

**DATED**

13 March

**2023**

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**DEED OF VARIATION OF CHARITABLE TRUST**

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THIS DEED dated the 13<sup>th</sup> day of March 2023

## PARTIES

1. **ANTONY MICHAEL YOUNG** of Levin, Marketing Consultant
  2. **JUSTINE KELLY STREET** of Foxton, Chartered Accountant
  3. **TE-AROA ATAWHAI ADA JENNINGS** of Levin, Consultant
  4. **LARRY STEWART ELLISON** of Foxton, Company Director
  5. **RONALD ADRIANUS TURK** of Palmerston North, Company Director
- (the **Trustees**)

## BACKGROUND

- A. The trustees are now the trustees of the **HOROWHENUA NEW ZEALAND TRUST** (the **Trust**) created by a deed dated the 4<sup>th</sup> day of April 2018 (the **Trust Deed**).
- B. The Trust was incorporated under the Charitable Trustees Act 1957 on the 31<sup>st</sup> day of May 2018.
- C. Clause 27 of the Trust Deed provides:

"27.1 **Limited Power to Vary:** *The Trustees may (and if more than one Trustee, by unanimous decision), alter, add to or rescind any of the provisions of this deed provided that no such alteration, addition or recession shall be made to:*

(a) *The definition of Charitable Purposes in clause 1.1 and the expression of those purposes and the means of achieving them in clauses 4.1 and 4.3; and*

(b) [...]

(c) [...]

*unless such alteration, addition or recession is consistent with retention by the Trust of:*

(d) *the exemption from income tax conferred by the Act; and*

(e) *registration of the Trust on the Charities Register."*

- D. The Charities Services have considered the Charitable Purposes of the Trust need clarification as they are too broad.
- E. For the purposes of the Trust confirming its exemption from income tax and registration of the Trust on the Charities Services Register, the Trustees have resolved to amend the Charitable Purposes as set out in this deed. The Trustees consider such amendments do not delegate from the purposes and intentions of the Charitable Purposes set out in the Trust Deed.
- F. The Trusts Act 2019 has come into force on the 30<sup>th</sup> day of January 2021. The Act repeals the Trustee Act 1956 and introduces new mandatory and default terms. The Trustees wish to amend the Trust Deed so that the current investment discretion will continue to apply and to reflect the exemption and liability standards imposed by the Act.
- G. By signing this deed, the Trustees are giving their unanimous consent to vary the terms of the Trust Deed in the manner indicated by this deed.
- H. The Trustees have agreed to vary the terms of the Trust Deed as set out in this deed.

## **BY THIS DEED**

In exercise of their powers under clause 27 of the Trust Deed, the Trustees vary the terms of the Trust, with effect from the date of this deed, as follows:

### **1. How and when variation takes effect**

- 1.1. The provisions of this deed override the provisions of the Trust Deed to the extent any of the provisions in the Trust Deed are incompatible with those in this deed.
- 1.2. This deed will take effect when it has been signed by all named parties.

### **2. Charitable Purposes**

- 2.1. Clause 4.1 of the Trust Deed is deleted and is replaced by this new clause:

"4.1 **Purposes:** *The Trustees shall hold the Trust Assets upon trust to pay or apply the income and the capital of the Trust Assets in such amounts, at such times, and subject to such terms and conditions, as the Trustees may decide for such charitable purposes in New Zealand as may be selected by the Trustees and are valid charitable purposes, to the extent that they include:*

- (a) provision of public amenities and services and community recreation facilities for the benefit of the Horowhenua District public at large, such as parks, playgrounds, community halls or facilities, walking tracks and cycling tracks;*
- (b) advancing the education of young people in the Horowhenua District by promoting post-secondary education and vocational skills training programmes;*
- (c) provision, promotion and facilitation of schemes or programmes which connect employers with young people and unemployed persons in the Horowhenua District for the purposes of reducing unemployment in the Horowhenua District;*
- (d) provision and facilitation of research which supports the Trust in the advancement of any one or more of its charitable purposes, in particular but not exclusively the relief of poverty or unemployment in the Horowhenua District through undertaking and supporting research into factors that contribute to poverty and unemployment and methods to reduce these, with research to be available to the public for public benefit;*
- (e) promotion and provision of schemes or activities of community benefit within the Horowhenua District which promote and support the social and economic well-being of the Horowhenua District and its people, provided any benefits to individuals and business are incidental to any economic development benefit to the general public;*
- (f) provision of schemes or activities which encourage or assist unemployed persons in the Horowhenua District in securing employment or which promote pathways to jobs;*
- (g) advocating for issues which relate to or advance any one or more of the charitable purposes of the Trust;*
- (h) provision, facilitation and promotion of activities, including training and education, aimed at equipping unemployed persons with the skills, knowledge and confidence to attain employment so that they can better engage in sustainable employment opportunities;*

(i) *relief of the sick through the provision and promotion of affordable and accessible medical care and services to any and all persons in need in the Horowhenua District;*

(j) *relief of poverty and unemployment in the Horowhenua District through conducting commercial activities which have the sole purpose of:*

(i) *attracting and retaining businesses in the Horowhenua District who commit to employing persons from the Horowhenua District;*

(ii) *creating and facilitating sustainable job opportunities for the people of the Horowhenua District;*

(iii) *promoting the Horowhenua District as an attractive location for business to set up or re-locate to support the creation of job opportunities in the Horowhenua District;*

(iv) *retaining skilled employees who otherwise are unable to obtain work in the Horowhenua District due to a lack of job opportunities;*

*with all profits to be applied solely to the promotion of the Trust's charitable purposes;*

(k) *provision and promotion of initiatives and schemes which promote affordable housing or healthy homes for the poor, low income and those in financial need and of small/limited means;*

(l) *provision of funding to any charitable entity registered under the Charities Services Act 2005 which support and promote the welfare of the people of the Horowhenua District;*

(m) *provision of funding to any community organisation which operates primarily in the Horowhenua District provided that their purposes are charitable as defined by the Charities Services Act 2005.*

#### General

- (n) *to join or seek affiliation and/or association with such other bodies organisations which the Trustees may from time to time consider expedient to facilitate one or more of the foregoing charitable purposes.*
- (o) *to support and join with such other charitable organisations, and by such means, as the trustees may from time to time consider expedient to facilitate one or more of the foregoing charitable purposes.*
- (p) *generally to have all the powers of a natural person to do such things as are conducive to the attainment of any of the purposes and objects of this Trust provided that the purposes and objects of this Trust shall be so conducted as to remain within the definition of Charitable Purposes.*

(together the **Charitable Purposes**)

2.2. Clause 4.2 of the Trust Deed is deleted.

2.3. Clause 4.3(a) of the Trust Deed is deleted and replaced by this new sub-clause:

"(a) *seek, accept and receive subscriptions, donations, subsidies, grants, endowments, dividends, gifts, legacies, loans and bequests in money, in kind or partly in both;*"

2.4. Clause 4.3(b) of the Trust Deed is deleted and replaced by this new sub-clause:

"(b) *promote and advertise the Trust and its purposes in such manner as the Trustees may determine having regard to the provisions of clause 4.1;*"

### **3. Liability and Indemnity**

3.1. Clause 11.1 of the Trust Deed is deleted and is replaced by this new clause:

"11.1 **Exclusion of Liability:** *No Trustee, delegate of the Trustees or officer of the Trust shall be liable for the acts, receipts, neglects or defaults of any other Trustees, delegate of the Trustees or officer of the Trust, nor for any loss, damage or misfortune unless the same happens through that person's own dishonesty, gross negligence or*

*willful misconduct known by that person to be a breach of the trust or duties imposed upon them in this deed or otherwise."*

3.2. Clause 11.3 of the Trust Deed is deleted and is replaced by this new clause:

"11.3 **Indemnity:** *The Trustees, any delegates of the Trustees, any officers and employees of the Trustees and the other officers and employees (if any) of the Trust shall be indemnified out of the Trust Assets against any liability incurred by them in defending any proceedings whether civil or criminal taken against them by reason of their actions in relation to or connected with this deed, provided such liability is not attributable to that person's own dishonesty, gross negligence or willful misconduct."*

#### **4. Investment**

4.1. Clauses 18.1 to 18.5 (inclusive) of the Trust Deed are deleted and replaced by this new clause:

"18.1 *"The Trustees may invest or re-invest such portion of the Trust Fund not immediately required for the purposes of the Trust as they shall from time to time think fit and beneficial to the Trust Fund, notwithstanding that the Trust Fund may be subject to any liability in such mode of investment or in such security and whether in New Zealand or elsewhere (notwithstanding that such mode or security may not be such as are for the time being authorised by law for the investment of Trust Funds). The Trustees shall not be liable for, and shall be indemnified by and out of the Trust in respect of any loss or liability which may be sustained or incurred by reason of the exercise in good faith of any of the powers of investment conferred. The duties imposed on Trustees by Section 30 (Duty to invest prudently) of the Trusts Act 2019 (or any modification thereof) shall not apply to the Trustees. The Trustees shall not be under any requirement to have regard to matters set out under Section 59 of the Trusts Act 2019 (or any modification thereof) and especially need not diversify investments in the Trust Fund."*

#### **5. Investment Advisor and Fund Manager**

The word "must" in Clause 19.1 of the Trust Deed is replaced with "may" to read:

"19.1 *The Trustees may appoint a person or company to be an Investment Advisor of the Trust."*

## **6. Books and Financial Statements**

- 6.1. The words "31 March" in Clause 20.4 of the Trust Deed are replaced with the words "30 June".

## **7. Default duties of trustees in the Trusts Act 2019**

The following clauses are inserted after Clause 29 of the Trust Deed:

*"30(a) The default duties of trustees under the following sections in the Trusts Act 2019 do not apply and are excluded by this Deed so the Trustees are not required to act in accordance with them:*

- i. Section 29 General duty of care;*
- ii. Section 30 Duty to invest prudently;*
- iii. Section 31 Duty not to exercise power for own benefit;*
- iv. Section 32 Duty to consider exercise of power;*
- v. Section 33 Duty of trustees not to bind or commit trustees to future exercise of discretion;*
- vi. Section 34 Duty to avoid conflict of interest;*
- vii. Section 35 Duty of impartiality;*
- viii. Section 36 Duty not to profit; and*
- ix. Section 37 Duty to act for no reward.*

*30(b) All of the duties listed in the previous sub-paragraph are excluded to give full effect to the clauses in this Deed."*

- 8.** The Trustees confirm that the variations implemented by this deed comply with all restrictions and requirements specified in the Trust Deed.
- 9.** *Antony Michael Young and Justine Kelly Street* are authorised to certify a copy of this deed and register this deed as required by section 23 of the Charitable Trust Act 1957.
- 10.** In all other respects, the Trust Deed is confirmed.



11. This deed can be executed in two or more counterparts, all of which together will be deemed to constitute the one and the same deed. A party may enter into this deed by signing a counterpart copy and sending it to another party by e-mail.

## ACKNOWLEDGEMENT

By signing this deed, each party acknowledges:

- The trustees were advised of their right to independent legal advice before signing;
- The Trustees were advised about trustees' duties at law and specific duties under the Trusts Act 2019;
- Some of those duties ("default duties") are excluded or modified by this deed;
- These exclusions and modifications are set out in this deed and the trustees are aware of the meaning and effect of each modification or exclusion.
- The Trustees are aware of the meaning and effect of the liability exclusion or indemnity in clause 3 of this deed (Trustees' indemnity except for wilful misconduct, gross negligence or dishonesty).
- The parties understand that nothing in this deed can release a Trustee from liability for a Trustees' dishonesty, wilful misconduct or gross negligence.

**SIGNED by ANTONY MICHAEL YOUNG**  
as Trustee in the presence of:

)  
)

Antony Young

Joanna Mason

Witness Signature

Joanna Mason

Full Name of Witness

for Lester

Occupation

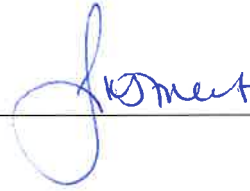
manager

Levin

City/Town of Residence

**SIGNED** by **JUSTINE KELLY STREET** as  
Trustee in the presence of:

)  
)



Witness Signature



Full Name of Witness



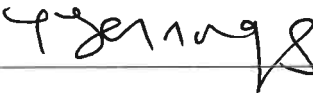
Occupation



City/Town of Residence

**SIGNED** by **TE-AROHA ATAWHAI ADA**  
**JENNINGS** as Trustee in the presence of:

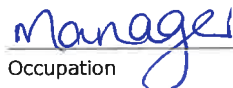
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Witness Signature



Full Name of Witness



Occupation



City/Town of Residence

**SIGNED** by **LARRY STEWART ELLISON**  
as Trustee in the presence of:

)  
)



Witness Signature



Full Name of Witness



Occupation



City/Town of Residence

**SIGNED** by **RONALD ADRIANUS TURK**  
as Trustee in the presence of:

) RA Turk

[Signature]  
Witness Signature

Anthony Stella

Full Name of Witness

Director

Occupation

Wellington

City/Town of Residence