

REX BARNABY

ANTHONY ROBSON HOOD

JOHN LIONEL GRAHAM

DOUGLAS GEORGE GALBRAITH

and

KEITH FREDERICK ARDERN

Trustees

Deed of Declaration of

Trust creating the Kerikeri Cruising Club Marina Trust

Law North Limited

Kerikeri

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The Kerikeri Cruising Club Marina Trust

Contents

Contents

1	Name
2	Office
3	Purposes
4	Tangata whenua
5	Structure of the Trust
6	Members of the Board
7	Proceedings of the Board
8	Powers
9	Income, benefit or advantage to be applied to Trust purposes
10	Accounts
11	Resignation of members of the Trust
12	Annual general meeting
13	Alteration of deed

Deed signed on

2017

PARTIES

- 1 **REX BARNABY** of Kerikeri, Farmer
- 2 **ANTHONY ROBSON HOOD** of Kerikeri, Businessman
- 3 **JOHN LIONEL GRAHAM** of Kerikeri, Retired
- 4 **DOUGLAS GEORGE GALBRAITH** of Kerikeri, Retired
- 5 **KEITH FREDERICK ARDERN** of Tauranga, Financial Advisor

BACKGROUND

- A The parties to this deed wish to establish a trust in New Zealand (**Trust**) for the objects described in clause 3 of this deed and to give effect to such desire are at the same time giving to the Board the sum of Ten Dollars dollars (\$10.00).
- B The parties have agreed to enter into this deed specifying the purposes of the trust and providing for its control and government.

OPERATIVE PROVISIONS

1 Name

The name of the Trust shall be the "**Kerikeri Cruising Club Marina Trust**".

2 Definitions

2.1 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;

"Kerikeri Cruising 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 Committee" means a subcommittee of the Kerikeri Cruising Club elected by the Berth Licensee;

"Refurbishment Account" means the contributions of the Berth Licensees set aside for refurbishment of the Marina facilities not covered by annual maintenance.

2 Office

The office of the Trust shall be such place in 346 Opito Bay Road, Kerikeri 0294 as the Board of Trustees may determine.

3 Purposes

The purposes of the Trust are as follows:

- (a) to operate on behalf of the Berth Licensees the Refurbishment Account and apply the funds to the refurbishment of the Marina not covered by annual maintenance;
- (b) to approve the decisions of Kerikeri Cruising Club relating to the management of the Refurbishment Account on behalf of the Berth Licensees to ensure the rights of the Berth Licensees are not diminished or lost;
- (c) to ensure the proper operation of the Marina to prevent the Berth Licensees' loss of use except in an emergency;
- (d) to approve the decisions of Kerikeri Cruising Club for the refurbishment from the Refurbishment Account; and
- (e) to mediate in disputes between the Club and Berth Licensees.

4 Tangata whenua

In attaining its purposes the Trust shall recognise the views and expectations of tangata whenua.

5 Structure of the Trust

The Trust shall be administered by the Board of Trustees (**Board**) who shall be accountable to the Trust.

6 Members of the Board

6.1 Numbers

The Board shall consist of not less than five consisting of four appointees by the Kerikeri Cruising Club general committee and one independent person who shall be the Chairperson, this person shall be appointed by the Kerikeri Cruising Club general committee.

No member of a standing committee or a club officer shall be a Board Member.

6.2 Membership of Board

The signatories to this deed shall be the first Board for a term of three (3) years and subsequently the appointed member Board shall be approved at the three (3) yearly intervals at the annual general meeting of the Kerikeri Cruising Club.

The Chairperson is appointed for a period of five (5) years by the Kerikeri Cruising Club. Upon the expiry of the then current term, the current Chairperson shall be eligible for re-appointment or a replacement chairperson shall be appointed by the Kerikeri Cruising Club.

6.3 Retirement of Board

The Trustees except the Chairperson on the Board shall retire at the annual general meeting of the Kerikeri Cruising Club as required but shall be eligible for re-election at the same and subsequent meetings.

6.4 Name of board

The name of the Board shall be the "**Kerikeri Cruising Club Marina Trust Board**".

7 Proceedings of the Board

7.1 Meetings

The Board shall meet at such times and places as it determines.

7.2 Officers

The Board may appoint the officers of secretary and treasurer. These offices may be combined. The secretary and treasurer need not be members of the Board and may also be employed by the Kerikeri Cruising Club.

7.3 Chairperson

The Chairperson shall preside at all meetings of the Board at which she or he is present. In the absence of the Chairperson from any meeting, the Board members present shall appoint one of their number to preside at that meeting.

7.4 Quorum

At any meeting of the Board a majority of Board members shall form a quorum, and no business shall be transacted unless a quorum is present.

7.5 Voting

All questions before the Board shall be decided by consensus. However, where a consensus decision cannot be reached on a question, it shall, unless otherwise specified in this deed, be put as a motion to be decided by a majority of votes. If the voting is tied, the motion shall be lost.

7.6 Minutes

The secretary shall keep minutes of all Board meetings which shall be available for inspection by Board members and the Club at reasonable times.

7.7 Resolution in lieu of meeting.

A resolution in writing or circular email resolution consented to by all members of the Board is as valid as if it had been passed at a meeting of the Board.

8 Powers

8.1 General and specific powers

In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956, the powers which the Board may exercise in order to carry out its objects are as follows:

- (a) to approve the use of the Refurbishment Account as the Board thinks necessary or proper in payment of properly incurred expenses of the Marina;
- (b) to carry on any business deemed necessary for the purposes of the Trust;
- (c) to approve the investment of the Refurbishment Account with an appropriate Bank upon such terms as the Board thinks fit;
- (d) to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and to attain the purposes of the Trust.

8.2 Remuneration

Under clause 8.1(a) the Board may remunerate persons who are members of the Board.

9 Income, benefit or advantage to be applied to purposes

9.1 Application

Any income, benefit or advantage shall be applied to the purposes of the trust.

9.2 Influence

No Board member, member of the Trust or person associated with a member of the Trust shall participate in, or materially influence, any decision made by the Trust in respect of the payment to or on behalf of that Board member, member or associated person of any income, benefit or advantage whatsoever, except where that income, benefit or advantage is derived from:

(a) professional services to the Trust rendered in the course of business charged at no greater rate than current market rates; or

(b) interest on money lent at no greater rate than current market rates.

9.3 Reasonableness required

Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being open market value).

9.4 Entrenchment

The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

10 Accounts

10.1 True and fair accounts

The Board shall ensure true and fair accounts are kept of all money received and expended.

10.2 Balance Date

The Balance date of the Trust shall be the same as the balance date of the Kerikeri Cruising Club.

10.3 Audit to be part of the Kerikeri Cruising Club

The Board shall, as soon as practicable after the end of every financial year of the Board, cause the accounts of the Board for that financial year to be audited or financially reviewed by an accountant appointed by the Board for that purpose and the Board shall present the audited or reviewed accounts to the annual general meeting of the trust together with an estimate of income and expenditure for the current year.

11 Disqualification and removal from the Trust

11.1 A person will be disqualified from holding the office of member of the Board if he or she:

(a) gives notice in writing to the chairperson that effect and such notice, unless otherwise expressed, shall take effect immediately, or

(b) is an undischarged bankrupt or has been a bankrupt;

- (c) is under the age of 18 years;
- (d) dies;
- (e) becomes a protected person under the Protection of Personal and Property Rights Act 1988;
- (f) convicted of a crime involving dishonesty (section 2(1) of the Crimes Act 1961) or tax evasion or other offence under section 143B of the Tax Administration Act 1994 and sentenced within the last seven years; or
- (g) is prohibited from being a director or promoter, or being concerned or taking part in the management of an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993.

12 Annual general meeting

12.1 Time and place of meeting

The annual general meeting of the Trust shall be held to coincide with the annual general meeting of the Kerikeri Cruising Club.

12.2 Business of meeting

The annual general meeting shall carry out the following business:

- (a) receive the minutes of the previous annual general meeting and of any other special general meeting held since the last annual general meeting; and
- (b) receive the Club/Trust's audited or reviewed statement of accounts for the preceding year and an estimate of income and expenditure for the current year; and
- (c) receive reports; and
- (d) consider and decide any other matter which may properly be brought before the meeting.

13 Alteration of deed

This deed may be altered, added to, rescinded or otherwise amended by a resolution passed by a two-thirds majority at a general meeting of member of the Trust, provided that no such amendment shall detract from the purposes of the Trust.

IN WITNESS this deed is duly executed.

Signed as a deed

SIGNED by)
REX BARNABY)
in the presence of:

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

SIGNED by)
ANTHONY ROBSON HOOD)
in the presence of:

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

SIGNED by)
JOHN LIONEL GRAHAM)
in the presence of:

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

SIGNED by)
DOUGLAS GEORGE GALBRAITH)
in the presence of:

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

SIGNED by)
KEITH FREDERICK ARDERN)
in the presence of:

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)