11.1 **Interested Trustee:** Any Trustee who is or may be in any other capacity whatsoever 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 the Trustee's interest to the other Trustees, and shall not take part whatsoever 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.

12 Commercial Rates:

12.1 The executive shall not lend money nor lease property or assets at less than current commercial rates, having regard to the nature and terms of the loan and lease to any person (as defined in the Income Tax Act 2004):

- i. Who is a settler, Trustee or member or the executive of the Trust Board;
or
- ii. Who is a shareholder or director of any company by which any business of the Trust is carried on; or
- iii. Who is a settler or director of any company by which any business of the Trust Board is carried on; or
- iv. Where that person and that settler or Trustee or shareholder or director referred to in (i) to (iii) are associated persons

3.0 DELEGATION

13.1 Power to Delegate

The Management Trust Committee may from time to time appoint any

subcommittee and may delegate in writing any of its powers and duties to any such subcommittee or to any person, and the committee or person as the case may be, may without confirmation by the Management Trust Committee exercise or perform the delegated powers or duties in like manner and with the same effect as the Trust could itself have exercised or performed them.

13.2 Delegate Bound

Any subcommittee or person to whom the Management Trust Committee has delegated powers or duties shall be bound by the charitable terms of the Trust.

13.3 Delegation Revocable

Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Management Trust Committee.

13.4 Delegate need not be Trust Member

It shall not be necessary that any person who is appointed to be a member of any such subcommittee, or to whom any such delegation is made, be a member of the Management Trust Committee.

14.0 COMMON SEAL

The Trust shall have a Common Seal which shall be kept in the custody of the Secretary, and shall be used only as directed by the Management Trust Committee. It shall be affixed to documents only in the presence of and accompanied by the signature of two members of the Management Trust Committee.

16.0 WITHDRAWAL FROM OFFICE

16.1 Resignation

The Office of the Trustee member shall become vacant if:

- (i) He/she shall resign from office; or
- (ii) He/she shall become of unsound mind; or
- (iii) He/she shall be absent from New Zealand for a period of 18 months and that absence is crucial to the operation of the Trust; or
- (iv) He/she shall die (refer 5.7)

17.0 EXPULSION OF MEMBERS OF THE TRUST

17.1 Notice of Complaint

Any person may make a complaint to the Trust that the conduct of a member of the Trust is or has been injurious to the objectives and purposes of the Trust as defined in 3.0 and/or 3.1 above. Every such complaint shall be in writing and addressed to the Trust Secretary and also to the appropriate recognised hapu or iwi authority if the member is a trustee.

17.2 Meeting

The Trust will consider any complaints to determine whether there is sufficient substance in the complaint, in the presence of the trustee and/or member and a representative of the appropriate recognised hapu or iwi authority at a meeting of the Trust or ask for a written explanation of the member's conduct.

17.3 Notice of Meeting

The Trust shall give the trustee and/or member and the recognised hapu or iwi authority at least fourteen (14) days written notice of the meeting. The notice shall:

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- (a) Sufficiently inform the trustee and/or member of the nature of the complaint so that the parties can offer an explanation of the member's conduct.
- (b) Inform the member that, if the Trust is not satisfied with the member's explanation, the Trust may expel the member from the Trust.

17.4 Trust May Expel

If, in the meeting the Trust decides to expel the member from the Trust, the member shall cease to be a member of the Trust.

17.5 Appeal

A member expelled by the Trust may, within fourteen (14) days give written notice of appeal to the Secretary. The Secretary shall then call a special general meeting to take place within twenty-one (21) days of receipt of the notice of appeal.

17.6 Report

A full report must be furnished to the nominating hapu, or iwi, or the Department within twenty-one (21) days of the Trust members meeting.

- (a) The nominating hapu, or iwi, or the Department may request an appearance before the Trust members.

18.0 Dispute Resolution: (Policy)

18.1 The following process will apply when seeking resolve to any or disputes

- (a) With regard to any disputes pertaining to tikanga, protocols and/or customary processes and practices relating to Te Ruapekapeka, the 'Trust' shall refer the 'take/issue' to the nominated Kaumatua/Kuia of the Trust who

shall have the appropriate knowledge and understanding of tikanga Māori me ona ahuatanga.

(b) All other matters shall be raised verbally with a trustee or the 'Trust' to see if in the first instance the 'take/issue' can be resolved to the satisfaction of the person/s and/or concerned whether he/she is a trustee of the Trust or not.

(c) If no satisfaction is gained from this initial contact the person/s concerned may choose to write their concerns or 'take/issue' to be tabled formally with the 'Trust'. The 'Trust' shall address the letter formally and may require the person/s concerned to attend a 'Trust meeting and speak to the letter.

(d) If the outcome or response to the letter is not satisfactory that person/s may then request the matter or 'take/issue' to be taken to an Annual General Meeting at which the 'take/issue' may be put on the meeting agenda, and discussed in an open forum at that meeting.

(e) Should the above process not prove satisfactory to either party in resolving the dispute, both parties may have recourse to external mediation, or litigation.

(f) All the above may be subject to the Trust's discretion.

19.0 BIENNIAL GENERAL MEETING

19.1 Time and Place of Meeting

The biennial general meeting of the Trust shall be held at such marae, date and time as the Trust shall determine.

19.2 Business of Meeting

The biennial general meeting shall carry out the following business:

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- (a) Receive the minutes of the previous biennial general meeting and or any other special general meeting held since the last biennial general meeting; and
- (b) Receive the Trust's statement of accounts for the preceding 2 years and an estimate of income and expenditure for the current year; and
- (c) Receive reports from the Trust and its committees; and
- (d) Fix the annual subscription (if any); and
- (e) Consider and decide by resolution any other matter which may properly be brought before the meeting.

20.0 SPECIAL GENERAL MEETING

20.1 Secretary May Call Meeting

A special general meeting of the Trust shall be called by the Secretary on receipt of a request in writing for such a meeting stating the reason for having the meeting and signed by not less than five members of the Trust.

20.2 Notice of Meeting

The prescribed notice calling a special general meeting shall state in general terms the business for which the meeting is called and at that meeting only the business so stated shall be discussed.

20.3 Advertising of Biennial General Meeting or Special General Meeting

As outlined in 6.2.1 the Secretary shall call the Biennial General Meeting and/or Special General Meetings as scheduled by the Trustees, and give 21 clear days prior notice of the time and place of the meeting by providing written notice to

each Trustee member and public notification by way of a notice in the Northern Advocate.

21.0 PROCEDURE FOR GENERAL MEETINGS

20.1 Definition

In these rules the term “general meeting” includes a Biennial general meeting, biennial meeting and a special general meeting.

20.2 Quorum

The quorum for an Biennial general meeting or special general meeting shall be five members of the Management Trust and five members of the public.

20.3 Chairperson

The Chairperson of the Trust shall chair each general meeting.

20.4 Voting

All decisions shall be made by a majority vote of those in attendance. Each member shall have only one vote. Voting shall be by show of hands. If the voting is tied, the motion shall be lost. All motions proposed shall be pursuant to the purposes and objectives of the Trust and shall not be unlawful

21.0 ALTERATION OF RULES

These rules may be altered, added to, rescinded or otherwise amended by a resolution passed by a majority vote (refer 20.4) of the Trust at a Biennial general meeting, provided that no such amendment shall: (Policy/procedure)

- (a) Detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
- (b) Be made to Rule 8.2 unless it is first approved in writing by the Department of Inland Revenue.

22.0 DISPOSITION OF SURPLUS ASSETS

On the winding up of the Trust or on its dissolution by the Registrar, all surplus assets, excepting where specific agreements differ, after the payment of costs, debts and liabilities shall be given to the Department of Conservation expressly and solely for administration and upkeep of Te Ruapekapeka Historic Reserve or if the Department of Conservation is unable to accept it, given to the Maori Trust that is managing the Pa site or if the Maori Trust are not able to accept it, then it shall be distributed in accordance with the directions of the High Court pursuant to Section 27 of the Charitable Trusts Act 1957.

DEFINITIONS:

In this Constitution unless where a different intention appears:

“*Act*” means the Charitable Trusts Act 1957;

“*Associated Person*” has the same meaning ascribed to it in the Income Tax Act 1976;

“*Chairperson*”, “*Secretary*” and “*Trustees*” means respectively the Chairperson, Secretary and Trust;

“*Meeting*” means a meeting of the Trust;

“*Member*” means a member of the Trust and includes a firm, a partnership, a Trust, an association, a club, and a corporation whether registered or not, as well as an individual whether an officer of the Trust or a Trustee

“*Ordinary resolution*” means a resolution passed by a majority of the votes of persons entitled to vote on any resolution;

“*Registrar*” means the Registrar of Charitable Trusts pursuant to the Charitable Trust Act 1957;

“*Special resolution*” means a resolution passed by not less than 75% of the votes of the persons entitled to vote on any resolution;

“*Trust*” means the Trust incorporated under these rules.

“*Recognised Authorities*” means the recognised authorities of Ngati Manu, Ngati Kahukuri (Ngati Hau), Ngati Hine, Te Kapotai and Ngapuhi Nui Tonu)

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