

“The Opotiki Community Trust”

DEED OF TRUST



TAURANGA, NEW ZEALAND

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DEED OF TRUST
THE OPOTIKI COMMUNITY TRUST

DATED _____ 2008

PARTIES

1. [] ("Settlers")
2. [] and []
("Initial Trustees")

WHEREAS

- A. The parties to this deed wish to establish a charitable trust ("the Trust") for the purposes described in Clause 4 of this Deed.
- B. The parties have agreed to enter into this Deed specifying the purposes of the Trust Fund and providing for its control and government.
- C. Whereas the Settlers have decided to assist in the establishment of the Trust by the Settlers and to make a gift of \$100 for the charitable trust purposes following.

THIS DEED WITNESSES

1. DEFINITIONS AND CONSTRUCTION

- 1.1 In this deed, unless the context otherwise requires:

"Active Investment" means an investment which is made with the purpose of enhancing capital value and/or income return from the investment by active management of the individual investment;

"AGM" means Annual General Meeting of the Board;

"Activity Plan" means a summary document outlining relevant aspects of the Trust's proposed activities and policies during the current financial year prepared pursuant to clause 12;

"Balance Date" means 30 June or any other date adopted from time to time by the Trustees with the written consent of the Council as the end of its Financial Year for the Trust;

"Board" means the Board of Trustees constituted by this Deed and is made up of the Trustees for the time being of the Trust;

"College Chairperson" means the member appointed as chairperson of the Electoral College pursuant to Rule 8 of Schedule 2;

“Community” means people and organisations within the Opotiki District;

“Council” means the Opotiki District Council.

“Deed” means this deed and any schedules to it, as amended from time to time;

“Distribution Advisory Committee” means the committee established pursuant to Clause 7;

“Election AGM” means the second AGM and every second AGM thereafter being AGMs at which the appointment of new Trustees are to take place;

“Electoral College” means the college established pursuant to Schedule 2;

“Electoral College Group” means those groups listed or to be listed in Rule 3.3 of Schedule 2

“Financial Year” means any year or other accounting period ending on a Balance Date;

“High Court” means the High Court of New Zealand;

“Initial Trustees” means those trustees named in this Deed;

“Investment Advisory Committee” means the committee established pursuant to Clause 8;

“Member” means an Electoral College member appointed pursuant to Rule 3 of Schedule 2;

“Opotiki District” means the areas administered by the Opotiki District Council as at the date of this Deed;

“Passive Investment” means an investment where the role of the Board as investor is limited to the purchase, or sale, or lending or otherwise committing financial resources of the Trust, to investments where the Board has no involvement or discretion in the management of the individual investments;

“persons” includes any individual, corporation, entity, partnership, joint venture, association, trust, organisation, government department or local authorities;

“Policy Manual” means and includes any policy manuals and guidelines, and operating guidelines to promote best practice for trust administration adopted or to be adopted by the Trustees in respect of the Trust (as amended or replaced from time to time);

“Remaining Trustees” means those trustees who remain on the Board when a Trustee(s) ceases to be a trustee between Election AGMs;

“Replacement Trustee” means a trustee appointed by the Remaining Trustees pursuant to Rule 3.5 of Schedule 1

“**Secretary**” means the person appointed pursuant to Rule 18 of Schedule 1;

“**Trust Chairperson**” means the Trustee appointed as chairperson of the Board pursuant to Rule 4 of Schedule 1;

“**Trust Fund**” means the fund referred to in Clause 5;

“**Trust Treasurer**” means the person appointed pursuant to Rule 18 of Schedule 1;

“**Trustee Act**” means the Trustee Act 1956; and/or any amendment, substitution or replacement of same;

“**Trustees**” means the Initial Trustees and thereafter the trustees for the time being of the Trust as appointed pursuant to clause 6 and Schedule 1;

“**Wealth Creation Charitable Company**” means the charitable company established pursuant to Clause 9.

2. **NAME**

The name of the Trust shall be “**The Opotiki Community Trust**” or such other name as the Board may decide from time to time.

3. **OFFICE**

The registered office of the Trust shall be at [*to be advised*] or at such other place as the Board may decide from time to time.

4. **PURPOSE**

4.1 The purpose of the Trust is to increase the social and economic wellbeing of community of the Opotiki District.

4.2 The Trust will aim to achieve its purpose by carrying out the following functions:

- (a) maximising commercial returns from particular assets of the Trust Fund;
- (b) developing opportunities for community investment;
- (c) receiving grants and bequests;
- (d) distributing grants;
- (e) developing opportunities for economic transformation of the Opotiki District;
- (f) any other function which the Trustees determine are in keeping with the Trust's purpose.

5. **TRUST FUND**

5.1 The Trust Fund shall comprise the initial gift of \$100 from the Settlers and all other capital, income and other property acquired and held by the Board from time to time for the Trust.

5.2 The Trust Fund shall be administered by the Board which shall set policies and resolve courses of action and the means and direction of implementation of same to achieve the charitable purposes of the Trust.

6. TRUSTEES AND PROCEEDINGS OF THE BOARD

The rules set forth in Schedule 1 (with such amendments, deletions and additions thereto as may be lawfully made) shall govern the appointment and retirement of the Trustees and the proceedings of the Board.

7. DISTRIBUTION ADVISORY COMMITTEE

7.1 The Board has the power to establish a Distribution Advisory Committee whose role it would be to consider and advise the Board as to what distributions should be made from the Trust Fund. The committee shall make recommendations to the Board and the Board shall consider the recommendations, but not be bound to follow such recommendations.

7.2 The committee may either request applications from within the Community or act solely on its own research and investigation.

7.3 The Board has, subject to clause 7.5, full power to determine the membership and powers of the Distribution Advisory Committee. In selecting the appropriate committee members the Board shall ensure some committee members have experience which the Board considers relevant for the purposes of making community distributions.

7.4 The Board shall appoint members of the Distribution Advisory Committee on such terms as the Board considers appropriate from time to time and may at any time remove any member of the Distribution Advisory Committee.

7.5 The provisions of clause 15 shall apply to the Distribution Advisory Committee, except the Board shall not delegate the ultimate decision-making on distributions of the Trust Fund to the Distribution Advisory Committee.

8. INVESTMENT ADVISORY COMMITTEE

8.1 The Board has the power to establish an Investment Advisory Committee whose role it would be to consider and advise the Board as to what passive investments should be made from the Trust Fund. The committee shall make recommendations to the Board and the Board shall consider the recommendations, but not be bound to follow such recommendations.

8.2 The Board has, subject to clause 8.5, full power to determine the membership and powers, of the Investment Advisory Committee. In selecting the appropriate committee members the Board shall ensure some committee members have expertise in investing.

8.3 The Board shall appoint members of the Investment Advisory Committee on such terms as the Board considers appropriate from time to time; and may at any time remove any member of the Investment Advisory Committee.

8.4 The Investment Advisory Committee will not be involved in any Active Investments of the Trust, such Active Investments shall be undertaken by the Wealth Creation Charitable Company.

8.5 The provisions of clause 15 shall apply to the Investment Advisory Committee, except the Board shall not delegate the ultimate decision making on Passive Investments to the Committee.

9. WEALTH CREATION CHARITABLE COMPANY

- 9.1 The Board shall not cause the Trust to undertake any active investments directly, but rather shall establish a Wealth Creation Charitable Company to undertake any of the Trust's active wealth creation activities or commercial activities.
- 9.2 The Trust shall hold all shares in the Wealth Creation Charitable Company and the Board shall appoint the directors. The directors may be Trustees, but need not be Trustees and in appointing the directors the Board shall consider the commercial experience of the directors in areas relevant to the activities the Wealth Creation Charitable Company will be undertaking.
- 9.3 In establishing the Wealth Creation Charitable Company, the Board shall ensure a requirement is placed upon the directors of the Wealth Creation Charitable Company to:
- (a) prepare an annual statement of intent setting out the Wealth Creation Charitable Company's principal objectives for the forthcoming year, including the principal activities the directors expect the Wealth Creation Charitable Company to undertake, any performance indicators the directors have established for those activities, the Wealth Creation Charitable Company's dividend policy and the accounting principles the Wealth Creation Charitable Company will apply;
 - (b) submit the annual statement of intent for the forthcoming year to the Board prior to the Wealth Creation Charitable Company's balance date;
 - (c) submit a report to the Board within two (2) months of the Wealth Creation Charitable Company's balance date, such report to outline whether the objectives and performance indicators contained in the statement of intent for the year just ended have been achieved and address any other matters recorded in the statement of intent;
 - (d) provide any such additional information as the Trustees may reasonably request, however the directors shall not be required to disclose any information that is commercially sensitive or the disclosure of which would cause breach at law.

10. THE ELECTORAL COLLEGE

The rules set forth in Schedule 2 hereto (with such amendments, deletions and additions thereto as may be lawfully made) shall, upon execution of this Deed, govern the appointment and retirement of Members and the proceedings of the Electoral College.

11. POWERS

General and specific powers: In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act or the Charitable Trusts Act 1957 or otherwise, and subject to express terms of this Deed the Board shall have in relation to the Trust Fund all the powers of natural persons acting as beneficial owners and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory and the powers which the Board may exercise (without limitation and by way of examples) in order to carry out the Trust's purposes are as follows:

- (a) to seek, accept and receive koha, donations, subsidies, grants, endowments, gifts, legacies and bequests either in money or in kind or partly in money and partly in kind for all or any of the purposes of the Trust; and
- (b) to use as much of the Trust Fund as the Board thinks appropriate in payment of the costs and expenses of the Trust such costs and expenses being no greater than market rates; and
- (c) to purchase, take on lease or licence, or grant sub-lease or sub-licence, or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of achieving the purposes of the Trust, and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; and
- (d) to carry on any business either directly or indirectly and whether via companies, partnerships, trading trusts or other structures, and in particular shall be able to incorporate, own shares in and operate a charitable company for the purposes of carrying out any of the Trust's wealth creation and commercial activities; and
- (e) to invest all or any part of the Trust Fund in any way permitted by law and in such manner and upon such terms as the Board thinks fit; and
- (f) to borrow or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Board thinks fit; and
- (g) to give guarantees and indemnities, alone or with third parties; and
- (h) to do all things as may from time to time appear necessary or desirable to enable the Board to give effect to and to achieve the purposes of the Trust; and
- (i) to employ and appoint such staff and professional advisers as the Board thinks appropriate to manage the affairs of the Trust and the Trust Fund the cost of this to be no greater than at market rates; and
- (j) to appoint any company or body corporate whether constituted in New Zealand or overseas to be Custodian Trustee of the trusts hereby created and the provisions of sub-section (2), (3) and (4) of section 50 of the Trustee Act shall apply to any Custodian Trustee so appointed provided however that in so appointing a Custodian Trustee the Board shall act unanimously; and
- (k) to incorporate itself into a Trust Board under Part II of the Charitable Trusts Act 1957 and apply for registration under the Charities Act 2005.

12. DUTIES OF THE BOARD

- 12.1 The Board will set policies and resolve on courses of action and means of implementing the same so as to achieve the Trust's purposes.
- 12.2 The Board shall prepare a draft Activity Plan at least two (2) months before the AGM in each year. However no Activity Plan shall be necessary prior to the first AGM.
- 12.3 The Activity Plan shall be for the financial year commencing on the 1st July immediately preceding the date of the AGM at which it is to be approved.

- 12.4 Each Activity Plan shall outline the principles the Trust shall apply during the period in relation to:
- (a) wealth creation;
 - (b) wealth distribution;
 - (c) wealth management;
 - (d) the accounting policies;
 - (e) the performance targets and other measures for assessing the performance of the Trust;
 - (f) such other matters as are agreed by the Trustees.
- 12.5 The Board shall make the draft Activity Plan available to members of the Community at least two (2) months before the AGM at which it is to be approved and invite submissions on the Activity Plan from the Community.
- 12.6 Any comments on the draft Activity Plan by members of the Community must be made in writing and must be received by the Board not later than one (1) month prior to the AGM.
- 12.7 The Board shall:
- (a) consider any comments that are made by the Community in accordance with Clause 12.5;
 - (b) finalise the Activity Plan not later than one (1) week before the relevant AGM; and
 - (c) report on the completed Activity Plan at the AGM.
13. **INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES**
- 13.1 **Application:** Any income, benefit or advantage shall be applied to the charitable purposes of the Trust.
- 13.2 **No private pecuniary profit:** Nothing expressed or implied in this Deed shall ever permit the activities of the Board or any business carried on by or on behalf of or for the benefit of the Board (whether directly or indirectly) to be carried on for the private pecuniary profit of any person at any time.
- 13.3 **Influence:**
- No Trustee or person associated with a Trustee shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
- (a) professional services to the Trust rendered in the course of business charged at no greater rate than market rates; or
 - (b) interest on money lent at no greater rate than market rates.
14. **ACCOUNTS**
- 14.1 **True and fair accounts:** The Trust Treasurer shall keep true and fair accounts of all money received and expended disclosing all financial transactions and assets and liabilities and without limitation this shall include:
- (a) financial performance;

- (b) cashflows;
- (c) financial position.

14.2 **Audit:**

- (a) The Board shall as soon as practicable after the end of every Financial Year of the Trust, cause the accounts of the Trust for that Financial Year to be audited by an auditor appointed by the Board for that purpose and the Board shall present the audited accounts to the AGM.
- (b) The auditor:
 - (i) must be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Trustees may seek the advice of the Auditor-General; and
 - (ii) must not be a Trustee, or an employee of the Trustees, nor any relative or partner of any of the Trustees or of any employee of the Trustees; and
 - (iii) must not be otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.
- (c) If no auditor is appointed or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring, the Board must apply to the Auditor-General with a request that the Auditor-General carry out an audit of the Trust under s19 of the Public Audit Act. If approval is not given within one month of the application to the Auditor-General, the Council must then appoint an auditor.
- (d) If this clause 14.2 applies, the sections and parts of the Public Audit Act 2001 listed in section 19 of that Act apply to the Trust Fund, until an auditor is appointed at a special meeting of the Board, as if references in those sections to a public entity were references to the Trust and with any other necessary modifications.

15. **POWER TO DELEGATE AND TO TAKE ADVICE**

- 15.1 Subject to the restrictions in Clauses 7 and 8, the Board may from time to time in writing appoint any committee or similar entity whether advisory or not and responsible for particular functions or purposes and may delegate in writing any of its powers and duties to any such committee or to any person, and the committee or person as the case may be, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them. The Board may devise procedures, policy manuals, requirements or guidelines for any management or other structures which it considers necessary or desirable from time to time for the attainment of any of the charitable purposes of the Trust and may review any of same at any time. Any person, committee, delegate or other entity of any description shall be required to perform to all reasonable requirements of the Board at all times and to report to the Board upon request.
- 15.2 Any committee or person to whom the Board has delegated powers or duties shall be bound by the terms of this Deed and shall be deemed to totally accept such responsibility.

- 15.3 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.
- 15.4 It shall not be necessary that any person who is appointed to be a member of any such committee or entity, or to whom any such delegation is made, be a member of the Board.
- 15.5 The Board may take and act upon the opinion of any barrister, solicitor, or other suitably qualified legal adviser practising in New Zealand whether in relation to the interpretation of this Deed or any other document or statute or to the administration of the Trust or otherwise, without being liable in respect of any act done by them in accordance with such opinion.
- 15.6 Nothing in this Clause prohibits the Board from applying to the High Court for directions on the resolution of any matter or otherwise. If the Board does apply to the High Court, all expenses of the application are chargeable to the Trust.

16. ALTERATION OF DEED

This Deed may be altered, added to, rescinded or otherwise amended by a resolution passed by a 75% majority of the Board, provided that no such amendment shall:

- (a) detract from the charitable nature of the Trust and its purposes or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
- (b) be made to clauses [numbers to be inserted] or rules [numbers to be inserted] unless the Council has first passed a resolution approving the amendment.

17. DISPOSITION OF SURPLUS ASSETS

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 shall be given to such exclusively charitable organisations within the Opotiki District as the Board decides or, if the Board is unable to make such decision, shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957.

18. TRUSTEES LIABILITY AND INDEMNITY

18.1 None of the Trustees will be liable for:

- (a) a loss incurred by the Trust Fund other than as a result of that Trustee's own dishonesty, or deliberate breach of trust;
- (b) the acts or omissions of anyone employed by including in contract or in consultancy to the Board;
- (c) claims against the Board that cannot be satisfied because:
 - (i) all or part of the Trust Fund has been distributed, unless the distribution was a deliberate breach of trust by the then Board;
 - (ii) any other circumstance not the fault of that Trustee.

- 18.2 No Trustee is obliged to take proceedings against a co-Trustee, or any former Trustee.
- 18.3 Each of the Trustees will be indemnified out of the Trust Fund if the Trustees incur any liability as the result of any act or omission by any of them as a Trustee, unless the liability is incurred as the result of that Trustee's own dishonesty or deliberate breach of trust.
- 18.4 The Board shall be entitled to pay Trustee indemnity insurance premiums on policies for same if available or the like.
- 18.5 Notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose 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 the Trustees in exercising any power of investment shall not be that required of such persons by section 13C of the Trustee Act 1956, subject always to clause 18.6, but shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 18.6 Notwithstanding anything else in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified or otherwise.

19. REMUNERATION OF TRUSTEES AND CHARGING BY TRUSTEES

- 19.1 Subject to the provisions of clause 13, any Trustee who is engaged by the Board in a profession or business shall be entitled to be paid at reasonable market rates for services provided by that trustee or that trustee's firm on the same basis as if that Trustee were not a trustee.
- 19.2 The Trustees shall be entitled to be remunerated for their role as a Trustee. The remuneration for each Trustee shall be set in advance by the Board at the AGM, provided that the remuneration for each Trustee not exceed the lesser of:
- (a) \$5,000 per annum; or
 - (b) One-fifth of 20% of the Trust's income after all expenses (other than Trustee remuneration) for the previous Financial Year.
- 19.3 The Trustees shall be entitled to be indemnified against, and reimbursed from the Trust Fund for any expense reasonably incurred by them in the exercising of their duties or powers under this Deed.

20. POWER TO PAY OR APPROPRIATE BEFORE DETERMINATION

Notwithstanding that the annual income of the Trust shall not have been ascertained in any financial year, the Board may at any time pay or apply any anticipated income and/or the capital of the Trust Fund or any part thereof and/or appropriate any part of the Trust Fund or part thereof for any charitable purpose or purposes as aforesaid and without derogating from the objects or purposes of the Trust.

SIGNED by _____)
[_____] as an Initial)
Trustee in the presence of: _____)

_____)
[_____]

Witness

Signature _____

Name (full) _____

Occupation _____

Address _____

SCHEDULE 1

RULES GOVERNING THE APPOINTMENT AND RETIREMENT OF TRUSTEES AND PROCEEDINGS OF THE BOARD

1. NUMBER OF TRUSTEES

- 1.1 The number of Trustees shall be five (5) **PROVIDED THAT** if at any time there are less than five (5) Trustees in office, the remaining Trustees shall, for a period not exceeding 2 months, be entitled to act until the number of Trustees is restored to the minimum number and no act or decision of the Trustees shall be called in to question on such account. If the remaining trustees fail to appoint a Replacement Trustee as a replacement within the two (2) month period the only act that the Trustees may perform after the expiry of the two (2) months shall be to appoint a Replacement Trustee in accordance with Rule 3.5.
- 1.2 At the first Election AGM two (2) of the Trustees shall retire. Any Replacement Trustees shall be required to retire and thereafter those Initial Trustees shall determine who among them shall retire to ensure that a total of two (2) Trustees retire (and, in the case of disagreement, this shall be determined by the drawing of lots).
- 1.3 At the conclusion of the second Election AGM those Initial Trustees who did not retire pursuant to Rule 1.2 (and any Replacement Trustee who may have been appointed to fill a casual vacancy of any of the Initial Trustees who did not retire at the first Election AGM) shall retire.
- 1.4 From and including the third Election AGM and at every Election AGM occurring thereafter, any Trustee who has served their current term must retire from office. Such retiring Trustees shall retire at the conclusion of the relevant Election AGM unless otherwise reappointed.
- 1.5 Prior to the first Election AGM and every Election AGM thereafter, any number of new Trustees as are required to replace the retiring Trustees, shall be elected in the manner specified in Rule 3.4, such appointment to take effect contemporaneously with the retirement required above.
- 1.6 A retiring Trustee shall be eligible for nomination for re-election subject to the other provisions of this Deed.
- 1.7 Any decision as to which Trustees are to retire at an Election AGM shall be made at least five (5) months prior to the first Election AGM and notified to the Community no later than the calling for nominations for new trustees.

2. ELIGIBILITY

- 2.1 The following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:
- (a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;

- (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;
 - (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
 - (d) a person to whom an order made under section 189 of the Companies Act 1955 applies;
 - (e) a person who is mentally disordered within the meaning of the Mental Health Act 1969;
 - (f) a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1989.
 - (g) a person who is a member of the Electoral College which has been convened for current Trustee elections.
- 2.2 A Trustee shall not be entitled to stand for re-election for an additional term if such term would, if fully served, cause them to hold office as a Trustee for more than the maximum period in Rule 3.1(c).

3. APPOINTMENT AND TERM OF OFFICE

- 3.1
- (a) Each elected Trustee shall be appointed for a term of four (4) years.
 - (b) A Trustee may be appointed for a second term of a further four (4) years subject to Rules 2.2 and 3.1(c).
 - (c) The maximum period any person may serve as a Trustee is eight (8) consecutive years without at least one (1) year not serving as a Trustee subject to Rule 3.1(d).
 - (d) Provided however that any four (4) year term may be extended by up to one (1) month if the expiry of the term would otherwise force the retirement of the Trustee in the month prior to the next Election AGM. Such extension shall not be deemed a breach of the maximum period in Rule 3.1(c).
- 3.2 A Trustee shall cease to hold office if:
- (a) the Trustee resigns by written notice to the Board or the Secretary;
 - (b) the Trustee is ineligible for election or appointment as a Trustee pursuant to Rule 2.1 or 2.2;
 - (c) the Trustee dies while holding office as a Trustee;
 - (d) [the Trustee whose term is due to expire and who is not re-elected pursuant to Rule 3.4, and in such case the Trustee shall retire at the conclusion of the Election AGM;] [may delete as duplication]

- (e) the Trustee does not attend three (3) consecutive monthly Trustee meetings of which notice has been properly given without the prior consent of the other Trustees;
 - (f) the Trustee has served for longer than the maximum period in Rule 3.1(c).
- 3.3 Other than the Initial Trustees and any Replacement Trustee appointed pursuant to Rule 3.4, all Trustees shall be appointed pursuant to the procedure in Rule 6 of Schedule 2.
- 3.4 If the number of Trustees drops below five (5) at any time the remaining Trustees shall have the power to appoint a Replacement Trustee and shall do so promptly to ensure that a Replacement Trustee is appointed to the Board within the 2 month period in order for the Board to continue to operate in accordance with Rule 1.1.
- 3.5 Whenever the need arises for the Remaining Trustees to appoint a Replacement Trustee the Remaining Trustees shall first consider similar requirements to those which the Electoral College would consider when selecting appropriate nominees for the role of a Trustee, but shall not be bound to follow any nomination or election process or to consult with the Community or Electoral College prior to making an appointment.
- 3.6 Replacement Trustees shall only hold office for the residue of the term of office the Trustee whose place is taken would have otherwise served.
- 3.7 Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.

4. TRUST CHAIRPERSON

The Trustees shall elect a Trust Chairperson, who shall also be a Trustee, at the first meeting of Board after the AGM in each year and at any other time when either position becomes vacant.

5. QUORUM

- 5.1 A quorum at meetings of the Board shall comprise three (3) Trustees.
- 5.2 No business may be transacted at a meeting of Board if a quorum is not present.
- 5.3 Notwithstanding Rule 5.2, where the number of Trustees in office at any relevant time is less than the number of Trustees required to form a quorum, then the remaining Trustees may convene a meeting for the sole purpose of appointing additional Trustee(s).
- 5.4 Any Replacement Trustee appointed pursuant to Rule 3.4 shall have all the powers and responsibilities of a Trustee as if elected to that office pursuant to Rule 6 of Schedule 2 and no act or decision of the remaining Trustees pursuant to this Rule 5 or of the Replacement Trustee(s) shall be called into question on such account.

6. VALIDITY OF PROCEEDINGS

All acts done by any meeting of the Board shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee as

aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

7. RESCISSION OR VARIATION OF RESOLUTIONS

Any resolution of the Trustees may be rescinded or varied from time to time by the Board at any subsequent meeting by the same majority as was necessary to pass the resolution being rescinded or varied.

8. MEETINGS OF TRUSTEES

8.1 The Trustees shall hold an AGM within three (3) months of each Balance Date for the Financial Year just ended, or such later date with the consent of Council.

8.2 The Secretary shall give no less than one (1) month's notice of the AGM to the Trustees and the Community, such notice to specify the date, time and place of the AGM.

8.3 The Trustees shall determine the date for the AGM and advise the Secretary of such date early enough so as to enable the Secretary to comply with the requirements of Rule 8.2 and in the case of an Election AGM, to further comply with the requirement in Rule 6.1(a) of Schedule 2.

8.4 The business to be transacted at the AGM shall be the:

- (a) approval of the minutes from the previous AGM;
- (b) the receipt of the annual report (including a report on the performance of the Trust against its Activity Plan objectives for the relevant year);
- (c) approval of the Activity Plan for the coming year;
- (d) reports from the Investment Advisory Committee, the Distribution Advisory Committee and the Wealth Creation Advisory Committee;
- (e) the Trust Treasurer's report and the approval of the audited Financial Statements; and
- (f) the setting of the remuneration (if any) of Trustees.

Any other business shall be deemed special business and shall be dealt with in accordance with Rule 8.5.

8.5 Notice in writing of any special business shall be given to the Secretary no less than twenty one (21) days prior to the AGM. The Secretary shall notify the Trustees of the agenda, including all special business, no later than fourteen (14) days prior to the AGM and shall at the same time notify the Members and the Community of the same.

8.6 Members and the Community shall be entitled to attend and be given a reasonable amount of time as determined by the Trust Chairperson to speak at the AGM but shall not be entitled to vote at such meetings.

8.7 The Trustees shall otherwise meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled to develop standing orders for the conduct of such meetings.

- 8.8 Other than a meeting of the Board called pursuant to Rule 5.3, any three (3) or more Trustees may at any time summon a meeting of the Board.

9. NOTICE OF MEETINGS

- 9.1 The Trustees shall be given no less than five days' notice in writing by the Secretary of any meeting of the Board.

- 9.2 Any notice required to be given to any Trustee may be:

- (a) delivered by hand;
- (b) sent by facsimile;
- (c) sent by e-mail;
- (d) sent by ordinary mail and in such case shall be deemed to have been received two days after posting.

- 9.3 It shall be the responsibility of each Trustee to notify the Secretary of his or her contact details and any change of contact details. Any notice shall be deemed to have been properly given, if it is posted, emailed or faxed to the latest contact details which the Secretary has been so notified, notwithstanding that it may not have actually been received by the Trustee.

- 9.4 Notice of any meeting may be abridged or waived if all of the trustees consent in writing to such abridgement or waiver.

10. ADJOURNMENT

If a quorum is not present within thirty minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. Any meeting may be adjourned by the Trust Chairperson upon the adoption of a resolution for its adjournment.

11. CONTENT OF NOTICE

Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a meeting summoned pursuant to Rule 8.8 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

12. VOTING

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

- 12.2 The Trust Chairperson shall have a second and casting vote in addition to his or her deliberative vote provided that such casting vote may only be exercised in the case of Trustee deadlock when voting on any particular issue and where such casting vote is made for continuance of the status quo.

13. INTERESTED TRUSTEES

- 13.1 A Trustee who in any way, whether directly or indirectly, has a material interest in any contract or proposed contract or arrangement or dealing with the Trust shall disclose

the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting.

- 13.2 A Trustee required to disclose an interest by Rule 13.1 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so vote the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by a unanimous vote of the other Trustees present given after the disclosure of the interest.
- 13.3 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Trust Chairperson of the meeting and the chairperson's ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.
- 13.4 Subject to compliance with the above disclosure requirements, any Trustee shall be entitled in a personal capacity (or otherwise) to have an interest in any entity or business having dealings with the Board.

14. MINUTES

- 14.1 A minute book shall be provided and kept by the Secretary and all proceedings of the Trustees shall be entered in the minute book.
- 14.2 Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.
- 14.3 Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

15. RESOLUTIONS IN WRITING

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Board or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be).

16. MEETINGS BY TELEPHONE

- 16.1 Notwithstanding any other provision in the Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") being not less than a quorum, together with the Secretary or a person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:
- (a) all the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by

telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;

- (b) each of the participants taking part in the meeting by telephone, and the Secretary or person acting as a secretary, must be able to hear each of the others taking part at the commencement of the meeting;
 - (c) at the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
 - (d) a participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting as aforesaid.
- 16.2 Minutes of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by the Secretary or person acting as a secretary.

17. EXECUTION OF DOCUMENTS

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose and by affixing the common seal when required.

18. SECRETARY AND TRUST TREASURER

- 18.1 The Trustees shall appoint from time to time a Secretary and a Trust Treasurer who may be the same person.
- 18.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.
- 18.3 It shall be the duty of the Trust Treasurer to keep usual and proper books of account and other financial records of the business to report to the Trustees from time to time on the finances of the Trust Fund to present annual statements of account for audit and for consideration by the Trustees and to prepare and file from time to time with the Inland Revenue Department all necessary tax accounts.
- 18.4 The Secretary shall hold the common seal of the Trust.

SCHEDULE 2

RULES GOVERNING THE APPOINTMENT AND RETIREMENT OF ELECTORAL COLLEGE MEMBERS AND PROCEEDINGS OF THE ELECTORAL COLLEGE

1. PURPOSE OF ELECTORAL COLLEGE

The Electoral College is intended to be made up of representatives from a broad cross-section of the Community but need not directly represent all sectors of the Community. The purpose of the Electoral College is to call for nominations for trustees to the Board of the Opotiki Community Trust from the Community and to appoint suitable Trustees to the Board of the Opotiki Community Trust.

2. PROCEDURE

Subject to the provisions of this Deed, the Electoral College may determine its own procedures.

3. ELECTORAL COLLEGE MEMBERSHIP

3.1 The Electoral College shall consist of one (1) representative appointed by each Electoral College Group.

3.2 The Electoral College Groups shall be determined by resolution of the Council prior to the convening of the Electoral College prior to the first Election AGM. The Board shall on receiving a copy of the Council resolution pass a resolution to amend this Trust Deed so to include a list of the Electoral College Groups as Rule 3.3

3.3 The Electoral College Groups shall include the following:

[To be inserted later in accordance with Rule 3.2]

[This clause will be deleted from the final deed but gives an idea of the intended Electoral College Groups The Electoral College shall consist of one (1) appointed member by each of the following:

- (a) *Whakatohea iwi;*
- (b) *Ngatai iwi;*
- (c) *Te Whanau a Apanui iwi;*
- (d) *the principals of primary and secondary schools within the Opotiki District;*
- (e) *churches within the Opotiki District, such appointment to be made by the Minister's fraternal;*
- (f) *sporting bodies within the Opotiki District;*
- (g) *voluntary and community sector organisations within the Opotiki District;*
- (h) *the Opotiki District Council;*
- (i) *members of the Federated Farmers of New Zealand (Inc) who farm within the Opotiki District;*
- (j) *Kiwifruit growers in the Opotiki District who shall be the person elected to the Kiwifruit Growers Incorporated Board at the commencement of the two year term;*
- (k) *a representative from the business community within the Opotiki District;*
- (l) *the Coastal Community Board. a public meeting within the community shall be held for the purposes of electing the Member;*

- (m) *the Member of Parliament whose electorate encompasses all or the majority of the population of the Opotiki District. The Member of Parliament may either be a member of the Electoral College him or herself or appoint another person to be a Member;*
- (n) *the Opotiki College. The representative of which shall be the Head Prefect or where there is more than one, one Head Prefect as chosen by random ballot;*
- (o) *the Te Whanau a Apanui Area School. The representative of which shall be the Head Prefect or where there is more than one, one Head Prefect as chosen by random ballot;*
- (p) *the Opotiki Probus Club.*

3.4 If at any time Council, in its absolute discretion:

- (a) determines that any of the Electoral College Groups listed in Rule 3.3 are no longer in existence or no longer adequately represent the sector of the community that they were initially intended to represent, then Council shall have the power to vary, redefine or exclude any Electoral College Group from Rule 3.3;
- (b) determines that the Electoral College Groups in Rule 3.3 as a whole no longer adequately represent a broad cross-section of the Community, Council may exclude or add an Electoral College Group to the list in Rule 3.3;

Council shall then pass a resolution recording such amendment, addition or deletion to Rule 3.3 and advise the Board in writing of the variation to the Trust Deed. Upon receipt of such notice in writing the Board shall, in the absence of valid reason not to, resolve to amend this Trust Deed accordingly.

- 3.5 Where no provision is made in this Deed as to how a Member shall be appointed from within or by the particular Electoral College Group, then those Electoral College Groups shall determine their own appointment procedure. [Provided however, if the Electoral College Group is unable to agree as to the appointment procedure, then the Council shall have the power to determine how a Member shall be appointed.]

4. TERM OF OFFICE AND ELIGIBILITY

- 4.1 Each Member shall be appointed for the period commencing from the receipt by the Secretary of notice of the appointment from each Electoral College Group, through until the conclusion of the Election AGM.
- 4.2 Members must have ordinarily resided in the Opotiki District for 6 months prior to their appointment to the Electoral College and may not also be a Trustee or be nominated for the current Trustee Elections.

5. REMOVAL AND RETIREMENT OF MEMBERS

A Member shall cease to be a Member if they retire at any time by giving notice to the Secretary. A person shall also cease to be a member if that person dies. Where a vacancy occurs for either of the above reasons then the Electoral College Group shall be entitled to appoint a replacement Member.

6. ELECTION OF TRUSTEES

6.1 All Trustees other than the Initial Trustees and Replacement Trustees shall be elected by the Electoral College in accordance with the following framework and such other procedures as the Electoral College may determine.

- (a) No less than four (4) months prior to the proposed date of an Election AGM the Secretary shall immediately notify the Electoral College Groups of the date by which they are required to advise the Secretary in writing of their appointed Member's name and details ("appointment date"). Such appointment date to be three (3) weeks after the notice to the Electoral College Groups.
- (b) Within one (1) week of the appointment date passing the Secretary shall provide notice to all validly appointed Members of the date of the initial meeting of the Electoral College which shall be no later than within two (2) weeks of the appointment date passing.
- (c) At the initial meeting, the Members shall determine the date of the Election Meeting required by Rule 6.1(i). Notice of the Election Meeting need only be given to Members who are not present at this initial meeting. The Electoral College shall appoint any necessary sub-committees including a sub-committed who will be responsible for developing a job and skill set description for the new Trustees based on the requirements in Rule 6.2 ("selection sub-committee").
- (d) The selection sub-committee shall decide upon the job description and skill set for the new trustees and advise the Secretary within one (1) week of the initial Electoral College meeting of the job description and the skill set required.
- (e) No later than two (2) months prior to the date of the Election AGM the Secretary shall notify the Community of the following:
 - (i) the number of Trustees to be elected;
 - (ii) the job description of the role as Trustee and skill set which candidates should have;
 - (iii) the place or places at which nomination forms may be obtained;
 - (iv) where completed nominations may be lodged; and
 - (v) the day and time nominations close, which shall be no later than six (6) weeks prior to the Election AGM.
- (f) Every nomination of a candidate shall be in writing. Nomination forms shall be in such form as the Secretary decides, but shall include:
 - (i) the full name and address of the candidate;
 - (ii) received no later than the closing date;
 - (iii) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the

election, disqualified from holding office as a Trustee by reason of any of the matters set out in Rule 2.1 of Schedule 1;

- (iv) the signature of the nominator and seconder and the candidate; and
- (v) Include a summary of the candidate's experience and skills.

The Secretary shall be entitled to declare any nomination invalid where on reasonable grounds he has good cause to believe that the candidate is ineligible for election in terms of Rule 2.1 and 2.2 of Schedule 1.

- (g) Immediately after the close off date for nominations the Secretary shall pass all valid nominations to the selection sub-committee who shall assess each nomination against the Trust's needs and the job description/skill set prepared in Rule 6.2. If the number of valid nominations exceeds twice the number of Trustees who are to be elected then the selection sub-committee shall select the most appropriate candidates from those nominated so that there are only twice as many final candidates as there are Trustees to be elected and advise the Secretary of the final candidates.
- (h) The Secretary shall no later than three (3) weeks prior to the Election AGM advise the Members of the final candidates names and a copy of the experience and skills as provided in the nomination form.
- (i) The Electoral College shall hold an Election Meeting no later than ten (10) days prior to the Election AGM with the purposes of voting on the final candidates in order to appoint the required number of new Trustees.

6.2 In formulating the job description for candidates and the skill set required the Electoral College and any selection subcommittee shall have as their objective the appointment of Trustees who have the skills, experience and understanding of good governance necessary for the role to enable the Trust to achieve its purpose and objective and which takes into account the skills and expertise of the non-retiring Trustee(s). The Electoral College shall endeavour to ensure that the Trustees collectively have amongst them knowledge and experience of local governance, of business, of charitable and community organisations and of community development.

7. MEETINGS

The Secretary shall determine the time and place of the initial meeting required by Rule 6.1(c) and thereafter the Electoral College shall meet at such times and places as it determines.

8. COLLEGE CHAIRPERSON

The Electoral College shall elect a College Chairperson from amongst its members at the first meeting of each Electoral College.

9. QUORUM

9.1 When a meeting is called for general business of the Electoral College, a simple majority of appointed Members must be present to form a quorum. No business shall be transacted unless a quorum is present. If a quorum is not present within 30 minutes of the scheduled commencement time for the meeting regarding general business, a subsequent meeting shall be called within seven days.

- 9.2 When a meeting is held for the purpose of electing Trustees, the time of such meeting having been agreed by a majority of those present at an earlier Electoral College meeting, a quorum shall consist of a two-thirds majority of appointed members. However if a quorum is not present within 30 minutes of the scheduled commencement time then a second Election Meeting shall be held within one (1) week and the provisions of Rule 9.3 shall apply:
- 9.3 If a second Election Meeting is required then a quorum shall either be:
- (a) a two-thirds majority of the appointed Members; or
 - (b) if a two-thirds majority is not present within 30 minutes of the scheduled commencement time, then those appointed Members present after the 30 minutes have passed.

10. VOTING

- 10.1 **General Matters:** All general matters (which shall not include the election of trustees) before the Electoral College shall be decided by a simple majority of those Members present. If the voting is tied, the motion shall be lost. The College Chairperson shall not have a casting vote.
- 10.2 **Election of Trustees:** The election of trustees shall be decided by a two-thirds majority of Members present at a meeting called for this purpose. Voting shall be conducted as follows:
- (a) each Member shall have as many votes in each round as there are the number of new Trustees to be appointed from that round of voting;
 - (b) voting may be by a show of hands, or if it is preferred by the College Chairperson, by ballot;
 - (c) any final candidate who receives a two-thirds majority shall be appointed as a Trustee and disregarded from the next round of voting;
 - (d) the final candidate who received the least number of votes in each round of voting shall no longer be eligible to be elected and shall cease to be considered in any further rounds of voting;
 - (e) the above steps shall be repeated with the remaining final candidates until the required number of new Trustees are elected, and
 - (f) in the event that two final candidates are left in the final round of voting for one position, then the final candidate with the majority of votes shall be appointed.

11. NOTICE OF MEETINGS

- 11.1 The Members shall be given no less than three (3) days notice in writing by the Secretary of any meeting of the Electoral College except for which the dates are set down at the initial meeting of the Electoral College.
- 11.2 Any notice required to be given to any Member or Electoral College Group may be:
- (a) delivered by hand;
 - (b) sent by facsimile;

- (c) sent by e-mail;
- (d) sent by ordinary mail and in such case shall be deemed to have been received two (2) days after posting.

11.3 It shall be the responsibility of each Member and Electoral College Group to notify the Secretary of his, her or its contact details and any change of contact details. Any notice shall be deemed to have been properly given, if it is posted, emailed or faxed to the latest contact details which the Secretary has been so notified, notwithstanding that it may not have actually been received by the Electoral College Group or the Member.

12. **RESOLUTION IN LIEU OF MEETING**

A resolution in writing signed by, or confirmed in writing by, the Members is as valid as if it had been passed at a meeting of the Electoral College. Such written confirmation may be by letter (whether hand delivered, posted or faxed), or emailed.