

DECLARATION OF TRUST

That the Trustees declare they will hold all property (both real and personal) which the Trustees from time-to-time purchase, receive or otherwise acquire from any person or persons for the purposes of the trusts set out in this Trust Deed upon the several trusts, powers, authorities and permissions following.

1.0 NAME

1.1 The Trust constituted by this Trust Deed shall be called “Ōtaki Heritage – Te Whare Pouhere Taonga o Ōtaki”.

2.0 INTERPRETATION

2.1 For the purposes of this Deed:

“**Area**” means those portions of the Horowhenua and Kāpiti Coast Districts between Manakau and Te Horo and between the crest of the Tararua ranges and the coast.

“**Bank**” means any bank listed in the register of registered banks referred to in section 69 of the Reserve Bank of New Zealand Act 1989.

“**Building**” means the former Ōtaki Main Street Bank of New Zealand (later the Kāpiti Coast District Council Service Building).

“**Chair**” means the Trustee who is Chair of the Trust appointed under clause 8 and holding office as such for the time being.

“**Charitable Body**” means any group of two or more persons, whether incorporated or unincorporated, formed for the purpose of furthering or promoting Charitable Purposes.

“**Charitable Purposes**” are defined in Schedule 1.

“**Community**” means and includes primarily the residents of the Area.

“**Income**” means:

- (a) all net income being dividends, rent, interest or other income derived from the Trust Property and activities, as and when the same shall be received; and
- (b) all net income derived from the activities of the Trust in accordance with the terms of this Deed or otherwise howsoever, as and when the same shall be received and finally determined for each financial year of the Trust.

“**Mana whenua**” means the body within the Area recognised as the authentic representative of people having the status of tangata whenua within the area.

“**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).

“**The Trust Fund**” means:

- (a) all moneys, investments and property, both real and personal, which may be received and accepted by the Trustees as part of the Trust Fund; and
- (b) the investments and properties from time to time representing (i) above and accretions to those investments and properties.

“**The Trustees**” means the trustees for the time being of this Trust. Further, “Trustees” means the Trustees named as parties to this Trust Deed 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.

- 2.2 If not inconsistent with the context hereof, words importing the singular number include the plural number and words importing the plural number include the singular number.
- 2.3 All provisions of this Trust Deed are to be interpreted as being subject to clause 3.2 and to the requirement that the Trust Fund may only be applied for Charitable Purposes. In particular, no part of the Trust Fund may be applied so as to confer a private pecuniary profit on any individual or group of individuals, except to the extent that this Deed authorises the payment of an honorarium or of a reasonable market remuneration to any individual (including a Trustee) for services actually rendered to the Trust.

3.0 ESTABLISHMENT OF TRUST OBJECTIVES

- 3.1 The Trustees acknowledge and declare that the Trust Fund will be held on the Trust declared in this deed.
- 3.2 The Charitable Purposes of the Trust are set out in Schedule 1 together with any such other charitable purposes within New Zealand as the Trustees shall determine from time to time that are incidental or conducive to the attainment of that.

4.0 POWERS OF THE TRUSTEES IN DEALING WITH TRUST FUNDS

- 4.1 Subject to the express terms of this Trust Deed 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 and all the powers necessary to carry out the purposes of the Trust, including the powers contained in the Trusts Act 2019 .
- 4.2 Without limiting the generality of the preceding paragraph and merely by way of example (but subject always to the express terms of this Deed). In managing the Trust Fund and the affairs of the Trust, the Trustees shall have the following powers which may be exercised either alone or jointly with any other person.

4.2.1 Raise money

Raise money, including payment from Kāpiti Coast District Council, by lawful means, accept gifts, legacies or other bequests (whether unconditional or subject to any condition acceptable to the Trustees which is consistent with the objects for which the Trust is established and whether absolute or for a period of time only) and to solicit, receive and enlist financial or other grants from individuals and organisations.

4.2.2 Invest

Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any property, including the Building.

4.2.3 Retain property

Retain property forming part of the Trust Fund.

4.2.4 Lease

Lease or to take on lease or license of any property on such terms and subject to such conditions as they think fit and to accept or affect such surrenders of leases and licenses as they think fit.

4.2.5 Borrow

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

4.2.6 *Lend*

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

4.2.7 *Guarantee*

Enter into any guarantee, which the Trustees consider to be in the interests of the Trust or the communities within the Area.

4.2.8 *Determine capital and income*

Determine whether any money for the purposes of these presents 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.

4.2.9 *Maintain and improve property.*

Maintain, manage, repair, improve and develop 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.

4.2.10 *Payments*

Employ and pay a reasonable salary or fee to any person firm company or corporation (other than a Trustee) to do any act of whatever nature relating to the Trust and pay an honorarium to any Trustee for services actually rendered to the Trust, with power for such honorarium to vary between Trustees based on such criteria as the Trustees think fit.

4.2.11 *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 to the powers conferred by section 81 of the Trustee Act 1956 to make arrangements with any bank for one or more 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.

4.2.12 *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 thereof as the Trustees may in their absolute discretion from time to time think fit.

4.2.13 *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.

4.2.14 *Delegate to committees*

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

4.2.15 *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 Charitable Purposes of the Trust.

5.0 CONSTITUTION OF THE BOARD OF TRUSTEES

5.1 *Membership*

5.1.1 The Board of Trustees shall consist of not less than six (6) and not more than twelve (12) people and will be made up as follows:

- (a) No more than Ten (10) people shall be elected at the first Annual General Meeting of the Trust by the residents of the Community in attendance. These Trustees shall be rotated in accordance with the provisions in clause 5.5.2 of this Deed.
- (b) Not more than two (2) members to be appointed as Mana Whenua Trustees in accordance with the provisions of clause 5.5.1 of this Deed.

5.2 *“Specialist” Membership Co-option*

5.2.1 The Trustees may from time to time co-opt additional Trustees to the Board provided that the cap of twelve (12) Trustees in total is complied with. Such membership may be either on an individual or organisational basis.

5.2.2 In making appointments under this provision the Board of Trustees shall specify the purpose for which the appointment will be made and the duration of the appointment, which will not exceed twelve (12) months.

5.3 *Relationship with mana whenua*

5.3.1 The Trustees are authorised to amend the membership of the Board of Trustees to provide for the appointment of additional Mana Whenua Trustees beyond two (2) provided that the cap of twelve (12) Trustees in total is complied with.

5.3.2 In the spirit of partnership the Board of Trustees seeks to recognise the aims and aspirations of mana whenua and to actively encourage and facilitate the participation of mana whenua on the Board and in the Trust’s activities.

5.4 *Relationship with other community organisations*

The Trust will work towards ensuring that there is a positive and productive relationship with the Ōtaki Community Board, the Kāpiti Coast District Council, and other community organisations as is decided by the Trustees.

5.5 *Appointment Process of Mana Whenua Trustees*

5.5.1 *Mana Whenua Trustees*

- (a) The Board of Ngā Hapū o Ōtaki shall determine the process of selection and/or appointment of the Mana Whenua Trustee(s) under clause 5.1.1 (b).
- (b) Any such appointment shall be for such term as that Board shall determine. It may also terminate the appointment at any time.
- (c) The Chair of the Board of Ngā Hapū o Ōtaki will advise the Chair of the Board of Ōtaki Heritage of the appointment or termination of Mana Whenua Trustees within two weeks of the appointment or termination being made.
- (d) Should a Mana Whenua Trustee be unable to attend any meeting of the Board of Trustees then Ngā Hapū o Ōtaki may by notice in writing to the Board of Trustees appoint an alternate in place of that Trustee to attend such meetings and to vote thereat.

5.5.2 *Rotation of Other Trustees*

- (a) At each Annual General Meeting of the Trust one third (1/3rd) of the Trustees (other than the Mana Whenua Trustee(s)) shall retire. The Trustees to retire at each Annual General Meeting shall be those longest in office but as between Trustees who took office on the same date those to retire shall (unless they otherwise agree amongst themselves) be determined by lot. Any retiring Trustee shall be eligible for re-election.
- (b) Not later than four (4) weeks prior to the date of any Annual General Meeting of the Trust, the Trustees will call for nominations for Trustees to be elected by the residents of the Community pursuant to Clause 5.1.1 (a). The call for nominations shall be publicly notified in a newspaper circulating in the Area.
- (c) All nominations shall be in writing signed by at least two (2) residents of the Area and assented to by the nominee.
- (d) If there are more nominations received than there are positions to be filled, an election will be held at the ensuing Annual General Meeting of the Trust. Prior to such election the nominees shall be entitled to address the meeting.
- (e) Any adult resident of the Community who is present at the Annual General Meeting may vote in such an election. Voting is to be by way of show of hands, or, if requested by any nominee, by secret ballot to be conducted at the Annual General Meeting in accordance with procedures to be determined from time to time by the Trustees.
- (f) If the number of nominations received is equal to or less than the number of positions to be filled those nominated will be declared duly elected.
- (g) If after the foregoing steps have been taken there are still vacancies on the Board of Trustees then the Trustees may appoint a suitable qualified person to fill such a vacancy. Any such appointee shall hold office as a Trustee until the next Annual General Meeting and shall then resign but shall be eligible for re-election.

5.6 A Trustee can be removed as a Trustee by the other Trustees acting unanimously. In addition, the following persons may not hold office as a Trustee:

- 5.6.1 A bankrupt who has not yet obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or subject to a condition not yet fulfilled.
- 5.6.2 A person who has been convicted of any offence punishable by imprisonment for a term of not less than two (2) years and has been sentenced to imprisonment for that offence.
- 5.6.3 A person who is mentally disordered within the meaning of the Mental Health Act 1992 s2(1).
- 5.6.4 A person whose property affairs are managed under the Protection of Personal and Property Rights Act 1988 upon the grounds of lack of competency to manage those affairs.

5.7 The procedures of the Trustees shall initially be regulated in accordance with the provisions contained in Schedule 2. The Trustees shall have power to amend the provisions of Schedule 1 at any time whether in whole or in part PROVIDED THAT no such amendment shall be made which shall permit the Trust Fund to be applied for any purpose that is not a Charitable Purpose AND PROVIDED FURTHER THAT no alteration shall be made to this Trust Deed without the prior approval of the Inland Revenue Department.

6.0 TRUSTEES' DUTIES AND LIABILITIES

6.1 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 shall not be that required of such persons by section 13C but, subject to clause 6.2 shall be the care, diligence and skill that a prudent person or business would exercise in managing the affairs of others.

6.2 No Trustee acting or purporting to act in the execution of this Deed shall be liable for any loss not attributable to his or her dishonesty or to the wilful commission or omission by him or her of an act where such commission or omission is known by him or her to be a breach of trust and, in particular, no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

7.0 TRUSTEES' INDEMNITIES

The Trustees 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 the Trust. This indemnity is in addition to and not in limitation of any other rights, indemnities or limitations of liabilities that may be available to the Trustees or to Trustees in general.

8.0 CHAIR OF THE TRUST

At the first meeting of the Trustees after each Annual General Meeting of the Trust and at any other time when the position becomes vacant the Trustees shall appoint a Chair from amongst their number. In addition, a Deputy Chair, Treasurer and Secretary may be appointed through the same process.

9.0 REVOCATION OR ADDITION

The terms of this Deed, including for the avoidance of doubt, the expression of the objects, purposes and proposed activities of the Trust as set out in Clause 3, and the rules for appointment or election of additional Trustees and any other term of this Deed whatsoever may be altered, added to, rescinded or otherwise amended at any time by resolution of at least two-thirds (2/3rds) of the Trustees PROVIDED THAT no such alteration, addition, rescission or other amendment shall be made which shall permit the Trust Fund to be applied for any purpose which is not a Charitable Purpose and no alteration to the provision of this Clause 9 or to the proviso in Clause 5.7 shall be permitted AND PROVIDED FURTHER that no alteration, addition, rescission or other amendment shall be made without the prior approval of the Inland Revenue Department.

10.0 WINDING UP

10.1 If at any time:

10.1.1 A resolution of the Trustees that the Trust be wound up has been passed and has come into effect;

10.1.2 The objects of the Trust shall fail; or

10.1.3 For any other reason the purpose hereof shall become wholly frustrated and incapable of being carried out the Trustees shall proceed to wind up the Trust.

10.2 Upon a winding up for any reason, the surplus assets and funds of the Trust after payment of all liabilities shall be applied towards such Charitable Purposes in Ōtaki consistent with the purposes of the Trust as may be determined by the Trustees or in default of such determination as may be directed by the High Court of New Zealand.

11.0 ACCOUNTS & REVIEWER

11.1 The Board shall keep true and fair accounts of all money received and expended.

11.2 The Annual General Meeting will elect a registered accountant as reviewer to the Trust Accounts.

11.3 The Trust shall, as soon as practicable after the end of every financial year, arrange for the accounts of the Trust for that financial year to be reviewed and be presented at the Annual General Meeting (refer paragraph 5 Schedule 2).

12.0 INCORPORATION

- 12.1 The Trustees may at any time at the expense of the Trust incorporate the Trust as a Trust Board under the provisions of Part 2 of the Charitable Trusts Act 1957 and for the purposes of such incorporation may make such amendments or additions to the Trust Deed as shall be required to effect such incorporation.
- 12.2 If and when the Trustees become incorporated the Trustees shall provide a common seal for the Trust which shall be kept by the Chair for the time being and which shall be affixed by the authority of the Trustees to any document requiring execution by the Trustees. Every such affixing shall be performed in the presence of and accompanied by the signature of two Trustees which signatures shall be sufficient evidence of the authority to affix such seal. No person dealing with the Trustees shall be bound or concerned to see or enquire as to the authority under which any document is sealed and in whose presence.

13.0 TRUST CONTRACTS

Contracts on behalf of the Trust may be made as follows:

- 13.1 A contract which if made by private persons would be by law required to be by deed may be made on behalf of the Trust by writing under the common seal of the Trust attested as referred to in clause 12.
- 13.2 A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged, may be made on behalf of the Trust in writing signed by any person acting under the Board's authority, express or implied.
- 13.3 A contract which if made between private persons would by law be valid although made verbally only, and not reduced into writing, may be made verbally on behalf of the Trust by any person acting under the Board's authority, express or implied.

PROVIDED, HOWEVER, that no such contract shall be entered into by any person on behalf of the Trust except with the authority of a resolution passed by the Board at a properly constituted Board meeting or in accordance with a written resolution signed by all Trustees in accordance with clause 8 of Schedule 2.

Schedule 1

Principal objects and charitable purposes of the Trust

1. Raising and maintaining awareness of the history of the district of Ōtaki, being the area between Manakau and Te Horo and between the crest of the Tararua ranges and the coast, including working with educational institutions.
2. Maintaining the Ōtaki museum as a centre for the preservation, collection, exhibition and recording of items of historical interest, including oral histories and Ōtaki Historical Society records, and for facilitating access to all these resources.
3. Operating the museum in accordance with the definition of the International Council of Museums.¹
4. Producing or assisting in the production of publications relevant to these purposes, including an annual historical journal.
5. Seeking out and supporting the marking of historical sites in Ōtaki.
6. Liaising and co-operating with other heritage-related community organisations with shared interests.
7. Developing and fostering the understanding and appreciation of the heritage of the wider Kāpiti Coast District.
8. Communicating with the Kāpiti Coast District Council in respect of the preservation of the museum building.
9. Seeking public, local body or Government assistance and support for all or any of the purposes of the Trust.

¹ "A museum is a non-profit making, permanent institution in the service of society and of its development and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment."

SCHEDULE 2
PROCEDURAL RULES OF TRUSTEES

1. The financial year of the Trust shall be from 1 July to 30 June in each year.
2. The Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit PROVIDED THAT subject to a waiver of this requirement by all of the Trustees, no meeting of Trustees shall be held unless all Trustees have been given not less than two (2) days' notice of the proposed meeting (which notice must be issued by the Chair of the Board). Questions arising at any meeting shall be decided by a majority of votes. In the case of equality of votes, the Chair shall have a second or casting vote.
3. The quorum for meetings of the Trustees shall be six (6) or such other number as the Trustees shall determine from time to time.
4. The Trustees shall cause to be kept minutes of all meetings and any minute or extract from any minute purporting to be signed by the Chair of the meeting at which such minute was confirmed shall be sufficient evidence without further proof of the matters referred to in that minute.
5. The Trustees shall cause proper books of account to be kept showing all assets comprising the Trust Funds and all moneys received and disbursed by the Trustees, and shall prepare the annual account, a copy of which, duly reviewed by the Trust reviewer, shall be made available to the public and presented at the Annual General Meeting of the Trust.
6. The Trustees shall hold one meeting in each financial year of the Trust which shall be called the Annual General Meeting which shall be advertised and open to the public and the accounts of the Trust shall be placed before this meeting for approval. Annual General Meetings shall be held within four (4) months of the end of each financial year.
7. All moneys payable to the Trust may be paid to any secretary, accountant or other officer appointed by the Trustees for that purpose and the receipt of a Trustee or such secretary, accountant or other officer shall be a full and sufficient discharge for all moneys so payable.
8. A resolution in writing signed by all the Trustees or all of those permitted to vote on the particular question subject or resolution shall be as valid and effectual as if it had been passed at a duly convened meeting of the Trustees.
9. Notwithstanding any other provision in the Deed, the contemporaneous linking together by telephone, or by any other electronic means, of a number of Trustees ("the Participants") being not less than the quorum, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings so long as the following conditions are met:
 - (a) All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone or other electronic means and to be linked by telephone or other electronic means for the purposes of such a meeting. Notice of such a meeting may be given by telephone, email or such other means as the Trustees may determine.
 - (b) Each of the participants taking part in the meeting by telephone or other electronic means must be able to hear each of the others taking part at the commencement of the meeting.
 - (c) At the commencement of the meeting, each participant must either be visible to all the others taking part or acknowledge his or her presence for the purpose of such meeting,
 - (d) A participant who is not visible to all the others taking part may not leave the meeting without having previously obtained the express consent of the Chair of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless such consent has been obtained.

- 10. Minutes of the proceedings at a meeting held by contemporaneous linking together by telephone or other electronic means shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by or on behalf of the Chair.
- 11. A Trustee may be paid reasonable out-of-pocket expenses incurred with the authority of the Trustees or incurred in attending meetings of the Trustees.

Signed (Trustee)

Witnessed

Date

Signed (Trustee)

Witnessed

Date

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