

# **DEED OF TRUST TE AWAHOU - NIEUWE STROOM TRUST**

## **Between**

**Te Taitoa Maori o Te Awahou  
Dutch Connection Museum Trust  
Horowhenua District Council  
Horowhenua Library Trust  
Save Our River Trust  
Flax Stripper Museum Trust  
("the Settlers")**

**Ben Vanderkolk  
Alan Smith  
Jeremy Eparaima  
Maurits Kelderman  
Arjan van der Boon  
Jeremy Manks  
David Clapperton  
Bob Tamihana  
Katrina Barber  
Charlie Pederson  
("the Original Trustees")**

**THIS DEED** is made the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN**

**Te Taitoa Maori o Te Awahou  
Dutch Connection Museum Trust  
Horowhenua District Council  
Horowhenua Library Trust  
Save Our River Trust  
Flax Stripper Museum trust  
(together "the Settlers")**

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Katrina Barber  
Charlie Pederson  
(together "the Original Trustees")**

**WHEREAS**

- A. The Settlers wish to establish a trust for charitable purposes for, amongst other things, the provision of a multi-purpose culture and heritage centre in Foxton.
- B. It is contemplated that donations and grants may be made to the Trust.
- C. The Settlers have agreed to contribute the sum of one dollar each to be held by the Trustees upon the trusts and with and subject to the provisions and powers expressed in this Deed.

**NOW THE PARTIES AGREE** as follows:

**1.0 INTERPRETATION**

**1.1 Definitions**

In this Deed unless the context otherwise requires:

**"Chairperson"** means the chairperson of the Trustees elected pursuant to Clause 12;

**"Charitable Purposes"** means every purpose which under New Zealand law is charitable;

**"Deed"** means this deed of trust as amended or supplemented from time to time;

**"Electoral College"** means that group of representatives of the Settlers appointed under to Clause 10 of this Deed;

**"Facility"** means Te Awahou – Nieuwe Stroom, the multi-purpose community, cultural and public amenity facility proposed to be constructed in Foxton, on Main Street

**"Original Trustees"** means the persons named as Original Trustees as party to this Deed;

**"Person"** includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or agency of state (in each case whether or not having a separate legal personality);

**"Secretary"** means the secretary appointed by the Trustees pursuant to Clause 13;

**"Treasurer"** means the treasurer appointed by the Trustees pursuant to clause 13;

**"Trust"** means the trust established by this Deed;

**"Trustees"** means the Original Trustees for so long as they remain Trustees and the Trustees for the time being appointed in terms of this Deed and, as the context may require, means all, some or any such Trustees;

**"Trust fund"** means property of any nature or kind which may be received or acquired by the Trustees for the purposes of the Trust from any source and whether by way of gift, bequest, devise, purchase, exchange or otherwise held from time to time by the Trustees on the terms of this Deed, including all income received from the property held by the Trustees upon the trusts established by this Deed;

**"Trust Period"** means the period commencing 18 September 2010 and ending:

- (a) on the date which is 80 years from the date of this Deed; or
- (b) any earlier date that the Trust is wound up pursuant to clause 26.1.

## 1.2 Interpretation

Headings to clause have been inserted for convenience and are not an aid to construction;

References to a party to this Deed include that party's successors in title and permitted substitutes and assigns;

Where the context permits, the singular includes the plural and vice versa;

References to one gender include the other;

All references to legislation are (unless stated otherwise) references to New Zealand legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation; and

The Schedule to this Deed forms part of this Deed.

## 2.0 PURPOSE OF THE TRUST

The purposes of the Trust shall be each of the following purposes, for so long as that purpose is regarded as a Charitable Purpose:

2.1 To establish, promote, maintain and develop the Facility and provide any or all of the following services:

- (a) a Maori arts and craft, museum and gallery;
- (b) a national Dutch museum;

- (c) spaces that reflect the historical, cultural and ecological significance of Foxton and the Horowhenua district and its immediate environment;
- (d) a library and library services;
- (e) information services for the local community and visitors;
- (f) a facility for community events and activities (including meeting facilities) and;
- (g) to facilitate the continuance and development of the Foxton Flax Stripper Museum Trust
- (h) to facilitate the continuance and development of the Whare Manaaki
- (i) support services for any of the above.

2.2 To ensure that the Facility functions as a valued resource and community asset available and accessible to the members of the Horowhenua Community as well as the wider community of New Zealand;

2.3 To recognise the Facility's location in Foxton and the wider Horowhenua, taking into consideration the wider community and regional focus and the effects the Facility will have on these;

2.4 To promote a healthy and physically active lifestyle through the restoration of the Manawatu River Loop, the development of flax wetlands, walkways and the river port;

2.5 To support and provide an environment in which the existing Flax Stripper Museum, De Molen windmill trust and Whare Manaaki are able to grow and flourish;

2.6 To promote and support any other Charitable Purposes within the Horowhenua district; and

2.7 All things as are incidental or conducive to the attainment of the purposes described in clauses 2.1 to 2.6 above.

For the avoidance doubt:

2.8 the Trust's purposes are for the benefit of the people of the Horowhenua community, and of New Zealand; and

2.9 the Trustees acknowledge their obligation to undertake the activities of the Trust in a manner which is not for the purpose of making a profit.

### **3.0 PRINCIPLES**

The Trustees are committed, in attaining the Trust's purposes, to:

- 3.1 respecting and implementing dual heritage of the partners of Te Tiriti Waitangi (the Treaty of Waitangi);
- 3.2 respecting diversity and encouraging people from all nationalities and cultural backgrounds to utilise the Trust's facilities and services;
- 3.3 respecting the cultural heritage of the Dutch people and their contribution to our nation;
- 3.4 maintaining the highest standards of professionalism and integrity;
- 3.5 being an effective project team able to develop consensus on the detailed objectives and implementation of the Te Awahou - Nieuwe Stroom vision

- 3.6 applying best practice environmental standards in the development and operation of the Facility; and
- 3.7 collaborating effectively to achieve common goals.

#### **4.0 VESTING OF THE TRUST FUND**

- 4.1 The Settlers direct and declare, and the Trustees acknowledge that they hold the Trust Fund upon the terms and conditions set out in this Deed for the Trust Period.

#### **5.0 NAME OF THE TRUST**

- 5.1 The Trust shall be known as the '**TE AWAHOU - NIEUWE STROOM TRUST**' or by such other name as the Trustees may determine from time to time.

#### **6.0 AREA OF OPERATION**

- 6.1 The activities of the Trust will be limited to New Zealand.

#### **7.0 OFFICE**

The office of the Trust shall be:  
1329a Rangitikei Line  
Awahuri  
RD 5  
Palmerston North 4450,

or such other address as the Trustees may determine from time to time.

#### **8.0 APPLICATION OF INCOME AND CAPITAL**

- 8.1 The Trustees shall use or apply all or any of the income and/or the capital of the Trust Fund exclusively for such of the purposes set out in clause 2, in such amounts, at such times and subject to such terms and conditions, as the Trustees may in their absolute discretion determine.
- 8.2 The Trustees shall not be obliged to pay, apply or distribute pursuant to the terms of this Deed in any year the whole of the income of the Trust Fund arising, accruing or available for payment, application or distribution but may accumulate any moneys not paid, applied or distributed and add such accumulations to the Trust Fund.
- 8.3 The Trustees may at any time or times resort to the income accumulations of any preceding year or years and pay, apply and distribute the same as if it were income arising in the year in which it is to be paid, applied for accumulated.

#### **9.0 ELECTION OF TRUSTEES**

- 9.1 There shall be not less than 5 nor more than 9 Trustees subject however to the terms of this Deed.
- 9.2 The power of appointing new Trustees shall be vested in the Electoral College provided that a new Trustee shall only be appointed from persons nominated by the Settlers or the existing Trustees and after consultation with the existing Trustees.

- 9.3 The Electoral College shall have power to remove any person as a Trustee at any time and, subject to clause 9.2, to appoint at any time or times any person as a replacement Trustee or as an additional Trustee, but so that the total number of Trustees for the time being of the Trust shall not exceed 10.
- 9.4 The first Trustees shall be the persons named as the Original Trustees.
- 9.5 Rotation of Original Trustees:
- (a) One-Third (or the number which is nearest to one-third) of the Original Trustees shall retire as at the date of the third Annual General Meeting of the Trust. The Original Trustees to retire shall be determined by agreement or, failing agreement, by lot. The first Chairperson shall not be eligible for retirement until the third Annual General Meeting.
  - (b) A further one-third (or the number which is nearest to one-third) of the Original Trustees, selected by the same procedure, shall retire as at the date of the Fourth Annual General Meeting.
  - (c) The remainder of the Original Trustees, if any, shall retire as at the date of the Fifth Annual General Meeting.
  - (d) A Trustee retiring under the provisions of this clause shall be eligible for reappointment as a Trustee under the provisions of this Trust Deed.
- 9.6 Any Trustee appointed after the execution of the Trust Deed including any Trustee appointed following his or her retirement by virtue of clause 9.5(d) above, shall retire as at the date of the fourth Annual General Meeting following the date of his or her appointment. Any such Trustees shall be eligible for reappointment under the terms of this Trust Deed.
- 9.7 A Trustee retiring under the provisions of clause 9.5 or 9.6 shall hold office until the dissolution of the Annual General Meeting as at which the Trustee retires, except for the purpose of carrying out the acts and deeds necessary for the purpose vesting of the Trust Fund in the continuing and/or new Trustees, which acts and deeds shall be carried out as soon as practicable thereafter at the expense of the Trust.
- 9.8 Upon the appointment of an additional Trustee or Trustees and upon the occurrence of a vacancy in the office of a Trustee the Trustees shall cause a note thereof to be entered in the minute book and will in like manner cause to be noted in the minutes thereof a record of all appointments of Trustees made.
- 9.9 The Trustees shall be entitled to continue to act notwithstanding that at any time they may not comprise the full number of Trustees and no act or decision of the Trustees and no act or decision of the Trustees shall be called into question on such account.
- 9.10 Whenever any vacancy shall occur in the number of Trustees which has the effect of reducing the number of Trustees below 5 and if the Electoral College has failed to appoint a replacement Trustee within a period of 3 months after the date on which the vacancy occurred, the remaining Trustees shall call upon the Horowhenua District Council to appoint such replacement, and the Horowhenua District Council shall be entitled to appoint such replacement so as to increase the number of Trustees to at least 5.

## **10.0 ELECTORAL COLLEGE**

- 10.1 This section establishes an Electoral College to be called the Te Awahou - Nieuwe Stroom Electoral College.
- 10.2 The Electoral College comprises up to a maximum of 2 members appointed by each Settlor.
- 10.3 Each member of the Electoral College holds office at the pleasure of the person or organisation that appointed the member. The appointment of a member of the Electoral College will automatically terminate if the Settlor who appointed that member ceases to exist.
- 10.4 The first meeting of the Electoral College shall be convened by the Horowhenua District Council after having received notice of the appointments from each Settlor.
- 10.5 At its first meeting, the Electoral College must elect a chairperson from its members. The chairperson must preside at all meetings of the Electoral College at which he or she is present. In the absence of the chairperson from any meeting, the other members present must elect one of their number to be the chairperson of the meeting. The chairperson may resign as chairperson with effect from the next meeting by notice to the other members at the Electoral College, in which event the Electoral College shall elect a replacement chairperson at that next meeting.
- 10.6 At a meeting of the Electoral College a quorum comprises a majority of its appointed members. For the avoidance of doubt, a quorum need not include representatives of each Settlor.
- 10.7 The powers of the Electoral College are not affected by a vacancy in its membership.
- 10.8 The function of the Electoral College is to:
1. appoint and remove trustees of the Trust;
  2. to receive an Annual Report from the Trust within three months after the end of each financial year and to consider the contents of that report; and
  3. to act as an advisory and advocacy group for the Trust if and when required.
- 10.9 The powers of appointment or removal, and any other power exercisable by the Electoral College under this Deed, must be decided by majority vote of the members. In the case of an equality of votes, the person presiding over the meeting has both a deliberate vote and a casting vote.
- 10.10 The Electoral College must call for applications from the Settlers and the general public of the Horowhenua region for the appointment of Trustees.
- 10.11 In considering applications the Electoral College shall have regard to:
1. achieving a balance of community, business and cultural skills; and
  2. the need to reflect the cultural diversity represented within the aspirations of the Facility.
- 10.12 Subject to this section, the Electoral College may regulate its own meeting procedures.

## **11.0 RESIGNATION OR REMOVAL OF TRUSTEES**

- 11.1 The office of a Trustee shall become vacant and the Trustee shall be ineligible for re-appointment if:

- (a) the Trustee resigns by written notice to the Chairperson of the Electoral College;
- (b) the Trustee is removed from office pursuant to clause 9.3;
- (c) the Trustee becomes bankrupt or insolvent or is an undischarged bankrupt;
- (d) the Trustee is under the age of 16 years;
- (e) the Trustee becomes of unsound mind, becomes a committed or voluntary patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992, becomes subject to a property order under the Protection of Personal and Property Rights Act 1988, has his or her property managed by a trustee corporation under section 32 of that Act, or otherwise becomes unfit or unable to act as a Trustee;
- (f) is disqualified from being an officer of a charitable entity under section 31(4) of the Charities Act 2005;
- (g) the Trustee has been convicted of a crime involving dishonesty (within the meaning of the Crimes Act 1961);
- (h) the Trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993; or
- (i) the Trustee dies.

11.2 A Trustee who ceases to hold office under clause 11.1 shall cease to be a Trustee immediately except for the purpose of carrying out the acts and deeds necessary for the proper vesting of the Trust Fund in the continuing and/or new Trustees, which acts and deeds shall be carried out as soon as practicable thereafter at the expense of the Trust.

## 12.0 CHAIRPERSON AND DEPUTY CHAIRPERSON

- 12.1 The Electoral College shall, at their first meeting following the execution of this Deed and thereafter at any time when the position becomes vacant, appoint a Chairperson who shall also be a Trustee. In the absence of the Chairperson, the Deputy Chairperson shall have and may exercise all the powers of and shall perform all the duties of the Chairperson.
- 12.2 The Trustees **may** in the same manner appoint a Deputy Chairperson.
- 12.3 The Trustee appointed as first Chairperson shall hold that office until the conclusion of the third Annual General Meeting of the Trust, or earlier resignation or removal as the Chairperson or Trustee.
- 12.4 A Chairperson, other than the first, and any Deputy Chairperson shall hold office until the conclusion of the Annual General Meeting next following appointment, or earlier resignation or removal as the Chairperson, Deputy Chairperson or Trustee.
- 12.5 Following expiry of his or her term of appointment, a Chairperson or Deputy Chairperson shall remain eligible for re-appointment, so long as he or she is still a Trustee.
- 12.6 In the absence of the Chairperson and Deputy Chairperson, the Trustees present shall elect one of their number to chair any meeting of the Trustees.



### **13.0 SECRETARY AND TREASURER**

- 13.1 The Trustees shall appoint from time to time a Secretary and Treasurer, both of whom may also be Trustees. The Secretary may also be the Treasurer.
- 13.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.
- 13.3 It shall be the duty of the Treasurer to keep usual and proper books of account and other financial records of the business of the Trust, to report to the Trustees from time to time on the finances of the Trust, to present annual statements of account for audit and for consideration by the Trustees, and to prepare and file from time to time with the Charities Commission (or any other Person) such documents as are necessary for the Trust to seek and retain charitable status.

### **14.0 AUDITOR**

- 14.1 The Trust shall appoint an auditor of the Trust at each Annual General Meeting. The auditor shall audit the accounts of the Trust every year and at such other times as the Trustees or the Settlers may require.

### **15.0 MEETINGS OF TRUSTEES**

- 15.1 The Trustees shall hold an Annual General Meeting at least once in each calendar year, commencing with the year ended 31 December 2011.
- 15.2 The Secretary shall give not less than 30 days' notice of the Annual General Meeting to the Trustees and the Electoral College such notice to specify the date, time and place of the Annual General Meeting.
- 15.3 The business to be transacted at the Annual General Meeting shall be the receipt of the annual report and accounts, the appointment of the auditor, and the remuneration of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with Clause 15.4.
- 15.4 Notice in writing of any special business shall be given to the Secretary not less than 21 days prior to the Annual General Meeting. The Secretary shall circulate an agenda, including all special business, to the Trustees not later than 14 days prior to the Annual General Meeting and shall also give to the Electoral College not less than 14 days' prior notice of the time, place, date and agenda of the Annual General Meeting.
- 15.5 Electoral College members and the general public shall be entitled to attend and speak at the Annual General Meeting but shall not be entitled to vote at such meetings.
- 15.6 The Trustees shall otherwise meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled to develop standing orders for the conduct of such meetings.
- 15.7 No business of the Trust shall be transacted at any meeting, whether the Annual General Meeting or any other meeting of the Trustees, unless a quorum of at least one half of the Trustees then holding office is present
- 15.8 A Trustee shall be deemed to be present at a meeting of the Trustees if the Trustee is connected by conference telephone link to the meeting.

15.9 All acts done by any meeting of Trustees or by any person acting as Trustee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Trustee or Trustees or that any Trustee was for any reason disqualified from holding office as Trustee or that there was accidental failure to comply with any of clauses 15.1 to 15.8 or clause 17 shall be valid as if such Trustee had been duly appointed and was qualified to hold office as Trustee and the requirements of clauses 15.1 to 15.8 and clause 17 had been complied with.

## **16.0 ANNUAL REPORT**

16.1 Following the end of each financial year for the Trust (being the period ending on 30 June in each year) the Trustees shall prepare an annual report for presentation to the Electoral College and the Annual General Meeting of the Trust.

16.2 The annual report shall:

- (a) Contain the audited financial statements of the Trust for that financial year including:
  - (i) a statement of financial position
  - (ii) an overall operating statement;
  - (iii) a statement of cash flows; and
  - (iv) such other statements and information as may be required by law or may be necessary to fairly reflect the financial position of the Trust, the resources available to it and the financial results of its operations.
- (b) Contain the auditor's report on the financial statements and performance targets and other measures by which the performance of the Trust in that financial year has been judged in relation to its objectives as set out in the Trust's annual plan relating to that year.
- (c) Assess the performance of the Trust in that financial year against the policies, objectives and targets adopted by the Trust for that year in its annual plan.
- (d) Provide a summary of key objectives for the following year.

16.3 The annual report shall be submitted to the Electoral College and members of the Trust and available for inspection by the public during the period of fourteen (14) days immediately prior to the Annual General Meeting.

## **17.0 VOTING**

17.1 Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.

17.2 Neither the Chairperson nor any other person chairing the meeting shall have a casting vote in addition to his or her deliberative vote.

17.3 Every resolution passed at any meeting shall be entered in the minute book to be kept by the Secretary and shall be signed by the Chairperson or other person chairing the meeting. Such minutes signed by the Chairperson or other such person shall be prima facie evidence of the decisions of the meeting concerned.

17.4 A resolution signed by all the Trustees then in New Zealand shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly called and

constituted. Such a document may consist of one or more resolutions in the same form, each signed by one or more Trustees.

## **18.0 COMMON SEAL**

18.1 In the event of the Trustees having a common seal whether by reason of their becoming incorporated under the Charitable Trusts Act 1957 or otherwise the following rules shall apply to the use thereof:

18.1.1 the common seal shall be in the custody of and under the control of the Trustees; and

18.1.2 the common seal shall not be affixed to any instrument except pursuant to a resolution of the Trustees and every instrument to which the common seal is affixed shall be signed by 2 Trustees.

18.2 No person dealing with the Trustees shall be bound or concerned to see or enquire as to the authority to affix the seal, or to enquire as to the authority under which any document was sealed and in whose presence it was sealed.

## **19.0 TRUSTEES' POWERS**

19.1 Subject to the express terms of this Deed and without limiting the generality of the foregoing, subject to clause 19, the Trustees shall have in relation to the Trust Fund and the income arising from the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.

19.2 Without limiting the generality of the preceding paragraph and merely by way of example:

19.2.1 The Trustees shall have the powers set out in the Schedule to this Deed which may be exercised either alone or jointly with any other persons;

19.2.2 The Trustees may delegate to any employee or contractor of the Trust any of the powers set out in the Schedule to this Deed upon such terms and conditions as they think fit, and may from time to time revoke, withdraw, alter, or vary all or any part of the delegation.

19.3 Notwithstanding the provisions of Section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose professions, employment or business is or includes acting as a trustee or investing money on behalf of others, the care, diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by Section 13C but, subject always of clause 19.4, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affair of others.

19.4 Notwithstanding anything to the contrary contained in this Deed or in the Trustee Act 1956, the Trustees shall be under no liability whatsoever in relation to the exercise of the power of investment under this Deed whether in tort, contract, equity or otherwise and the Trustees' duties and obligations in terms of the Trustee Act 1956 and in law and in equity shall be reduced accordingly and to that extent shall be a

contrary intention in terms of section 13D(1) of the Trustee Act 1956 on the duties imposed on the Trustees.

## **20.0 TRUSTEES' CONFLICT OF DUTIES**

The Trustees shall be entitled to act and exercise all of the powers hereby conferred upon them notwithstanding that their interests in any private capacity, duties as trustees of any other trust, or duties as directors or officers of any company conflict with their duties as Trustees of the Trust Fund

## **21.0 TRUSTEES' INDEMNITY**

The Trustees shall have no liability for and shall be absolutely indemnified by and out of the Trust Fund in respect of any loss or liability sustained while acting in good faith in connection with all or any of the trusts hereof and this indemnity shall be in addition to and not in limitation of any other rights, indemnities or limitations of liabilities.

## **22.0 RESTRICTIONS ON PECUNIARY PROFIT**

22.1 No private pecuniary profit may be made by any Person from the Trust, except that:

- (a) any Trustee may receive such reasonable remuneration for services rendered to the Trust in the capacity of a Trustee as is determined from time to time by the Electoral College;
- (b) any Trustee may receive full reimbursement for all expenses properly incurred by that Trustee in connection with the affairs of the Trust;
- (c) the Trust may pay reasonable remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
- (d) any Trustee, Settlor or member of the Electoral College may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Person or by any firm or entity of which that Person is a member, employee or associate in connection with the affairs of the Trust; and
- (e) 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 the Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

22.2 The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by the following clause are strictly observed.

## **23.0 RESTRICTIONS ON BENEFITS TO AND INFLUENCE BY INTERESTED PERSONS**

23.1 Notwithstanding anything contained or implied in this deed, any Person who is:

- (a) a Settlor or Trustee of the Trust, or a member of the Electoral College;
- (b) a shareholder or director of any company carrying on any business of the Trust;
- (c) a settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Trust; or
- (d) an associated person (as defined by the Income Tax Act 2007) of any such Settlor, Trustee, member of the Electoral College, shareholder or director,

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.

23.1 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 the terms of this clause 23.

23.2 Nothing in this clause 23 shall prevent or restrict the Trustees from properly fulfilling or carrying out the purposes of the Trust.

#### **24.0 POWER TO CREATE CLASSES OF MEMBERS**

The Trustees may in their absolute discretion do all or any of the following:

- (i) invite persons both natural and corporate who have indicated their wish to support or take an interest in the purposes of the trusts herein contained to be members of the Trust.
- (ii) establish or create different classes of membership as the Trustees may consider appropriate.
- (iii) fix and charge membership fees (including entrance fees and annual subscriptions and the intervals for payment thereof) for members if the Trustees consider it desirable to charge such fees and in so doing the Trustees shall have the power at their absolute discretion to fix and charge different amounts of fees for different classes of membership;
- (iv) call meetings of the members at intervals to be determined by the Trustees at any time and from time to time;
- (v) confer on such members such rights as the Trustees may from time to time consider appropriate; and
- (vi) issue such members with certificates or other evidence of membership,

**PROVIDED ALWAYS** that membership shall not confer on any member the right to participate in the income corpus or any assets or property of the Trust Fund or to direct or control the Trustees in the exercise of the powers conferred upon the Trustees by this Deed or by law or otherwise.

#### **25.0 VARIATION OF THE TRUST**

The Trustees shall have power on the affirmative vote of at least three quarters of all Trustees and with the written consent of the Electoral College to:

- (a) vary the purposes of the Trust provided no charge may be made which would deprive the Trust of its character or nature as a charitable trust with Charitable Purposes;
- (b) enlarge, amend or revoke their powers, authorities and discretions as set forth in Clause 19 and the Schedule (subject always to the terms of this Deed and the limitation set out in paragraph (a) of this clause);

- (c) amalgamate and merge the Trust with any other charitable trust for Charitable Purposes within the Horowhenua district and agree to any changes to the provisions of this Deed necessary or desirable to enable or facilitate such amalgamation and merger. The Trustees may transfer all property of the Trust to such amalgamated and merged trust and upon such transfer the Trustees shall be released and discharged from any further obligations as Trustees in respect of the property of the Trust so transferred;
- (d) amend the rules for the election of Trustees and any other rules relating to the administration of the Trust;
- (e) amend this Deed in any other way necessary to obtain or maintain the general charitable or tax charitable status of the Trust; or
- (f) amend this Deed in any other way so long as the Trust's charitable status is preserved.

## **26.0 WINDING UP**

- 26.1 The Trust may be wound up with the written consent of the Electoral College on the affirmative vote of at least 80% of all the Trustees at a meeting of the Trustees called for that purpose on not less than 30 days prior written notice.
- 26.2 On the winding up of the Trust or at the end of the Trust Period the net assets of the Trust, after payment of all liabilities and costs and the return of taonga, collections and assets originally contributed by or lent by the respective Settlers, shall be transferred to a charitable entity or entities with similar Charitable Purposes in a manner directed by a majority of the Settlers present at the meeting at which the resolution confirming the winding up is passed.
- 26.3 No money or property remaining after the settlement of the Trust's affairs shall be paid or distributed to the Trustees.

## **27.0 NOT A COUNCIL CONTROLLED ORGANISATION**

For the avoidance of doubt it is hereby declared that the Trust is not a Council Controlled Organisation within the meaning of the Local Government Act 2002.

## **28.0 NOTICES**

Any notice given in terms of this Deed may be delivered personally, or sent by registered post or by facsimile. Notices sent by registered post shall be deemed to have been received 2 days after posting. Notices sent by facsimile shall be deemed to have been received immediately following dispatch.

**THE COMMON SEAL of HOROWHENUA DISTRICT COUNCIL** was affixed in the presence of:

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**THE COMMON SEAL of TE TAITOA MAORI O TE AWAHOU** was affixed in the presence of:

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**THE COMMON SEAL of HOROWHENUA LIBRARY TRUST** was affixed in the presence of:

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**THE COMMON SEAL of SAVE OUR RIVER TRUST** was affixed in the presence of:

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**THE COMMON SEAL of DUTCH CONNECTION TRUST** was affixed in the presence of:

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**THE COMMON SEAL of FLAX STRIPPER MUSEUM TRUST** was affixed in the presence of:

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**Original Trustees**

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**Ben Vanderkolk** \_\_\_\_\_

**Alan Smith** \_\_\_\_\_

**Jeremy Eparaima** \_\_\_\_\_

**Maurits Kelderman** \_\_\_\_\_

**Arjan van der Boon** \_\_\_\_\_

**Jeremy Manks** \_\_\_\_\_

**David Clapperton** \_\_\_\_\_

**Bob Tamihana** \_\_\_\_\_

**Katrina Barber** \_\_\_\_\_

**Charlie Pederson** \_\_\_\_\_



## SCHEDULE

### TRUSTEE'S SPECIFIC POWERS

Subject to any express terms in this Deed limiting or restricting such powers, the Trustees shall have the power to:

(a) **Invest:**

Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability in New Zealand.

(b) **Sell:**

Sell any part of the property comprising the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.

(c) **Retain Property:**

Retain property forming part of the Trust Fund.

(d) **Lease:**

Lease or to take on lease or licence any property on such terms and subject to such condition as they think fit and to accept or effect the surrender of such leases and licences as they think fit.

(e) **Borrow:**

Borrow money and give security on such terms and subject to such conditions as the Trustees think fit.

(f) **Lend:**

Lend moneys on such terms and subject to such conditions as the Trustees think fit.

(g) **Guarantee:**

Enter into guarantees, indemnities or other obligations on such terms and subject to such conditions as the Trustees think fit.

(h) **Determine Capital and Income**

Determine whether any money for the purposes of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion blended funds.

(i) **Maintain and Improve Property:**

Maintain, manage, repair, improve and develop any property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees think fit.

(j) **Employ:**

Employ and pay any person, firm, company or corporation (including any Trustee) to do any act of whatever nature relating to the Trust including the receipt and payment of money.

(k) **Bank Accounts:**

Open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another at any bank and to overdraw any such account with or without giving security and in addition the powers conferred by section 81 of the Trustee Act 1956 to make arrangements with any bank for any one of the following, namely, the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate upon any account at that bank.

(l) **Insurance:**

Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurable value thereof or the full replacement value therefore as the Trustees may in their absolute discretion from time to time think fit.

(m) **Maintenance Contracts**

Enter into contracts of any nature whatsoever for the purpose of protecting, maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.

(n) **Carry on Business**

Acquire, commence or carry on any business (whether alone or in partnership otherwise) which the Trustees in their absolute discretion consider capable of directly or indirectly benefitting the Trust Fund, with power to use or apply in any such business all such managers, employees, agents and others (including any Trustee provided that the remuneration paid to the Trustee does not exceed that payable on an arm's length basis). The Trustees shall be absolutely indemnified by and out of the Trust Fund for and in respect of any loss or liability which they or any of them may sustain by reason of carrying on such business.

(o) **Form Company:**

Promote or form any limited liability company for any purpose including purchasing, leasing or otherwise acquiring any undertaking or assets which form part of the Trust Fund or in which any Trustee holds shares.

(p) **Subscription**

Subscribe for and take shares, stock or debentures in any company subject to such conditions as the Trustees think fit and notwithstanding that the Trustees may incur a liability for future calls.

(q) **Directorship:**

Act as director(s) of any company in which the Trustees hold shares and to receive and retain, without being liable to account, any director's fees or other remuneration.

(r) **Joint Ventures:**

Enter into partnership or any arrangement or sharing profits, union of interests, co-operation, joint venture, concession, or otherwise with and assist in any business or transaction with the Trustees in their absolute discretion consider capable of being conducted so as to directly or indirectly benefit the Trust Fund.

(s) **Delegate to Committees:**

Delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.

(t) **Other Powers:**

Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the purposes of the Trust.