

Whangarei District Council Meeting

Supplementary Agenda

Date: 29 June, 2021
Time: 9:00 am
Location: Council Chamber
Forum North, Rust Avenue
Whangarei
Elected Members: Her Worship the Mayor Sheryl Mai
(Chairperson)
Cr Gavin Benney
Cr Vince Cocurullo
Cr Nicholas Connop
Cr Ken Couper
Cr Tricia Cutforth
Cr Shelley Deeming
Cr Jayne Golightly
Cr Phil Halse
Cr Greg Innes
Cr Greg Martin
Cr Anna Murphy
Cr Carol Peters
Cr Simon Reid

For any queries regarding this meeting please contact
the Whangarei District Council on (09) 430-4200.

4. Decision Reports

4.4. NECT Trustee Reappointment and Update on New Trust

4.4.1. <i>NECT Trustee Reappointment and Update on New Trust - Further Information and updated recommendations</i>	1
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4.4.1 NECT Trustee Reappointment and Update on New Trust – Further Information and updated recommendations

Meeting: Whangarei District Council
Date of meeting: 29 July 2021
Reporting officer: Joanne Tasker (Assurance Coordinator)

1 Purpose

To provide further information to the report in this agenda titled “NECT Trustee Reappointment and Update on New Trust”, and to provide updated recommendations.

2 Recommendations

That the Council:

1. Notes the consultation feedback from Northland Regional Council on the new Trust.
2. Notes the continuation of the Management Agreement and Provision of Services Agreement.
3. Agrees to indemnify all trustees of Northland Events Centre Trust for any liabilities that may be incurred in winding up the Trust.
4. Approves the reappointment of Councillor Gavin Benney as a trustee of the Northland Events Centre Trust for a term to end on 31 October 2021.
5. Appoints General Manager Dominic Kula as a trustee of the Northland Events Centre Trust from 1 July 2021 to 31 October 2021.
6. Endorses the Trust Deed for the new Trust and notes that the Trust Deed will be finalised and put to Council for approval at a later date.
7. Delegates Dominic Kula’s position on the trustee recruitment panel to General Manager Sandra Boardman from 1 July 2021 (for the avoidance of doubt, Dominic Kula will come off the selection panel from 01 July 2021).

3 Background

A new Trust will be established by 31 October 2021 to manage the Events Centre, which is currently operated by the Northland Events Centre Trust (NECT).

This report provides further information and updated recommendations to the report provided in the agenda titled “NECT Trustee Reappointment and Update on New Trust” which updates Council on progress made towards this goal.

Changes have been made to recommendations 4 through 7. Discussion on the changed recommendations is provided below.

4 Discussion

4.1 NECT Trustees

As explained in the report “NECT Trustee Reappointment and Update on New Trust”, trustee Daniel Yorke has indicated his intention to resign as a trustee of NECT.

The other trustees of NECT currently include Councillor Gavin Benney, General Manager Sandra Boardman, and Councillor Phil Halse. Councillor Gavin Benney and Sandra Boardman’s terms expire on 30 June 2021.

It is recommended that two trustees are appointed to maintain the quorum of three trustees. It was originally recommended that both Councillor Gavin Benney and Sandra Boardman be reappointed for a further term to end on 31 October 2021. However after further consideration, and following discussion with the Chair of NECT, it is recommended that Council reappoints Councillor Gavin Benney and does not reappoint Sandra Boardman. Instead it is recommended that Council appoint Dominic Kula as a trustee of NECT from 1 July 2021 to 31 October 2021.

Dominic Kula has been overseeing the process of winding up NECT and establishing a new Trust in his previous role as General Manager Strategy and Democracy. He has recently become the General Manager Planning and Development. Consequently the Events Centre workstream no longer sits within Mr Kula’s portfolio, it now falls within General Manager Sandra Boardman’s portfolio. Sandra Boardman, General Manager of Community, has a good understanding of the situation, and would ordinarily pick up this workstream were she not a trustee of NECT. In short, she will ‘own’ the workstream and relationship with the new trust once established. For these reasons, it is preferable that Dominic Kula become a trustee, and Sandra Boardman become the business owner of the NECT/ new Trust workstream.

However, it is stressed that the appointment will ultimately be a decision for Council. As such both sets of recommendations will be available on the day.

4.2 Policy Implications

The Council Appointment to Outside Organisations Policy underpins appointments of trustees to Council Controlled Organisations (CCO). Under this policy Councillors and Council staff should only be appointed as trustees of a CCO where there are compelling reasons for the appointment, as it is recognised that a conflict of interest could arise between their two roles.

In this situation Gavin Benney and Phil Halse are Councillors of Whangarei District Council, and Sandra Boardman and Dominic Kula are General Managers of Council. As a result, NECT may appear to lack independence from Council and there is a risk that conflicts could arise. However, this is a temporary situation and seeking to appoint external trustees at this time would likely disrupt the change of governance process that is currently being undertaken. The reappointment of Gavin Benney and appointment of Dominic Kula is recommended because they can help assist Council in its process to move to a new Trust. This is a temporary situation that will end on or before 31 October 2021 and will assist Council to meet this timeframe.

Given the current trustees of NECT and Council staff have been working collaboratively to provide advice to Council, with Council ultimately making the decision at each point of the transition process, a potential change in roles is not considered to create conflict.

4.3 Trust Deed

A draft Trust Deed has been developed for the new Trust by marking up the original NECT Trust Deed with proposed changes. This was circulated to trustees for feedback. Initial feedback suggests that further changes will need to be made before the Trust Deed can be finalised. This includes:

- Using the term regional events centre rather than district or community events centre.
- Removal of some of the objects and purposes to future proof the Trust Deed (with the intention that these matters are addressed in a Statement of Expectations and subsequently reported to Council in their Statement of Intent).
- Altering the first trustees' section.
- Adding the new Trust's name.

The finalised version of the Trust Deed will be brought back to Council for approval at a later date. For now, it is recommended that Council endorse the draft Trust Deed.

4.4 Trustee Recruitment Process

The delegation for the trustee recruitment process currently sits with Dominic Kula. If Council appoints Dominic Kula as a trustee of NECT this delegation will need to be removed. It is recommended that the delegation be given to Sandra Boardman from 1 July 2021. This will allow the trustee recruitment process to continue to progress.

5 Significance and engagement

The matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via agenda publication on the website.

6 Attachment

1. Draft Trust Deed

DEED OF TRUST

THOMSON WILSON
SOLICITORS
PO BOX 1042
WHANGAREI

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This deed is made this day of 20

Parties

1. **WHANGAREI DISTRICT COUNCIL** a Local Authority constituted under the Local Government Act 2002 ("the Settlor")
2. "Trustees"

Background

- A. The Settlor wishes to establish and register under the Charitable Trusts Act 1957 a trust, to be known as ("the Trust"), to be responsible for the operation and maintenance of a multi purpose regional events centre
- B. This deed is made by the Settlor to establish the terms of the Trust.
- C. The Settlor settles the sum of \$10.00 on the Trustees (as defined in this deed) as an initial settlement on the Trust.

Part 1

Establishment, objects and powers

1.0 Establishment of the Trust

- 1.1 The Trust Fund shall comprise all Trust Assets from time to time held by or within the control of the Trustees including the income arising from the Trust Assets and any accumulation of that income.
- 1.2 The Trust Assets shall be held on trust by the Trustees and shall be managed and administered on the terms contained in this deed.
- 1.3 The Trust shall commence on the date of this deed and shall continue until terminated in accordance with this deed or the law.

2.0 Name of the Trust

- 2.1 The name of this Trust is "_____".

3.0 Objects and purposes of the

- 3.1 The Trust is established for such of the following purposes within New Zealand as are charitable:
- (a) The operation and maintenance of a high quality multipurpose events centre at Okara Park, Whangarei.
 - (b) To provide a regional—sporting, cultural, convention and events centre for use by community organisations, sports bodies and

codes, arts, musical, social and cultural organisations and public bodies for the benefit of the public of the Region.

- (c) To enable holding a wide range of activities and events for the benefit of the public of the Region;
 - (d) With the prior consent of the Settlor, to carry out any further purpose that is charitable according to the law of New Zealand.
- 3.2 None of the objects or purposes of the Trust are limited or restricted by reference to or inference from the terms of any other clause or the name of the Trust, except where the context expressly requires it.
- 3.3 None of the objects or purposes of the Trust are to be treated as ancillary or subsidiary to any other object or purpose of the Trust.
- 3.4 The Trust's objects shall only be carried out in, or to benefit people resident in or visiting, the Region. The Trustees may carry out activities outside the Region to promote the Trust if they believe such activities will be of ultimate benefit to people in the Region.
- 3.5 It is expressly acknowledged that the Trust is not intended to provide a monetary or other profit for the benefit of the Settlor. It is intended that the Trust should operate with a surplus of income over expenditure to enable the Trustees to re-invest in the Events Centre with the consent of the Settlor.

4.0 Powers and Duties of the Trustees

- 4.1 In addition to the powers conferred on the Trustees by law the Trustees shall have the widest possible powers and discretions to achieve the objects of the Trust and shall be empowered to exercise all the rights, powers and privileges and may incur all the liabilities and obligations of a natural person of full age and capacity.
- 4.2 Without in any way limiting the wide powers conferred by the previous paragraph the Trustees shall have power:
- (a) To invest the Trust Assets and the income from the Trust Assets not immediately required for the objects of the Trust;
 - (b) To make any investment exercising the care, diligence and skill required of a prudent trustee as set out in the Trusts Act 2019 and as required by law;
 - (c) To insure the Trustees or any employees against liability for acts or omissions or costs incurred in connection with claims relating thereto or both;
 - (d) To give a full and complete indemnity from any and every part of the Trust Fund for any personal liability for the debts, engagements and liabilities of any business or partnership in which the funds of the trust have been employed notwithstanding that the whole of the Trust Fund may not have been employed;
 - (e) To reimburse the Trustees all reasonable out of pocket expenses reasonably incurred by the Trustees in or about the execution of

the Trust but excluding any fees for services rendered or meeting fees;

- (f) To delegate the management function of the Events Centre to a suitably qualified management entity or person to ensure the efficient and proper management of the activities of the Events Centre;
- (g) To do all acts, matters and things that are considered necessary or conducive to further or attain the objects of the Trust for the benefit of the public of the Region;
- (h) To use the funds of the Trust as the Board thinks necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisers, agents, officers and staff as appears necessary or expedient;
- (i) To charge the assets of the Trust other than the Events Centre

provided however that the Trustees shall have no power to permanently sell or transfer any part of the Events Centre other than to the Settlor or grant any mortgage or charge over the Events Centre without the prior written consent of the Settlor.

4.3 The Trustees shall not without the prior written consent of the Settlor:

- (a) sell, purchase or otherwise acquire or dispose of any of the Trust Assets to or from any person associated with any Trustee; or
- (b) other than for the purpose of repaying any loans from the Settlor, cause any Trust Assets that comprise cash to be invested or lodged with any person associated with any Trustee; or
- (c) participate in, or materially influence, any decision made by the Trust in respect of the payment to or on behalf of a Trustee or a person associated with a Trustee, of any income, benefit or advantage whatsoever, except where that income, benefit or advantage is derived from:
 - (i) professional services to the Trust rendered in the course of business charged at no greater rate than current market rates; or
 - (ii) interest on money lent at no greater rate than current market rates

provided always that any income paid shall be reasonable and relative to that which would be paid in an arms length transaction (being open market value).

4.4 The Trustees must:

- (a) seek maximum usage of the Events Centre and associated facilities and positively promote multiple uses of the Events Centre at both local and national level.
- (b) actively seek opportunities for the holding of major events and

activities at the Events Centre which are likely to attract visitors to the Region.

- (c) undertake a marketing plan directed at potential users in the market place and review the same annually.
- (d) administer the Events Centre and the Trust Assets on a prudent and commercial basis subject to the single asset nature of the Trust and endeavour to make it a successful and financially autonomous community asset.
- (e) exhibit and provide a sense of social and environmental responsibility having regard to the interests of the community as a whole.

4.5 The Trustees may:

- (a) take such steps from time to time as the Trustees may consider necessary to promote activities of the Events Centre either alone or in conjunction with other commercial or community agencies;
- (b) acquire any land or interest in land or other assets for other purposes ancillary to the Events Centre and maintain such land or assets to a high standard;
- (c) raise money for the purposes of the Trust;
- (d) do such other lawful things incidental to attainment of the above objects

with the intention of these objects and purposes to be that the Trustees shall have and may at their absolute discretion exercise the fullest possible powers to do in relation to the Trust Fund all things as they from time to time deem necessary, desirable or expedient.

5.0 Income of the Trust

5.1 The Trustees may for all or any part of the income arising from the Trust Assets for each financial year;

- (a) pay, apply, or appropriate from income (to the extent income is available) all expenses and other charges and provisions ordinarily met from income;
- (b) make, retain or charge against income any payments, reserves or provisions necessary or desirable for the proper administration and maintenance of the Trust and the Trust Assets including making any appropriate reserves for capital works and other things which the Trustees consider desirable to achieve the objects of the Trust;
- (c) reduce or repay any loans or liabilities of the Trust.

5.2 Subject to the repayment of all loans from the Settlor, or if the Settlor consents to the suspension of repayment in any year or years, any income of any financial year not dealt with in a manner described in clause 5.1 shall be accumulated and added to the Trust Assets and any income so accumulated shall be added to and form part of the capital of

the Trust Fund and shall then become subject to the powers and discretions set out in this deed in respect of the capital of the Trust Fund.

6.0 Trusts of Capital

- 6.1 At any time the Trustees may, or may decide to, pay, apply or appropriate as much of the capital of the Trust Assets as they think fit for or towards one or more of the objects of the Trust. If the Trustees provide for more than one such object they need not treat each object equally. Any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of income.

7.0 Controls on Exercise of Powers

- 7.1 Notwithstanding any provision in this deed the Trustees may not enter into a Major Transaction unless the Major Transaction is authorised by a Special Resolution or contingent upon the passing of a Special Resolution.

8.0 Trustees' Declaration of Interest

- 8.1 Any Trustee who is Materially Interested (whether direct or indirect) in any contract, undertaking, arrangement or dealing (proposed or otherwise) with the Trust shall:

- (1) disclose the nature and extent of that interest at a meeting of the Trustees and such disclosure shall be recorded within the minutes of that meeting; and
- (2) shall not take part in any deliberations of the Trustees concerning that matter.

- 8.2 Failure to disclose the nature of the interest at a meeting of Trustees shall not disqualify the Trustee or invalidate any contract, or proposed contract or any other matter in which the interest lies.

- 8.3 If any question shall arise at any meeting as to whether a Trustee is Materially Interested or as to the entitlement of any Trustee to vote and that question is not resolved by the Trustee voluntarily agreeing to abstain from taking part in the discussion and voting, that question shall, (unless the Trustee claimed to have the conflict of interest is the Chairperson), be referred to the Chairperson of the meeting and his or her ruling in relation to any such Trustee shall be final and conclusive. If the Trustee claimed to have the conflict of interest is the Chairperson then the Question shall be resolved by the majority decision of the other Trustees, whose decision shall be final and conclusive.

9.0 Trustees' Responsibilities

- 9.1 The Trustees shall take overall control of and responsibility for the governance of the Trust. The Trustees will perform all of their responsibilities under this deed in a prudent manner and shall exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

- 9.2 The Trustees shall devote adequate and sufficient time, attention and resources to carry out their obligations under this deed to ensure that the Trust achieves its objectives.
- 9.3 The Trustees must ensure that all decisions are made in accordance with this Trust Deed.
- 9.4 Until the Trust is listed as an approved charitable donee organisation as provided by the Income Tax Act 2007 and/or the Charities Act 2005, the Trustees must place all donations and gifts of money made to the Trustees for the objects and purposes of the Trust in a fund established and maintained by the Trustees exclusively for those objects and purposes.

10.0 Trustees' Indemnity and Liability

- 10.1 The Trustees shall not be liable for any:
- (a) losses or liabilities; or
 - (b) act or acts or attempted act or acts done in exercise of or pursuant to any trust, power or discretion vested in them by this deed; or
 - (c) omission or omissions or non-exercise in respect of any trust, power or discretion of the Trustees under this deed except losses or liabilities arising from their own dishonesty, or wilful breach of trust in the carrying out of their legal responsibilities.
- 10.2 The Trustees, and every other person acting on behalf of the Trustees, shall be indemnified out of the Trust Assets against all proper liabilities and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees pursuant to this deed and in respect of any matter or thing done or omitted to be done in any way relating to this deed and indemnity shall extend to any payments made to any person whom the Trustees bona fide believe to be entitled though it may be subsequently found that the person was not in fact so entitled. The Trustees shall have a lien or charge on the Trust Assets and may retain and pay out of any moneys in the Trust all sums and amounts necessary to give effect to this indemnity.
- 10.3 The liability of the Trustees in connection with this deed or at law, in equity, or on any other basis shall at all times be limited to the Trust Assets or to the Trust Assets which, but for their default, would be in their hands as Trustees.

11.0 Delegation by Trustees

- 11.1 The Trustees shall have, to the full extent permitted by law, full power to appoint in addition to the persons referred to in clause 4.2(f) of this deed as an employee or as an agent, a chief executive and related support staff and to delegate to any chief executive and related support staff so appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this deed without releasing the Trustees from their obligations under this deed except as provided for in clauses 4.3(c) and 11.6 of this deed. The Trustees may

employ or appoint such other persons as are agreed by the Settlor.

- 11.2 The Trust shall have the power to appoint, by power of attorney, any person to be the attorney of a Trustee whilst he or she is a Trustee but incapacitated or outside of New Zealand for such purposes and with such powers, authorities, or discretions as the particular Trustee thinks fit with power for the attorney to subdelegate any such powers or discretions.
- 11.3 Any committee or person to whom the Trustees have delegated powers or duties shall be bound by the charitable terms of the Trust.
- 11.4 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 Trustees.
- 11.5 It shall not be necessary that any person who is appointed to be a member of any such committee, or to whom any such delegation is made, be a member of the Trustees.
- 11.6 The Trustees may appoint agents or employ officers and staff who are also Trustees.

12.0 Incorporation under the Charitable Trusts Act 1957

- 12.1 The Trustees shall immediately apply for incorporation under the Charitable Trusts Act 1957 and the Trustees are authorised to make such application on behalf of the Trust. Upon incorporation the Trustees shall constitute the members of the Trustees of the Trust and the provisions of this deed shall apply to them as Trustees mutatis mutandis.

13.0 Income, Benefit or Advantage to be Applied to Charitable Purposes

- 13.1 Upon their appointment the Trustees shall apply:
 - .1 any income, benefit or advantage to the charitable purposes of the Trust.
 - .2 all funds and assets towards furthering exclusively the charitable objects aims and purposes of the Trust.
- 13.2 No private pecuniary profit shall be made by any person involved with Trustees except that:
 - 13.2.1 The Trustees may pay reasonable and proper remuneration to any officer or employee of the trust in return for services actually rendered to it.
 - 13.2.2 Any Trustee may retain any remuneration properly payable to them by any company or undertaking with which the Trustee has acted in any capacity whatever, notwithstanding that the Trustee's connection with that company or

undertaking is in anyway attributable to their connection with the Trust.

13.2.3 The Trustees in determining all reimbursements and charges payable in the terms of the foregoing clause or of any of the kinds referred to in clause 4.2 (e) of this deed shall ensure that the restrictions imposed by clauses 13.2.4 and 13.3 of this deed are strictly observed:

13.2.4 Notwithstanding anything contained or implied in this deed any person who is -

- (1) a Trustee of the Trust;
- (2) a shareholder or director of any company carrying on any business of the Trustees; or
- (3) the Settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Trust; or
- (4) an associated person (as defined by the Income Tax Act 2007 or any substituted Act) of any such Settlor, Trustee, shareholder or director

shall not by virtue of that capacity be able to determine or materially influence in any way (whether directly or indirectly) whatsoever:

- (5) the nature, or the amount of any benefit or advantage or income; or
- (6) circumstances in which it is or is to be or is able to be afforded to, or received, gained, achieved or derived as a result of their employment by or involvement with the Trust and such persons shall not participate in any deliberations and proceedings by which such income, benefit or advantage is being determined.

13.3 Notwithstanding anything expressed or implied in this deed no commercial transaction, including the relinquishing of assets, will be entered into unless, having regard to the terms and conditions of the loan or agreement:

- (1) payment by way of interest or rent shall not exceed current commercial rates; and
- (2) receipts by way of interest or rent shall not be at less than current commercial rates; and
- (3) the sale of any trust asset shall always be at market value.

14.0 Common Seal

14.1 Upon incorporation of this Trust the Trustees shall procure a common seal for the Trust and shall provide for its custody. Any documents required to be signed under the common seal shall be attested by any

two Trustees.

15.0 Reports, Accounts and Audit

- 15.1 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and the Trust Assets, liabilities and funds are kept. The financial year for the Trust shall commence on the 1st day of July in each year and end on the 30th day of June in the following year.
- 15.2 The Trustees 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 a chartered accountant or by the Office of the Auditor General appointed by the Trust for that purpose and the Trust shall present the audited accounts to the annual general meeting of the Trust

16.0 Alteration to the Trust Deed

- 16.1 The Trustees may, from time to time by deed, alter, rescind or add to any of the provisions of this deed provided that:
- (a) any amendment to this deed may only be made if it is pursuant to a special resolution of the Trustees;
 - (b) at least 28 days' notice of intention to make any amendment to this deed must be given to all Trustees and to the Settlor; and
 - (c) the Settlor must approve any amendment proposed by the Trustees;
 - (d) no alteration, rescission or addition may be made to this deed which is prejudicial to the legal charitable status of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable;
 - (e) no alteration shall allow the application of funds beyond New Zealand; and
 - (f) no amendment shall be made to the terms of clauses 8 and 13 of this Deed.

17.0 Investment Discretion

- 17.1 In exercising their powers of investment the Trustees may acquire any property, or retain or deal with any property which from time to time comprises the whole or part of the Trust Fund notwithstanding that any act or omission by the Trustees in the exercise of those powers and discretions would be, or could be, contrary to the principles governing the investment of the Trust Fund as set out in the Trusts Act 2019.
- 17.2 Where, the Trustees engage in the profession, employment or business which is or includes acting as a Trustee or investing money on behalf of others, then in exercising any power of investment, the Trustees shall not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment, or business would

exercise in managing the affairs of others. Rather, the Trustees shall be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

18.0 Winding Up of the Trust

18.1 The Trust shall terminate and be wound up and dissolved if:

- (a) the Trustees resolve by Special Resolution that the Trust shall be wound up with at least 28 days notice of the intention to consider any such resolution to be given to all Trustees and the Settlor; or
- (b) the Trust is wound up by law.

18.2 A resolution to wind up the Trust shall specify an effective termination date of the Trust and thereafter the Trustees shall realise or dispose of the Trust Assets as soon as reasonably practicable in accordance with this clause 18.

18.3 The Trust Assets or the proceeds resulting shall be applied by the Trustees upon the winding up in the following order of priority and manner:

- (a) first in meeting all costs, expenses and liabilities of the Trust including the costs and expenses of winding up the Trust and setting aside any amount that the Trustees consider necessary or desirable (having regard to generally accepted accounting practices) in respect of any contingent liability properly appearing in the accounts of the Trust;
- (b) for such charitable purpose or purposes in the Region being as similar as is practicable to those which the Trust was established as shall be approved by the Settlor.

18.4 If the Settlor is unable to make the decision described in 18.3 (b), such property shall be disposed of in accordance with the directions of a Judge of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 on the application of any of the Trustees.

19.0 Authorised Representative of Settlor

19.1 For the purposes of clauses 4.3, 16, 18, 22 and 23 of this Deed the Trustees shall be entitled to rely on any notice signed by the Chief Executive Officer of the Settlor as being a notice authorised by that Settlor. If the Chief Executive Officer of the Settlor is for any reason unable to sign such a notice the notice shall be signed on his behalf by:

- (a) the delegated Acting Chief Executive Officer.
- (b) any person authorised in writing by that Settlor to sign on their behalf.

20.0 Settlor's Liability

20.1 The Settlor shall not in any circumstances be liable for the debts, liabilities or commitments of the trust but may provide assistance to the

Trust at the Settlor's sole discretion.

- 20.2 Notwithstanding any requirement for the Settlor to give its consent to certain Trustee actions, the Settlor shall not in any circumstances be deemed to be acting as a Trustee or held to be responsible as a Trustee.

Part 2

Appointment, Retirement and Proceedings of the Trustees of the Trust

21.0 Constitution of the Trustees

- 21.1 The first Trustees of the Trust shall be and shall hold office for the term specified in the following table:

Name	Term of Office
	3 years
	3 years
	2 years
	1 year
	1 year

- 21.2 The term of the first Trustees is to commence with the date of this Deed.
- 21.3 The Trustees named in clause 21.1 shall hold office for the term specified in clause 21.1 but on the expiration of such term shall be eligible for reappointment for a further term or terms provided always no Trustee shall hold office for more than 12 continuous years.
- 21.4 Trustees appointed after the date of this Deed shall hold office from the date of their appointment and for the term of that appointment but on the expiration of such term shall be eligible for reappointment for a further term or terms provided always no Trustee shall hold office for more than 12 continuous years.

22.0 Appointment and Removal of Trustees

- 22.1 There shall be not less than three nor more than five Trustees.
- 22.2 The Settlor shall determine the number of Trustees.
- 22.3 The Trustees shall be appointed by the Settlor with each appointment to be for a specific term.
- 22.4 In the event that the office of Trustee shall be vacated for any reason then a new Trustee shall be appointed by the Settlor.
- 22.5 For the purposes of the appointment of trustees where an appointment is to be made either pursuant to clause 22.3 or 22.4 the party responsible for appointment shall endeavor to ensure that no more than 60 percent of the trustees are of any one gender.

22.6 If at any time the number of Trustees is less than three the Settlor shall appoint a new Trustee or new Trustees under clause 22.4 as soon as it is reasonably practicable. The remaining Trustees shall be entitled to act until the number of Trustees appointed is so increased.

22.7 The appointment of a Trustee shall be vacated if such Trustee:

- (a) resigns;
- (b) dies;
- (c) is removed from office by the Settlor;
- (d) who was a Councillor of the Settlor at the time of appointment ceases to be a Councillor for any reason.
- (e) is, under clause 22.7, not capable of holding office as a Trustee
- (f) refuses to act;
- (g) is absent without leave from the other Trustees from three consecutive ordinary meetings of the Trustees; or
- (h) having held office for the term(s) of their appointment either does not seek to be reappointed or is not reappointed or has served for 12 continuous years.

22.8 The following persons shall not be capable of being appointed or reappointed, or of holding office, as a Trustee:

- (a) A person who has been bankrupt whether discharged or not.
- (b) A person who has been convicted of an offence punishable by a term of imprisonment of 2 years or more.
- (c) A person who would be subject to an order under Section 189 of the Companies Act 1955 but for the repeal of that section.
- (d) A person to whom an order made under Section 199L of the Companies Act 1955 applies (or would apply but for the repeal of that Act) or to whom an order made under Section 383 of the Companies Act 1993 applies.
- (e) Any person who is the subject of an order under the Protection of Personal and Property Rights Act 1988.

22.9 A certificate signed by or on behalf of the Settlor pursuant to clauses 22.3, 22.4 or 22.7(c) to the effect that a person has been appointed a Trustee or removed from the office of Trustee shall be conclusive evidence of that fact.

23.0 Proceedings of Trustees

23.1 The Trustees shall establish the governance regime for the Trust.

- 23.2 The Trustees shall consider whether the Trustees should contract out the management of the Events Centre to an independent entity having the specialist skills required to manage an events centre and the terms of such contract.
- 23.3 Subject to this deed the Trustees may meet together for the dispatch of business and may adjourn or otherwise regulate their meetings as they think fit. With the exception of the annual general meeting meetings of Trustees shall not be open to the public.
- 23.4 The Trustees shall appoint one of the Trustees to be chairperson of the Trust with the chairperson of the Trust to be appointed at the first Trustees meeting following each Annual General Meeting and the incumbent chairperson shall be eligible for re-appointment
- 23.5 Notwithstanding the provisions of clause 23.4 the Trustees may, by special resolution, replace the current chairperson with a new chairperson at any time within the current chairperson's period of office.
- 23.6 At any meeting of the Trustees the chairperson of the Trust shall preside or in the absence of the chairperson of the Trust or the appointed chairperson is unable for any reason to perform the duty of chairperson the Trustees shall elect one of their members to preside.
- 23.7 In the event of an equality of votes, the chairperson shall have a second or casting vote.
- 23.8 No business shall be transacted at any meeting unless the required quorum is present at the commencement of business.
- 23.9 The quorum for passing of a special resolution shall be three quarters of the number of Trustees.
- 23.10 The quorum for the transaction of any other business shall be a majority of the Trustees.
- 23.11 A "Special Resolution" means a resolution passed at a meeting of Trustees at which not less than three quarters of the Trustees present vote in favour of the resolution.
- 23.12 An act or decision of the Trustees shall not be invalid by reason only of:
- (a) A fault, default or irregularity in or in connection with the appointment of a Trustee; or
 - (b) A vacancy in the number of the Trustees including a vacancy arising because of the failure to appoint a Trustee.
- 23.13 The Trustees shall keep a minute book and shall cause minutes to be kept of all meetings, resolutions and decisions made by them. Minutes purporting to be signed by the chairperson of the Trustees of a meeting shall be prima facie evidence of the matters contained in such minutes.

24.0 Convening of Meetings

- 24.1 The Trustees shall hold at least four meetings in each financial year, including the annual general meeting under Clause 24.4.
- 24.2 The chairperson shall convene the meetings of the Trustees.
- 24.3 The chairperson shall convene any additional meeting of the Trustees if the chairperson receives a written request from at least two Trustees. At least two working days prior notice of meetings of Trustees shall be given to all Trustees.
- 24.4 An annual general meeting shall be held within four months of the end of the financial year. At the annual general meeting, the annual audited accounts, and the annual report for the Trust in respect of the last financial year shall be tabled and discussed. At the discretion of the chairperson of the Trust, any other business may be raised at the annual general meeting.

25.0 Appointment of Committees

- 25.1 The Trustees may delegate any of their powers and duties under this deed to any committee or committees consisting of such Trustees and other persons as the Trustees may appoint for such purpose.
- 25.2 The committee chairperson shall convene committee meetings as required.
- 25.3 Committee minutes and records shall be kept in accordance with this deed.
- 25.4 Committee proceedings shall generally conform to the procedures adopted for meetings of the Trustees.

26.0 Resolution Assented to by Trustees

- 26.1 A resolution in writing signed or assented to by letter, facsimile, email or other written manner, by all Trustees for the time being entitled to receive notice of meetings of the Trustees shall be valid and effective as if it had been passed at a meeting of Trustees duly called and constituted. Any such resolution may consist of several documents in like form either signed or purporting to have been dispatched by any one or more of the Trustees.

27.0 Teleconference Meeting of Trustees

- 27.1 The contemporaneous linking together by telephone or other means of communication of a number of Trustees not less than the quorum (whether or not any one or more of the Trustees is out of New Zealand) shall be deemed to constitute a meeting of Trustees and all the provisions of this deed in respect of such meetings shall apply so long as the following conditions are met:
- (a) All Trustees for the time being entitled to receive notice of a meeting of the Trustees shall be entitled to notice of the meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting, and shall have first received two working days prior notice of such meeting; and

- (b) Each Trustee taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear each of the Trustees taking part in the meeting; and
- (c) At the commencement of the meeting each Trustee must acknowledge his or her presence for the purpose of the meeting to all other Trustees taking part.

28.0 Statement of Intent

28.1 The Trustees shall have a statement of intent which complies with the Local Government Act 2002. In settling and amending the statement of intent in terms of section 64 of the Local Government Act 2002, the Trustees shall ensure that the Trust retains its charitable status. The statement of intent is to be delivered to the Settlor for approval in terms of section 65 of the Local Government Act 2002.

The objectives as outlined in the statement of intent must be, and be implemented, consistent with the purposes of the Trust, and can not extend them.

Part 3

General

29.0 Service of Notices

29.1 Any Notice served in accordance with this deed shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

30.0 Interpretation and Definitions

30.1 In this deed, unless the context otherwise requires:

Charitable Purposes mean every purpose which under the law of New Zealand is charitable.

Direct Pecuniary Interest means whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the Trustee concerned.

Events Centre means a multi-purpose sporting and cultural venue for the benefit of the public of the Region built on the property known as Okara Park as situated on Okara Drive, Whangarei.

Indirect Pecuniary Interest means where the Trustee would financially benefit or where the spouse, civil union partner, or de facto partner has a Pecuniary Interest in a matter before the Trust, or is involved in a company that has a Pecuniary Interest in a matter before the Trust.

Major Transaction means any transaction, undertaking agreement or

arrangement that has or is likely to have the effect of the Trustees acquiring or disposing of assets, rights or interest, or incurring obligations or liabilities the value of which is more than 50% of the value of the Trust Assets at that time and includes any lease or licence that grants exclusive possession or preferential use of any facilities at or part of the Events Centre for a period or periods that, from the beginning of the first period to the end of the last period totals more than five (5) years.

Materially Interested means a Direct or Indirect Pecuniary Interest. The definition shall not include merely by way of an association with a party that has a relationship with the Trustees or the Trust where the association is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities as a Trustee. Without limiting the meaning of Materially Interested a Trustee shall be deemed to be Materially Interested in any matter in which he or she would reasonably be regarded as likely to be influenced materially to prefer interests other than those of the Trust, for reasons of personal advantage or the advantage of business or family associates.

Region means the region of Northland as is administered by Whangarei District Council, Northland Regional Council, Far North District Council and Kaipara District Council at the date of the execution of this trust deed.

Settlor means Whangarei District Council.

Special Resolution means a special resolution of Trustees passed in the manner provided in Clause 23.11.

Trust means the trust established by this deed and known as the Trust, and includes any subsidiary company or other controlled entity of the Trust.

Trustees and Trustee mean the Trustees of the Trust from time to time and at any time.

Trust Assets means all money, investments, property and assets, and leases of property and assets, from time to time owned or beneficially held by the Trust.

Trust Fund means initially the sum of \$10.00 given to the Trustees and includes any money, investments or other property paid or given to or acquired by the Trustees after this deed has been signed with the intention to be held by the Trustees on the Trust and with the powers set out in this deed. The Trust Fund also includes the sale proceeds of conversion of any of the Trust Assets in the Trust Fund and the net income arising in each financial period, as determined by the Trustees, from the same.

Working day means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day and the provincial anniversary day as observed in Northland; and

- (b) A day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive.

A working day shall be deemed to commence at 9.00am and to terminate at 5.00pm.

- 30.2 A person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of state (in each case whether or not having separate legal personality).
- 30.3 Headings and marginal notes are included for convenience only and do not affect the interpretation of this deed.
- 30.4 This deed is binding upon the parties and their representative successors and permitted assigns.
- 30.5 Where the context permits words describing the singular include the plural and vice versa and words imputing masculine, feminine or neuter gender include all genders.
- 30.6 In this deed, unless the context otherwise requires, any reference to any legislation includes a modification and re-enactment of that legislation or legislation enacted in substitution for any regulation, Order in Council and other instrument from time to time issued or made under that legislation.

Executed as a deed

SIGNED for and on behalf of
WHANGAREI DISTRICT COUNCIL
 by

.....
 Authorised Officer
 in the presence of:

.....
Witness to complete in BLOCK letters

Name:
 Address:
 Occupation:

SIGNED by

.....
 as Trustee in the presence of:

Witness Signature:
 Witness Name:
 Address:
 Occupation:

SIGNED by

.....
 as Trustee in the presence of:

Witness Signature:
 Witness Name:
 Address:
 Occupation:

SIGNED by

.....
as Trustee in the presence of:

Witness Signature:
Witness Name:
Address:
Occupation:

SIGNED by

.....
as Trustee in the presence of:

Witness Signature:
Witness Name:
Address:
Occupation:

SIGNED by

.....
as Trustee in the presence of:

Witness Signature:
Witness Name:
Address:
Occupation:

RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

1.	The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}
2.	To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {(Section 7(2)(i))}.
3.	To protect the privacy of natural persons. {Section 7(2)(a)}.
4.	Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.
5.	To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section 7(2)(c)(i)}.
6.	In order to maintain legal professional privilege. {Section 2(g)}.
7.	To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(i)}.

Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

Move/Second

"That _____ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item _____.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because _____.

Note:

Every resolution to exclude the public shall be put at a time when the meeting is open to the public.