

Constitution

of

Ngati Ruanui Holdings Corporation Limited

Date June 2006

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Constitution of Ngati Ruanui Holdings Corporation Limited

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993;

Board means Directors who number not less than the required quorum acting together as the Board of Directors of the Company;

Company means Ngati Ruanui Holdings Corporation Limited;

Conflict Transaction means a transaction set out in clause 11.3;

Constitution means this constitution, as altered from time to time;

Director means a person appointed as Director of the Company;

Governing Shareholder means Te Runanga o Ngati Ruanui Trust;

Interested has the meaning set out in Section 139 of the Act (and **Interest** shall be interpreted accordingly);

Objects means the objects of the Company set out in clause 3;

Ordinary Resolution means a resolution passed by a simple majority of the votes of Shareholders entitled to vote and voting on the resolution;

Resolution means a resolution passed by the Shareholder;

Share means a share issued, or to be issued, by the Company;

Shareholder means a person, who is considered charitable under New Zealand law, whose name is entered in the share register as the holder for the time being of one or more Shares;

Subsidiary means any subsidiary of the Company within the meaning of Section 5 of the Act

(read together with Sections 6 to 8 of the Act);

Trust Deed means the Deed of Trust establishing the Governing Shareholder, dated 10 December 2001, as amended from time to time and also refers to the latest amendment titled the Amalgamated Deed of Trust which is dated 19 February 2006;

1.2 **Construction**

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to clauses or paragraphs are to clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) the words **written** and **writing** include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word **person** includes any association of person whether corporate or unincorporated, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (g) words or expressions defined in the Act have the same meaning in this Constitution.

2. **Constitution and the Trust Deed**

2.1 **Constitution and Trust Deed to be read together**

Subject to Clause 2.2, the Constitution must always be read with reference to the Trust Deed, with the Trust Deed (as necessary) forming part of the terms of the Constitution.

2.2 Constitution subject to Trust Deed

If the terms of the Constitution and the Trust Deed are ever in conflict, the Constitution will always be interpreted as being subject to the Trust Deed unless such terms would result in the Company breaching any obligation imposed by the Act.

3. Companies Act 1993

The Company, the Board, the Shareholder and each Director have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by the Constitution.

4. Objects of the Company

4.1 Any net profits of the Company are to be applied towards the:

- (a) promotion of education;
- (b) relief of poverty;
- (c) improvement of physical and mental health; and
- (d) promotion of the unique cultural identity –

in New Zealand of Ngati Ruanui people (the **Objects**).

4.2 For the avoidance of doubt, the Objects can be achieved through distributions directly towards the furtherance of the Objects, to a Subsidiary or to the Shareholder or any other entity of which Te Runanga o Ngati Ruanui Trust is the only ultimate shareholder.

5. Rights attaching to Shares

5.1 Holder of Shares

At the date of adoption of the Constitution, the Company has one share all of which is held by the Shareholder.

5.2 Rights attached to Shares

Ownership of the Shares confers on the Shareholder the right to:

- (a) Pass any resolution, including a resolution to:
 - (i) appoint or remove an auditor; or
 - (ii) adopt a constitution; or
 - (iii) alter the Constitution; or
 - (iv) approve a major transaction; or
 - (v) approve an amalgamation of the Company under Section 221 of the Act; or
 - (vi) put the Company into liquidation;
- (b) dividends authorised by the Board;
- (c) the distribution of the surplus assets of the Company.

The Shareholder has the right to receive notice of and attend every meeting of Shareholders called by the Board pursuant to Clause 9.5.

6. Issue, consolidation, subdivision and repurchase of Shares

6.1 Issue of new Shares

Further Shares in the Company, including different Classes of Shares and Shares which:

- (a) rank equally with, or in priority to, existing Shares; or
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- (c) confer preferential rights to distributions of capital or income; or
- (d) confer special, limited or conditional voting rights; or
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with Section 68 of the Act,

may be issued with the approval of the Governing Shareholder in writing, provided that such Shares are only issued to the Shareholder.

6.2 **Consolidation and subdivision of Shares**

The Board may with the approval of the Shareholder in writing:

- (a) Consolidate and divide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class; or
- (b) Subdivide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class.

6.3 **Bonus issues**

The Board may with the approval of the Shareholder in writing resolve to apply any amount which is available for distribution to Shareholders either:

- (a) In paying up in full Shares or other securities of the Company to be issued credited as fully paid to the Shareholder; or
- (b) In paying up any amount which is unpaid on any Shares held by the Shareholder

Or partly in one way and partly in the other.

6.4 **Shares in lieu of dividends**

The Board may exercise the right conferred by Section 54 of the Act to issue Shares to the

Shareholder where the Shareholder has agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

6.5 Share repurchases

The Company may purchase or otherwise acquire Shares issued by it from the Shareholder and hold its own Shares.

7. Company as shareholder

In the event that the Company is a shareholder in a Subsidiary, the Company must:

- (a) At all time hold all the shares in the Subsidiary;
- (b) Not transfer any shares in the Subsidiary; and
- (c) Always exercise the pre-emptive rights in relation to new shares or equity securities issued by the Subsidiary.

8. Exercise of powers of Shareholders

8.1 Methods of holding meetings

Notwithstanding the First Schedule to the Act, the meetings of Shareholders may be called, held and conducted at the total discretion of the Shareholder

8.2 Exercise of power by meeting or written resolution

A power reserved to the Shareholder by the Act or by this Constitution may be exercised either:

- (a) At a meeting of the Shareholder; or
- (b) By a resolution in writing signed in accordance with Section 122 of Act.

8.3 Powers of Shareholders

Unless otherwise specified in the Act or this Constitution any power reserved to the Shareholder may be exercised and any approval of the Shareholder may be given by Resolution.

9. Meetings of Shareholders

9.1 Annual meetings

Subject to clause 9.3, the Company shall hold an annual meeting not later than:

- (a) Six months after the balance date of the Company or, if the Company is an **exempt company** (as that term is defined in the Financial Reporting Act 1993) and all the Shareholders agree, ten months after the balance date of the Company; and
- (b) Fifteen months after the previous annual meeting.

The Company need not hold its first annual meeting in the calendar year of its registration but shall hold that meeting within 18 months of its registration.

9.2 Time and place of annual meeting

Each annual meeting shall be held at such time and place as the Board appoints.

9.3 Resolution in lieu of annual meeting

It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with Section 122 of the Act.

9.4 Special meetings

All meetings other than annual meetings shall be called special meetings.

9.5 Calling of special meetings

A special meeting may be called by the Board at any time.

10. Appointment and removal of Directors

10.1 Existing Directors

The Directors in office at the date of adoption of this Constitution shall continue in office and shall be deemed to have been appointed pursuant to this Constitution.

10.2 Appointment and removal of Directors

The Shareholder may from time to time by notice in writing delivered to the Company appoint, remove and replace and Director.

10.3 Vacation of office

A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
- (b) becomes disqualified from being a Director pursuant to Section 151 of the Act;
- (c) resigns from office by notice in writing to the Company; or
- (d) is removed from office pursuant to this Constitution or the Act.

10.4 Appointment and removal of Alternate Directors

The Shareholder may by notice in writing to the Company appoint any person to be an Alternate Director or a Director (an **Alternate Director**) and may by notice in writing to the Company remove or replace any Alternate Director.

10.5 Rights of Alternate Director

Each Alternate Director will be entitled to:

- (a) Receive notices of all meetings of the Board if the Director for whom he or she is an Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
- (b) Attend and vote at any such meeting at which the Director for who he or she is an Alternate Director is not personally present; and

- (c) In the absence of the Director for whom he or she is an Alternate Director, perform all the functions, and exercise all the powers, of that Director.

11. Powers of Directors

11.1 Management of Company

Except as provided in this Constitution, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

11.2 Exercise of powers by Board

Subject to the provisions of this Constitution, the Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholder.

11.3 Delegation of powers

The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.

11.4 Appointment of attorney

The Company may exercise the power conferred by Section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

11.5 Ratification by Shareholders

Subject to the provisions of Section 177 of the Act (relating to ratification of Director's actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

12. Proceedings of the Board

12.1 Methods of holding meetings

A meeting of the Board may be held either:

- (a) By a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) By means of audio, or audio and visual communication by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

12.2 Notice of meeting

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board. Notice of a meeting of Directors must be given to:

- (a) Every Director who is in New Zealand; and
- (b) Any Alternate Director (as defined in clause 8.4) who is in New Zealand who is an alternate of a Director who is not in New Zealand.

12.3 Waiver of irregularity

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

12.4 Quorum

A quorum for a meeting of the Board may be fixed by all of the Directors, and unless so fixed, is a majority of the Directors.

12.5 Chairperson

- (a) The Shareholder shall appoint one of the Directors as chairperson of the Board and determine the period for which the chairperson is to hold office.

- (b) If no chairperson is appointed by the Shareholder, or if at any meeting the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

12.6 **Votes**

Every Director has one vote. In the case of an equality of votes, the chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents from or expressly abstains from voting on, or votes against, the resolution.

12.7 **Resolutions in writing**

A resolution in writing, signed or assented to by a majority of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form; each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings. The Company shall within seven days after any resolution is passed in accordance with this clause send a copy of the resolution to each Director who has not signed or assented to the resolution but failure to do so shall not invalidate the resolution.

12.8 **Minutes**

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

12.9 **Validity of acts**

All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) Any defect in the appointment of any Director or person acting as a Director; or
- (b) That they or any of them were disqualified; or
- (c) Any irregularity in a notice of meeting

12.10 Other procedures

Except as set out in this Clause 10, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

13. Director's Interests

13.1 Disclosure of Interests

A Director shall comply with the provisions of Section 140 of the Act (relating to disclosure of Interest of Directors) but failure to comply with that section does not affect the operation of Clause 13.2.

13.2 Directors entitled to act under Constitution

Subject to Clauses 13.4 and 13.5, a Director is entitled to act under this Constitution and to exercise all of the powers conferred on him or her even when the Directors enter into a propose to enter into a Conflict Transaction for that Director.

13.3 Conflict Transaction

A Conflict Transaction exists for a Director when:

- (a) The Director is or may be or becomes associated (whether as Director or otherwise in a private capacity) with any company, partnership, organisation, group or trust with which the Director is transacting or dealing in his or her capacity as Director of the Company; or
- (b) The interests or duty of the Director in any particular matter conflicts or might conflict with his or her duty to the Company or the Shareholder; or
- (c) The Director is transacting or dealing as Director with himself or herself in another capacity.

13.4 Director unable to act

When a Conflict Transaction exists for a Director and there is at the time more than one

Director:

- (a) The Director for whom the Conflict Transaction exists must declare the nature of the conflict or the potential conflict at a meeting of the Directors; and
- (b) The Director must not take part in any deliberations or proceedings, including voting or other decision-making, relating to the Conflict Transaction, and the Clauses of this Constitution relating to voting shall be deemed to be varied accordingly; and
- (c) If the Director contravenes paragraphs (a) and (b) of this Clause, his or her vote or other decision will not be counted, and neither will the Director be counted in the quorum present at the meeting, and the Clauses of this Constitution relating to voting will be deemed to be varied accordingly.

13.5 No Director able to act

When there is a Conflict Transaction, and

- (a) There is at the time a sole Director; or
- (b) Because of Clause 13.4 there are at the time no Directors who are permitted to vote or decide on the Conflict Transaction –

The Directors may still enter into the Conflict Transaction, but subject to Sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and Section 199(2) of the Act (prohibiting a Director from acting as auditor of a company), only if they have obtained a written confirmation from a lawyer, accountant or other reputable professional person of independent status that the Conflict Transaction is proper and in order for the Directors to enter into.

14. Pecuniary profit, Directors' remuneration and benefits and advantages

14.1 No pecuniary profit

No private pecuniary profit shall be made by any person from the Company, except that (but subject to Clause 14.3):

- (a) In accordance with Clause 14.7, each Director may receive remuneration of not more than the arms-length open market value for similar services provided by the Director.
- (b) Each Director may receive full reimbursement for all costs, charges and expenses properly incurred by the Director in connection with the Company's business;
- (c) The Directors may pay reasonable and proper remuneration to any person or firm or company (including a Director) in return for services actually rendered to the Company;
- (d) Each Director may be paid all usual professional, business or trade charges for services rendered, time spent and acts done by the Director or by any firm or entity of which the Director is a member, employee or associate in connection with the Company's business;
- (e) Each Director may retain any remuneration properly payable to the Director by any company or other body or firm or undertaking with which the Company may be in any way concerned or involved for which the Director has acted in any capacity whatever, notwithstanding that the Director's connection with that company or body or firm or undertaking is in any way attributable to the Director's connection with the Company.

14.2 Restrictions imposed on payments

The Directors, in determining all reimbursements, remuneration and charges payable in terms of this Deed, must ensure that the restrictions imposed by Clause 14.3 are strictly observed.

14.3 No influencing remuneration or benefit

Notwithstanding anything to the contrary in this Constitution, no remuneration or benefit or advantage (regardless of whether it is convertible into money) or income of any of the kinds referred to in the Sections set out in the second proviso to Section CB 4(1)(e) of the Income Tax Act 1994 shall be paid or afforded to or received or gained or achieved or derived by any person (the Determining Person) if the second proviso to Section CB 4(1)(e) of the Income Tax Act 1994 denies the Directors an exemption from tax on income derived by the Directors from the carrying on of any business by or on behalf of or for the benefit of the Directors in the circumstances set out in Clause 14.4.

14.4 Tax Act circumstances

The circumstances referred to in Clause 14.3 are those in which the Determining Person is:

- (a) A Director of the Shareholder or Director of the Company; or
- (b) Settlor or Hapu Representative of Te Runanga o Ngati Ruanui Trust; or
- (c) An associated person (as defined by the Income Tax Act 1994) of any such settlor, Director or Hapu Representative –

And the Determining Person can, by virtue of being a Director or such a settlor, Shareholder, Director, Trustee or associated person, in any way (whether directly or indirectly) determine, or materially influence in any way the determination of, the nature or the amount of the remuneration or benefit or advantage or income referred to in Clause 14.3 or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by the Determining Person.

14.5 Exclusion of Tax Act rules

Clause 14.3 does not apply if and to the extent that there is an exclusion from the application of the second proviso to Section CB 4(1)(e) of the Income Tax Act 1994 by any law of New Zealand (whether that law is the Income Tax Act 1994 or otherwise).

14.6 Professional public practice exemption

A person, who in the course of and as part of the carrying on of 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 Clause 14.3.

14.7 Remuneration and benefits

- (a) The Shareholder shall determine the maximum annual amount, in respect of each Director, of any payments referred to in Section 161 of the Act that may be authorised by the Board.
- (b) Each Director may accept all or part of or none of the sums allocated to them under paragraph (a) above.

15. Indemnity and insurance for Directors and employees

15.1 Indemnity for Directors

Every Director shall be indemnified by the Company or the Shareholder for any costs referred to in Section 162(3) of the Act and any liability or costs referred to in Section 162(4) of the Act.

15.2 Indemnities and insurance

In addition to the indemnity set out in Clause 15.1, the Company may with the prior written approval of the Governing Shareholder:

- (a) indemnify a Director or employee of the Company or a related company for any costs referred to in Section 162(3) of the Act;
- (b) indemnify a Director or employee of the Company or a related company in respect of any liability or costs referred to in Section 162(4) of the Act; and
- (c) effect insurance for a Director or employee of the Company or a related company in respect of any liability or costs referred to in Section 162(5) of the Act.

15.3 Interpretation

Words given extended meanings by Section 162(9) of the Act have those extended meanings in this Clause.

16. Dividends

The Board may, subject to the Act and this Constitution, authorise the payment of dividends to the Shareholder by the Company at times, and of amounts, and in such form as it thinks fit and may do everything which is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test.

17. Notices

All notices, reports, accounts or documents required to be sent to a Shareholder shall be sent in the manner set out in Section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.

18. Liquidation

18.1 Power to appoint liquidator

Subject to the necessary statutory rules being fulfilled, the Directors, with the written consent of the Shareholder may at any time liquidate the Company.

18.2 Distribution on liquidation

Subject to the rights of the Shareholder and to Clauses 18.3, upon the liquidation of the Company the Directors are to distribute, with the approval of the Shareholder, the surplus assets of the Company (if any) towards the Shareholder, or among the Shareholders in proportion to their shareholding, or if there is no distribution to the Shareholders to the furtherance within New Zealand of such of the Objects as the Directors determine. If the Directors cannot agree of the distribution, the surplus assets will be paid or applied to such of the Objects as a judge of the High Court of New Zealand directs.

18.3 Trusts

With the approval of the Shareholder, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.

19. Method of contracting

19.1 Deeds

A deed which is to be entered into by the Company may be signed on behalf of the Company,

by:

- (a) two or more Directors;
- (b) if there is only one Director, by that Director whose signature must be witnessed;
- (c) one or more attorneys appointed by the Company; or
- (d) any Director, or any other person authorised by the Board, whose signature must be witnessed.

19.2 **Other written contracts**

An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

19.3 **Other obligations**

Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

20. **Amendment of constitution**

Subject to any relevant legislation for the time being in force relating to companies and/or charities, the Directors, with the written consent of the Governing Shareholder, have power:

- (a) to amend, revoke or add to any of the provisions of this Constitution unless to do so:
 - (i) would amend, revoke or add to:
 - (A) Clause 4 (the Objects);
 - (B) Clause 6.1 (Issue, consolidation, subdivision and repurchase of Share);
 - (C) Clause 7 (Company as Shareholder);
 - (D) Clause 13 (Directors' interests);

(E) Clause 14.1 (No pecuniary profit);

(F) Clause 14.3 (No influencing remuneration or benefit);

(G) Clause 18 (Liquidation),

In a manner that would adversely affect the Company's qualification as a charitable company under the Income Tax Act 1994; or

(ii) Would enable a distribution in a manner that is inconsistent with the Objects;
and

(b) Notwithstanding paragraph (a) of this Clause, to amend revoke or add to this Constitution including the Objects if and to the extent that it is necessary to do so for the Company to qualify as a charitable company under the Income Tax Act 1994.

Appendix 1: Certification

This document is the Constitution of Ngati Ruanui Holdings Corporation Limited as adopted by the Company by Special Resolution passed on the [] day of [].

Certified as the Constitution of the Company

[] – Director / Authorised Person