



HUTT MANA CHARITABLE TRUST

TRUST DEED

Consolidating changes made on

21 July 1998

8 December 1999

23 September 2005

18 May 2007

29 April 2016

22 February 2019

[XX] [MONTH] 2023

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DRAFT

TRUST DEED

HUTT MANA CHARITABLE TRUST¹

DATED 4 December 1996

PARTIES **ALISON MAY LAWSON** of Lower Hutt, Manager; **JOHN BRIAN BURKE** of Titahi Bay, Mayor; **PETER JOHN DAWE** of Upper Hutt, Retired; and **IAN REX HUTCHINGS** of Johnsonville, Electrical Engineer ("the Trustees")

BACKGROUND

- A The Trustees have determined to establish a trust for certain charitable purposes relating to energy consumer related activities of public benefit, and to act as trustees of that trust.
- B The Trustees have further determined to sign this Deed Poll for the purpose of establishing the trusts and conditions on which such trust fund is to be held.

COVENANTS

¹ The name change from The EnergyDirect Charitable Trust to the Hutt Mana Charitable Trust occurred by Resolution of the Board dated 8 December 1999.

DECLARATION OF TRUST: That Trustees declare that they will hold all Property (both real and personal) which the Trustees may from time to time purchase, receive or otherwise acquire from the Community Trust or any other person for the purposes of the trusts set out in this Deed ~~Poll~~ upon the several trusts, powers, authorities and permissions following:

1 Name

- 1.1 The Trust constituted by this Deed ~~Poll~~ shall be called "The ~~EnergyDirect Hutt Mana~~ Charitable Trust" or such other name as the Trustees shall from time to time determine.²

2 Interpretation

- 2.1 For the purpose of this Deed:

"ADR process" means an alternative dispute resolution process (for example, mediation or arbitration) designed to facilitate the resolution of a dispute.

"AMINZ" means the Arbitrators' and Mediators' Institute of New Zealand Incorporated.

"Appointment" means the process of appointing Trustees as outlined in ~~Trustee Appointment Process – Trustee Appointment Process – Trustee Appointment Process – Trustee Appointment Process.~~

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"Appointor" means the current Trustees who appoint the incoming Trustees.

"Bank" means any bank listed in the register of registered banks referred to in section 69 of the Reserve Bank of New Zealand Act 1989.

"Chair" means the Trustee who is the Chair of the Trust appointed under ~~c~~Clause ~~13.113.113.113.18.1~~ and holding office as such for the time being.

"Charitable Purpose" means and includes that term as defined by the Charitable Trusts Act 1957 and also means and includes every charitable purpose (whether religious, educational, cultural, recreational, philanthropic, or to relieve poverty, or otherwise) within the District or New Zealand which shall be regarded as charitable by the law for the time being in force in New Zealand PROVIDED THAT any such charitable purpose shall also be regarded as charitable under any statute, regulation or ordinance of New Zealand relating to income tax, estate duty, gift duty or any other revenue statute for the time being in force in New Zealand.

² The Trust was previously known as the EnergyDirect Charitable Trust and the name was changed on 8 December 1999. Refer to note 1 above.

"Community Trust" means The EnergyDirect Community Trust established by Deed of Trust dated 6 April 1993.

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"District" means the geographical area of Lower Hutt City, Porirua City, and Upper Hutt City and that part of Wellington City that comprise the Northern Ward and the suburbs of Broadmeadows and Ngauranga, ~~as these latter three areas were defined at 13 April 2013, as those areas are defined by each relevant local authority from time to time.~~

~~"Elector" means any person residing in the District whose name appears on the electoral roll in force in the District at the time of each triennial election and compiled in accordance with the provisions of the Local Electoral Act 2001.~~

"Energy Related Charitable Purposes" means charitable purposes by way of promoting within the District for the general benefit of the community within the District and New Zealand, prudent practices in energy use, energy safety and energy conservation for the purposes of maximising the efficient use of energy within the District, ensuring the maximum economic reduction in energy wastage, educating the community in the relevant principles, and maximising the economic and health benefits which result from a proper understanding of energy and conservation principles, including:

- (a) promoting the education of members of the public within the District in the principles of energy conservation, energy efficiency, energy safety and the economic and health benefits flowing from these principles;
- (b) generally promoting more economically efficient practices in the usage of electricity;
- (c) assisting in implementing energy efficiency measures including providing sponsorship or other financial assistance in deserving cases;
- (d) conducting or providing funding to facilitate energy related research including the health and safety benefits, and to publish and promote the findings of any such research.

"Income" means:

- (a) all net income being dividends, rent, interest or other income derived from the Trust Property, as and when the same shall be received; ~~and~~
- (b) all net income derived from the activities of the Trust in accordance with the terms of this Deed or otherwise howsoever as and when the same shall be received and finally determined for each financial year of the Trust,

³ The definition of "Customer" was deleted by Deed of Variation of Trust Deed dated [21 July 1998].

after payment of all expenses relating to the Trust Fund. Those expenses shall include all expenses and outgoings related to the administration, working, management and maintenance of the Trust Fund and to the affairs of the Trust.

"Loses Mental Capacity" or "Lost Mental Capacity" in relation to any person means that:

- (a) an order is in force under the Protection of Personal and Property Rights Act 1988 protecting the property or personal care and welfare of that person; or
- (b) that person is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 and is subject to an order made under that Act; or
- (c) any Trustee has received a written certificate from a medical practitioner, lawfully entitled to practise at that time, stating that in their opinion the person lacks the mental capacity to carry out their duties and powers under this Deed but no Trustee has received a subsequent certificate from a medical practitioner stating that the person in question has regained the required mental capacity.

"Officer" means any person for the time being holding an office to which that person has been appointed in accordance with clause 14.114.114.114.1.

"person" includes any individual, corporation, partnership, joint venture, association, trust, organization, government department or agency of state (in each case whether or not having a separate legal personality).

"Special Resolution" means a resolution passed by at least 75% of the total number of the Trustees present at a meeting-

-"the Trust Fund" means:

- (a) all monies, investments and property, both real and personal, which may be received and accepted by the Trustees as part of the Trust ~~Fund; and~~ Fund; and
- (b) the investments and properties from time to time representing the above and accretions to those investments and properties; and
- (c) all interest, dividends and other income derived from or accruing to the aforesaid investments and properties.

"the Trusts Act" means the Trusts Act 2019.

"the Trust's Purposes" has the meaning given to that term in clause 3.2.

"Trust" means the ~~EnergyDirect Hutt Mana~~ Charitable Trust constituted by this Deed ~~and~~ and includes the Trust Fund and the trusts, duties, obligations and rights upon which the Trustees hold the Trust Fund.

"Trustees" means the Trustees named as parties to this Deed ~~Part~~ for so long as they remain trustees and the trustees for the time being appointed in terms of this ~~Deed~~ and, as the context may require, means all, some or any such Trustees.

"Working Day" means a day of the week the major trading banks are open for business in Wellington other than a Saturday or Sunday, and excludes New Years Day, the Day after New Years Day, Wellington Anniversary Day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Matariki, Labour Day, Christmas Day and Boxing Day.

2.2 In this ~~Deed~~, unless the context otherwise requires:

(a) New Zealand law governs the interpretation of this Deed.

~~(a)~~(b) References to one gender include each other gender.

(c) References to the singular include the plural and vice versa.

~~(b)~~(d) Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

~~(c)~~(e) The headings and the contents shall not affect the construction of this ~~Deed~~.

~~(d)~~ References to clauses and schedules are references to clauses and schedules in this ~~Deed~~.

~~(e)~~(f) References to a statute include references to regulations, orders or notices made under or pursuant to that statute.

~~(f)~~(g) References to any statute, regulation, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to.

2.3 All provisions of this Deed ~~Part~~ are to be interpreted as being subject to ~~c~~Clause ~~3.2~~ ~~3.2~~ and to the requirement that the Trust Fund may only be applied for Charitable Purposes. -In particular, no part of the Trust Fund may be applied so as to confer a private pecuniary profit on any individual or group of individuals, except to the extent that this Deed authorises the payment of a reasonable market remuneration to any individual (including a Trustee) for services actually rendered to the Trust.

3 Establishment Of Trust And Objects

3.1 The Trustees acknowledge and declare that the Trust Fund will be held on the trusts declared in this Deed.

3.2 The Trust Fund shall be used and applied for either ("the Trust's Purposes"):

- (a) Energy Related Charitable Purposes; or
- (b) Other Charitable Purposes within the District, but elsewhere in New Zealand if the Trustees think fit.

4 Trustee Duties

4.1 Subject to clause 4.2, the duties of Trustees set out in Part 3 of the Trusts Act apply to their full extent unless explicitly modified or negated in this Deed.

4.2 The mandatory duties set out in sections 22 to 27 of the Trusts Act shall apply at all times to the exercise of the Trustees' powers and discretions under this Deed. Each Trustee and the Board, as the case may be, must:

- (a) know the terms of the Trust;
- (b) act in accordance with the terms of the Trust;
- (c) act honestly and in good faith;
- (d) hold or deal with the Trust Fund and otherwise act to further the Trust's Purposes specified in clause 3.2 in accordance with the terms of the Trust; and
- (e) exercise their powers for a proper purpose.

3.34.3 The Trustees will carry out mandatory governance and fiduciary governance training, as organised by the Trustees, from time to time.

45 Powers Of The Trustees In Dealing With Trust Fund

4.15.1 Subject to the express terms of this Deed, ~~Pol~~ the Trustees shall have in relation to the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.

4.25.2 Without limiting the generality of the preceding paragraph ~~and merely by way of example~~ (but subject always to the express terms of this Deed ~~Pol~~) in managing the Trust Fund and the affairs of the Trust, the Trustees shall have the following powers which may be exercised either alone or jointly with any other person:

- (a) **Raise Money:** Raise money by all lawful means, accept gifts, legacies or other bequests (whether unconditional or subject to any condition acceptable to the Trustees that is consistent with the objects for which the Trust is established, and whether absolute or for a period of time only) and to solicit, receive and enlist financial or other aid from individuals and organizations.

- (b) **Invest:** ~~To invest in any property and in any investment permitted by law for the investment of trust funds, whether or not authorised by law for the investment of trust funds, and upon such terms as the Trustees think fit and to vary any such investment from time to time. Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any property.~~
- (c) **Sell:** Sell all or any part of the property comprising the Trust Fund at such price, on such terms, and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.
- (d) **Retain Property:** Retain property forming part of the Trust Fund.
- (e) **Lease:** Lease or to take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- (f) **Borrow:** Borrow moneys on such terms and subject to such conditions as the Trustees think fit.
- (g) **Lend:** Lend moneys on such terms and subject to such conditions as the Trustees think fit.
- (h) **Guarantee:** Enter into any guarantee which the Trustees consider to be in the interests of the Trust, Customers or the communities within the District.
- (i) **Determine Capital And Income:** Determine whether any money for the purposes of these presents is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion blended funds.
- (j) **Maintain And Improve Property:** Maintain, manage, repair, improve and develop any property which, or an interest in which, for the time being forms part of the Trust Fund in such manner as the Trustees shall think fit.
- (k) **Employment And Remuneration:** Employ and pay a reasonable salary or fee to any person, firm, company or corporation (other than a Trustee) to do any act of whatever nature relating to the Trust.
- (l) **Bank Accounts:** Open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another at any bank, ~~and~~ to overdraw any such account with or without giving security, ~~and and in addition to the powers conferred by Section 81 of the Trustee Act 1956~~ to make arrangements with any bank for any one or more of the following, namely the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate upon any account from time to time opened or subsisting at that bank.

- (m) **Insurance:** Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurance value thereof or the full replacement value thereof as the Trustees may in their absolute discretion from time to time think fit.
- (n) **Maintenance Contracts:** Enter into contracts of any nature whatsoever for the purpose of protecting, maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.
- ~~(o)~~ **Delegate To Committees:** Delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or other such persons) as they may appoint for such purpose.
- ~~(p)~~ **Renumerate Trustees:** A Trustee being a solicitor or accountant or other person engaged in a profession or business and a firm of which the person is a partner may charge and be paid all proper professional and other charges for business or acts done by such person or firm in connection with the Trust Fund or its income including charges for the time and trouble taken by a Trustee which could be made by the Trustee if they were not a Trustee and was employed by the Trustees to act in connection with the Trust Fund, including the charges of such Trustee for acts which a Trustee could have done personally. This is a modification of the duty not to profit in section 36 of the Trusts Act and the duty to act for no reward in section 37 of the Trusts Act.
- ~~(p)~~ **Other Powers:** Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the Charitable Purposes of the Trust.
- ~~(q)~~ **Elections:** Appoint an Electoral Officer pursuant to the Local Electoral Act 2001 to be responsible for the conduct of the Trustee elections, determine the system of voting, determine the order of candidates' names on the voting documents and whether the returned voting documents will be processed progressively throughout the voting period pursuant to section 79 of the Local Electoral Act 2001.

6 Further Powers as a Board

- 6.1 Where the Trustees are incorporated as a Board under the Charitable Trusts Act 1957, the Trustees acting as a Board will in addition and without limitation have:
- (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
- ~~(q)~~(b) for the purposes of clause 6.1(a), full rights, powers and privileges; and
- ~~(r)~~(c) no limitation or restriction on the Trustees' powers by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.

57 Investment Policy

Standard of care

~~5.4.7.1~~ When exercising any power to invest property which forms part of the Trust Fund, the Trustees may but are not obliged to have regard to the matters set out in section 59 of the Trusts Act and must exercise the care and skill that is reasonable in all the circumstances. Section 30 of the Trusts Act does not apply.

Investment principles

7.2 The Trustees have authority to invest any or all of the Trust Fund as they think fit at any time, but having regard to grow the Trust Fund in real terms, including indexed to inflation). ~~Sections 29 and 30 of the Trusts Act will not apply to the investment of the Trust Fund. This clause is a modification and exclusion under section 28 of the Trusts Act in respect of investment of the Trust Fund but the Trustees must invest in good faith in what the Trustees believe to be the best interests of the Trust's Purposes.~~

7.3 ~~The Trustees will not be liable for any loss or liability resulting from investment in accordance with any of these general investment principles and clauses 7.5 to 7.97.97.97.10. The Trustees will be indemnified out of the Trust Fund in each such case.~~

7.4 ~~Clauses 7.5 to 7.97.97.97.10 are intended only to amplify these investment principles and to avoid any doubt. Nothing in the following clauses is to be read so as to limit the wide provisions of these investment principles.~~

Freedom to invest

~~The Trustees may retain land or interests in land or bank deposits or bank accounts or any other type of investments as the sole or predominant asset class in the Trust Fund.~~

7.5 ~~The Trustees may adopt a portfolio approach to investment, with or without taking advice and take advice regarding the same.~~

7.6 ~~The Trustees may from time to time hold wasting assets or those which produce little or no income.~~

7.7 ~~The Trustees may delegate investment decisions, management or allocation to a professional investment manager or adviser or a trustee corporation.~~

7.8 ~~The Trustees will at all times be entitled, as of right, to a set off of the type specified in section 129 of the Trusts Act, as if this had already been approved by the court in respect of the whole amount.~~

7.9 ~~Where the Trust's Purposes make acquiring or retaining a particular asset or assets (or investment in any particular manner) desirable in the Trustees' opinion, then the Trustees need not exercise the care, diligence and skill that~~

a prudent person of business would exercise in managing the affairs of others.

68 Trustees

Appointment

8.1 Any Appointment of Trustees is to be carried out in accordance with the process outlined at —Trustee Appointment Processthis clause 8 and in Schedule 2.

8.2 Trustees are only eligible to be a Trustee for 8 years (two four-year terms), whether this be consecutive or involve intervening periods where they are not a Trustee.

6.1 ~~At the time of each triennial election of the members of local authorities Trustees shall be elected pursuant to the Local Electoral Act 2001 as follows:~~

- ~~(a) Two Trustees shall be elected by the electors residing in the boundaries of Lower Hutt City as those boundaries were defined as at 1 October 2004.~~
- ~~(b) One Trustee shall be elected by the electors residing in the boundaries of Upper Hutt City as those boundaries were defined as at 1 October 2004.~~
- ~~(c) One Trustee shall be elected by the electors residing in the boundaries of Porirua City as those boundaries were defined as at 1 October 2004.~~
- ~~(d) One Trustee shall be elected by the electors residing in that part of the District within the boundaries of Wellington City as those boundaries were defined as at 1 October 2004.~~

6.2 ~~Each election shall be carried out on the following basis:~~

- ~~(a) Nominations for appointment of a Trustee shall be invited from the public in accordance with the provisions of section 52 of the Local Electoral Act 2001~~
- ~~(b) Each nominee shall at the date of their nomination be resident within the District.~~
- ~~(c) Each nominee shall only be nominated for one area as defined by clause 5.1.~~
- ~~(d) Except as provided herein, voting shall be carried out in accordance with the Local Electoral Act 2001 and different systems of voting can be determined for different electoral areas within the District.~~
- ~~(e) The elections shall otherwise be conducted in such manner as the~~

~~Trustees may from time to time determine.~~

~~6.38.3 5.2A~~—All Trustees in office prior to ~~a triennial~~~~the election~~~~Appointment~~ of Trustees shall continue in office until the first meeting of Trustees following that ~~triennial election~~~~Appointment~~.- The meeting of Trustees shall be held within ~~230~~ Working Days ~~from 1 January~~ of that ~~triennial election~~~~Appointment~~ at which:

- (a) Trustees who are re-~~elected~~~~appointed~~ (and any replacement Trustee appointed in terms of ~~c~~Clause ~~8.48.48.48.45.2B~~) will continue in office; and
- (b) Trustees who are ~~elected~~~~appointed~~ for the first time will be appointed to office; and
- (c) Trustees who are not re-~~appointed~~ ~~elected~~ will retire.

~~6.48.4 5.2B~~—~~Where by~~~~Where by~~ reason of any vacancy, the number of Trustees is reduced below five, the remaining trustees shall appoint some other eligible person to be a Trustee ~~for the balance of the term of the office~~~~until the next annual~~~~Trustee appointment process as that process is described in Schedule 2~~, provided that ~~the Trustees will endeavour to ensure that~~ any person so appointed ~~shall~~ ~~is~~ ~~be~~ resident in ~~that the same~~ part of the ~~D~~istrict ~~whose electors~~~~appointors~~ ~~elected~~~~appointed~~ where the Trustee ~~he or she~~~~they are~~ is to replace ~~was resident~~.

~~5.2C~~—~~Notwithstanding any other provision of this Deed, those Trustees in office as at 1 October 2004 shall continue in office until the 2007 triennial elections of members of local authorities.~~

~~8.5~~ Upon every change of trustees, the Trust Fund shall be vested in the Trustees for the time being in office.

Ineligible Trustees

~~6.58.6~~ The following persons may not hold office as a Trustee:

- ~~(a)~~ A person who is under the age of 18.
- ~~(b)~~ Current Local Government members within the Districts.
- ~~(a)~~~~(c)~~ 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.
- ~~(b)~~ A person who has been convicted of any offence punishable by a term of imprisonment of two or more years.
- ~~(c)~~~~(d)~~ A person who has been convicted of any offence punishable by imprisonment for a term of less than two years and has been sentenced to imprisonment for that offence.

~~(e)~~ A person whom is prohibited from being a director or promoter of, or being concerned or taking part in the management of a company under section 382, 383, or 385 or 385AA of the Companies Act 1993.⁴

~~(e)(f)~~ A person who has lost mental capacity, is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

~~(g)~~ A person who resides outside the District. A person who has been convicted of a crime involving dishonesty, within the meaning of section 2(1) of the Crimes Act 1961, or any offence punishable by a term of imprisonment of two or more years, or who has been sentenced to imprisonment for any offence, unless that person has:

~~(i)~~ obtained a pardon; or

~~(ii)~~ served, or otherwise suffered, the sentence imposed on them;

provided that that person will not be disqualified from appointment as a Trustee, or may continue to hold office as a Trustee, and will be deemed to have taken a leave of absence, until the expiry of the time for appealing against the conviction or sentence of imprisonment, and, if there is an appeal against conviction or sentence, until the appeal has been determined.

~~(h)~~ A person is subject to an order made under section 31 of the Charities Act 2005 disqualifying the person from being an officer of a charitable entity.

~~(i)~~ A person:

~~(i)~~ who is subject to a property order made under the Protection of Personal and Property Rights Act 1988; or

~~(ii)~~ whose property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or

~~(i)(iii)~~ who is mentally incapable as defined in section 94 of the Protection of Personal and Property Rights Act 1988.

8.7 The procedures of the Trustees shall initially be regulated in accordance with the provisions contained in Schedule 1.

9 Cessation and Removal of Trustee

9.1 A person ceases to hold office as a Trustee when:

⁴ Companies Act 1993, s 151(2)(e).

- (a) the person becomes ineligible to hold office as a Trustee under clause ~~8.68-68.68.6~~; or
- (b) the person resigns as a Trustee by giving 10 Working Days' written notice to the remaining Trustees; or
- (c) the person retires in accordance with clause ~~8.3(c)8.3(c)8.3(c)8.3(c)~~; or
- (d) the person fails to attend all meetings of the Trustees held during any period of 12 months without leave approved in writing in advance by the Trustees; or
- (e) the person brings the Trust into disrepute where a majority of the Trustees and the Appointment Committee unanimously agree that removal of that Trustee is just; or
- (f) the person dies.

710 Trustees' Duties And Liability of Trustees

10.1 No Trustee (including any former Trustee) will be liable for any loss to the Trust Fund arising from any act or omission of the Trustee or any of the Trustees unless it is attributable to that Trustee's own dishonesty or gross negligence or wilful misconduct which is known by that Trustee to be a breach of trust.

10.2 Subject to clause 10.1, despite the fact that the Trustees may 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 such persons:

- (a) will not be that required by section 30 of the Trusts Act; and
- (b) will at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

This clause is a modification of the duty of prudent investment expressed in section 30 of the Trusts Act.

10.3 No Trustee will be bound to take, or liable for failure to take, any proceedings against any other Trustee (including any former Trustee) for any breach or alleged breach of trust committed by that other Trustee.

10.4 Subject to clauses 10.1 and 10.2, a Trustee (including any former Trustee) will be chargeable only for money which that Trustee has received. For the purposes of this clause, a Trustee is deemed to have received money even if not actually paid to that Trustee if that money has been credited in account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.

~~7.1 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 professions, 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 but, subject to Clause 6.2, shall be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.~~

~~No Trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to his or her own dishonesty or to the willful commission or omission by him or her of an act where such commission or omission is known by him or her to be a breach of trust, and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.~~

Indemnification of Trustees

~~7.2~~10.5 Subject to clause 10.6, each Trustee (including any former Trustee) is entitled to be indemnified out of the Trust Fund against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together called "Liabilities") suffered or incurred by that Trustee in connection with the Trust.

~~7.3~~10.6 The indemnification provided under clause 10.5 will not apply to any Trustee (including any former Trustee) to the extent that the Liabilities suffered or incurred by that Trustee are attributable to that Trustee's own:

- (a) dishonesty;
- (b) gross negligence; or
- (c) wilful misconduct which is known by that Trustee to be a breach of Trust.

~~7.4 The Trustees shall be absolutely indemnified by and out of the Trust Fund in respect of any loss or liability sustained while acting in good faith in connection with the Trust. This indemnity is in addition to and not in limitation of any other rights, indemnities or imitations or liabilities that may be available to the Trustees or to trustees in general.~~

~~8.11~~ 7A Trustees' Fees

~~8.11.1~~ 7A.1 Subject to ~~clause 15.3(d)~~clause 15.3(d)~~15.3(d)~~15.3(d)~~9.3(d)~~, each Trustee shall be entitled to be paid from the Trust Fund a reasonable fee for his or her services as a Trustee of the Trust assessed by the Trustees from time to time. This is a modification of the duty not to profit in section 36 of the Trusts Act and the duty to act for no reward in section 37 of the Trusts Act.

11.2 7A.2 The total amount of trustee fees paid in each financial year shall be disclosed in the annual accounts of the Trust.

12 Remuneration and Reimbursement of Trustees

- 12.1 Subject to clause ~~12.3~~~~12.3~~~~12.3~~, each Trustee may be remunerated for services provided by the Trustee in connection with the Trust (including services provided as a Trustee), provided that any such remuneration is reasonable having regard to that Trustee's duties and responsibilities, the services provided, and any remuneration paid to that Trustee for services in accordance with clause ~~12.2~~~~12.2~~~~12.2~~.
- 12.2 Subject to clause ~~12.3~~~~12.3~~~~12.3~~, any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade may be paid all usual professional, business and trade charges for services provided by that person or that person's employee or partner in connection with the Trust including acts which a Trustee, not being in any profession, business or trade, could have done personally. This is a modification of the duty to act for no reward in section 37 of the Trusts Act.
- 12.3 If any remuneration is to be paid under clauses ~~12.1~~~~12.1~~~~12.1~~ and ~~12.2~~~~12.2~~~~12.2~~, the amount of the remuneration must not exceed fair market value for the services provided.
- ~~8.2~~12.4 Each Trustee is entitled to be indemnified against, and reimbursed for, expenses, including travelling, hotel and other expenses, properly incurred by the Trustee in connection with the Trust.

13 Chair Of The Trust

- ~~9.4~~13.1 All meetings of the Trust shall be presided over by the Chair or, in his or her absence, by the Deputy Chair, appointed pursuant to clause ~~15.3(b)~~~~15.3(b)~~~~15.3(b)~~.
- 13.2 The Chair and Deputy Chair shall remain in office until the next annual general meeting of the Trust or such earlier date as when the position becomes vacant, in which case the Trustees shall fill the vacancy from amongst their number.

14 Other Officers

- ~~9.2~~14.1 For the purposes of administration of the Trust, the Trustees may from time to time employ, appoint or engage a person or persons to hold any office or offices in respect of the Trust (for example, financial officer, treasurer or secretary), as determined by the Trustees. A person appointed to hold any such office need not be a Trustee.

15 Annual General Meetings

- ~~10.4~~15.1 The Trust shall within five months of the end of each financial year hold an annual general meeting.
- ~~10.2~~15.2 The annual general meeting shall be open to all members of the public and notice of the meeting shall be published at least 10 Working Days prior to the meeting being held by the following means:-

- (a) On the Trust's website, remaining on there for the ~~10 Working~~4 Days prior to the meeting; or
- (b) In one or more social media platforms as determined by the Trustees that is accessible by persons residing within the District remaining on there for the ~~10 Working~~4 Days prior to the meeting; and
- (c) In a newspaper circulating within the District.

~~10.3~~15.3 The following business shall be conducted at the annual general meeting:

- (a) The trustees shall present an annual report and audited financial statements for the preceding financial year.
- (b) The Trustees shall appoint a Chair and Deputy Chair from amongst their number.
- (c) The Trustees shall appoint an auditor for the current financial year.
- (d) The Trustees shall determine the ~~trustee~~ fees to be paid to ~~themselves~~ the Trustees for the current financial year.
- (e) Such other business as the Trustees ~~consider~~consider appropriate.

14.16 Revocation Or Addition Variation

~~14.4~~16.1 Subject to clause ~~40.2~~16.2~~16.2~~16.2, the terms of this Deed, including for the avoidance of doubt, the expression of the objects, purposes and proposed activities of the Trust as set out at clause ~~3-3~~ and any other term of this Deed whatsoever (including the Schedule hereto), may be altered, added to, rescinded or otherwise amended at any time by a resolution of the Trustees PROVIDED THAT no ~~alteration, addition, rescission or other amendments~~such variation shall be made which shall permit the Trust Fund to be applied for any purpose that is not a Charitable Purpose or Energy Related Charitable Purpose and no alteration to the proviso to this clause ~~40.4~~16.1~~16.1~~16.1 shall be permitted.

16.2 Except where an alteration, addition, rescission or other amendment to this Deed is of an administration nature only or is required to retain the charitable status of the Trust for taxation purposes, no such alteration, addition, rescission or other amendment shall be effective unless the Trustees shall have first consulted in a manner the Trustees in their absolute and unfettered discretion consider fair and reasonable in the circumstances with the people and communities within the District about the tenor or gist of that alteration, rescission or other amendment.

16.3 For the purpose of clause ~~16.2~~16.2, "of an administration nature only" may include a variation that the Trustees consider is (without limitation):

- (a) Of a grammatical nature or is intended to simplify and/or clarify drafting; or

(b) Necessary in light of legislative updates; or

(c) Common practice, such as to align with technological advances.

12.17 Winding Up

12.17.1 If at any time:

- (a) a special resolution of the Trustees that the Trust be wound up has been passed after the Trustees have formally consulted with the people, local government, and communities within the District about a wind up of the ~~Trust; or~~ Trust; or
- (b) the ~~objects of the Trust's Purposes~~ shall ~~fail; or~~ fail; or
- (c) for any other reason the purposes hereof shall become wholly frustrated and incapable of being carried out,

the Trustees shall proceed to wind up the Trust.

12.217.2 Upon a winding up for any reason the surplus assets and funds of the Trust after payment of all liabilities shall be applied towards such Charitable Purposes in New Zealand consistent with the purposes of the Trust as may be determined by the Trustees or in default of such determination as may be directed by the High Court of New Zealand.

13.18 Incorporation

13.1 The Trustees may at any time incorporate the Trust as a Board under the provisions of Part II of the Charitable Trusts Act 1957.

18.1

18.2 If and when the Trustees become incorporated the Trustees shall provide a common seal for the Trust which shall be kept by the Chair for the time being and which shall be affixed by the authority of the Trustees to any document requiring execution by the Trustees. Every such affixing shall be performed in the presence of and accompanied by the signatures of two trustees, which signatures shall be sufficient evidence of the authority to affix such seal and no person dealing with the Trustees shall be bound or concerned to see or enquire as to the authority under which any document is sealed and in whose presence.

19 Dispute Resolution

19.1 Any dispute arising out of or relating to this Deed may be referred to an ADR process on the following basis:

- (a) in the first instance, the parties will seek to promptly discuss the matter and to negotiate in good faith to resolve the dispute;

- (b) if the dispute is not resolved by discussion in good faith within 5 Working Days, then the ADR process may be initiated by either party writing to the other party and identifying the dispute which is being suggested for resolution by way of an ADR process and which form of ADR process is suggested;
- (c) the other party will either agree to proceed with the proposed ADR process or propose an alternative ADR process or agree to attend a preliminary meeting with a mediator or arbitrator to discuss whether an ADR process would be helpful in the circumstances;
- (d) the parties will agree on a suitable person to assist in resolution of the dispute via an ADR process or will ask AMINZ to appoint a mediator or an arbitrator as the case may be;
- (e) the ADR process will be in accordance with AMINZ protocols and, if it is an arbitration, in accordance with the provisions of the AMINZ Arbitration Rules and the Arbitration Act 1996.

19.2 The ADR process will be terminated by:

- (a) signing of a settlement agreement by the parties;
- (b) notice to the parties by a mediator or arbitrator appointed in accordance with clause ~~19.149.149.149.4~~, after consultation with the parties, to the effect that further efforts at mediation or arbitration are no longer justified;
- (c) an arbitral award being made within the meaning of the Arbitration Act 1996; or
- (d) the expiry of 60 Working Days from the commencement of the ADR process, unless the parties expressly consent in writing to an extension of this period.

19.3 If the ADR process should be terminated as provided in clause ~~19.249.249.249.2~~, any dispute or difference arising out of or in connection with this Deed, including any question regarding its existence, validity or termination, may be determined by a court or tribunal of competent jurisdiction.

19.4 Nothing in clauses ~~19.149.149.149.1~~ to ~~19.549.549.549.5~~ will require the Trustees to submit to an ADR process any matter that the Trustees consider is more appropriately dealt with by a court or tribunal of competent jurisdiction.

~~13.219.5~~ If, subsequent to the establishment of these trusts, AMINZ ceases to exist or has amalgamated with another entity or has changed its name, then the Trustees must by resolution in writing determine which organisation they consider most nearly fulfils the objects intended and that will stand in the place of AMINZ for the purposes of clauses ~~19.149.149.149.4~~ to ~~19.549.549.549.5~~. The decision of the Trustees in this regard will be final and binding.

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DRAFT

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SIGNED by **ALISON MAY LAWSON**
in the presence of:

Witness signature

Occupation

City of residence

SIGNED by **JOHN BRIAN BURKE**
in the presence of:

Witness signature

Occupation

City of residence

SIGNED by **PETER JOHN DAWE**
in the presence of:

Witness signature

Occupation

City of residence

SIGNED by **IAN REX HUTCHINGS**
in the presence of:

Witness signature

Occupation

City of residence

SCHEDULE 1

Schedule 1 – Procedural Rules Of Trustees

1 Financial year

~~4.1~~ The financial year of the Trust shall be the year ending 30 June or such other period as fixed by the Trustees.

~~1.1~~

2 Proceedings of Meeting of Trustees

~~2.1~~ Subject to clause 2.2 of this Schedule, ~~the~~ Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, ~~PROVIDED THAT~~

~~2.2~~ subject to a waiver of this requirement by all of the Trustees, No meeting of Trustees shall be held unless all Trustees have been given ~~two~~ 2 Working Days' notice of the proposed meeting (which notice may be issued by one of the Trustees), ~~unless this requirement is waived by all of the Trustees.~~

~~1.2.2.3~~ Questions arising at any meeting shall be decided by a majority of votes. In the case of equality of votes the Chair shall have a second or casting vote.

~~1.3.2.4~~ The quorum for meetings of the Trustees shall be three or such other number as the Trustees may determine from time to time and shall include any Trustee whether attending the meeting in person, by telephone, by audio-visual link (AVL) or otherwise as permitted pursuant to ~~c~~Clause 2.6 of this Schedule.

~~2.5~~ The Trustees shall cause to be kept minutes of all meetings and any minute or extract from any minute purporting to be signed by the Chair of the meeting at which such minute was confirmed shall be sufficient evidence without further proof of the matters referred to in that minute.

2

~~2.1~~ The Trustees shall cause proper books of account to be kept showing all assets comprising the Trust Fund and all moneys received and disbursed by the Trustees and shall prepare annual accounts which shall be audited by a person who is independent of the Trust's financial and accounting advisors. The auditor shall be appointed by the Trustees.

~~3~~ All moneys payable to the Trust may be paid to any secretary, accountant or other officer appointed by the Trustees for that purpose and the receipt of a Trustee or

~~such secretary, accountant or other officer shall be a full and sufficient discharge for all moneys so payable.~~

~~4 A resolution in writing signed by all the Trustees or all of those permitted to vote on the particular question subject of the resolution shall be as valid and effectual as if it had been passed at a duly convened meeting of the Trustees.~~

4.4.2.6 Notwithstanding any other provision in this Deed, the contemporaneous linking together by telephone, AVL or other electronic means of a number of the Trustees ("the participants") being not less than the quorum shall be deemed to constitute a meeting and all the provisions of these rules as to the meeting shall apply to such meetings so long as the following conditions are met:

- (a) All the participants for the time being shall be entitled to notice of the meeting by telephone, email or other electronic means and to be linked by telephone, AVL or other electronic means for the purposes of such a meeting.
- (b) Each of the participants taking part in such a meeting must be able to hear and where applicable see each of the others taking part at the commencement of the meeting.
- (c) At the commencement of such a meeting, each participant must acknowledge ~~his or her~~their presence for the purpose of such a meeting to all the others taking part.
- (d) A participant may not leave the meeting by disconnecting ~~his or her~~their telephone, computer or other device without having previously obtained the express consent of the ~~chairperson~~Chair of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting, unless having obtained the express consent of the ~~chairperson~~Chair to leave the meeting ~~as aforesaid~~.
- (e) The location of the meeting is deemed to take place at the physical location for the participants to attend within the District or if there is none, where the ~~Chairperson~~Chair is situated.~~All the participants for the time being shall be entitled to notice of the meeting by telephone, email or other electronic means and to be linked by telephone, AVL or other electronic means for the purposes of such a meeting.~~
- (f) ~~Each of the participants taking part in such a meeting must be able to hear and where applicable see each of the others taking part at the commencement of the meeting.~~
- (g) ~~At the commencement of such a meeting, each participant must acknowledge his or her presence for the purpose of such a meeting to all the others taking part.~~
- (h) ~~A participant may not leave the meeting by disconnecting his or her telephone, computer or other device 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 such a meeting, unless having obtained the express consent of the chairperson to leave the meeting as aforesaid.~~

~~(i) The location of the meeting is deemed to take place at the physical location for the participants to attend within the District or if there is none, where the Chairperson is situated.~~

4.2 Minut~~e~~s of the proceedings at a meeting held in accordance with ~~c~~Clause ~~2.68~~ of this Schedule shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by or on behalf of the Chair.

~~2.7~~

3 Record Keeping and Accounts

~~3.1 The Trustees shall cause proper books of account to be kept showing all assets comprising the Trust Fund and all moneys received and disbursed by the Trustees and shall prepare annual accounts which shall be audited by a person who is independent of the Trust's financial and accounting advisors. The auditor shall be appointed by the Trustees.~~

~~3.2 All moneys payable to the Trust may be paid to any secretary, accountant or other officer appointed by the Trustees for that purpose and the receipt of a Trustee or such secretary, accountant or other officer shall be a full and sufficient discharge for all moneys so payable.~~

4 Resolutions

~~4.1 A resolution in writing signed by all the Trustees or all of those permitted to vote on the particular question subject of the resolution shall be as valid and effectual as if it had been passed at a duly convened meeting of the Trustees.~~

5 Trustees Fees

4.3 A Trustee may be paid reasonable out of pocket expenses incurred with the authority of the Trustees or incurred in attending meetings of the Trustees. Any Trustee being a professional person may charge a reasonable fee for any professional services rendered by him or her to the Trust. This is a modification of the duty not to profit in section 36 of the Trusts Act and the duty to act for no reward in section 37 of the Trusts Act.

Schedule 2 – Trustee Appointment Process

1 General

1.1 For the purpose of this schedule, any reference to person, Trustee, Nominee or appointor means a natural person.

2 Appointment Committee

2.1 Trustees are appointed by an appointment committee, a committee of no less than 5 people who are delegated authority to conduct the Trustee Appointment Process by the Trustees ("Appointment Committee").

2.2 The Appointment Committee members are appointed annually every two (2) years prior to the annual trustee appointment process on the following basis:

- (a) One member appointed by the current Trustees;
- (b) One member appointed by the Wellington City Council;
- (c) One member appointed by the Porirua City Council;
- (d) One member appointed by the Hutt City Council; and
- (e) One member appointed by the Upper Hutt City Council.

2.3 In the event of any amalgamation of the abovenamed Councils, the successor Council/s covering the amalgamated District will appoint the relevant members of the Appointment Committee.

2.4 Each Appointment Committee member appointed by a Council will be a current appointed/delected member of the relevant Council.

2.5 Any member appointed to the Appointment Committee must reside within the Trusts' Districts.

2.6 With the exception of clause 8.6(b), a person will not be eligible to be a Appointment Committee member if any of clause 8.6 applies to them.

2.7 The Appointment Committee shall appoint a Chairman/Chairperson at their first meeting. The Chairman/Chairperson shall:

- (a) Organise meetings of the Appointment Committee members throughout the Trustee Appointment process; and
- (b) In the event the Appointment Committee members are unable to decide on what nominee is best suited to be a Trustee, the Chairman/Chairperson will have a casting vote.

2.8 For the avoidance of doubt, the Appointment Committee will not receive any remuneration for this role.

3 Annual Appointment Process

3.1 The Appointment Committee will carry out the following annual trustee appointment process every two (2) years:

- (a) In September of the relevant year, the Appointment Committee will be appointed in accordance with clause 2.
- (b) On 1 October of the relevant year, the Appointment Committee will call for nominations to fulfil all vacant Trustee positions through all reasonable public methods. The Appointment Committee must ensure the call for nominations:
 - (i) Specifies the requirements Trustees must meet at clause 8.6 and clause 2.4 of Schedule 2.
 - (ii) Clearly states the period that nominations are open.
 - (iii) Clearly states the method/s of submitting nominations.
 - (iv) Clearly states any further information the Appointment Committee will seek from the nominees and deems appropriate, including but not limited to CV, professional references, police checks and credit checks.
- (c) In November of the relevant year, the Appointment Committee will:
 - (i) close the nomination period;
 - (ii) carry out all checks noted at 3.1(b)(iv);
 - (iii) give reasonable consideration to clause 4.4; and
 - (iv) shortlist the preferred nominees.
- (d) In December of the relevant year, the Appointment Committee will:
 - (i) interview the shortlisted nominees;
 - (ii) vote on the most suitable nominees;
 - (iii) the nominee with a majority of votes will be the Appointed Trustee;
 - (iv) notify the newly appointed Trustee they were successful and will take office on 1 January the following year: and-
 - (v) notify the public of such decision through all reasonable methods.

3.2 In the years where the Local Government Body Elections take place, the Appointment Committee will endeavour to carry out and complete the Appointment process in clause 3.13.13.14.4 prior to such elections taking place.

3.3 The first Trustee Appointment Committee process under this clause 3 will commence in 20265.

3.4 The decision of new Trustees by the Appointment Committee will be binding on the Trustees.

3.5 The Appointment process shall otherwise be conducted in such manner as the Trustees may from time to time determine. Notwithstanding the timeframes listed in this clause 3, the Trustees may resolve to amend any of the timeframes referred to in this clause 3 if the Trustees determine those timeframes are unworkable or inappropriate in any relevant appointment period.

4 **Appointment Committee Considerations**

4.1 The Trustees (and the Appointment Committee as the case may be) will endeavour to ensure that at any time, the Trustees comprise the Districts, and as follows:

- (a) Two Trustees appointed reside in the boundaries of Lower Hutt City.
- (b) One Trustee appointed resides in the boundaries of Upper Hutt City.
- (c) One Trustee appointed resides in the boundaries of Porirua City.
- (d) One Trustee appointed resides in that part of the District within the boundaries of the Northern Ward of Wellington City and including the suburbs of Broadmeadows and Ngauranga.

4.2 Each nominee shall only be nominated for one area as defined by clause 4.1.

4.3 At all times, there shall be at least three (3) Trustees who reside in the boundaries described at clause 4.1.

4.4 The Trustees and the Appointment Committee (as the case may be) will have regard to cultural, ethnic, gender, and professional skill set considerations when assessing nominees.

5 **Trustees**

5.1 The number of Trustees will be five.

5.2 Trustees are appointed for a four (4) year term. Subject to clause 8.3(a), a four (4) year period means incoming Trustees will commence the role from 1 January the year following Appointment and end the role on 31 December, 4 years later.

5.3 In the event a Trustee is appointed by the remaining Trustees to take office until the next ~~annual~~ Trustee appointment process, that Trustee will be eligible to be separately appointed for two (2) four (4) year terms.

6 **Current Trustees**

6.1 Subject to clause 8.6 (except clause 8.6(b), which will not apply to the Trustees listed in this clause 6.1), the current Trustees shall continue to hold office as Trustees up to and including the following dates:

- (a) Nick Legget – 31 December 2026~~5~~.
- (b) Anita Baker – 31 December 2026.
- (c) Campbell Barry – 31 December 2028~~7~~.
- (d) Paul Swain – 31 December 2028.
- (e) Tony Stallinger – 31 December 2030~~29~~.

7 **Continuity of Trustees**

7.1 At each ~~annual~~ appointment round, at least one (1) Trustee appointment will be made. When no vacancies automatically arise by virtue of an existing Trustee's term being at an end, retirement or removal of a Trustee, ~~the then longest standing~~ the Trustee who has been the longest serving trustee since their last appointment will automatically be deemed to retire. Any persons who became trustees on the same day must retire in the same order as they were elected by the then Appointment Committee.

7.2 In any ~~annual~~ trustee appointment round where more than one (1) Trustee elects or is required to retire at that time, the Appointment Committee must fill each vacant position.