

**KERIKERI CRUISING CLUB INCORPORATED**

and

**REX BARNABY, ANTHONY ROBSON HOOD,  
JOHN LIONEL GRAHAM, DOUGLAS GEORGE GALBRAITH  
&  
KEITH FREDERICK ARDERN**

**as trustees of the Kerikeri Cruising Club Marina Trust**

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**Deed of Undertaking**

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**Law North Limited  
Kerikeri  
Private Bag 1001, Kerikeri  
Phone 09 407 7099  
Fax 09 407 7095**

Deed signed on

2017

## PARTIES

- 1 **KERIKERI CRUISING CLUB INCORPORATED** an incorporated society formed under the provisions of the Incorporated Societies Act 1908 having its registered office at Kerikeri ('the Club')
- 2 **REX BARNABY** of Kerikeri, Farmer, **ANTHONY ROBSON HOOD** of Kerikeri, Businessman, **JOHN LIONEL GRAHAM** of Kerikeri, Retired, **DOUGLAS GEORGE GALBRAITH** of Kerikeri, Retired and **KEITH FREDERICK ARDERN** of Tauranga, Financial Advisor as trustees of the **KERIKERI CRUISING CLUB MARINA TRUST** created by trust deed dated (the Trust')

## BACKGROUND

- A The Club has established a marina at Doves Bay, Kerikeri Inlet and has obtained all permits for the purpose of the operation of the Marina.
- B The Club assigns licences in respect of Marina berths to Club members on the terms and conditions contained in the Marina Berth Licence.
- C The Trust was established to hold the Refurbishment Account and to ensure it is applied in accordance with the purpose of the Trust Deed, this Deed and the Marina Berth Licence for the respective rights and interests of the Club and the Berth Licensees.

## OPERATIVE PROVISIONS

### 1 Definitions

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

**"Berth Licensee"** means any person or persons who enter into a licence with the Kerikeri Cruising Club Incorporated and is noted on the Register as holding a Licence;

**"The Club"** means Kerikeri Cruising Club Incorporated, an incorporated Society formed under the provision of the Incorporated Societies Act 1908 having its registered office at Kerikeri;

**"Marina"** means the marina constructed at Doves Bay, Kerikeri Inlet;

**"Marina Berth Licence"** means a licence in the form agreed to between the Berth Licensee and the Club (and as amended from time to time) pursuant to which a Berth Licensee shall be or is entitled to use, occupy and enjoy a particular Marina Berth subject to the terms of the licence;

**"Marina Berth"** means a berth in the Marina;

**"Marina Site"** means that site in Doves Bay, Kerikeri Inlet;

**"Refurbishment Account"** means a trust account established by the Club and operated by the Trust, held with a bank in an interest bearing account and styled the "Kerikeri Cruising Club Refurbishment Account" in which the contributions received from the Berth Licensees by the Club shall be deposited. The trust account shall be operated by the Trust;

- 1.2 Clause headings appear as a matter of convenience and shall not affect the construction of this Deed

1.3 In this Deed unless the context otherwise requires:

- (a) The plural number includes the singular number and vice versa and words importing any gender include the other genders;
- (b) References to a statute including amendments to that statute and a statute passed in substitution for that statute, and regulations passed under that statute; and
- (c) A reference to 'written' or 'or in writing' includes electronic communication.

## **2 The Club's Covenants to perform Obligations**

2.1 The Club will assign Marina Berth Licences to eligible Club members on the terms of the Marina Berth Licence in place at the time of issue.

2.2 The Club will maintain a register of Berth Licensees.

2.3 The Club hereby appoints the Trust to comply with the Trust's purpose and to act in accordance with the Marina Berth Licence and the Trust hereby accepts such appointment. The Trust acknowledges that it is entering into this Deed for the benefit of the Berth Licensees and that the covenants apply to the benefit of the Trust will be held on trust by the Trust for the benefit of the Berth Licensees.

2.4 The Club covenants with the Trust for the benefit of the Berth Licensees that it shall perform all covenants and undertakings (express or implied) made or given by it to the Trust or the Berth Licensees in or pursuant to this Deed and in the Marina Berth Licence; including that it will maintain the Marina and perform all the obligations on its part contained or implied in all Marina Berth Licences ('the Obligations').

2.5 The Club covenants with the Trust that the Club shall procure that the management of the Marina be carried out in a proper and efficient manner. Without limiting the generality of the foregoing, the Club undertakes as follows:

- (a) as at the date of these presents and at all times thereafter during the operation of the Marina the Club has and enjoys and will have and will enjoy all the rights accorded to the licensee under any permit issued by the relevant territorial authorities;
- (b) It will use its best endeavours and skill to carry out its duties and obligations under this Deed in a proper and efficient manner, and in particular will ensure that at all times the Marina (having regard to the age of the Marina) is maintained in a thoroughly good and efficient manner;
- (c) It will use due diligence and vigilance in the exercise and performance of its functions, powers and duties as a manager;
- (d) It will account to the Club members and the Berth Licensees for all monies that it receives and will pay any such monies into the appropriate bank accounts;
- (e) It will duly pay or cause to be paid promptly on becoming due and payable all rents, rates, taxes, duties, assessments, liabilities and outgoings assessed or levied against itself or the Marina in respect of the Marina unless the Club has certified to the Trust in writing that the Club has contested and has written legal advice that it has reasonable grounds for contesting any such assessment or levy;
- (f) It will procure the structural integrity of the Marina will be maintained out of the Refurbishment Account and keep all parts of the Marina which shall be of a repairable nature in proper repair, order and condition and maintain the same in reasonable working order and efficiency including that it will keep the bed of the sea within the Marina properly dredged and

not pull down, remove or injure any part of the same (except in the ordinary course of business or pursuant to any lawful requirement or except with the other reasonable justification) without restoring or replacing the same and will obtain all necessary consents required pursuant to any permit issued by the relevant territorial authorities prior to undertaking any such work and will permit the Trust and any person authorised by it in writing to enter upon and inspect the Marina or any part thereof and to view the state and condition thereof and give all reasonable facilities for the purpose.

- (g) It will cause to be kept insured (including Public Liability cover) with a reputable insurer for the full insurable value all parts of the Marina which may be of an insurable nature against fire and any other risks usually insured against including (without limiting the generality of the foregoing) storm and tempest, and marina fire and at all times pay or cause to be paid the premiums and other sum of money payable for all the above purposes and will not do or permit or suffer to be done any act or thing which may prejudice or vitiate any such insurance and the Club will confirm with the Trust details of insurance when it is renewed each year;
- (h) If the Marina or any part thereof is destroyed or damaged by fire or by storm or tempest then all monies received in respect of such insurance shall be expended with all convenient speed in repairing and reinstating the Marina (with such modifications as may be necessary to obtain all necessary approvals, which approvals the Club shall exercise its best endeavours to obtain);
- (i) It will comply with and observe each of the covenants, obligations, provisions and conditions contained in this Deed or imposed by the relevant territorial authorities in any permit and on its part to be observed and performed, and will ensure that it conducts itself as to obtain a renewal of all necessary permits if such renewal is available or offered to the Club and will ensure that the Trust is notified immediately they are aware that any condition or requirement of any permit cannot be fulfilled;
- (j) It will not enter into any arrangement or contract which would have the effect of defeating any of the terms of this Deed or of creating any obligation of liability on the Trust except only in terms approved of by the Trust in writing;
- (k) The Club will provide the Trust with a copy of its audited accounts annually;
- (l) The Club will annually call a meeting of Berth Licensees; and
- (m) The Club shall report to the Trust not less than once in each financial year as to the adequacy of the Refurbishment Account to meet future expenditure on the Marina. Such report shall state the amount that in the Club's reasonable opinion is required to be expended on the refurbishment of the Marina in the next three (3) years, and the adequacy of the Refurbishment Account (assuming normal recovery from the Berth Licensees) to meet such expenditure.

#### **Renewal Coastal Permit/Licence**

2.6 The Club will comply with and observe all covenants, obligations, provisions and conditions contained in this Deed and in the Coastal Permit. Further, the Club will conduct itself and the operation of the Marina in such a manner so as to ensure that it is able to obtain a renewal or extension of the Coastal Permit, if such a renewal is available or offered to the Club. To this end, the Club shall cause a Meeting to be held on or before three (3) years from the expiry of the Coastal Permit with a view to obtaining directions from Berth Licensees on the following matters:

- (a) Whether the Club should obtain a renewal or extension of the Coastal Permit or new coastal permits for the Marina;
- (b) If the Club obtains a renewal or extension of the Coastal Permit or new coastal permit for the Marina, whether the term of the Licences be extended to coincide with the term of the renewed or extended Coastal Permit or new coastal permit (as the case may be) less one Working Day and the other terms and conditions of the Licences be amended to coincide

with any consequential changes to the terms of the renewed or extended Coastal Permit or new coastal permit;

- (c) To determine if any additional Licence payments, beyond those incurred by the Club in obtaining the extension or renewal of the Coastal Permits or new coastal permits, as the case may be, should be paid by the Berth Licensees upon the extension of the Licences contemplated at paragraph (b) above;

the directions of the Berth Licensees on the above matters, so long as such directions are passed by Ordinary Resolution at the Meeting, shall be binding on the Club and the Club must act promptly and with all due diligence to give effect to those directions, including complying with all necessary law.

**3 The Trust Covenants to perform Obligations**

- 3.1 The Trust shall establish in the name of the Club a bank account styled as the Kerikeri Cruising Club Refurbishment Account which shall be operated by the Trust and the Club shall deposit all contributions received from the Berth Licensees which comprise the Refurbishment Account, to the credit of the Refurbishment Account. The Club shall hold the Refurbishment Account which is operated by the Trust and shall apply the Refurbishment Account towards any major refurbishment of the Marina or replacement of fixed and floating structures.
- 3.2 The Trust shall be the sole signatory to the Refurbishment Account and shall make withdrawals and payments on that bank account only on the recommendation of the Club.
- 3.3 When in the opinion of the Club any refurbishment of the Marina is required, the Club shall consult with the Trust and obtain the Trust’s approval to the expenditure of money on the Marina from the Refurbishment Account before work commences. Upon granting its approval to the refurbishment of the Marina the Trust shall authorise payment from the Refurbishment Account required to pay for the refurbishment of the Marina.
- 3.4 In the event a dispute between the Club and a Berth Licensee reaches the stage when it cannot be resolved, the Trust shall appoint its Chairperson as mediator in accordance with clause 27.4 of the Berth Licence Rules.

IN WITNESS this deed is duly executed.

**Signed as a deed**

**SIGNED** The *common seal* of )  
**KERIKERI CRUISING CLUB INC** ) \_\_\_\_\_  
was affixed in the presence of )

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Full Name of Witness)

\_\_\_\_\_  
(Occupation of Witness)

\_\_\_\_\_  
(Residential Address)

\_\_\_\_\_  
(City/Town/Locality)

**SIGNED** by )  
**REX BARNABY** )  
as trustee in the presence of: )

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\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Full Name of Witness)

\_\_\_\_\_  
(Occupation of Witness)

\_\_\_\_\_  
(Residential Address)

\_\_\_\_\_  
(City/Town/Locality)

**SIGNED** by )  
**ANTHONY ROBSON HOOD** )  
as trustee in the presence of: )

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(Signature of Witness)

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(Full Name of Witness)

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(Occupation of Witness)

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(Residential Address)

\_\_\_\_\_  
(City/Town/Locality)

**SIGNED** by )  
**JOHN LIONEL GRAHAM** )  
as trustee in the presence of: )

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(Signature of Witness)

\_\_\_\_\_  
(Full Name of Witness)

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(Occupation of Witness)

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(Residential Address)

\_\_\_\_\_  
(City/Town/Locality)

**SIGNED** by )  
**DOUGLAS GEORGE GALBRAITH** )  
as trustee in the presence of: )

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(Signature of Witness)

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(Full Name of Witness)

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(Occupation of Witness)

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(Residential Address)

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(City/Town/Locality)

**SIGNED** by )  
**KEITH FREDERICK ARDERN** )  
as trustee in the presence of: ) \_\_\_\_\_

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(Signature of Witness)

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(Full Name of Witness)

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