

PETER DUNCAN GEORGE TOWNEND

Settlor

PETER DUNCAN GEORGE TOWNEND and TREFFERY JEAN BARNETT

Trustees

**DEED OF TRUST ESTABLISHING
YAKITY YAK KAYAK CLUB TRUST**

THIS DEED dated

12th October

2014

PARTIES:

1. **PETER DUNCAN GEORGE TOWNEND** of Auckland, Company Director (**Settlor**)
2. **PETER DUNCAN GEORGE TOWNEND** of Auckland, Company Director, **TREFFERY JEAN BARNETT** of Auckland, Company Director (**Trustees**)

BACKGROUND:

- A. The Settlor has recognised the need to foster the development and increased participation of recreational and sport kayaking and canoeing in New Zealand.
- B. The Settlor considers it desirable to establish a trust for the purposes set out in detail in this deed.
- C. The Trustees are prepared to act as trustees of the Trust Fund.
- D. By way of initial gift to the Trustees to establish the Trust, the Settlor has paid the sum of \$10.00 to the Trustees on the date of execution of this deed.

TRUST TERMS:

1. **INTERPRETATION**

In this deed unless the context indicates otherwise:

1.1 **Definitions:**

Balance Date means 31 March or any other date adopted from time to time by the Trustees as the end of the Trust's Financial Year;

Chairperson means the Trustee appointed in accordance with clause 6.4;

Financial Year means any year or other accounting period ending on the Balance Date;

Property means real or personal property of any kind and includes any right or interest in such property and anything in action;

Secretary means the person appointed in accordance with clause 6.5;

Trust means the trust created by this deed;

Trust Fund means any Property, which may be paid to or held under the control of or vested in or acquired by the Trustees for the Trust from any source on or after the date of this deed and whether by way of gift, bequest, devise, purchase, exchange or otherwise; and

Trustees means the trustee or trustees for the time being of the Trust and, where the trustees of the Trust have incorporated as a board under the Charitable Trusts Act 1957, either the trustees acting as a board or the trustee or trustees for the time being constituting the board, as the context requires;

- 1.2 **Clauses:** references to clauses are references to this deed's clauses;



- 1.3 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;
- 1.4 **Gender:** references to one gender include the other gender;
- 1.5 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect this deed's interpretation;
- 1.6 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.7 **No Limitation:** references to anything of a particular nature either before or after a general statement do not limit the general statement unless the context requires;
- 1.8 **Parties:** references to parties are references to parties to this deed;
- 1.9 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.10 **Plural and Singular:** singular words include the plural and vice versa; and
- 1.11 **Statutes and Regulations:** references to any statutory provision include any statutory provision, which amends or replaces it, and any subordinate legislation made under it.

2. NAME OF TRUST

- 2.1 The name of the Trust is Yakity Yak Kayak Club Trust.
- 2.2 The Trustees may change the name of the Trust by deed to any other name which they may determine from time to time, provided that:
- (a) the Trustees may be incorporated as a trust board under the Charitable Trusts Act 1957 under the new name; or
 - (b) if the Trustees will not be incorporated as a trust board, the new name is not offensive or liable to mislead any member of the public.

3. PURPOSES OF TRUST

- 3.1 The Trustees hold the Trust Fund on trust to pay or apply so much of the capital and income of the Trust Fund as the Trustees think fit exclusively for or towards any one or more of the following purposes:
- (a) to foster the development and increased participation of recreation and sport kayaking and canoeing in New Zealand; and
 - (b) to provide a platform, leadership and a community for people to take up the activity of kayaking and canoeing in a safe and organised way in New Zealand;
 - (c) Promote, develop, organise and train volunteers and leaders for kayaking and canoeing activities organised by the Trust;
 - (d) To co-operate with, and/or assist, other trusts, clubs or organisations having purposes similar to those of the Trust; and
 - (e) all things incidental to the purposes described in this clause 3.1.

3.2 If, because of any change in the law brought about by the enactment of new legislation and/or the amendment or repeal of existing legislation, or by any change in the official interpretation or official application of any such legislation, it is at any time necessary to amend the terms of this deed in order to achieve and/or preserve the availability of any concession in relation to the Trust with the Inland Revenue Department (if any), which would otherwise be available were it not for the change in the law, then, despite clause 12, the terms of this deed will at that time be deemed to be amended to the extent necessary.

3.3 None of the purposes of the Trust will be:

(a) in any way 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 specifically or expressly requires it; and

(b) treated as subsidiary or ancillary to any other purpose of the Trust.

3.4 The Trustees are empowered to carry out any one or more of the purposes of the Trust independently of any other purpose of the Trust.

4. **POWERS OF TRUSTEES**

4.1 The Trustees, in connection with the Trust, will only promote the purposes of the Trust described in clause 3.

4.2 In particular and in addition to all other powers conferred by law, but subject to the restrictions contained in this deed:

(a) the Trustees will have the same powers as if they were the beneficial owner of the Trust Fund; and

(b) the Trustees' powers will not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.

4.3 None of the powers or authorities conferred on the Trustees by this clause or otherwise will be deemed subsidiary or ancillary to any other power or authority. The Trustees may exercise any of those powers and authorities independently of any other power or authority. If there is any ambiguity, this provision will be construed so as to widen and not restrict the Trustees' powers provided that at no time shall this provision be construed so as to prevent the availability of any concession in relation to the Trust with the Inland Revenue Department (if any), which would otherwise be available.

5. **APPOINTMENT AND REMOVAL OF TRUSTEES**

5.1 The number of Trustees must be not less than 2 nor more than 5 provided that:

(a) if at any time there are less than 2 Trustees, the person having the power of appointment of Trustees must increase the number of Trustees to 2 as soon as is reasonably practicable; and

(b) the remaining Trustees will be entitled to act until the number of Trustees is increased and no act or decision of the remaining Trustees will be called into question on account of the fact that there were less than 2 Trustees when that act or decision was carried out or made.

5.2 The power of appointment of replacement Trustees is vested in the Settlor (being Peter Duncan George Townend), who also has the following powers:

- (a) to appoint at any time or times an additional Trustee or additional Trustees;
 - (b) to reappoint any retiring or retired Trustee as Trustee; or
 - (c) to appoint that person, or any of them, to be a Trustee.
- 5.3 The person having the powers of appointment under clause 5.2 also has the power to remove any Trustee.
- 5.4 The following persons may not hold office as a Trustee:
- (a) an individual who is under the age of 16 years;
 - (b) an individual who is an undischarged bankrupt or who is a discharged bankrupt but is prohibited by the Court from engaging in any form of business activity;
 - (c) a company, incorporated society or any other body corporate:
 - (i) which is being wound up or has gone into liquidation;
 - (ii) in respect of which a resolution has been passed appointing a liquidator;
 - (iii) in respect of which an order has been applied for or made by the court appointing a liquidator;
 - (iv) in respect of which a meeting of shareholders or members has been called at which the appointment of a liquidator will be considered;
 - (v) for which a receiver or statutory manager has been appointed in respect of all or any part of its assets; or
 - (vi) which has made or entered into, or attempted to make or enter into, any compromise, assignment or other arrangement with or for the benefit of all or any class of its creditors;
 - (d) a person who has been:
 - (i) convicted of any crime involving dishonesty, within the meaning of section 2(1) of the Crimes Act 1961, and sentenced for that crime within the last seven years; or
 - (ii) convicted of any offence punishable by a term of imprisonment of two or more years, or sentenced to imprisonment for any offence, unless that person has:
 - (A) obtained a pardon; or
 - (B) served, or otherwise suffered, the sentence imposed on that person;

provided that that person will not be disqualified from appointment as a Trustee, or may continue to hold office as a Trustee, but will be deemed to have taken 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;

- (e) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of a company under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988 or the Takeovers Act 1993;
- (f) a person who is subject to a property order made under the Protection of Personal and Property Rights Act 1988 or whose Property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or
- (g) a person who 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.

5.5 If the Settlor (being Peter Duncan George Townend) having the powers of appointment under clause 5.2 and removal under clause 5.3:

- (a) dies; or
- (b) is precluded from holding office as a Trustee under clause 5.4;

then the Trustees, but excluding that person if that person is also a Trustee, will have the power to:

- (c) remove those powers of appointment and removal from that person; and
- (d) revest those powers of appointment and removal in another person who may or may not be a Trustee.

From the date of any such revesting, this clause 5.5 will apply to the person in whom the powers of appointment and removal are revested as if that person were originally named in clause 5.2.

5.6 A Trustee will cease to hold office if that Trustee:

- (a) resigns by giving 30 days' written notice to the Secretary, who must circulate that written notice to the remaining Trustees within 10 days of receipt;
- (b) is precluded from holding office as a Trustee under clause 5.4;
- (c) fails to attend a meeting of the Trustees for a period of 12 months;
- (d) dies while holding office as a Trustee; or
- (e) is removed by the person having the power of removal of Trustees.

5.7 On every appointment, reappointment, removal or cessation of office of any Trustee, the Trustees must cause an entry to that effect to be recorded in the Trust's minute book.

6. ADMINISTRATION OF THE TRUST

6.1 The Trustees must regulate and conduct meetings as follows:

- (a) within four months of the end of each Financial Year, the Trustees must hold an annual general meeting;
- (b) the Secretary must give no less than 30 days' written notice of the annual general meeting to the Trustees;

(c) the business to be transacted at the annual general meeting will be the:

- (i) receipt of the financial statements;
- (ii) appointment of the auditor (if any); and
- (iii) setting of the Trustees' remuneration;

and any other business will be treated as special business and will be dealt with in accordance with clause 6.1(d);

(d) written notice of any special business must be given to the Secretary no less than 21 days before the annual general meeting and the Secretary must circulate a written agenda including all special business to the Trustees no later than 14 days before the annual general meeting;

(e) the Trustees will otherwise meet at any times and places, which they may agree, provided that any two or more Trustees may at any time requisition a meeting of Trustees by giving written notice to the Secretary and the Secretary must, within 10 days of receipt of that notice, convene a special general meeting by giving, subject to clause 13.1, not less than 10 days' notice of the meeting to the Trustees; and

(f) every notice of meeting given by the Secretary to the Trustees must:

- (i) be in writing; and
- (ii) state the date, time and place of the meeting;

and every notice of a meeting requisitioned under clause 6.1(e) must state the matters to be discussed at that meeting, but notice of any meeting may be abridged or waived if all the Trustees consent in writing to that abridgment or waiver.

6.2 A quorum at meetings of the Trustees shall be a majority of Trustees.

6.3 All acts done by any meeting of Trustees or by any person acting as Trustee will be as valid and effectual as if that Trustee or those Trustees:

- (a) had been duly appointed;
- (b) were qualified to hold office as Trustee; and
- (c) had complied with the rules and regulations made in accordance with clause 6.1;

even if it is later discovered that:

- (d) there was some defect in the appointment of any of the Trustees;
- (e) any of the Trustees were for any reason disqualified from holding office as Trustee; or
- (f) there was accidental failure to comply with the rules and regulations made in accordance with clause 6.1.

6.4 The Trustees must appoint a Chairperson of the Trustees from among their number who will hold office at the Trustees' pleasure.

- 6.5 The Trustees must from time to time appoint either one of their number or some other person to be Secretary who shall hold office at the Trustees' pleasure.
- 6.6 Except as otherwise provided, and subject to clause 6.2, all resolutions passed at a meeting of the Trustees may be by a majority of Trustees present at that meeting and any such resolution will be binding on all Trustees. The Chairperson will have a casting as well as a deliberative vote if there is a tie and equality of votes.
- 6.7 A written resolution, signed by all the Trustees, will be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustees.
- 6.8 The Trustees may from time to time rescind or vary any resolution of the Trustees by the same majority as was necessary to pass the resolution being rescinded or varied.
- 6.9 The Trustees must provide and keep a minute book. The Secretary must prepare and enter a record of all resolutions of the Trustees in the minute book. If confirmed by the Trustees, the Chairperson must sign those minutes as a true and correct record. Every minute purporting to be so signed will be prima facie evidence of the facts stated in those minutes.
- 6.10 The Trustees must keep an account at a bank, which they may determine from time to time. Cheques must be drawn, signed and endorsed by any person whom the Trustees from time to time authorise in writing.
- 6.11 The Trustees must ensure that:
- (a) full and correct records and accounts are kept of all their receipts, credits, payments, assets, liabilities, transactions and all other matters necessary for showing the true state and condition of the Trust Fund; and
 - (b) financial statements are prepared as soon as practicable after the end of each Financial Year, those statements must include:
 - (i) a statement of financial position;
 - (ii) a statement of financial performance;
 - (iii) a statement of cashflows; and
 - (iv) notes to those statements;giving a true and fair view of the financial position of the Trust Fund for that Financial Year and, if the Trustees so resolve, a chartered accountant appointed for the purpose by the Trustees will audit those financial statements; and
 - (c) any change to the Balance Date for the Trust has been approved, if required, by the Charities Commission under the Charities Act 2005 or by any other relevant authority.
- 6.12 Subject to clause 6.13, all documents required to be executed by the Trustees will be deemed to be validly executed and binding if those documents have been signed by at least 2 either being a Trustee or any other person whom the Trustees from time to time authorise in writing.
- 6.13 If the Trustees become incorporated as a board under the Charitable Trusts Act 1957 then:

- (a) the Trustees will provide a common seal for the board, which will be:
 - (i) deposited with the Secretary; and
 - (ii) affixed to any document requiring execution by the board under common seal; and
- (b) every affixing of the common seal must be:
 - (i) performed in the presence of and accompanied by the signatures of 2 Trustees, which will be sufficient evidence of authority to affix the seal; and
 - (ii) recorded in a seal register retained for such purpose.

6.14 The Trustees must cause to be prepared and retained or filed with any relevant person, including:

- (a) the Commissioner of Inland Revenue, pursuant to any revenue legislation; and
- (b) if applicable, the Charities Commission, pursuant to the Charities Act 2005;

all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations, applications, forms and other information required to be prepared or filed so as to achieve or preserve the availability of any concession in relation to the Trust with the Inland Revenue Department (if applicable).

6.15 Any notice to be given to the Secretary under this deed must be in writing signed by the person giving the notice and served at the office of the Trust. Any notice or document so served will be deemed to be duly given:

- (a) if delivered by hand, when so delivered;
- (b) if delivered by facsimile, when receipt is confirmed;
- (c) if delivered by post, on the third working day after posting; or
- (d) if sent by e-mail, on the sender's receipt of an e-mail message indicating that the e-mail has been opened at the recipient's terminal.

7. LIABILITY OF TRUSTEES

7.1 No Trustee will be liable for any loss to the Trust Fund arising from any act or omission of the Trustee unless it is attributable to that Trustee's own dishonesty or to the wilful commission or omission of any act known by that Trustee to be a breach of trust.

7.2 Subject to clause 7.1, despite:

- (a) the provisions of section 13C of the Trustee Act 1956; and
- (b) the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others;

the care, diligence and skill to be exercised by those persons will not be that required by section 13C of the Trustee Act 1956 but will at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

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

7.4 Subject to clauses 7.1 and 7.2, a Trustee will be chargeable only for any 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.

8. INDEMNIFICATION OF TRUSTEES

8.1 Each Trustee or 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 or former Trustee in connection with the Trust, except to the extent that those liabilities are due to:

(a) that Trustee's or former Trustee's own dishonesty or lack of good faith; or

(b) that Trustee's or former Trustee's wilful commission or omission of an act known by that Trustee or former Trustee to be a breach of trust.

9. TRUSTEE REMUNERATION AND EXPENSES

9.1 Subject to clause 9.3, any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade is entitled to 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.

9.2 Subject to clause 9.3, each Trustee is entitled to such remuneration for services provided as may be reasonable having regard to that Trustee's duties and responsibilities and to any remuneration paid to that Trustee in accordance with clause 9.1 for those services.

9.3 Any payment to a Trustee referred to in clauses 9.1 and 9.2 must not exceed fair market value for services provided and, where any such payment is a benefit or advantage to which clauses 11.2 to 11.4 apply, no Trustee receiving such payment and no person associated with such Trustee may determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

9.4 Each Trustee is entitled to be indemnified against, and reimbursed for, all travelling, hotel and other expenses properly incurred in connection with the Trust.

10. NO PRIVATE PROFIT

10.1 Nothing expressed or implied in this deed will permit:

(a) the Trustees' activities; or

(b) any business carried on by or on behalf of or for the benefit of the Trustees;

in connection with the Trust, to be carried on for the private profit of any individual.

11. MODIFICATION OF TRUST TERMS

11.1 The Trustees may from time to time by resolution carried by a majority of two-thirds of their number at that time modify or amend any term of this deed.

12. **WINDING UP THE TRUST**

12.1 The Trustees may wind up the Trust by a unanimous resolution of the Trustees, provided that:

- (a) that resolution must be passed at a Trustees' meeting called for that purpose; and
- (b) the Secretary must give not less than 30 days' notice of that meeting to the Trustees.

12.2 If, on the winding up of the Trust, any portion of the Trust Fund remains after satisfaction of all the debts and liabilities of the Trustees in connection with the Trust, none of that portion may be paid out or distributed other than for charitable purposes carried out exclusively within New Zealand. Alternatively, any surplus Property remaining after the winding up or dissolution of the Trust may be disposed of at the direction of a Judge of the High Court of New Zealand.

13. **GOVERNING LAW**

13.1 This deed is governed by New Zealand law. The Trustees submit to the non-exclusive jurisdiction of all courts having jurisdiction in New Zealand.

EXECUTED AS A DEED

SIGNED by **PETER DUNCAN GEORGE TOWNEND** as Settlor in the presence of:



Peter Duncan George Townend

Witness to signature:

M. A. Wright
Signature of witness

Margaret Anne Wright
Name of witness

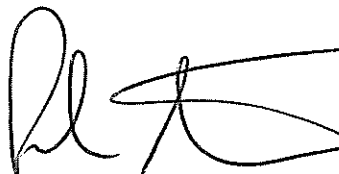
Occupation

Teacher

City/town of residence

Auckland

SIGNED by **PETER DUNCAN GEORGE TOWNEND** as Trustee in the presence of:



Peter Duncan George Townend

Witness to signature:

M. A. Wright
Signature of witness

Margaret Anne Wright
Name of witness

Occupation

Teacher

City/town of residence

Auckland



SIGNED by **TREFFERY JEAN BARNETT**
as Trustee in the presence of:



Treffery Jean Barnett

Witness to signature:

Signature of witness

M. A. Wright

Name of witness

Margaret Anne Wright

Occupation

Teacher

City/town of residence

Auckland
