

Dated

day of

2019

WAIMAKARIRI DISTRICT COUNCIL
("the Settlor")

[name, address and occupation of trustees]
("the Trustees")

Waimakariri Public Arts Trust Deed


**CORCORAN
FRENCH**

lawyers

PARTIES

1. **WAIMAKARIRI DISTRICT COUNCIL** at Rangiora ("the Settlor")

2.

[name, address and occupation of trustees]
("the Trustees")

BACKGROUND

- A. The Settlor wishes to establish a charitable trust to develop public art projects in the Waimakariri district that are of enduring quality, are accessible to the public and stimulate public interest. The aim is to educate the public about art and artists and support artistic endeavours.
- B. The parties have agreed to enter into this deed specifying the purposes of the trust and providing for its control and governance.
- C. The Trustees have agreed to act as initial Trustees of the trust.
- D. The Settlor proposes that in due course additional property may fall into and form part of the assets of the trust and the trustees will own the assets of the trust and will, along with certain advisory trustees (in this deed referred to as the charitable trustees) manage these within the framework of the trust.
- E. The Settlor intends the charitable trustees be appointed to give appropriate guidance and instruction to the Trustees and to perform certain specific functions in relation to this trust.

OPERATIVE PROVISIONS**1. NAME**

The name of the Trust shall be the "**Waimakariri Public Arts Trust**".

2. OFFICE

The office of the Trust shall be such place in North Canterbury or the Waimakariri district as the Board of Trustees may determine.

3. PURPOSES

The purposes of the Trust are as follows:

- (a) To promote art and culture in the Waimakariri district including but not limited to the matters set out in Schedule C;
- (b) To encourage public art in all new developments and redevelopments in the Waimakariri district;
- (c) Establish and support a Waimakariri Arts Fund to commission art works and promote the arts;
- (d) To apply for independent funding to secure art works and commission art works for specific sites.
- (e) To educate the public about art and artists.
- (f) To support artistic endeavours in the community.
- (g) To benefit the public and local community with art works and events.

4. TANGATA WHENUA

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

5. MEMBERS OF THE BOARD

5.1 Numbers

The Board of Trustees ("Board") shall consist of no fewer than five (5) nor more than seven (7) members. The initial members of the Board shall be the signatories to this deed.

5.2 Term of Board

Trustees shall be appointed on a rotational basis as follows:-

- (a) Two of the initial trustees will retire at the end of a two year term
- (b) Two of the initial Trustees will expire at the end of a four year term.
- (c) The remaining initial Trustee(s) shall retire at the end of a three year term.
- (d) Each subsequent term of the Trustees shall be for a period of three years.

Unless otherwise specified in this deed each member of the Board shall hold office for a term of three years or until he or she dies, or is declared bankrupt, or shall have his or her property affairs managed under the Protection of Personal and Property Rights Act 1988 upon the grounds of lack of competency to manage those affairs, or is a "patient as defined in s2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or indicates in writing that he or she wishes to resign from the Board. Any retiring member shall be eligible for re-appointment.

5.3 Appointment and Removal of Trustees

The Waimakariri District Council shall have the power to appoint and remove all Trustees to the Board of the Trust. The Trustees shall include people of the Waimakariri District Council and representatives from the art community in the Waimakariri or North Canterbury district at the Council's discretion.

The Trust Board is to comprise of a minimum of five (5) and up to seven (7) Trustees and include two elected member representatives ("Councillors") who may be the Council appointed Trustees. The Trustees (other than the Councillors) are appointed by the Council based on a "call for expressions of interest". The Council's landscape architect will be an advisory trustee but may also serve as a Trustee of the Board. The Trust Board may include a professional advisor to be called upon for professional or cultural advice then required.

5.4 Appointment of further trustees

The Council may at any time appoint up to two (2) further Trustees for terms which shall expire no later than the time when the terms of the members of the then current Board expire. Such trustees may be advisory Trustees referred to as "Charitable Trustees".

5.5 Termination of trusteeship

The Board may, by a motion decided by a two-thirds majority of votes to recommend to the Waimakariri District Council that a Trustee's membership in the Board be considered for termination if they believe on reasonable grounds that such action is in the best interests of the Trust.

5.6 Recording trustee appointments, resignations and removals

The appointment of a trustee and the cessation of the appointment of any trustee shall not be effective until recorded by resolution recorded in the Council's meeting minutes or by deed.

5.7 Name of the Board

The name of the Board shall be the Waimakariri Public Arts Trust Board.

6. POWERS

6.1 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 charitable purposes are as follows:

- (a) to use the funds of the Trust as the Board thinks necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisers, agents, officers and employees as appears necessary or expedient; and
- (b) to purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of attaining the objects of the Trust and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; and
- (c) to carry on any business; and
- (d) to invest surplus funds in any way permitted by law for the investment of trust funds and upon such terms as the Board thinks fit; and
- (e) to borrow or raise money from time to time, with or without security, and upon such terms as to priority and otherwise as the Board thinks fit; and
- (f) to pay, apply or appropriate from income or capital such amount as the Trustees may decide for or towards one or more of the objectives of the trust; and
- (g) 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 charitable purposes of the Trust.

6.2 Trustee Person Specification

The Council shall consider the matters set out schedule A when deciding on the appointment of initial, new, additional or replacement trustees.

6.3 Incorporation

The Board is empowered to seek incorporation in accordance with the provisions of the Charitable Trusts Act 1957.

6.4 Employment

Under clause 6.1(a) the Board may employ as agents, officers, and employees, persons who are members of the Board.

7. INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES

7.1 Application

Any income, benefit or advantage shall be applied to the charitable purposes of the Trust and may take into account the matters set out in Schedule B.

7.2 Influence

No 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 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.

7.3 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).

7.4 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.

8. PROCEEDINGS OF THE BOARD

8.1 Meetings

The Board shall meet at such times and places as it determines, and shall elect a chairperson from amongst its members at its first meeting and at every subsequent annual general meeting.

8.2 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 members present shall appoint one of their number to preside at that meeting.

8.3 Quorum

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

8.4 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.

8.5 Reports

The Board shall report regularly on its activities to the Waimakariri District Council and, in particular, shall present a detailed annual report to the Council if required.

8.6 Guidance

The Board shall be guided in its decisions by the views of the Waimakariri District Council and may take into account the matters set out in Schedules A, B and C.

9. ACCOUNTS

9.1 True and fair accounts

The Board shall keep true and fair accounts of all money received and expended.

9.3 Audit

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 by an accountant appointed for that purpose and the audited accounts shall be made available to the public.

10. POWER TO DELEGATE

10.1 Power to delegate

The Board may, from time to time, appoint any committee and may delegate any of its powers and duties to any such committee or to any person, and the committee or person, as the case may be, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them.

10.2 Delegate bound

Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the Trust.

10.3 Delegation revocable

Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

10.4 Delegate need not be trustee

It shall not be necessary that any person who is appointed to be a member of any such committee, or to whom any such delegation is made, be a member of the Board.

11. COMMON SEAL

The Board shall have a common seal which shall be kept in the custody of the secretary, or such other officer as shall be appointed by the Board, and shall be used only as directed by the Board. It shall be affixed to documents only in the presence of, and accompanied by the signature of, two members of the Board.

12. ALTERATION OF DEED

The Board may, by consensus or pursuant to a motion decided by a two thirds majority of votes, by supplemental deed, make alterations or additions to the terms and provisions of this deed provided that no such alteration or addition shall:

- (a) take effect unless it is confirmed by resolution of the Board;
- (b) detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
- (c) be effective until registered with and accepted under the Charities Act 2005 by the Charities Board;
- (d) be approved by the Waimakariri District Council.

13. DISPOSITION OF SURPLUS ASSETS

If, either on the winding up, failure or dissolution of the Trust, or in the case of the Board having incorporated in accordance with the provisions of the Charitable Trusts Act 1957 (or other Act passed in substitution for the same) on the liquidation of the

Board or on its dissolution by the Registrar, there remains, after payment of all of the trust debts and liabilities, any property or assets whatsoever, they shall be given or transferred to the Trustees of such trusts or organizations in the Waimakariri or North Canterbury District in New Zealand as the Board with the support of the Waimakariri District Council considers in its discretion carry out charitable purposes within New Zealand similar to those set out in this deed, or be applied for such charitable purposes Waimakariri or North Canterbury District as the Board with the support of the Waimakariri District Council considers in its discretion, by resolution, determine at, before, or during the winding up, failure, dissolution or liquidation. If the Board is unable to make such decision, such property shall be disposed of in accordance with the directions of a Judge of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 on the application of any member of the Board.

14. WAIMAKARIRI DISTRICT COUNCIL

The Waimakariri District Council may provide ongoing technical administration support through (but not limited to) providing resource management advice, secretarial support, and covering resource consent costs where the Waimakariri District Council considers it appropriate to do so.

The Waimakariri District Council may also assist with physical work such as site preparation and maintenance through the Waimakariri District Council's Green Space team where the Waimakariri District Council considers it appropriate to do so

SIGNED BY

WAIMAKARIRI DISTRICT COUNCIL]
 by its Authorised Representative]

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 in the presence of:]

Signature of Witness.....
 Full Name.....
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SCHEDULE A

Trustee Person Specification

In considering suitability for the appointment of a Trustee, the Council may consider the following attributes:-

1. Enthusiasm and/or expertise in the arts and a willingness to champion public art in the Waimakariri District.
2. Integrity of member.
3. A commitment to the trust and its objectives.
4. An understanding and accepted of the legal duties, responsibilities and liability of the trusteeship.
5. A willingness to devote the necessary time and effort to their duties as a trustee.
6. Good independent judgment.
7. An ability to think creatively.
8. The ability to work effectively as a member of a team and a willingness to state personal conviction and, equally, to accept a majority decision and be tolerant of the views of other people.
9. A belief in equal opportunities and diversity.
10. Not have any orders under the Protection of Personal and Property Rights Act 1988 or otherwise relating to the mental capacity of the member.
11. Have no convictions for fraud or any fraud related activities.

SCHEDULE B

Basis for decision-making

1. The trustee will evaluate and commission potential public art works (including gifts and bequests) taking into account (but not limited to) the following:-
 - a) Standards of excellence and innovation
 - b) Durability of the art work.
 - c) Ownership structure and conditions for movement or disposal of the artworks.
 - d) Potential of artwork to capture the public's imagination and to help create a sense of place and identity for the Waimakariri District.
 - e) Fit with the topography and character, and use of the relevant public places.
 - f) Cost implications including ongoing maintenance costs.
2. All proposed installations will be consulted with the local Community Board before any decisions are made. This will ensure no conflicts are likely to arise in terms of land use, will ensure Council has no significant concerns and to check that Council does not foresee any risk, liability or unscheduled costs associated with any potential installation.
3. All artwork is subject to the provisions of the Resources Management Act 1991 (treated as a structure potentially required resource consent) and must comply with the provisions of the Waimakariri District Plan, Resource Management Plans and policies.

SCHEDULE C

Roles and Responsibilities

1. Public Art Programme
 - Develop a public art project and opportunities programme and budget
2. Public Works of Art
 - Evaluate and approve opportunity and sit in accordance with the Waimakariri Public Art policy.
 - Approval consent and site
 - Approval budget
3. Gifts
 - Ensure all gift offers are considered in a fair, transparent and consistent manner
 - Approval consent and site
 - Approve budget
4. Re-siting and Removal
 - Approval decision to re-site or remove art work in accordance with the original intentions, consistent with the rights afforded by contractual agreement and copyright legislation
 - Undertake careful and robust evaluation and consider re-siting or removal only when no other option exists
5. Renewals, care and maintenance
 - Ensure all public works or art are identified and catalogues and their location and condition are recorded and reviewed regularly
 - Ensure all works of art are cared for and maintained in accordance with the artistic and cultural protocols appropriate to their origin, intended purpose and location
 - Develop a programme of renewals and care and maintenance plans
 - Maintain the integrity of public works of art through their useful life