

# TRUST DEED

## Community Wellbeing North Canterbury Trust

### WHEREAS:

- A. The parties to this Deed wish to establish a charitable Trust (in this Deed referred to as "the Trust") for the purposes described in Clause 2 of this Deed, and
- B. The parties to this Deed have agreed to contribute the sum of five dollars each to establish the Trust; and
- C. They have agreed to enter into this Deed specifying the purposes of the Trust and providing for its control and government.

NOW THIS DEED WITNESSES that the Constitution and Rules of the Trust are as follows:

### 1. Name / Te Ingoa

The name of the Trust will be **Community Wellbeing North Canterbury Trust** in this Deed called 'the Trust'.

### 2. Purpose / Whainga

The major aim or purpose shall be to promote and support community wellbeing in North Canterbury.

### 3. Activities Limited to Aotearoa / New Zealand

The activities of the Trust will be limited to Aotearoa / New Zealand and particularly within the districts of Waimakariri and Hurunui.

### 4. Office / Tari

The office of the Trust will be in such place in New Zealand as the Board of Trustees may from time to time determine.

### 5. The Board of Trustees / Te Runanga Whakahaerei

- 5.1 The composition of the Board will be as set out in Schedule A.
- 5.2 The provisions of this Deed dealing with the number, appointment, and cessation of office of the Trustees are as set out in Schedule A.
- 5.3 The name of the Board will be the Community Wellbeing North Canterbury Trust.

## 6. Meetings of the Board / Nga Hui O Te Runanga Whakahaere

- 6.1 The procedure for Board meetings will be as follows:
- 6.1.1 A quorum will be a minimum of four (4) Board members but no fewer than half of the current number of Board members.
  - 6.1.2 If a Trustee, including an office-bearer, does not attend three (3) consecutive meetings of the Board without leave of absence that member may, at the discretion and on decision of the Board, be removed as a Trustee, and/or from any office of the Trust which she or he holds.
  - 6.1.3 All questions will if possible be decided by consensus. In the event that a consensus cannot be reached then a decision will be made by a majority vote by show of hands unless members indicate an alternative preference. If any member requests a secret ballot on any vote or election, a secret ballot shall be held.
  - 6.1.4 If the voting is tied, the Chairperson will have a second and casting vote.
  - 6.1.5 Each meeting will be chaired by the Chairperson of the Trust. In the absence of the Chairperson, the Board will elect a person to chair the meeting from among the Trustees present.
- 6.2 The Board will meet at least six (6) times every year. The Chair will ensure that all members of the Board are notified of the meeting, either verbally or in writing.
- 6.3 The Chair will ensure that a minute book is maintained which is available to any member of the Trust and which, for each meeting of the Board, records
- 6.3.1 The names of those present;
  - 6.3.2 All decisions which are required by this Deed or by law to be made by the Board of Trustees; and
  - 6.3.3 Any other matters discussed at the meeting.
- 6.4 The Manager shall attend Board meetings as a non-voting participant.

## 7. Powers / Taketake

In addition to the powers provided by the general law of New Zealand or contained in the Trustee Act 1956, the powers which the Board may exercise in order to carry out its charitable purposes are as follows:

- 7.1 To take all steps expedient or necessary for the effective constitution and incorporation of the Trustees as a Board pursuant to the Charitable Trusts Act 1957.
- 7.2 To use the funds of the Trust as the Board thinks necessary or expedient in payment of the costs and expenses of the Trust, including the employment and dismissal of professional advisors, agents, officers, and staff, according to principles of good employment and in compliance with prevailing employment legislation;

- 7.3 To purchase, take on, lease or in exchange or hire or otherwise, acquire any real or personal property and any rights or privileges which the Board thinks necessary or expedient in order to attain the purpose of the Trust and to sell, exchange, let, bail or lease, with or without option of purchase or, in any other manner, dispose of such property, rights or privileges;
- 7.4 To invest surplus funds in any way permitted by law for the investment of Charitable Trust funds and upon such terms as the Board thinks fit;
- 7.5 To carry on a business;
- 7.6 To borrow or raise money from time to time with or without security and upon such terms as to priority or otherwise as the Board thinks fit; and
- 7.7 To do all things as may from time to time be necessary or desirable to enable the Board to give effect to and attain the charitable purposes of the Trust.
- 7.8 With respect to clauses 7.3, 7.4 and 7.6 any decisions made must be approved by a resolution supported by 2/3 majority of the full Board.

## 8. Income, Benefit or Advantage to be Applied to Charitable Purposes / Ko Nga Rawa Hei Painga Mo Te Iwi

- 8.1 Any income, benefit or advantage will be applied to the charitable purposes of the Trust.
- 8.2 No Trustee or members of the Trust or any person associated with a Trustee or member shall participate in or materially influence any decision made by the Trustees in respect of any payment to or on behalf of that Trustee or member or associated person of any income, benefit or advantage whatsoever.
- 8.3 Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).
- 8.4 The provision and effect of this clause shall not be removed from this Deed and shall be implied into any document replacing this Deed of Trust.

## 9. Power to Delegate / Turu Taketake

- 9.1 The Board may from time to time appoint any committee and may delegate any of its powers and duties to any such committee or to any person other than those powers and duties that relate to matters which go to the heart of the Trust itself such as: the makeup of the Board, the calling of Board meetings, and the purposes for which the Trust has been established. The committee or person may without confirmation by the Board exercise or perform the delegated powers or duties in the same way and with the same effect as the Board could itself have done.
- 9.2 Any committee or person to whom the Board has delegated powers or duties will be bound by the charitable terms of the Trust and any terms or conditions of the delegation set by the Board.
- 9.3 The Board will be able to revoke such delegation at will, and no such delegation will prevent the exercise of any power or the performance of any duty by the Board.

- 9.4 It will not be necessary for any person who is appointed to be a member of any such committee, or to whom such delegation is made, to be a Trustee.

## 10. Financial Arrangements / Putea

- 10.1 The financial year of the Trust will be from 1st July to 30th June in the following year.
- 10.2 At the first meeting of the Board in each financial year, the Board will decide by resolution the following:
- 10.2.1 How money will be received by the Trust;
  - 10.2.2 Who will be entitled to produce receipts;
  - 10.2.3 What bank accounts will operate for the ensuing year, including the purposes of and access to bank accounts;
  - 10.2.4 Who will be allowed to authorise the production of cheques and the names of cheque signatories; and
  - 10.2.5 The policy concerning the investment of money by the Trust, including what type of investment will be permitted
- 10.3 The Manager will ensure that true and fair accounts are kept of all money received and expended by the Trust. The books of account shall always be open to the inspection of any Trustee.
- 10.4 The Board will, as soon as practicable after the end of the financial year of the Trust, arrange for the accounts of the Trust for that financial year to be audited by an accountant appointed for that purpose. The audited accounts will be made available to the public.

## 11. Common Seal / Te Tohe Taketake

- 11.1 The Common Seal of the Trust will be kept in the custody and control of the Secretary, or such other officer appointed by the Board.
- 11.2 When required, the Common Seal will be affixed to any document following a resolution of the Board and will be signed by the Chairperson (or a Trustee acting as the Chair) and one other person appointed by the Board.

## 12. Alteration of Rules / Whakarereketanga Ture

- 12.1 The Trustees may, by consensus or pursuant to a motion decided by two-thirds ( $\frac{2}{3}$  rds) majority of votes, by supplemental Deed make alterations or additions to the terms and provisions of this document provided that no such alteration or addition will:
- 12.1.1 Detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.

## 13. Mediation & Arbitration/ Takawaenga

- 13.1 No party to any dispute arising out of or relating to this deed shall commence any court or arbitration proceedings in relation to that dispute unless that party has complied with the following paragraphs of this clause.
- 13.2 Any party who claims that a dispute has arisen must give written notice to every other party specifying the nature of the dispute.
- 13.3 On receipt of the notice by the other parties, the parties shall co-operate and use their best endeavours to resolve the dispute expeditiously. If they do not resolve the dispute within 7 days of the receipt of the notice or within such further period as they may agree in writing, the parties shall refer the dispute to an independent mediator whose role will be to attempt to facilitate negotiation between the parties.
- 13.4 The parties will agree on a suitable mediator.
- 13.5 The parties will, if necessary, meet with the mediator to discuss whether mediation would be helpful in the circumstances.
- 13.6 The mediation will be conducted in accordance with the mediation protocol.
- 13.7 The mediation shall be terminated by :
- 14.7.1 The signing of a settlement agreement by the parties; or
  - 14.7.2 Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
  - 14.7.3 The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

## 14. Trustee Liability / Taunaha Whakahaere

It is declared that:

- 14.1 The Trustees are chargeable respectively only in respect of the money and securities they actually receive, or which, but for their own acts, omissions, neglects, or defaults they would have received, notwithstanding their signing any receipt for the sake of conformity; and
- 14.2 They are each answerable and responsible respectively only for their own acts, receipts, omissions, neglects and defaults and not for those of each other, or of any banker, broker, auctioneers, or other person with whom, or into whose hands, any Trust money or security is properly deposited or has come;
- 14.3 No Trustees shall be liable personally for the maintenance, repair, or insurance of any charges on such property;
- 14.4 No Trustees hereof shall be liable for any loss arising from any cause whatsoever including a breach of the duties imposed by Section 13B and/or Section 13C Trustees Act 1956 (as enacted by the Trustee Amendment Act 1988) (or any statutory replacement or equivalent) unless such loss is attributable:

- (i) To his or her own dishonesty; or
- (ii) To the wilful commission by him or her of an act known by him/her to be a breach of Trust.

And pursuant to Section 13D of the Trustees Act 1956 it is intended by this clause that the duties imposed by Section 13B and 13C of the Trustees Act 1956 shall not apply to any Trustee hereof.

- 14.5 No Trustees shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of Trust committed by that co-Trustee.
- 14.6 Notwithstanding the procedure or otherwise of retaining assets in the Trust Fund, no Trustee shall be liable for any loss suffered by the Trust Fund by reason of the Trustees retaining any asset forming part of the Trust Fund.
- 14.7 The Trustees shall from time to time and at all times be indemnified by and out of the Trust property from and against all costs, charges, losses, damages, and expenses sustained or incurred by them or in or about the execution and discharge of their office or in or about any claim, demand, action, proceeding or defence at law or in equity in which they may be joined as a party.

## 15. Disposition of Surplus Assets / Whakatutu Tuwhene Rawa

- 15.1 The Board may be wound up if at a general meeting of Board members, it passes a resolution to wind up the Trust and that resolution is confirmed at a subsequent general meeting called for that purpose and held not sooner than the 28<sup>th</sup> day and not later than the 42<sup>nd</sup> day after the date on which the resolution to be confirmed was passed.
- 15.2 On the winding up of the Trust or on its dissolution by the Registrar, all surplus assets after the payment of costs, debts and liabilities will be given to such charitable organisation(s) within New Zealand as the members of the Trust in a General Meeting will decide. If the Trust is unable to make such a decision, the remaining assets will be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 or subsequent enactment.

## 16. Issues of Maoritanga / Take Māori

The Trust is committed in attaining its purposes to respect and implement the dual heritage of the partners of Te Tiriti o Waitangi (the Treaty of Waitangi).

# RULES GOVERNING THE NUMBER, APPOINTMENT AND CESSATION OF OFFICE OF THE TRUSTEES

## 1. Composition of the Board

The Board shall be formed via the process set out in this Schedule and shall comprise of no fewer than five (5) and no more than (10) Trustees, excluding Co-opted Trustees. The Trustees shall be made up from the following:

- One (1) Trustee who is a Waimakariri District Council Councillor and who is appointed by the Waimakariri District Council, and
- One (1) Trustee who is a Hurunui District Council Councillor and who is appointed by the Hurunui District Council
- No fewer the four (4) and no more than (7) “Community Trustees” and who are appointed by the Trust, and
- One (1) Trustee appointed by local Iwi. Although this appointment is not mandatory, it is highly recommended that the Trust pursues all available options to promote local Iwi making an appointment and that the appointee is best suited to representing the services of the Trust within the local Iwi, and
- The Trust may, from time to time, co-opt additional trustees (see Section 3)

## 2. Appointment of Community Trustees

2.1 The Trust’s Board will set the terms of reference that the Appointments Panel will follow for the appointment of a Community Trustee in order to best meet the objectives of the Trust.

2.2 Community Trustees will be appointed by an Appointments Panel.

2.3 The “Appointments Panel” will comprise:

2.3.1 The Chair or in the Chair’s absence the Deputy Chair or nominee of the Board of the Community Wellbeing North Canterbury Trust, and

2.3.2 The Mayor of the Waimakariri District Council or his/her nominee, or the Mayor of Hurunui District Council or his/her nominee and

2.3.3 2.3.3 A representative from a North Canterbury community stakeholder agency or organisation independent of the Trust

2.4 The Trust’s Chair, or in the Chair’s absence the Deputy Chair, will Chair the Appointment Panel.

- 2.5 The Appointments Panel will be convened by the Chair, or in the Chair's absence the Deputy Chair, of the Board of the Community Wellbeing North Canterbury Trust.
- 2.6 The Appointments Panel must be convened if the number of Trustees drops below five (5).
- 2.7 The procedure for the Appointments Panel will be as follows:
  - 2.7.1 All decisions will if possible be decided by consensus. In the event that a consensus cannot be reached, then a decision will be made by a majority vote by show of hands.
  - 2.7.2 If the voting is tied, the Chairperson will have a casting vote.
  - 2.7.3 The Trust Board will set the terms of reference for the Appointments Panel.

### 3. Appointment of Co-opted Trustees

- 3.1 In co-opting an additional trustee, the Board should identify the specific skills offered by the co-opted trustee and/or the specific task(s) to be carried out by the co-opted trustee.
- 3.2 The Board should specify the length of co-option.
- 3.3 The length of co-option should not exceed two years.
- 3.4 The maximum number of co-opted Trustees appointed to the Trust at any one time is two (2).

### 4. Terms of Appointment

- 4.1 The "Term" of all Community Trustees is up to three (3) years from the date of appointment. A Community Trustee may be re-appointed after their first full three-year term for a further three-year term without convening the Appointments panel, subject to a unanimous decision by the Board
- 4.2 Community Trustees may serve no more than two full consecutive Terms without reapplying.
- 4.3 Trustees who have served two consecutive three-year terms will be eligible to apply for re-appointment and will be required to be interviewed by the Appointments Panel.
- 4.4 The District Councils and local Iwi (if appropriate) will be requested to either reconfirm their appointed Trustee or to provide a new Trustee on or before the expiry of the three (3) year term for those applicable Trustees.

### 5. Office Holders

- 5.1 The Trustees will elect from among themselves a Chairperson and Deputy Chairperson.



- 5.2 Office bearing positions within the Board will be agreed by the Board and elections for those roles will be completed by the Board.
- 5.2 An election of office bearing positions, as set out by the Board from time to time, will be held annually during the first board meeting after the Annual General Meeting of the Trust.
- 5.3 An election of office bearing position, as set out by the Board from time to time, will be held during the first meeting of the Board after a vacancy occurs.

## 6. Cessation of Trusteeship

- 6.1 A person will immediately cease to be Trustee when he or she:
  - a) resigns or retires in writing by written notice to the other Trustees;
  - b) refuses or is otherwise unable to act in his or her capacity as a Trustee;
  - c) dies;
  - d) is convicted of a criminal offence involving deception or fraud;
  - e) is declared bankrupt;
  - f) is found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or subsequent enactment, or
  - g) is otherwise disqualified from acting pursuant to the Charities Act 2005 or subsequent enactment.
- 6.2 Any Trustee position vacated pursuant to rule 6.1 will be replaced through the Appointments Panel process in accordance with this Schedule.
- 6.3 A person may, at the discretion and on the decision of the Board cease to be a Trustee when:
  - a) he or she fails to attend three (3) consecutive meetings of the Board without leave of absence, or without providing an apology for absence
  - b) the Board, by a motion decided by a two-thirds (2/3) majority of votes, terminate his or her position as a Trustee. This may only be done where the Board believe this to be in the best interests of the Trust.
- 6.4 Any Trustee removed pursuant to rule 6.3 will be replaced by an Appointments Panel in accordance with this Schedule.

## Schedule A

### 7. Vacancies

The Board may continue to act notwithstanding any vacancy, but if the number of Trustees reduce below five (5) the Appointments Panel shall be convened by the Chair or in the Chair's absence the Deputy Chair of the Board of the Community Wellbeing North Canterbury Trust