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***South Waikato Investment Fund  
(SWIF)***

Deed of Variation and Restatement

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Deed dated

7th day of November

2024

**Parties**

**Stephen Ross Davidson Veitch, Kate Nancy Hatwell, Franciscus Johannes Aerts, Michael John Cameron Crawford, James Luke Te Whakaheke Whetu and Johnathan Robert Bartley (Trustees)**

**Introduction**

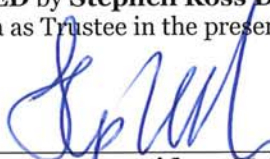
- A. The South Waikato Investment Fund (**Trust**) was established by deed dated 9 June 2014 and subsequently varied by deed of variation dated 23 August 2016 (**Trust Deed**).
- B. The Trustees are the present trustees of the Trust.
- C. The Trustees have the power pursuant to clause 16 of the Trust Deed to vary the terms of the Trust by amending, deleting or replacing any term set out in the Trust Deed (including, for the avoidance of doubt, the Trust Purposes (as defined in the Trust Deed)).
- D. The Trustees wish to vary the Trust Deed in the manner set out in this deed to update the terms of the Trust in light of the changes made by the Trusts Act 2019 and to clarify other certain existing terms.


**Operative Part**

- 1. Pursuant to the power vested in the Trustees by clause 16 of the Trust Deed, the Trustees hereby vary the Trust Deed by deleting each of the existing clauses of the Trust Deed and substituting them with the clauses set out in the schedule to this deed, so that the Trust Deed is varied and restated in its entirety.
- 2. The Trustees hereby acknowledge and agree that, from the date of this deed, the Trust shall be governed by the terms of the Trust Deed as varied and restated by this deed.

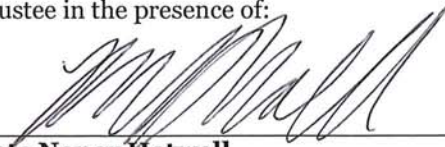
**Signed as a deed**


**SIGNED** by **Stephen Ross Davidson Veitch** as Trustee in the presence of:

  
 \_\_\_\_\_  
**Stephen Ross Davidson Veitch**

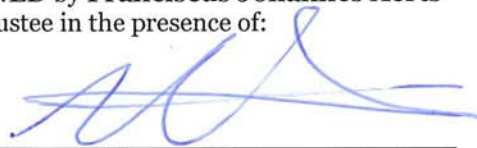
  
 \_\_\_\_\_  
 Signature of Witness  
 Sara Hindley  
 \_\_\_\_\_  
 Name of Witness  
 Hamilton  
 \_\_\_\_\_  
 Address of Witness  
 Admin & Leasing Support.  
 \_\_\_\_\_  
 Occupation of Witness


**SIGNED** by **Kate Nancy Hatwell** as  
Trustee in the presence of:

  
\_\_\_\_\_  
**Kate Nancy Hatwell**

  
\_\_\_\_\_  
Signature of Witness  
**JOHNATHAN BALTY**  
\_\_\_\_\_  
Name of Witness  
**CAMBRIDGE**  
\_\_\_\_\_  
Address of Witness  
**INVESTMENT.**  
\_\_\_\_\_  
Occupation of Witness


**SIGNED** by **Franciscus Johannes Aerts**  
as Trustee in the presence of:

  
\_\_\_\_\_  
**Franciscus Johannes Aerts**

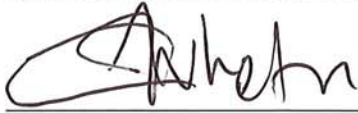
  
\_\_\_\_\_  
Signature of Witness  
**Sharon Double**  
\_\_\_\_\_  
Name of Witness  
**Putnam**  
\_\_\_\_\_  
Address of Witness  
**Operations Manager**  
\_\_\_\_\_  
Occupation of Witness

**SIGNED** by **Michael John Cameron  
Crawford** as Trustee in the presence of:

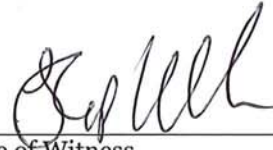
  
\_\_\_\_\_  
**Michael John Cameron Crawford**

  
\_\_\_\_\_  
Signature of Witness  
**Sara Hindley**  
\_\_\_\_\_  
Name of Witness  
**Hamilton**  
\_\_\_\_\_  
Address of Witness  
**Admin & Leasing Support**  
\_\_\_\_\_  
Occupation of Witness

**SIGNED** by **James Luke Te Whakaheke Whetu** as Trustee in the presence of:



**James Luke Te Whakaheke Whetu**



Signature of Witness

Stephen Verke

Name of Witness

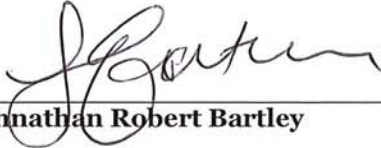
Hamilton.

Address of Witness

Property Manager.

Occupation of Witness

**SIGNED** by **Johnathan Robert Bartley** as Trustee in the presence of:



**Johnathan Robert Bartley**



Signature of Witness

Kate Hatwell

Name of Witness

Hamilton

Address of Witness

Solicitor

Occupation of Witness

# *Schedule*

DATED 9 JUNE 2014

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***South Waikato Investment Fund  
(SWIF)***

Deed of Trust

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*Deed dated 9 June 2014*

## ***Parties***

**Ian Kennedy Elliot, John Michael Cronin and Benjamin Eric Smith (Trustees)**

## ***Introduction***

- A. The Trustees wish to establish a trust for the benefit of the South Waikato District, to be known as the South Waikato Investment Fund (SWIF), on the terms set out in this deed.
- B. In order to establish the Trust, the Trustees hold an amount of \$100.00 constituting the initial Trust Fund in respect of which the terms of the Trust are declared.
- C. It is intended that further property and funds will be received and acquired from time to time for the advancement of the Trust Purposes.

## ***Trust Terms***

### ***1. Definitions and interpretation provisions***

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#### **1.1 Application**

Clauses 1.2 to 1.10 shall apply to this deed unless the context requires otherwise.

#### **1.2 Defined Terms**

**Act** means the Trusts Act 2019 as amended, re-enacted or substituted from time-to-time.

**AGM** means an annual general meeting of the Board held in accordance with clause 11.1(a)(ii).

**Annual Report** means an annual report regarding the activities of the Trust for a Financial Year and, as the context requires, the most recent annual report, prepared in accordance with clause 12.3.

**Balance Date** means 31 March or any other date adopted from time to time by the Trustees as the end of the Trust's Financial Year.

**Board** means the Trustees, collectively, acting as a board, whether or not the Trustees are incorporated as a board under the Charitable Trusts Act 1957.

**Board Chair** means the Trustee for the time being appointed as the chair of the Board in accordance with clause 9.1.

**Charitable Purposes** means every purpose within New Zealand in accordance with the law of New Zealand for the time being is charitable, whether such purpose involves the relief of poverty, the advancement of education or religion, or any other object or purpose beneficial to the community not falling under any of the preceding heads, and facilities for recreation or other leisure time and occupation that are charitable under section 61A of the Charitable Trusts Act 1957, and shall include any trust established solely and exclusively for charitable purposes.

**company** includes a corporation or other body corporate and body of persons (whether incorporated or not)

**Council** means the territorial authority known as South Waikato District Council, as named in Part 2 of Schedule 2 of the Local Government Act 2002 or any territorial or unitary authority succeeding that Council as the local authority principally responsible for the current South Waikato District.

**Financial Year** means any 12 month or other accounting period ending on the Balance Date.

**Officer** means any person for the time being holding any office in respect of the Trust to which that person has been appointed in accordance with clause 9.2.

**property** means real or personal property of any kind and includes any right or interest in such property and anything in action.

**South Waikato District** means the area identified in the schedule to this deed.

**Strategic Plan** means a strategic plan for the Trust, and, as the context requires, the most recent strategic plan, prepared in accordance with clause 12.1.

**This deed** means this deed executed by the Initial Trustees setting out the terms of the Trust, including the schedule, and, as the context requires, includes any deed varying the terms of the Trust in accordance with clause 17.

**Trust** means the trust or trusts established and maintained in relation to the Trust Fund on the terms set out in this deed.

**Trust Fund** means:

- (a) the initial amount held by the Trustees to establish the Trust; and
- (b) all other property paid to or held under the control of or vested in or acquired by the Board on the terms of the Trust from any source, whether by way of gift, bequest, devise, purchase, exchange or otherwise, the moneys and investments from time to time representing such property, and, unless inconsistent with the context, the income received from such property.

**Trust Purposes** means the purposes of the Trust as set out in clause 3.2.

**Trustees** means the trustees of the Trust for the time being, whether original, additional or substituted.

- 1.3 **Clauses:** references to clauses, unless otherwise qualified, are references to the clauses of this deed.
- 1.4 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background.
- 1.5 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this deed.
- 1.6 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

- 1.7 **No Limitation:** references to anything of a particular nature either before or after a general statement do not limit the general statement.
- 1.8 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 1.9 **Plural and Singular:** singular words include the plural and vice versa.
- 1.10 **Legislation/Legislative Instruments:** references to any legislation or legislative provision include:
- (a) any corresponding amendment or replacement legislation or legislative provision; and
  - (b) any legislative instrument (including any order in council, regulation or other instrument) made under the relevant legislation or legislative provision or under any such amendment or replacement legislation or legislative provision.

## ***2. Creation of the Trust***

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- 2.1 **Declaration of Trust:** the Board declare and acknowledge that the Board shall hold the Trust Fund upon the trusts, and with and subject to the powers and discretions contained or implied in this deed.
- 2.2 **Initial Name:** the name by which the Trust shall be known, and under which the Board shall be incorporated under the Charitable Trusts Act 1957, is the **South Waikato Investment Fund (SWIF)**
- 2.3 **Change of Name:** the Board may, by varying this deed under clause 17, change the name of the Trust to any other name as determined by the Board from time to time.

## ***3. Charitable Purposes, application of Trust Fund and activities of the Trust***

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- 3.1 **Trust Fund Held for Charitable Purposes:** The Trust Fund, including both capital and income, is to be held on trust and administered by the Board upon the terms set out in this deed for Charitable Purposes in New Zealand, for public benefit and not for private profit, and in particular for the Trust Purposes set out in clause 3.2 to the extent that such Trust Purposes are Charitable Purposes.
- 3.2 **Trust Purposes:** the Trust has been established, and is to be maintained, for Charitable Purposes in relation to promoting and supporting the regeneration, development and enhancement of areas of social and economic deprivation within the South Waikato District, on an ongoing and enduring basis, for the benefit of the people and communities of the South Waikato District; including, but without limitation, the following:
- (a) **Educational Initiatives:** identifying, creating, funding and/or promoting education opportunities for the people of the South Waikato District;
  - (b) **Employment Opportunities:** maintaining and creating employment opportunities within areas of social and economic deprivation within the South Waikato District;

- (c) **Economic Regeneration and Development:** identifying, creating, funding and/or promoting opportunities for new business and investment, and the maintenance and expansion of existing business and investment, in and/or for the benefit of the areas of social and economic deprivation within the South Waikato District;
- (d) **Supporting People in Need:** identifying, creating, funding and/or promoting the provision of services to, or other assistance for people in the South Waikato District who are impoverished, aged and/or suffering genuine hardship;
- (e) **Services, Infrastructure and Other Amenities:** identifying, creating, funding and/or promoting the delivery, maintenance and/or enhancement of public services, infrastructure and amenities in the South Waikato District provided they augment rather than replace the role of the South Waikato District Council (or its amalgamated or successor entity as the case may be); and
- (f) **Other Charitable Purposes:** the advancement of any other Charitable Purpose for the benefit of the South Waikato District and its people and communities that the Board considers to be consistent or aligned with the purposes otherwise specified above.

3.3 **Means of Achieving Trust Purposes:** The Board may, in order to achieve the Trust Purposes, in addition to all other powers vested in the Board undertake such activities and enterprises as may be necessary or desirable including:

- (a) seek, raise, accept and receive subscriptions, donations, grants, subsidies, gifts, legacies, loans and bequests in money, in kind or partly in both;
- (b) identify persons, groups and entities eligible for grants or financial assistance, establish programmes for the assistance of those persons, groups or entities and make grants and provide financial assistance to them or any one or more of them;
- (c) employ, engage or procure persons to assist in achieving the Trust Purposes;
- (d) make known and advertise the Trust and its purposes by such use of any of the media as the Board may decide;
- (e) acquire, hold, convert, lay out, improve, establish, and maintain any premises of whatever nature or tenure;
- (f) subsidise, encourage, and co-operate with any other person, organisation, or group (whether incorporated or not) sharing similar charitable objects as the Trust;
- (g) undertake such other activities and enterprises as the Board may decide will further the Trust Purposes.

3.4 **Part of Trust Fund May be Held on Specific Trust:** for the avoidance of doubt, the Board may receive/acquire and hold/administer any part of the Trust Fund on trust for any one or more purposes falling within the Trust Purposes or subject to any specific terms that are consistent with the general terms of the Trust (referred to as a Specific Trust), and in relation to any such Specific Trust:

- (a) **Identification and Administration:** the Board must separately identify, administer and apply, that part of the Trust Fund in accordance with the terms of the Specific Trust; and

- (b) **Costs of Administration:** costs relating to the administration of the Specific Trust, including a fair proportion of the general administration costs of the Trust, will be borne by that part of the Trust Fund held on Specific Trust, provided that the Board may apply any other part of the Trust Fund (but excluding any part of the Trust Fund held on any other Specific Trust) to meet all or part of the costs relating to the administration of the Specific Trust.
- 3.5 **Geographical Focus of the Trust Purposes:** the Trust Purposes are to be pursued for the benefit of the people and communities of the South Waikato District, but this does not preclude the Board from carrying out or supporting any project or activity outside of the South Waikato District, or any project or activity that will or may benefit any person or area outside of the South Waikato District if the Board considers that the project or activity is an appropriate means by which to advance one or more of the Trust Purposes for the benefit of the people and communities of the South Waikato District and any benefit to any person or area outside of the South Waikato District is merely incidental or ancillary to the advancement of the relevant Trust Purpose(s).
- 3.6 **Interrelationship with Other Organisations/Bodies:** in pursuing the Trust Purposes, the Board must have regard to the obligations and commitments of other organisations and bodies, and in particular local and central government, in relation to the advancement of such purposes for the benefit of the South Waikato District, with a view to ensuring that the Board's pursuit of the Trust Purposes supplements and/or enhances, rather than replacing or substituting, the obligations and commitments of such other organisations and bodies.
- 3.7 **Application of Trust Fund:** the Board may, in any one year:
- (a) use or apply, or decide not to use or apply, the income of the Trust Fund for all or any of the Trust Purposes;
  - (b) use or apply any capital of the Trust Fund for all or any of the Trust Purposes without first using or applying the whole or any portion of the income of the Trust Fund for that year;
  - (c) set aside reserves or accumulations for future use or application.
- 3.8 **Permitted Activities of the Trust:** in furtherance of the Trust Purposes, the permitted activities of the Board will include:
- (a) **Building Up the Capital of the Trust Fund:** soliciting and receiving funds in order to build up the capital of the Trust Fund if required by the Board;
  - (b) **Management and Investment of the Trust Fund:** prudent management and investment of the Trust Fund, in accordance with an investment policy to be adopted by the Board from time to time, with a view to:
    - (i) **Maintenance of Capital:** maintaining the real value of the capital of the Trust Fund from one Financial Year to the next, using the New Zealand Consumer Price Index as a minimum benchmark for this purpose; and

- (ii) **Generation of Income:** generating sufficient income from the capital of the Trust Fund in order to:
  - (A) **Accumulation:** maintain the real value of the capital of the Trust Fund, in accordance with clause 3.8(b)(i), by accumulating income to be included in the capital of the Trust Fund; and
  - (B) **Distribution and Application:** enable the Board to distribute or apply funds for activities and projects that advance the Trust Purposes, in accordance with clause 3.8(c);
- (c) **Distribution/Application of Funds:** distributing and/or applying funds (by way of grant, advance or otherwise) in order to advance any one or more of the Trust Purposes, including (without limitation) any distribution or application of funds to or for the benefit of:
  - (i) **Persons Limited to Qualifying Purposes:** any organisation or body established and maintained exclusively to advance any one or more purposes falling within the Trust Purposes; and
  - (ii) **Persons Undertaking Qualifying Projects:** any other person, in connection with any project or activity that the Board considers will advance any one or more of the Trust Purposes, with the funds provided by the Board being commensurate with the Board's assessment of benefit or benefits to the people and communities of the South Waikato District from the project or activity;

provided that the funds distributed or applied in any Financial Year under this clause 3.8(c) must not exceed the amount of the Trust's anticipated net income for the year (after meeting the Board's expenses for the year and allowing for maintenance of the value of the capital of the Trust Fund in accordance with clause 3.8(b)(i), unless the Board determines, by resolution passed at a meeting of the Board by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being, that any distribution or application of funds in excess of that amount is justified on account of the anticipated on-going and enduring benefit or benefits to the people and communities of the South Waikato District from the activity or project for which the funds are to be distributed or applied; and

- (d) **Other Activities:** Subject to the terms set out in this deed, the Board will pay its own operating expenses and may undertake any activity, not being prohibited by law, as the Board thinks fit, including working with any governmental, business, community or other organisation or body, in order to advance one or more of the Trust Purposes for the benefit of the people and the communities of the South Waikato District, provided that the activities of the Trust must remain at all times consistent with;
- (e) **Charitable Status:** the continued operation of the Trust for Charitable Purposes in New Zealand, for the benefit of the public and not for private profit; and
- (f) **Tax Concessions:** the Trust's eligibility for the benefit of any tax concession for which it would otherwise be eligible, including (without limitation) exemption of the Trust's income from income tax, unless in relation to any such concession the Board has determined that eligibility for the benefit of that concession is not required in the best interests of the Trust, in relation to the advancement of Trust Purposes.

- 3.9 **No Private Profit:** nothing expressed or implied in this deed will permit the Trust Purposes to be pursued, or the permitted activities of the Trust to be carried on, for the private profit of any person, and any private benefits arising from the Trust's activities must be merely an inevitable concomitant of, or incidental or ancillary to, the pursuit of the Trust Purposes. For the avoidance of doubt, this does not preclude the application of the Trust Fund to or towards:
- (a) **Remuneration and Reimbursement:** reasonable remuneration for services provided to the Trust, and full reimbursement of expenses properly incurred in connection with the affairs of the Trust, by any Trustee, in accordance with clause 14, or by any Officer or other personnel of the Trust; and
  - (b) **Consideration for Goods and Services:** consideration for the supply of any other goods and/or services acquired by the Board in order to advance the Trust Purposes (including interest in relation to any borrowing by the Board), provided that the consideration does not exceed fair market value for the supply.

#### ***4. Role and powers of the Board***

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- 4.1 **Role of the Board:** Subject to the terms set out in this deed, the role of the Board, and each Trustee on the Board, is to act in the best interests of the Trust in relation to the advancement of the Trust Purposes. The Board will have overall control of and responsibility for the Trust Fund and the administration of the Trust, and the affairs of the Trust must be managed by, or under the direction or supervision of, the Board.
- 4.2 **Powers:** In order to advance the Trust Purposes and carry out the permitted activities of the Trust, in addition to all other powers and discretions conferred by law but subject to the restrictions contained in this deed (and under any other applicable law):
- (a) **Widest Possible Powers:** the Board has the same powers and discretions as if it was the absolute owner of, and was beneficially entitled to, the Trust Fund, including (without limitation):
    - (i) **Full Capacity:** full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
    - (ii) **Full Rights, Powers, Privileges:** full rights, powers, and privileges; and
  - (b) **Powers Not Limited or Restricted:** the Board's powers will not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.
- 4.3 **Discretions:** Except as otherwise expressly provided by this deed, the Board may exercise all the powers and discretions vested in the Board by this deed in the absolute and uncontrolled discretion of the Board, at such time or times, upon such terms and conditions, and in such manner as the Board may decide.
- 4.4 **Investment Discretion:** In exercising their powers of investment the Board may acquire any property, or retain or deal with any property which from time to time comprises the whole or part of the Trust Fund, notwithstanding that any act or omission by the Board in the exercise of those powers and discretions would be, or could be, contrary to the principles governing the investment of trust funds set out in the Act.

4.5 **Exercise of Powers:** For the avoidance of doubt, the Board must exercise all powers and discretions (including the power to invest any part of the Trust Fund):

- (a) **Advancement of Trust Purposes:** in order to advance the Trust Purposes and carry out the permitted activities of the Trust; and
- (b) **Prudent Person Standard:** in a prudent manner, exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others, but shall not be required to have regard:
  - (i) to any special knowledge or experience that a Trustee has or may hold out as having; and
  - (ii) if a Trustee acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

## ***5. Board delegation of powers and establishment of committees***

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### **5.1 Delegation of Powers**

To the full extent permitted by law, the Board may delegate any of its powers and discretions, in writing and subject to such terms and/or directions as the Board thinks fit, to any committee or subcommittee (the members of which may include both Trustees and other persons appointed by the Board, provided that the Trustee members must be in the majority, or must in any event control, any such committee or subcommittee unless it is advisory only), or to any officer, employee, manager, agent, attorney or other person or body engaged or appointed by the Board, provided that:

- (a) **Exercise of Delegated Powers:** any delegated power or discretion must be exercised in accordance with the terms of this deed and any terms set or directions given by the Board;
- (b) **Revocation of Delegation:** the Board may wholly or partly revoke or modify any such delegation at any time; and
- (c) **Responsibility of Board/Trustees:** no such delegation will release the Board and the Trustees from their responsibilities in relation to the Trust under the terms of this deed.

### **5.2 Specific Committees**

Without derogating from the generality of, and subject to the terms set out in, clause 5.1, the Board may:

- (a) **Investment:** establish an Investment Committee and delegate to that committee all or any of the Board's powers and discretions in respect of the investment of all or any part of the Trust Fund and/or the power to make recommendations to the Board in relation to investment matters; and
- (b) **Distributions:** establish a Distributions Committee and delegate to that committee all or any of the Board's powers and discretions in respect of the distribution and application of the Trust Fund for projects and activities that advance the Trust Purposes and/or the power to make recommendations to the Board in relation to investment matters.

and the membership, membership terms, and terms of reference for any such committee shall be determined by the Board.

## **6. Duties of the Board**

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- 6.1 **Adherence to trustees' duties:** In exercising the powers and discretions vested in the Board by this deed and by the law, the Board shall act in accordance with the mandatory and default duties of the Board set out in the Act except to the extent that the default duties are modified or excluded by this deed.
- 6.2 **Mandatory Duties:** the Board shall be subject to, and must perform, the following mandatory duties:
- (a) to know the terms of the Trust;
  - (b) to act in accordance with the terms of the Trust;
  - (c) to act honestly and in good faith;
  - (d) to hold or deal with the Trust Fund and otherwise act to further the Trust Purposes in accordance with the terms of the Trust; and
  - (e) to exercise their powers for a proper purpose.
- 6.3 **Default Duties:** The Board shall be subject to, and must perform, the default duties under the Act as modified or excluded by this deed. The Trustees record that the default duties set out below have been expressly modified in this deed:
- (a) the general duty of care contained in section 29 of the Act is modified by clauses 4.5 and 15.2 of this deed;
  - (b) the duty to invest prudently contained in section 30 of the Act is modified by clauses 4.4, 4.5 and 15.2 of this deed;
  - (c) the duty not to exercise a power for a Trustee's own benefit contained in section 31 of the Act is modified by clauses 3.9 and 14 of this deed;
  - (d) the duty to avoid a conflict of interest contained in section 34 of the Act is modified by clause 10 of this deed;
  - (e) the duty not to profit contained in section 36 of the Act is modified by clauses 3.9 and 14 of this deed;
  - (f) the duty to act for no reward contained in section 37 of the Act is modified by clauses 3.9 and 14 of this deed; and
  - (g) the duty to act unanimously contained in section 38 of the Act is modified by clauses 3.8, 8.1, 11.1 17.1 and 18.1 of this deed.

For completeness, the Board records that the default duties set out below have not been modified or excluded:

- (h) the duty to consider actively and regularly whether the Board should be exercising any of their Trustee powers contained in section 32 of the Act;
- (i) the duty not to bind or commit the Board to a future exercise or non-exercise of discretion contained in section 33 of the Act;
- (j) the duty of impartiality contained in section 35 of the Act.

## **7. *Composition of the Board, basic Trustee eligibility criteria and term of office***

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7.1 **Number of Trustees:** the total number of Trustees constituting the Board is to be

not less than five (5) and not more than ten (10), provided that if at any time the total number of Trustees falls below five (5):

- (a) **Action by the Board Chair:** the Board Chair must take prompt action to identify sufficient suitable candidates for Trustees as would take the total number of Trustees above five (5) and propose the appointment of such candidates for approval by the Board; and
- (b) **Trustees Entitled to Act:** subject to clause 7.1(a), the remaining Trustee or Trustees constituting the Board will be entitled to act until the number of Trustees is increased to five (5) provided only that there are at least three (3) or more Trustees.

7.2 **Basic Eligibility Criteria:** an individual is not eligible to be appointed, or to continue to hold office, as a Trustee if the person is:

- (a) **Positions of Conflict:** a person who holds any position (whether as a Councillor, employee or otherwise) with the Council (unless, in the case of an individual to be appointed as a Trustee, the person will cease to hold any such position prior to the effective date of their appointment as a Trustee);
- (b) **Bankruptcy:** a person who is an undischarged bankrupt or who is a discharged bankrupt but is prohibited by court order from engaging in any form of business activity;
- (c) **Criminal Conviction:** a person who has been:
  - (i) **Crime Involving Dishonesty:** convicted of any crime involving dishonesty, within the meaning of section 2(1) of the Crimes Act 1961, and sentenced for that crime within the last seven years; or
  - (ii) **Other Offences:** convicted of any offence punishable by a term of imprisonment of two or more years, or sentenced to imprisonment for any offence, unless that person has obtained a pardon.
- (d) **Disqualification from Company Positions:** a person who is prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a

company under any of the Companies Act 1993, the Securities Act 1978, the Securities Market Act 1988 or the Takeover Act 1993; or

- (e) **Incapacity:** a person:
  - (i) **Property Order:** who is subject to a property order made under the Protection of Personal and Property Rights Act 1988;
  - (ii) **Property Management:** whose property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or
  - (iii) **Mental Incapacity:** who is mentally incapable in relation to property or personal care and welfare, as defined in respect of a donor of an enduring power of attorney under section 94 of that Protection of Personal and Property Rights Act 1988.

7.3 **Term of Office:** The following provisions apply to an individual's term of office as a Trustee:

- (a) **Term of Appointment:** Subject to clause 7.3(b), an individual appointed to hold office as a Trustee (including an individual reappointed as a Trustee) by the Board will hold such office for a period of three (3) years from the effective date of the appointment (or reappointment) by the Board, or for any period of less than three (3) years from the effective date of the appointment if so determined by the Board, whether on account of the requirement to take into account the need for continuity/rotation under clause 8.2(e)(ii) or for any other reason.
- (b) **Maximum Term:** No individual shall hold office as a Trustee for more than four (4) consecutive terms of office, unless that individual has received the approval of the Board to serve for a further term, with such approval to be obtained by way of a confidential ballot taken by the Board Chair.
- (c) **Cessation of Office:** An individual holding office as a Trustee will cease to hold such office, notwithstanding that the person's term of office under clause 7.3(a) has not expired, if the individual:
  - (i) **Resignation:** resigns by giving 28 days' written notice to the Board;
  - (ii) **Ineligibility:** is ineligible, or becomes ineligible, to hold office as a Trustee under clause 7.2;
  - (iii) **Failure to Attend Meetings:** fails to attend any three (3) or more consecutive meetings of the Board without leave granted by the Board;
  - (iv) **Death:** dies while holding office as a Trustee; or
  - (v) **Removal:** is removed from holding office as Trustee by the Board under clause 8.

The Trustee concerned shall cease to hold office in a case where clause 7.3(c)(iii) applies from the date of the first meeting of the Board after that Trustee's third consecutive absence without leave, and in cases where clauses 7.3(c)(i), 7.3(c)(ii), 7.3(c)(vi) and 7.3(c)(v) apply from the date of the event mentioned.

## **8. Appointment, removal and monitoring of trustees**

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8.1 **Power to Appoint and Remove Trustees:** subject to clause 7.2, the Board has the power, at any time:

- (a) **Appointment:** to appoint (and to reappoint) any individual to hold office as a Trustee, for a term of appointment of up to three (3) years from the effective date of the appointment, in accordance with the requirements set out in clause 8.2; and
- (b) **Removal:** to remove any person from holding office as a Trustee, notwithstanding that the person's term of office has not expired, in accordance with clause 8.4 provided that any such removal must be approved by a number of the Board members that exceeds 75% of the total number of the Board members for the time being;

and any such appointment or removal must be recorded in writing by the Board.

8.2 **Exercise of Appointment Power:** the Board's power to appoint Trustees under clause 8.1 is to be exercised at the discretion of the Board, provided that:

- (a) **Identification of Candidates:** the Board Chair is responsible for identifying suitable candidates, confirming that such candidates are willing to accept appointment as Trustees and for proposing to the Board that the appointment of such candidates be approved.
- (b) **Independence and Integrity:** the Board must be satisfied that any prospective appointee;
  - (i) **Independence:** is able to act reasonably independently as a Trustee, in the best interests of the Trust in relation to the advancement of the Trust Purposes, and in particular does not have any position with any other organisation or body that the Board considers will, or may, fundamentally impact on the individual's ability to act independently as a Trustee; and
  - (ii) **Integrity:** is of good character and will act with honesty and integrity as a Trustee;
- (c) **Assessment of Skills and Competencies:** subject to clause 8.2(b), the Board must exercise its power to appoint Trustees principally based on its assessment of:
  - (i) **Skills and Competencies of Candidate:** the skills and competencies of each prospective appointee, including the individual's level of experience and his or her passion and ability to advance the interests of the Trust. in relation to the advancement of the Trust Purposes; and
  - (ii) **Mix of Skills and Competencies:** the overall mix of skills and competencies offered by the continuing Trustees and the prospective appointee(s);

in order to ensure that the Board has the skills and competencies required to meet the current strategic needs of the Trust;

- (d) **Skills and Competencies Matrix:** for the purpose of undertaking such assessments:
  - (i) **Content of Matrix:** the Board must develop and adopt a skills and competencies matrix, which must include a requirement that Trustees must have both the passion and

the ability to advance the interests of the Trust in relation to the advancement of its Trust Purposes and must otherwise reflect the current strategic needs of the Trust; and

- (ii) **Revision of Matrix:** the skills and competencies matrix adopted by the Board must be reviewed and updated by the Board from time to time and in any event at least once every Financial Year;
- (e) **Additional Considerations:** when exercising its power to appoint Trustees and in determining any Trustee's term of appointment:
  - (i) **District Connections and Representation:** subject to the overriding requirements set out in clause 8.2(b) and clause 8.2(c), the Board must also have regard to:
    - (A) **Connections:** a prospective appointee's connections with the South Waikato District, and the people and communities of the South Waikato District; and
    - (B) **Representation:** the desirability of the Board being able to represent, and being seen to represent, the people and communities of the South Waikato District as a whole (with reference to gender, ethnicity, geographical representation, the interests of mana whenua and any other relevant factors); and
  - (ii) **Continuity and Rotation of Trustees:** the Board must endeavour to maintain an appropriate degree of continuity on the Board, as determined by the Board, and for this purpose the Board must ensure that, at any time the terms of appointment of all or a substantial number of the Trustees are not scheduled to expire on or about the same date, for example by staggering the appointment of Trustees and/or by ensuring that the Trustees' terms of appointment are staggered.

8.3 **Board Chair Monitoring of Trustee Performance:** the Board Chair will be responsible for monitoring the performance of the Board and each of the Trustees individually and in particular:

- (a) **Trustee Appraisals:** each Trustee will be subject to a biennial performance appraisal, during the Trustee's term of appointment and, if considered appropriate by the Board Chair, at the end of that term; and
- (b) **Board Appraisals:** the Board will be subject to a biennial performance appraisal, it being the intention that Trustee appraisals occur in one year and Board appraisals in the next; and

8.4 **Exercise of Removal Power:** the Board's power to remove Trustees under clause 8.1 is to be exercised at the discretion of the Board which shall be sole, absolute and unfettered.

## ***9. Appointment of Board Chair and other Officers and personnel***

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9.1 **Board Chair:** the Board must appoint from time to time one (1) Trustee to hold office as the chair of the Board for a term of appointment of up to the full term of office of the Trustee under clause 7.3(a), provided that any person appointed to hold such office will only hold that office while they remain a Trustee.

9.2 **Officers:** the Board may appoint from time to time either one of the Trustees or some other person to hold any other office or offices, or to fulfil any role, as determined by the Board, and the Board may remove and replace any Trustee or other person appointed to hold any such office at any time,

provided that any such appointee must not be ineligible, and will cease to hold such office if they become ineligible, to hold office as a Trustee under clause 7.2.

- 9.3 **Personnel:** the Board may employ such staff or other personnel as it considers appropriate to work for the Trust, on such terms as it considers appropriate.

## ***10. Trustee and Officer conflicts of interest***

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10.1 **Conflicts of Interest:** if any Trustee or Officer is interested (as set out in clause 10.2) in any transaction entered into, or to be entered into, by the Board (other than provision for general remuneration or reimbursement of Trustees, or indemnification or insurance of Trustees):

- (a) **Disclosure:** the Trustee or Officer, immediately upon becoming aware that he or she is interested in the transaction, must disclose to the Board:
  - (i) **Disclosure of Interest:** the fact of his or her interest in the transaction; and
  - (ii) **Disclosure of Nature and Extent of Interest:** the nature of their interest and either the monetary value of their interest, if the monetary value of the interest is able to be quantified, or, if the monetary value of the interest is not able to be quantified, the extent of their interest.
- (b) **Record of Interests:** the Board must keep a record of the interest of the Trustee or Officer in relation to the transaction, in the minute book kept and maintained by the Board;
- (c) **Involvement in Transaction:** the Trustee or Officer:
  - (i) **Deliberations and Voting:** must not be involved in deliberations, and in the case of a Trustee will not be entitled to vote, on any matter relating to the transaction;
  - (ii) **Attendance at Meetings:** may attend any meeting of Trustees that is not limited to dealing with matters relating to the transaction and be included among the attendees for the purpose of establishing a quorum for commencing the meeting and for any part of the meeting during which other matters are being deliberated and decided (and may be involved in deliberations, and in the case of a Trustee may vote, on such other matters), but must be excluded from remaining in attendance and participating in any part of the meeting during which any matter relating to the transaction is being deliberated and/or decided and will not be included among the attendees for the purpose of establishing a quorum for that part of the meeting; and
  - (iii) **Other Matters:** must not sign any written resolution or any other document relating to the transaction on behalf of the Trust, or do anything else as Trustee or Officer in relation to the transaction.

10.2 **Meaning of Interested:** for the purpose of clause 10.1, a Trustee or Officer will be interested in a transaction if the Trustee or Officer:

- (a) **Direct Financial Interest:** is a party to, or will or may derive a material financial benefit from, the transaction; or

- (b) **Indirect Financial Interest:**
- (i) **Through Another Interested Party:** has a material financial interest in another party to the transaction;
  - (ii) **As Director, Officer or Trustee of Another Interested Person:** is a director, officer, or trustee of another party to the transaction, or person who will or may derive a material financial benefit from, the transaction (unless the party or person is wholly owned or wholly controlled by the Board); or
  - (iii) **As a Relative of Another Interested Person:** is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, the transaction; or
- (c) **Other Material Interest:** otherwise has, directly or indirectly, any material personal interest in the transaction.

## ***11. Proceedings of the board***

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11.1 **Board Meetings:** unless provided otherwise in this deed, the following provisions apply in relation to meetings of the Board:

- (a) **Obligation to Meet:** The Board must meet from time to time (by the Trustees assembling together, and/or by means of audio, audio and visual, or any other form of communication suitable for conducting meetings by which all Trustees can participate and simultaneously hear each other throughout the meeting), as the Board considers necessary or expedient for the conduct of the affairs of the Trust. provided that:
  - (i) **Convening Meetings:** the Board Chair or any four Trustees may convene a meeting of the Board at any time by giving, or arranging for any Officer or other personnel of the Trust to give, written notice of the meeting in accordance with clause 11.1(b); and
  - (ii) **AGM Requirement:** the Board must hold an annual general meeting each year, within four months of the end of the Financial Year, to receive and approve the Annual Report for that year and to deal with any other business as determined by the Board.
- (b) **Notice of Meetings:** Unless the Board determines otherwise, meetings of the Board are to be convened by giving each Trustee (other than a Trustee who has waived the right) not less than twenty (20) working days' written notice of any meeting of the Board and such notice must:
  - (i) **Date and time:** specify the date and time of the meeting;
  - (ii) **Method:** specify the place of the meeting at which the Trustees are to assemble and/or the manner in which each Trustee may participate in the meeting (if the meeting is to be held by means of audio, audio and visual, or any other form of communication suitable for conducting meetings); and
  - (iii) **Agenda:** give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Trustee to appreciate the general import of those matters, unless this is already known to the Trustees or is impracticable in the particular circumstances;

provided that any irregularity in relation to giving such notice is waived by a Trustee if the Trustee attends the meeting without protest as to the irregularity or agrees to the waiver (whether before, after or during the meeting).

- (c) **Quorum and Voting:** Subject to clause 10.1:
  - (i) **Quorum:** a quorum at a meeting of the Board will be established if the number of Trustees in attendance exceeds 50% of the total number of Trustees for the time being, and no business will be transacted at a meeting at any time unless a quorum is present at that time; and
  - (ii) **Voting:** each Trustee in attendance at a meeting shall have one vote.
- (d) **Resolutions at Meetings:** Any resolution to be passed at a meeting of the Board must be approved by a number of Trustees that exceeds 50% of the total number of Trustees for the time being, provided that if there is an even number of Trustees for time being of whom 50% approve any resolution, the Board Chair will have a casting vote in relation to that resolution. Any resolution passed in accordance with this clause will be binding on all Trustees.
- (e) **Role of Chair:** The Board Chair must chair any meeting of the Board, provided that if no Trustee has been appointed Board Chair or if the appointed Board Chair is not present within 15 minutes after the time appointed for commencement of the meeting, the Trustees in attendance at that meeting may appoint one of their number to chair the meeting. Subject to the terms of this deed and any rules/regulations adopted by the Board prior to any meeting, the Trustee chairing the meeting will control the conduct of that meeting.

11.2 **Board Resolutions:** unless provided otherwise in this deed, the following provisions apply in relation to resolutions to be passed by the Board:

- (a) **Resolutions at Meetings:** Any resolution at a meeting of the Board must be passed in accordance with 11.1(d).
- (b) **Written Resolutions:** A written resolution signed by all of the Trustees for the time being will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Trustees. A facsimile (including an electronic scanned copy) of any such signed resolution shall be as valid and effectual as the original signed document with effect from its transmission.
- (c) **Rescission or Variation of Resolutions:** The Board may from time to time rescind or vary any resolution of the Board by resolution passed by the same majority as was necessary to pass the resolution that is to be rescinded or varied.

11.3 **Records of Meetings and Resolutions:** the Board must ensure that a record of all meetings and resolutions of the Trustees is included in a minute book kept and maintained by the Board. Once any minutes are confirmed by the Board, the Board Chair (or, if confirmed at a meeting of the Board, the Trustee chairing the meeting) must sign the minutes as a true and correct record. The signed minutes will be prima facie evidence of the facts stated in those minutes.

11.4 **Board Rules and Regulations:** subject to the terms of this deed, the proceedings of the Board, including (without limitation) the manner in which meetings of the Board are to be convened and

conducted (including meetings to be held by means of audio, audio and visual, or any other form of communication suitable for conducting meetings), will otherwise be regulated by the Board, as the Board thinks fit, and for this purpose the Board may develop and adopt from time to time any rules and/or regulations relating to its proceedings.

11.5 **Validity of Proceedings:** any meeting of the Board and any resolution of the Board will be as valid and effectual as if:

- (a) **Trustees Duly Appointed:** the persons acting as Trustees had been duly appointed;
- (b) **Trustees Eligible:** the persons acting as Trustees were eligible to hold office as Trustee; and
- (c) **Compliance With Rules and Regulations:** the Board, and the persons acting as Trustees, had complied with any applicable rule and/or regulation adopted by the Board relating to such matters;

even if it is later discovered that:

- (d) **Defect in Appointment:** there was some defect in the appointment of any person acting as Trustee;
- (e) **Trustee Ineligible:** any person acting as Trustee was for any reason ineligible to hold office as Trustee; or
- (f) **Non-compliance with Rules and Regulations:** there was accidental failure to comply with any applicable rule and/or regulation adopted by the Board.

## ***12. Reporting and accountability requirements***

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12.1 **Strategic Plans:** at or before the start of each Financial Year, the Board must prepare a strategic plan for the Trust for that Financial Year and at least the two following Financial Years together with a statement of priorities for that Financial Year (Strategic Plan). Once the Strategic Plan is finalised, the Board must provide a copy for information to organisations and bodies working in or for the benefit of the South Waikato District as determined by the Board, and must make a copy of the Strategic Plan available to the general public.

12.2 **Financial Information:** the Board must ensure that:

- (a) **Financial Statements:** financial statements of the Trust (and any other documentation required by law) are prepared as soon as practicable after the end of each Financial Year, for presentation and approval at the AGM, which must give a true and fair view of the financial position of the Trust Fund for that Financial Year and must include:
  - (i) **Financial Position:** a statement of financial position;
  - (ii) **Financial Performance:** a statement of financial performance; and
  - (iii) **Notes:** notes to those statements; and

- (b) **Audit Requirement:** the financial statements of the Trust prepared for each Financial Year are audited as soon as practicable after the end of the relevant Financial Year, by an independent, appropriately qualified auditor appointed by the Board.
- 12.3 **Annual Reports:** as soon as practicable after the end of each Financial Year, for presentation and approval at the AGM, the Board must prepare an Annual Report that includes a report on the Trust's activities during the relevant Financial Year and a copy of the audited financial statements for that Financial Year. Once the Annual Report is finalised and approved at the AGM, the Board must provide a copy for information to organisations and bodies working in or for the benefit of the South Waikato District as determined by the Board, and must make a copy of the Strategic Plan available to the general public.
- 12.4 **Publication of Documents:** for the purpose of clauses 12.1 and 12.3, the Board may make copies of its Strategic Plans and Annual Reports available to the general public by:
- (a) **Electronic Access:** publishing an electronic version of any such document on a website for the Trust and/or on any public electronic register; and/or
  - (b) **Hard Copy Access:** making a hard copy of any such document available for inspection at the Trust's registered office or any other premises, as determined by the Board.

### **13. General administrative matters**

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- 13.1 **Trust Records:** the Board must ensure that full and accurate records are kept and maintained in respect of the Trust, in written form or in a form or in a manner that allows such records to be easily accessible and convertible into written form, including (without limitation):
- (a) **Minute Book:** a minute book, which must include (without limitation) a full and accurate record of the appointment, removal and cessation of office of Trustees and Officers. disclosures of any conflicts of interest, Board meetings and resolutions, delegations, committee and subcommittee appointments and terms, and any other matters appropriately included in a minute book relating to the Trust;
  - (b) **Financial Records:** financial books, accounts, papers and other financial records of the Trust, including full and accurate records and accounts of all receipts, credits, payments, assets, liabilities, transactions and other matters necessary for giving a true and fair view of the financial position of the Trust, and the audited financial statements for each Financial Year; and
  - (c) **Other Records:** any other records that it may be necessary or appropriate to keep and maintain in respect of the Trust, including this deed, any rules and/or regulations adopted the Board, details of the Board, and any other documents and information relating to the Trust and its activities.

and such records will be open to inspection by any of the Trustees and by the Board.

- 13.2 **Bank Account(s):** the Board must keep an account or accounts for the Trust, at any bank or banks as determined by the Board from time to time. Cheques, withdrawals and authorities must be signed or endorsed, as the case may be, by two persons, each person being either a Trustee or another person acting on the written authority of the Trustees.

13.3 **Method of Contracting:** unless the law requires otherwise, and subject to clause 13.4:

- (a) **Deeds:** a deed to be executed by the Board may be signed on behalf of the Board by two or more Trustees;
- (b) **Written Contracts:** any contract or other obligation required by law to be in writing, and any other written contract or obligation to be entered into by the Board, may be signed on behalf of the Board by a Trustee or another person acting under the express or implied authority of the Board; and
- (c) **Other Contracts:** any other contract or obligation may be entered into on behalf of the Board in writing or orally by a Trustee or another person acting under the express or implied authority of the Board.

13.4 **Common Seal:** for so long as it is incorporated under the Charitable Trusts Act 1957, the Board will have a common seal and the seal:

- (a) **Custody of Seal:** must be held by one of the Trustees, or an Officer, as determined by the Board;
- (b) **Mandatory Use:** must be affixed to any document that is required to be executed by the Board under common seal; and
- (c) **Optional Use:** may be affixed to any other document to be executed by the Board;

provided that the common seal must in all cases be affixed pursuant to prior authority given by the Trustees and in the presence, and accompanied by the signatures, of at least two Trustees.

13.5 **Provision of Notices:** any notice to be given by the Trustees or by any other person (Sender) to any person (Recipient), including notice of any written approval, resolution or other matter under this deed, may be:

- (a) **Delivery:** delivered to the Recipient directly or to an address given by the Recipient to the Sender for such purpose;
- (b) **Post:** posted to an address given by the Recipient to the Sender for such purpose;
- (c) **Facsimile:** sent by facsimile transmission to a facsimile telephone number given by the Recipient to the Sender for such purpose; or
- (d) **Electronic Means:** sent by electronic means in accordance with any request made by the Recipient from time to time for notices to be sent by such means.

13.6 **Receipt of Notices:** a notice given by a Sender to a Recipient pursuant to clause 13.5 is deemed to be given:

- (a) **Delivery:** in the case of delivery, when the notice is handed to the Recipient or delivered to the address of the Recipient;
- (b) **Post:** in the case of posting, two days after it is posted;

- (c) **Facsimile:** in the case of a facsimile transmission, when the Sender receives a transmission report produced by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Recipient to the Sender: and
- (d) **Electronic Means:** in the case of electronic means, at the time of transmission.

## ***14. Remuneration, engagement and reimbursement of trustees***

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14.1 **Remuneration of Trustees:** subject to clause 14.2:

- (a) **General Remuneration:** a Trustee may be remunerated for services provided as a Trustee, provided that any such remuneration must be reasonable having regard to the Trustee's duties and responsibilities and the services provided by the Trustee; and
- (b) **Professional Remuneration:** any Trustee engaged in any profession, business or trade may be paid all usual professional, business and trade charges for services requested by the Board that are provided by that Trustee or by that Trustee's employee or partner, including acts which the Trustee, not being in any profession, business or trade, could have done personally.

14.2 **Remuneration Restrictions:** in relation to any remuneration to be paid under clause 14.1:

- (a) **Fair Market Value:** the amount of the remuneration must not exceed fair market value for the services provided; and
- (b) **Approval:** the amount and/or the rate or rates of any such remuneration, and the circumstances in which the remuneration is to be provided, must be approved in writing by the Board having taken independent, professional advice as to the rate or rates of any such remuneration.

14.3 **Reimbursement of Expenses:** a Trustee is entitled to be indemnified against and reimbursed for expenses properly incurred by the Trustee in connection with the Trust, including travel and other expenses.

## ***15. Limited liability of trustees***

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15.1 **Limited Liability:** no Trustee (including any former Trustee) will be liable for any loss to the Trust Fund arising from any act or omission of the Trustee, the Board or any of the other Trustees unless it is attributable to that Trustee's own dishonesty, wilful misconduct or gross negligence.

15.2 **Standard of Care:** despite the fact that the Board may from time to time include Trustees whose profession, 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 all Trustees at all times shall be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others,

but shall not be required to have regard:

- (a) to any special knowledge or experience that a Trustee has or may hold out as having; and
- (b) to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

- 15.3 **Proceedings Against Trustees:** neither the Board nor any Trustee will be bound to take, or liable for failure to take, any proceedings against any co-Trustee (including any former Trustee) for any breach or alleged breach of trust committed by a co-Trustee (including any former Trustee).

## ***16. Trustee indemnification and insurance***

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- 16.1 **Indemnification:** each Trustee (including any former Trustee) is entitled to a full and complete indemnity from the Trust Fund for any liability that that Trustee (including any former Trustee) may incur in any way arising out of our in connection with that Trustee acting or purporting to act as or on behalf of a Trustee of the Trust, provided such liability is not attributable to that Trustee's dishonesty, wilful misconduct or gross negligence.
- 16.2 **Insurance:** the Board may obtain insurance for the benefit of the Trustees in relation to any Liabilities covered by the indemnification provided under this clause 16 and meet the cost of such insurance out of the Trust Fund.

## ***17. Variation of trust terms***

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- 17.1 **Approval of Variation:** subject to clause 17.2, the Board may from time to time, by deed (which may be in the form of a revised deed of trust setting out all of the terms of the Trust, as varied), vary the terms of the Trust as set out in this deed by amending, deleting or replacing any term set out in this deed (including, for the avoidance of doubt, the Trust Purposes), provided that any such variation must be approved by resolution of the Board passed at a meeting of the Board by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being, or by written resolution under clause 11.2(b).
- 17.2 **Variation Restrictions:** no variation of the terms set out in this deed will be valid or effective if it would:
- (a) **Charitable Purposes:** permit the Trust to operate, or to generate and distribute or apply any income, other than for Charitable Purposes in New Zealand, for the benefit of the public and not for private profit, and in particular for Charitable Purposes that fall within, or are otherwise consistent or aligned with, the Trust Purposes as originally set out in this deed; or
  - (b) **South Waikato District:** permit the Trust to operate, or to generate and distribute or apply any income, other than for the benefit of the people and communities of the South Waikato District; or
  - (c) **Tax Concessions:** affect the Trust's eligibility for the benefit of any tax concession for which it would otherwise be eligible, including (without limitation) exemption of the Trust's income from income tax, unless in relation to any such concession the Board has determined that eligibility for the benefit of that concession is not required in the best interests of the Trust, in relation to the advancement of the Trust Purposes.
- 17.3 **Records and Filing:** the Board must ensure that any variation of the terms set out in this deed is included in the Trust's records and, if required by law, filed with any relevant authority (for example, under the Charitable Trusts Act 1957).

## ***18. Resettlement of trust fund***

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- 18.1 **Approval of Resettlement:** subject to clause 18.2, the Trustees may, by deed, resettle any part of the Trust Fund on trust for one or more Charitable Purposes connected with the South Waikato District, on terms determined by the Trustees, provided that any such resettlement must be approved by resolution of the Board passed at a meeting of the Board by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being, or by written resolution under clause 11.2(b).
- 18.2 **Resettlement Restrictions:** no resettlement is permitted under clause 18.1 if it would:
- (a) **Charitable Purposes:** permit any resettled part of the Trust Fund, or any income derived therefrom, to be distributed or applied other than for Charitable Purposes in New Zealand, for the benefit of the public and not for private profit, and in particular for Charitable Purposes that fall within, or are otherwise consistent or aligned with, the Trust Purposes as originally set out in this deed; or
  - (b) **South Waikato District:** permit any resettled part of the Trust Fund, or any income derived therefrom, to be distributed or applied other than for the benefit of the people and communities of the South Waikato District; or
  - (c) **Tax Concessions:** affect the Trust's eligibility for the benefit of any tax concession for which it would otherwise be eligible, including (without limitation) exemption of the Trust's income from income tax, unless in relation to any such concession the Board has determined that eligibility for the benefit of that concession is not required in the best interests of the Trust, in relation to the advancement of the Trust Purposes.

## ***19. Winding up the trust***

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- 19.1 **Resolution to Wind Up:** subject to clauses 19.2 and 19.3, the Trustees may by resolution determine to wind up the Trust in accordance with clause 19.3, provided that any proposal to wind up the Trust (including the proposed distribution or application of any surplus in accordance with clause 19.3(b)) must be approved by unanimous resolution of the Board passed at a meeting of the Board.
- 19.2 **Meeting of Trustees Required:** in relation to the Board's consideration of any resolution to wind up the Trust under clause 19.1:
- (a) **Resolution at Meeting:** the resolution must be passed at a meeting of the Board called for that purpose; and
  - (b) **Notice of Meeting:** all Trustees must be given not less than 30 days' notice of the meeting and the purpose of the meeting.
- 19.3 **Winding Up Procedure:** in relation to winding up the Trust:
- (a) **Satisfaction of Debts and Liabilities:** the Board must first ensure that all debts and liabilities of the Trust, including the costs of winding up the Trust, have been or will be satisfied out of the Trust Fund or have been or will be assumed by another person; and
  - (b) **Distribution Application of Trust Fund:** subject to clause 19.3(a), the Trust Fund must be distributed or applied, by way of transfer to a new or existing charitable organisation or body, or

transfer on trust to the Council, or otherwise, for exclusively Charitable Purposes in New Zealand, for the benefit of the public and not for private profit, and in particular to advance the Trust Purposes, or Charitable Purposes that fall within or are otherwise as close as possible to and consistent or aligned with, the Trust Purposes, for the benefit of the people and communities of the South Waikato District, as determined by the Board or otherwise by direction of the High Court of New Zealand.

## ***20. Governing Law and jurisdiction***

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20.1 **Governing Law:** this deed is governed by New Zealand law.

20.2 **Jurisdiction:** the Trustees submit to the non-exclusive jurisdiction of all courts having jurisdiction in New Zealand.

# Schedule 1 – South Waikato District Plan

The “South Waikato District” is the area outlined red on the attached plan.

