

BETWEEN

Paul Michael Hughes

(“As Settlor”)

AND

...

...

(“As Trustees”)

FRIENDS OF KAKARIKI CHARITABLE TRUST DEED

THE FRIENDS OF KAKARIKI TRUST

THIS TRUST DEED is made and executed on this day of 2019

BACKGROUND

- A. The area known as Kakariki Lands (surplus NZTA acquired land adjoining Paekakariki village) is regarded by many members of the community as a rare and special place because of its comprehensive array of ecological, freshwater, landscape, historical, flood protection, recreational, cultural and amenity values.
- B. Accordingly, when the property, comprising a large part of the land surrounding Paekakariki village, became surplus in 2020, the community successfully encouraged the Department of Conservation, to retain part of this Crown property, for Reserve.
- C. The Council manages the area for and on behalf of the Crown.
- D. Because the iwi and community played such a pivotal role in the protection of the area for the benefit of future generations, it is considered appropriate that the iwi and community manage this area in partnership, and be actively involved in the ongoing protection, maintenance, restoration, and enhancement of the values of the area, and in ensuring the public enjoyment of the area.
- E. After approaches from members of the Paekakariki community, the Settlor therefore wishes to establish a charitable trust to be a leading supporter of/contributor to the protection, enhancement and public enjoyment of the Kakariki Lands and its environs, to assist the Council in its stewardship of the area, and to promote, carry out and assist the charitable purposes set forth in this Deed.
- F. On signing of this Deed the Settlor has agreed to pay the sum of Ten Dollars (\$10.00) to the Trustees to be held upon the trusts and powers as set out in this Deed.

- G. Further monies may from time to time be raised either privately or by public appeal as the Trustees may deem appropriate for the purpose of furthering the charitable purposes contained in this Deed.
- H. It is intended that the Trustees will form a special relationship with the Council and tangata whenua and community (particularly the Paekakariki community) in carrying out its activities on the lands comprising the Kakariki Lands.
- I. The Trustees have consented to become the trustees of the trusts created by this Deed with and subject to the powers and provisions of this Deed.

NOW THIS DEED RECORDS

1. Definitions and Construction

In this Deed, unless the context otherwise requires:

“**Work**” means any projects, services or other activities that promote or benefit the protection, maintenance, enhancement and/or restoration of the values of the Kakariki Lands and its environs, including its natural, landscape, recreational, scientific, flood protection, historical and cultural values, to provide for their appreciation and enjoyment by the community and to safeguard the options of future generations.

“**Council**” means the Kapiti Coast District Council.

“**Deed**” means this Deed of trust.

“**Financial Year**” means a year ending on 30 June.

“**Objects of the Trust**” means the objects or purposes of the Trust specified in clause 6.

“**the Trust**” means the Trust established by this Deed.

“**the Trustees**” means the Trustees for the time being of the Trust.

2. Construction

In the construction of this Deed, unless the context requires otherwise:

- (a) a reference to “Trustees” is a reference to the trustees for the time being of the Trust Fund, whether original, additional or substituted;
- (b) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (c) a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- (d) headings appear as a matter of convenience and shall not affect the construction of this Deed;
- (e) if there is a conflict between the rules and the other provisions of this Deed the other provisions of this Deed shall prevail.

NAME OF TRUST

3. Name of Trust

- (a) The Trust established under and by this Deed shall be known as the Friends Of Kakariki Trust or by such other name as the Trustees may determine by resolution from time to time.
- (b) If they consider it appropriate the Trustees may apply under the Charitable Trusts Act 1956 for incorporation as a board under the name Friends Of Kakariki Trust, or under such other name approved by the Registrar of Incorporated Societies.

4. Declaration of Trust

- (a) By signing this Deed the Settlor and Trustees acknowledge and accept that the Trustees shall manage and administer the Trust Fund in accordance with the powers set out in this Deed.

5. Charities Commission

- (a) The Trustees may at any time after the execution of this document apply to the Charities Commission for registration as a charitable entity under the Charities Act 2005.

OBJECTS OF THE TRUST

6. The Objects and Purposes of the Trust

- (a) The primary purposes of the Trust shall be:
 - (i) to support and promote the protection, maintenance, enhancement and restoration of the values of the Kakariki Lands and its environs, including its natural, historic, landscape, scientific, flood protection, recreational and cultural values, for the benefit of current and future generations; and
 - (ii) to disseminate information about the features and values of the Kakariki Lands and its environs to increase public understanding, enjoyment and stewardship of the area.

- (b) The ancillary purposes of the trust shall be:
 - (i) to assist the Council in any reasonable and agreed way to protect and enhance the area and to enhance its values, both intrinsic and to the community;
 - (ii) to foster community support and involvement in the protection and enhancement of the area, and the Work of the Trust;
 - (iii) if agreed by the Trustees and the Council, to facilitate, support and contribute resources and funding towards any Work undertaken or commissioned by the Trust, the Council or any other party;

- (iv) to undertake Work on, or in respect of, any other lands where such Work will protect, maintain or enhance the values of the area;
- (v) to make representations with respect of any proposals, plans or policies of any other party which, in the opinion of the Trustees, affect the protection and/or values of the area;
- (vi) to promote, advocate for, and/or facilitate the protection, restoration or enhancement of other areas that will advance the primary purpose of the Trust;
- (vii) to raise moneys and to engage or employ staff or contractors to further the Objects of the Trust;
- (viii) to liaise with, support, encourage, and collaborate with like groups elsewhere;
- (ix) To support iwi, in any way mutually considered appropriate, in the protection of their taonga in or on the land and the identification, protection and maintenance of their wahi tapu sites;
- (x) to co-operate, consult, liaise, and work with the Council, other community and interest groups, relevant statutory authorities, iwi and other parties to advance the primary purpose of the Trust;
- (xi) to educate, raise community awareness and foster public appreciation of the values and benefits of the area;
- (xii) to promote the generation of appropriate employment and eco-tourism opportunities on the land that do not conflict with the Objects of the Trust;
- (xiii) to encourage and assist the Council to facilitate public enjoyment of the area;
- (xiv) to promote, restore and enhance the conservation of the area's intrinsic, cultural and heritage values;
- (xv) to foster community involvement in protecting and enhancing the area's intrinsic and heritage values;
- (xvi) to work co-operatively with iwi, the Council, other statutory authorities, and any other party for the protection and restoration of the area's values and heritage;
- (xvii) to accept gifts, bequests, grants, subscriptions, property, goods and services;

- (xviii)* to, if necessary with the approval of the Council and any other administrative or regulatory authorities with jurisdiction, purchase, lease, rent, construct, alter, maintain and manage buildings, fences, machinery and other works as it may consider necessary or desirable for the use of, and/or to attain the Objects of the Trust;
- (xix)* to purchase, or lease, or otherwise acquire or take and interest in, any other lands as it may consider necessary or desirable for the use of, and/or to attain the Objects of, the Trust;
- (xx)* with the approval of the Council, to let, sublet, rent or lease any buildings or other works to any other party on such terms and conditions as it sees fit;
- (xxi)* To provide for the public use and enjoyment of any buildings in its control on such terms and conditions as it sees fit;
- (xxii)* to carry out such other lawful activities which are incidental or conducive to attaining the objects and purposes of the Trust.

FINANCIAL PROVISIONS

7. Funds of the Trust

- (a) The Trust Fund shall be used to assist and achieve the Objects of the Trust.
- (b) The Trust Fund comprises the said sum of ten dollars (\$10.00) and all other money paid or donated to the Trustees to be held in accordance with this Deed.
- (c) In applying or using the Trust Fund the Trustees may pay any person or organisation for such purposes as the Trustees may decide will assist in furthering the Objects of the Trust. The receipt of payment by that person or organisation shall constitute a sufficient discharge for the Trustees.

8. Financial Requirements

- (a) The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets, liabilities and funds are kept.

- (b) The Trustees shall, after the end of each Financial Year, have prepared financial statements including a balance sheet and income and expenditure account.
- (c) If the Trustees at any time resolve to appoint, at their election, either an auditor or assurance practitioner, then they will ensure that the financial statements for the Trust for each Financial Year are audited by a registered chartered accountant or reviewed by an assurance practitioner, as the case may be, as soon as convenient after the end of that Financial Year. The person appointed as an auditor or assurance practitioner must not be a Trustee.
- (d) All money received by or on behalf of the Trust shall be paid immediately into the Trust's bank account. All cheques and other negotiable instruments shall be signed on behalf of the Trust as decided and agreed to by the Trustees.

MEETINGS AND APPOINTMENT OF TRUSTEES, POWERS, RESPONSIBILITIES AND LIABILITIES

9. Eligibility and Appointment of Trustees

- (a) There shall be eleven (11) initial trustees and provision to increase this to twenty (20) Trustees.
- (b) Trustees are to be appointed for their;
 - (i) enthusiasm, passion and interest in the Objects of the Trust; and
 - (ii) skills and expertise in promoting the Trust and achieving its Objects.
- (c) The initial eleven (11) Trustees shall be:

Paul Michael Hughes

.....

- (d) The term of office for a Trustee shall be three (3) years with reappointments to be considered at the Annual General Meeting.
- (f) When a Trustee resigns, or their office is otherwise terminated, a replacement Trustee may be appointed at an ordinary meeting provided the vacancy has been publicly advertised.
- (g) The following persons shall not be capable of being appointed or reappointed, or holding office, as a Trustee:
 - (i) 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;
 - (ii) a person who is convicted of any offence punishable by imprisonment for a term of two years or more;
 - (iii) a person who is convicted of any offence punishable by imprisonment for a term of less than two years and is sentenced to imprisonment for that offence;
 - (iv) a person who is disqualified under Section 151 of the Companies Act 1993 applies;
 - (v) a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
 - (vi) a person who is under 18 years of age.

10. Termination of Office of a Trustee

- (a) A Trustee shall cease to hold office if he or she:
 - (i) is removed from office by resolution of the Trustees;
 - (ii) has resigned by notice in writing to the Trustees;
 - (iii) dies;
 - (iv) refuses to act;
 - (v) is absent without leave from 3 consecutive ordinary meetings.
- (b) A Trustee may be removed from office if all of the other Trustees of the Trust resolve, by way of resolution in writing signed by those Trustees, to remove

that person from office. The Trustees need not give reasons for removing the Trustee, however in exercising the power of removal, they must:

- (i) act reasonably, having regard to the Objects of the Trust; and
- (ii) if the removal of the Trustee reduces the number of Trustees to less than the minimum number of Trustees under clause 9, only exercise the power of removal in conjunction with the appointment of a replacement Trustee or Trustees.

11. Chairperson

- (a) The Trustees shall elect a chairperson of their meetings and determine the term of his or her office. The chairperson shall take the chair at all meetings and shall have a casting as well as a deliberative vote. If the chairperson cannot be present or is not present within 10 minutes of the appointed time for any meeting, the Trustees present shall elect another person to be chairperson of that meeting.

12. Appointment of Secretary and Others

- (a) The Trustees may appoint any person (who need not be a Trustee) secretary and/or a treasurer and/or any other officers or employees that the affairs of the Trust may require on such terms and conditions as they think fit. The Trustees may also remove and replace any persons so appointed.

13. Meeting of the Trustees

- (a) The Trustees may schedule and hold meetings as they think fit but shall hold at least two meetings in each financial year. The Chairperson or any two of the Trustees may at any time summon a meeting of the Trustees. Meetings may be held in person or by any other means of communicating as decided on by the Board from time to time. The Secretary will ensure that all members of the Board are notified of the meeting, either verbally or in writing.
- (b) The quorum shall be a majority of the Trustees.

- (c) The Trustees may invite a representative from the Council, nominated by the Chief Executive, to meetings of the Trust.
- (d) The Trustee may invite other persons to any meeting of the Trust.
- (e) The Trustees must maintain complete and accurate records, including;
 - (i) minutes of meetings of the Trustees; and
 - (ii) copies of resolutions of the Trustees; and
 - (iii) complete and accurate books and accounts.
- (f) All decisions at meetings shall be made by a simple majority of votes. In the case of an equality of votes, the Chairperson shall have the casting vote.
- (g) All meetings will require 14 days notice unless otherwise agreed by the Trustees.
- (h) Upon every appointment, retirement or termination of office of any Trustee the Trustees will ensure that an entry is made in the minute book of the Trust to that effect and that any statutory requirements as to the vesting of the Trust Fund in the Trustees are satisfied.
- (i) Where, for any reason, a Trustee is not properly appointed or is disqualified from holding office, anything done by that Trustee (or by a meeting at which he or she was present as a Trustee) before discovery of the irregularity, shall be as valid as if that Trustee had been duly appointed or had not been disqualified (as the case may be).

14. Conflicts of Interest

- (a) If a Trustee's interest or duties in a particular matter conflict with his or her duties to the Trust and its Objects, including potential conflicts of interest, the Trustee must declare that interest to the Trust and the declaration must be recorded in the minutes of the meeting.

- (b) The Trustee may still exercise their vote as long as the Trustee is satisfied that their vote is made in the best interests of the Trust and its Objects.
- (c) For the avoidance of doubt, no Trustee shall take part in, or influence any decision made by the Trust in respect of payments to, or on behalf of, that Trustee of any income, benefit, or advantage.

15. No private pecuniary profit of any individual and exceptions

- (a) No private pecuniary profit shall be made by any person involved in this Trust, except that:
 - (i) any Trustee is not entitled to be reimbursed out of the assets of the Trust for any expenses which he or she properly incurs in connection with the affairs of the Trust, unless the circumstances are such that the Trustees agree that it is appropriate to do so;
 - (ii) the Trust may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
 - (iii) a Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate, in connection with the affairs of the Trust. Any such payment must be authorised by the other Trustees and certified by the Trustees as being fair and reasonable (having regard to the level of remuneration that would be paid in an arms-length transaction);
 - (iv) any Trustee may retain any remuneration properly payable to that person by any company or undertaking with which the Trust may be in any way concerned or involved for which that person has acted in any capacity whatever, notwithstanding that that person's connection with that company or undertaking is in any way attributable to that person's connection with the Trust.

- (b) The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that all reimbursements, remuneration and charges are agreed to by the Trustees.

16. Powers of Trustees

- (a) The Trustees shall have and may exercise the following powers, authorities and discretions:
 - (i) to raise money for any of the Objects of the Trust by all lawful means;
 - (ii) to apply and use the Trust Fund to further the Objects of the Trust as they see fit;
 - (iii) to make grants for specific projects or other work subject to terms and conditions as the Trustees think fit to promote and achieve the Objects of the Trust;
 - (iv) to employ, pay and retain the services of any person, firm, company or corporation upon such terms as they think fit to further the Objects of the Trust;
 - (v) to make such arrangements as the Trustees think fit for the operation of any bank accounts held by the Trustees, including specification of the signatures required for such operation;
 - (vi) to pay out of the Trust Fund all property costs incurred in the administration of the Trust;
 - (v) Notwithstanding Section 2(5) of the Trustee Act 1956, whenever the Trustees are a body corporate, the powers conferred by or under the Trustee Act on that body corporate are in addition to the powers given by the Act, this Deed and to the powers given by or under any Act by or under which the Trustees are incorporated, but the powers conferred on that body corporate by the Trustee Act, unless otherwise stated:
 - a. apply if and so far only as a contrary intention is not expressed in the Act or this Deed, and have effect subject to the terms of the Act and this Deed;
 - b. apply if and so far only as a contrary intention is not expressed in the Act by or under which the Trustees are incorporated and have effect subject to the terms of that Act:

provided that nothing in this paragraph shall affect any Act which applies to all trustees, whether corporations or not;

- (vi) to do all other lawful things that are necessary or desirable in their opinion for the carrying out of the purposes of the Trust.

18. Liability of Trustees

- (a) A Trustee shall only be liable for any loss caused by his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or be liable for failing to take any proceedings against a co-Trustee for breach or alleged breach of trust.
- (b) The Trustees, in respect of one or more of the Trustees, may take out trustees' liability insurance for such cover and on such terms as the Trustees think fit.
- (c) The reasonable costs of premiums are to be treated as a legitimate expense of the Trust and may be paid directly from the Trust Fund.

MEMBERSHIP

20. Trustees may establish a Membership

- (a) The Trustees may:
 - (j) invite persons, firms and organisations who wish to support or take an interest in the purposes of the Trust to become members of the Trust;
 - (ii)** establish different classes of membership;
 - (iii)** fix and charge membership fees (including joining fees and subscriptions) for members or each class of members, as the case may be;
 - (iv)** call members' meetings;
 - (v)** confer membership rights on members;
 - (vi)** issue membership certificates or other evidence of membership provided that nothing in this clause shall confer on any member the right to receive any of the income or capital of the Trust Fund or to vote or to control the Trustees in the exercise of their powers.

20. Trustees may establish Committees

- (a) The Trustees may establish such committees as are deemed necessary to provide advice to the Trustees, progress Work agreed by the Trustees, and to support the involvement of the membership and the community in the Work of the trust.
- (b) Any such committee may be established for a set period or as a standing committee.
- (c) Any such committee is to be chaired by a Trustee.
- (d) Such committees shall have the role or tasks determined by the Trustees at the time that the committee is established, and such role or tasks may be amended by the Trustees from time to time as they see fit.
- (e) The committee will be made up of members who are selected by the Trustees from nominations by the membership, but may include additional persons who are appointed for their special expertise in relation to the role or tasks of the committee.

SEAL OF TRUST

21. Common Seal

- (a) If the Trustees become incorporated as a board under the Charitable Trusts Act 1957 they shall have custody of the common seal, and from time to time by resolution, they may adopt any seal they think fit.
- (b) The Common Seal of the Trust shall only be affixed pursuant to a resolution of its Trust Board or of a committee of the Trustees authorised by the Trust Board on their behalf and every instrument to which the Common Seal is affixed shall be signed by two Trustees.

REGISTERED OFFICE

22. Registered Office

- (a) If the Trust is incorporated as a board under the Charitable Trusts Act 1956 the registered office of the Trust shall be 103 Tilley Road, Paekakariki or such office as the Trust may from time to time determine.

AMENDMENT OF TRUST

23. Amendment of Trust

- (a) The Trustees may from time to time by Special Resolution and amending deed or instrument alter, rescind or add to any of the provisions of this Deed or its schedules provided that:
 - (i) at least 14 days notice of intention to move any amendment to this Deed is given to all Trustees; and
 - (ii) the varied terms do not prejudice:
 - a. the charitable purpose of the Trust;
 - b. the eligibility of the Trust to claim the exemptions under Tax Laws for charitable entities; and
 - c. the ability of the Trust to remain registered under the Charities Act 2005.

TERMINATION OF TRUST

24. Liquidation of Trust

- (a) If, in the opinion of the Trust, it shall become no longer possible or feasible to carry out the objects of the Trust then the Trust may, by resolution, liquidate the Trust. No resolution dissolving the Trust shall take effect unless it has been passed by a majority of the Trust and only after three months notice of intention to move such resolution has been given in writing to each Trustee.
- (b) Such dissolution shall not take effect unless at a subsequent meeting of the Trust called for the purpose (such meeting to be held not earlier than 28 days and not later than 42 days after the date of the meeting declaring such dissolution); such dissolution is confirmed by resolution to that effect carried by a majority of the Trust.
- (c) Should the Trust be dissolved, then any moneys and property and the payment of all debts and claims shall be handed to such charitable society, association,

institution, organisation or corporation in New Zealand that the Trustees decide has Objects similar to those of this Trust operating in the Kapiti Coast area.

EXECUTION CLAUSES

SIGNED by Paul Michael Hughes)
as Settlor in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by Paul Michael Hughes)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____

SIGNED by ...)
as Trustee in the presence of:)

Witness Signature: _____
Print Full Name: _____
Occupation: _____
Address: _____