

DECLARATION OF TRUST

ŌROKARE

Art, Story, Motion

**A Charitable Trust dedicated to
Indigenous Theatre and Performing Arts**

**DECLARATION OF TRUST: ŌROTOKARE: Art, Story, Motion
A Trust Dedicated to Indigenous Theatre and Performing Arts**

Dated: 15th day of December, 2004

The Trustees:

The original trustees are:

- Parekāwhia McLean
- Piripi Walker
- Ray Ahipene-Mercer
- Kim Skelton
- Mīria Pomare

("The Trustees")

The Trustees wish to create a Charitable Trust to carry out the aims set out in this Trust Declaration.

The Trustees will hold the sum of \$100 as the initial Trust Fund, on trust along with any other money or property received by the Trustees – after this Trust Declaration has been signed with the intention that it be held by the Trustees subject to the tenets and other provisions set out in this Trust Declaration - to carry out the aims, and with the powers, set out in this Trust Declaration ("The Trust Fund").

Additionally, the Trustees will also found an endowment fund. (See Section 7.0 of this Trust Declaration, "The Endowment Fund").

The Trustees will be entitled to apply to be incorporated as a Board under the Charitable Trust Act 1957 to carry out the aims, exercise the powers and comply with rules all as set out in this Trust Declaration.

Ōrotokare: Art Story, Motion acknowledges the assistance of Neil Gray of Chapman Tripp, Barristers and Solicitors, during the preparation of this Trust declaration.

1.0 Introductory Statement

Whare Tapere were pā-based 'houses' of entertainment, storytelling, dance and games that fell into disuse following the abandonment of pā in the 19th century. Influences and 'echoes' of *whare tapere* performing arts were brought forth into later expressions including the contemporary *kapa haka*. Recent research, however, (including research by the late Hirini Melbourne of Ngāi Tūhoe) has revealed a larger number of performing arts forms in traditional Māori culture than what is popularly understood today.

The overall goal of the Trust is to rediscover, explore and renew traditional indigenous/Māori theatre and performing arts forms - particularly those of the traditional *whare tapere* - by researching those forms, evolving them and giving expression to them in newly created performances. The Trust will be free to perform and evolve these forms either by performing them on their own or through encounter with performing arts and expressions from other traditions.

The Trust is to act as a forum for a new creativity, inspiration and vision with respect to indigenous theatre and performing arts. In this regard, the Trust is encouraged to convene activities, when appropriate, that are exploratory, radical and *avant garde*. Further, the Trust is urged to seek excellence in its activities - in both the organisation and administration of its affairs and, particularly, in the performing arts activities which will be convened under its auspices.

The genesis of the Trust is found in a 1998 doctoral research project entitled *Te Whare Tapere: Towards a Model for Māori Performing Arts*. The doctoral project contained three parts:

- a. a discussion concerning the traditional Māori worldview, there entitled 'Te Ao Mārama'
- b. a reconstruction of the traditional *whare tapere*
- c. a model for a new *whare tapere*

It is proposed that the Trust employ the model articulated in the dissertation as a starting point for its activities.

1.1 Explanation concerning the name 'Ōrotokare'

Ōrotokare is the name of a locality, once the home of the 19th century Ngāti Raukawa ancestor Hūkiki Te Ahukaramū. Located west of Muhunua, Ōhau (Horowhenua), Ōrotokare was a small lake that became the home of Te Ahukaramū following his migration (and that of his people) from Maungatautari in the Waikato region.

The name Ōrotokare resonates with the term *kare-ā-roto* which is used to denote the passions of the heart. A *kare-ā-roto* is a person who has captured one's affections. Here Te Rangikāheke of Te Arawa uses the term in his telling of the love story of Hinemoa and Tūtānekai:

*Ano te rangi o te koauau o Tutanekai, me he ru na ano e ueue ana i a tuawahine kia haere atu ki te kare-a-roto a tona ngakau
The melody of Tūtānekai's flute stirred her within to go to the person who moved her heart.¹*

Name: Ōrotokare: Art, Story, Motion

Trustees who will become **Board Members** on their registration as a Board under the Charitable Trusts Act 1957:

Ray Ahipene-Mercer
Parekāwhia McLean
Piripi Walker
Kim Skelton
Mīria Pomare

¹ Taken from *Nga Mahi a nga Tupuna*, by George Grey, Third Edition, Thomas Avery and Sons Ltd 1928.

2.0 Name

The name of the Trust is *Ōrotokare: Art, Story, Motion*, or such other name as the trustees may choose.

3.0 Definitions

In this Declaration, unless context requires otherwise:

Related Person for the purposes of clause 6.10 and in relation to any business to which section CB4(1)(e) of the Income Tax Act 1994 applies, means a person specified in paragraphs (i) to (iv) of the 2nd proviso to that section, the persons currently specified being:

- (a) a settlor or trustee of the trust by which the business is carried on; or
- (b) a shareholder or director of the company by which the business is being carried on; or
- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) that person, where he or she and the settlor, trustee, shareholder or director already mentioned in this definition, are associated persons for the purposes of the Income Tax Act 1994

4.0 Purposes

The Trust is established to carry out the following purposes:

- 4.1 To convene indigenous/Māori theatre and performing arts activities particularly as they fall within the meaning of *te whare tapere*.
- 4.2 To convene a regularly occurring festival – or series of events - of performing arts activities that highlight and advance aspects of the whare tapere
- 4.3 To advance research into the traditional whare tapere
- 4.4 To publicise and generally make available the outcomes of research into the whare tapere and indigenous/Māori theatre and performing arts activities in general
- 4.5 To advance creative endeavour with respect to the new whare tapere, particularly through the convention of newly composed and created performances employing, and thereby advancing, some or all aspects of performing arts forms found within the whare tapere
- 4.6 To explore and advance a philosophy (including theory and practice) pertaining to 'indigenous theatre and performing arts'
- 4.7 To publicise and generally make available advances with respect to the whare tapere.
- 4.8 To teach and impart skills and knowledge pertaining to the whare tapere.
- 4.9 Or for any other purposes within New Zealand (whether relating to the relief of poverty, the advancement of education or

religion or another matter beneficial to the community) which are charitable according to the law of New Zealand and the Trustees find appropriate.

5.0 Powers

The Trustees will have the following powers:

5.1 To purchase, lease, hire or otherwise acquire any real or personal property.

5.2 To sell, let, mortgage or otherwise dispose of or deal with any of the property forming part of the Trust Fund.

5.3 To construct, maintain or alter any buildings or property.

5.4 To borrow, raise, invest or loan money in any manner and on any terms suitable to the Trustees.

5.5 To enter into any arrangement or contract with any individual, Government Department or corporate body.

5.6 To pay all or any of the expenses incurred in establishing the Trust and the Board and in the execution of the aims of the Trust and in the administration of the property forming the Trust Fund.

5.7 To employ or engage staff, advisors or other people whether or not they are Trustees, and to pay their wages, salaries and/or their expenses on terms suitable to the Trustees.

5.8 To alter the powers and rules of the Board provided that no alteration or addition endangers the charitable aims and status of the Trust.

5.9 To do anything else that in the opinion of the Trustees will further the charitable objects of the Trust.

6.0 Rules

Upon registration of the Trustees as a Board under the Charitable Trusts Act 1957, the Rules of the Board will be as follows:

6.1. Constitution of the Board

6.1.1 The Board will have not less than 3 members and not more than 9.

6.1.2 The Trustees named in this Deed will be some of the original Board members and their appointment will commence from the date of

registration of the Trustees as a Board under the Charitable Trusts Act 1957.

6.1.3 Three of the positions upon the Board may bear the following formal titles:

- The Professor Timoti Kāretu Chair for Indigenous Performing Arts
- The Professor Phillip Mann Chair for World Theatre
- The Dr. Mīria Simpson Chair for the Māori Language²

6.1.4 From time to time, the Board may appoint one, two or three of its members to fill the positions established in Clause 6.1.3. This is to be achieved by unanimous agreement of all Board members. Appointment of Board members to these positions is to be done in consultation with the individuals whose names appear in Clause 6.1.3 or with their families or with some other individual or group who possesses an appropriate relationship with the individuals named. The Board is also free not to confer any or all of these titles upon any of its members. In conferring these titles, no additional obligation or rights shall be established for the recipient.

6.1.5 Additionally, if the Board deems it appropriate, the Board may confer any one, two or three of these titles upon one, two or three officers or servants of the Board. This is to be done with the unanimous agreement of the Board and in consultation with the individuals whose names appear in Clause 6.1.3 or with their families or with some other individual or group who possesses an appropriate relationship with the individuals named.

6.1.6 The Board will appoint new members to the Board according to these rules and on their appointment those new members will be deemed to be Trustees.

6.1.7 A Board member will hold office until the next Annual General Meeting of the Board unless prior to this date he or she:

- (i) resigns
- (ii) is unable to perform his or her duties
- (iii) does not attend three consecutive Board meetings without adequate explanation
- (iv) dies
- (v) is removed from the Board according to clause 6.1.8.

² Professor Phillip Mann was the Victoria University supervisor who oversaw the doctoral research project conducted by Dr. Charles Royal and mentioned in Section 1.0 of this Trust Deed. Professor Kāretu and Dr Simpson were members of an advisory committee who assisted the project. The research took place in the period 1994-1998.

6.1.8 A Board member may be removed from the Board by a vote of at least two thirds of the Board members at a General Meeting. The Board member concerned must be given:

- (i) at least 14 days notice of the proposed removal
- (ii) the reasons for the proposed removal
- (iii) an opportunity to reply at the meeting considering his or her removal.

6.1.9 Any Board member may resign from the Board by giving notice in writing to the Secretary of the Board and the resignation will take effect from the date the notice is received by the Secretary.

6.2 Powers of the Board

6.2.1 The Board members will be responsible for the management of all the Trust and may exercise all the powers given to it by this declaration.

6.3 Board Meetings

6.3.1 The Board will hold at **least four meetings** in every year and one of these meetings will be the Annual General Meeting which is to be held not more than 15 months following the previous Annual General Meeting.

6.3.2 At the first meeting of the Board and at every Annual General Meeting the Board will appoint the following officers:

- (i) a Chairperson who will be responsible for convening and chairing Board meetings
- (ii) a Secretary who will carry out the functions allocated to the Secretary in these Rules
- (iii) a Treasurer who will control the funds of the Board.

6.3.3 If at any time an office holder ceases to be a Board member the Board may appoint another member to that office prior to the next Annual General Meeting and that member on said appointment will become a Trustee.

6.3.4 In addition to the appointment of office holders the Annual General Meeting will carry out the following tasks:

- (i) consider and adopt the Annual Report
- (ii) consider and adopt the Financial Accounts
- (iii) appoint an Auditor or Accountant who may or may not be a Board Member
- (iv) consider any other general business.

6.4 Notice of Board meetings

6.4.1 Notice of all Board meetings including the Annual General Meeting will be given in writing to each Board member at least 14 days prior to the meeting. However, if all Board members agree, a Board meeting may be called at any time.

6.5 The Running of Board meetings

6.5.1 The Quorum for all Board meetings will be half of the Board members or if the number of Board members is not a multiple of two (2) then the next whole number that is more than one half.

6.5.2 Decision making at any meeting will be by consensus, but failing a consensus decisions will be made by a simple majority of the Board members present at the meeting.

6.5.3 Every Board member present at a Board meeting will be entitled to one vote. The Chairperson shall not be entitled to a second or casting vote.

6.5.4 The Board may from time to time appoint two or more of its members to form a sub-committee. The sub-committee may co-opt other people who are not Board members.

6.6 Minute Book

6.6.1 All proceedings of Board meetings will be recorded in a minute book which will be held by the Secretary of the Board.

6.7 The Common Seal

6.7.1 The Common Seal of the Board will be held by the Secretary and will be used only when authorised by a resolution of the Board. When the seal is used it will be signed by the Secretary and one other Board member appointed to sign that document by the Board.

6.8 Control of Funds and Property

6.8.1 The Board, through its Treasurer, will keep proper books of accounts and will prepare annual accounts which are to be audited.

6.8.2 All funds received by the Board will be paid into the Board's bank account.

6.8.3 All cheques and withdrawal slips drawn on the Board's account will be signed by the Treasurer and one of two other Board members appointed by resolution of the Board.

6.8.4 The income and property of the Trust is to be applied solely to further the aims of the Trust. No income or property is to be paid or transferred directly or indirectly to any members of the Board. This will not prevent payment of reasonable wages or expenses to any officer or employee of the Board or to any Board members for any services performed by them for the Trust.

6.8.5 A Board member may charge for any services carried out by him or her where the Board would have had to pay for that service if it was carried out by somebody who was not a Board member.

6.9 Limitations on personal benefit arising from membership rights

6.9.1 No member of the Trust or any person associated with a member of the Trust may determine or materially influence any decision of the Trustees relating to:

- (i) the payment of any income of the Trust Fund to, or on behalf of, that member or associated person; or
- (ii) the conferring of any benefit or advantage on, or behalf of, that member or associated person

6.9.2 Any such income paid must be reasonable and relative to that which would be paid in an arm's length transaction (being open market value)

6.9.3 Membership shall not confer on any member the right to receive any of the income or capital of the Trust Fund or to control the Trustees in the exercise of their powers.

6.10 Prohibition of benefit or advantage in Business Activity

6.10.1: In carrying on of any business under this declaration, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related Person, in his or her capacity as a Related Person, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:

- (i) the nature or amount of that benefit, advantage or income; or
- (ii) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

6.10.2: A person who is in the course of, and as part of the carrying on of his or her business or professional public practice, shall not, by reason only of him 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 6.10

6.11 No private pecuniary profit of any individual and exceptions

6.11.1 No private pecuniary profit shall be made by any person involved in this Trust, except that:

- (i) any Trustee or committee member appointed by the Trustees shall be entitled to be reimbursed out of the assets of the Trust for all expenses which he or she properly incurs 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 is to 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 the Trustee is a member, employee or associate in connection 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 whatever, notwithstanding that the Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

6.11.2 The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed in clauses 6.9 and 6.10 of this declaration are strictly observed.

6.12 Liability of Trustees

6.12.1 A Trustee shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

6.13 Alterations and Additions to this Trust Declaration and its provisions

6.13.1 The Board may alter, add or cancel any rules at a Board meeting provided that:

- (i) written notice of the proposed change is included in the notice calling the meeting
- (ii) the meeting may amend the proposed change
- (iii) a two thirds majority of the Board members present at the meeting agree to the change
- (iv) no alterations, additions or cancellation will be made to these rules that are in conflict with:
 - (a) the purposes of the Trust
 - (b) the charitable nature of the Trust
 - (c) the Charitable Trust Act 1957
 - (d) the conditions of any exemption granted by the Inland Revenue Department.

That is, before resolving to make any alteration to this deed, the Trustees must be satisfied that the proposed alteration does not prejudice the charitable nature of the Trust, and in particular the efficacy of clauses 4.0-4.9, 6.9, 6.10, 6.11 and 6.12.

6.14 Winding Up

6.14.1 The Charitable Trust may be wound up if:

- (i) a majority of the members at a General Meeting pass a resolution to wind up the Trust
- (ii) a second meeting is held, not earlier than 30 days since the first meeting to confirm or reject the resolution
- (iii) at the second meeting a two thirds majority of the members confirm the resolution.

6.14.2 On winding up, any surplus assets of the Charitable Trust will be distributed to other charitable organisations in New Zealand, particularly a succeeding organisation whose aims are similar to those of this Trust.

7.0 Endowment Fund

7.1 The Board shall establish an Endowment Fund which will act as a pool of monies (and other assets where appropriate) whose purpose is to generate further funds to assist the activities of the Trust.

7.2 The principles of the Endowment Fund are as follows:

- any funds that are yielded from the Endowment Fund shall be used for the purposes of the Trust and according to this Deed
- the fund equity shall grow
- any income used for Trust purposes shall not draw upon the fund equity set on an annual basis

7.3 The Endowment Fund shall be administered separately from operating accounts and any other accounts whose primary purpose is to facilitate the day-to-day activities of the Trust.

7.4 The Board shall administer the Endowment Fund according to the principles set down in Section 4.0 of this Deed. Should it deem appropriate, the Board is able to establish a committee of the Board whose responsibility will be to administer the Endowment Fund and to provide recommendations to the Board concerning the administration of the Fund. The Board may wish to invite ex officio members to join that committee.

7.5 A contribution of \$100 is made to initiate the Endowment Fund.

7.6 The Board shall take every available opportunity to advertise the fund and to seek contributions to it.

7.7 The administration of the Fund shall be free to employ any appropriate method, such as investments, in order to grow the fund in an appropriate manner and in accordance with the principles set forth in Clause 7.2 and in this Trust Deed overall.

SIGNED by **Piripi Walker**
as Trustee in the presence of:
Witness
Signature
Occupation

SIGNED by **Parekāwhia McLean**
as Trustee in the presence of:
Witness
Signature
Occupation

SIGNED by **Miria Pomare**
as Trustee in the presence of:
Witness
Signature
Occupation

SIGNED by **Ray Ahipene-Mercer**
as Trustee in the presence of:
Witness
Signature
Occupation

SIGNED by **Kim Skelton**
as Trustee in the presence of:
Witness
Signature
Occupation