

Mayor and Councillors
COUNCIL

2 MARCH 2017

Meeting Status: **Public**

Purpose of Report: For Decision

**APPOINTMENT OF COUNCIL REPRESENTATIVE TO
TE NEWHANGA KĀPITI COMMUNITY CENTRE TRUST**

PURPOSE OF REPORT

- 1 This report seeks Council's approval of a Council appointed Trustee to Te Newhanga Kāpiti Community Centre Trust.

DELEGATION

- 2 The Council has the authority to consider this matter.

BACKGROUND

- 3 The Council has a Policy on the Appointment of Directors to Council Organisations, the policy includes criteria for deciding which organisations to appoint to, the skills required for these appointments, and the process by which they are made. The Policy is attached as Appendix 1.
- 4 Appointments to external organisations are made for a number of reasons:
 - To encourage coordinated work towards Community Outcomes and strategic goals
 - To provide a means of monitoring where Council has made a grant to the body
 - To meet statutory requirements (as in a Deed of Trust or Will)
 - To meet requirements in the organisation's constitution (although Council is under no compulsion to do so).
- 5 Appointments are generally made for a three year term coinciding with the Triennium and can be made by Council as required throughout the Triennium.
- 6 The Council needs to ensure that any person it appoints to an external organisation has the knowledge or experience relevant to the activities of the organisation and is familiar with the relevant council policy, programmes and activities, and understands the nature of the role to which they have been appointed.

Council Appointment to Te Newhanga Kāpiti Community Trust

- 7 Te Newhanga, Kāpiti Community Centre Trust (the Trust) requires a Council appointed representative in its governance structure.

- 8 In 2014, Hilary Wooding was appointed as the Council representative. A letter confirming her appointment is attached at Appendix 2. Ms Wooding would like to step down from this role in March.
- 9 A new Council appointed representative is required for remainder of the triennium.

ISSUES AND OPTIONS

Issues

- 10 The Trust Deed of Te Newhanga Kāpiti Community dictates that a Council appointed Trustee is required to make up one of six members of the Te Newhanga Kāpiti Community Trust Board. The Trust Deed is attached as Appendix 3.

Appointment

- 11 Mayor Gurunathan endorses the appointment of Councillor Howson to this role in recognition of his substantial experience in local governance. Councillor Howson has had nine years on the Kāpiti College Board of Trustees. For six of those years Councillor Howson Chaired the Board and worked with the community to complete a new community gymnasium and commence planning work on a Performing Arts Centre. Both projects bring significant benefits to the wider community. These attributes and skills are significant in a community a governance role.

CONSIDERATIONS

Policy considerations

- 12 There are no additional policy considerations.

Legal considerations

- 13 Relevant extracts of legislation are at Appendix 1.
- 14 Section 43 of the LGA 2002 provides that a member of a local authority (including a committee, community board or other subordinate decision making body) is indemnified by that local authority for costs and damages arising from any civil liability arising from action taken by a third party, providing the member was acting in good faith.
- 15 However, liability issues can potentially arise in relation to Councillors appointed as trustees. A trust is not a separate legal entity (unlike a company). This means that the trustees hold property or enter into contracts on behalf of a trust. As a result the trustees are liable in relation to any contracts entered into on behalf of the trust. Generally speaking the liability of trustees will be personal and not limited to the assets of the trust. The exception is where a contract contains a clause stating that the liability of a trustee is limited to the assets of the trust.

Financial considerations

- 16 Elected member appointed to external organisations are not remunerated.

Tāngata whenua considerations

17 There are no tāngata whenua considerations for this appointment.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

18 This matter has a low level of significance under Council policy.

Engagement planning

19 An engagement plan is not needed to implement this decision.

Publicity

20 The Council appointed representative will be added to the list of appointments posted on the Council website.

RECOMMENDATIONS

21 That the Mayor on behalf of the Council acknowledges Ms Wooding's contribution and dedication to her role as the Council appointed representative to the Trust, since 2014.

22 That the Council confirms the appointment of the Councillor John Howson to Te Newhanga Kāpiti Community Centre Trust for the 2016-2019 Triennium.

Report prepared by	Approved for submission	Approved for submission
Tania Parata	Max Pedersen	Sarah Stevenson
Manager, Programme Design and Delivery	Group Manager Community Services	Group Manager Strategy and Planning

ATTACHMENTS

Appendix 1: Policy on the Appointment of Directors to Council Organisations

Appendix 2: Letter of appointment for Ms H Wooding to the Trust.

Appendix 3: Deed of Charitable Trust of Te Newhanga Kāpiti Community Centre.

Appendix 1**Council Policy on the Appointment of Directors of Council Organisations**

The Council will use the following criteria for considering whether or not it should appoint a director or directors to any organisation:

- a) Does the organisation allocate significant council funding within the community?
- b) Does the organisation coordinate the activity of particular sectors or groups within the community in an area that is significant to the achievement of Council's own goals or Community Outcomes?
- c) Are there any other ways or initiatives that the Council might take to coordinate or establish organisations that advance the Council's strategic goals and Community Outcomes?

Skills and Experience Required

The Council will ensure that any person that it appoints to be a director of a council organisation will have the knowledge, skills and experience relevant to the activities of the organisation and be familiar with the Council policy, programmes and activities relevant to the organisation. For appointments to organisations with an annual turnover of \$500,000 or greater, particular attention will be given to these criteria with an emphasis on skills and experience.

Appointments will generally be made by the Council at the beginning of the triennium although vacancies and new council organisations may be considered during the triennium. Any future appointments made by the Council will have regard to the criteria specified in this policy.

Remuneration

The Council does not remunerate the directors it appoints to council organisations and the remuneration of the directors by the council organisation is a matter for the organisation concerned.

These recommendations are based on practice over the last triennium and /or the special requirements of the organisation such as the dictates of its trust deed.

24 July 2014

Hilary Wooding
30 Gavin Rd
Raumati Beach
KAPITI COAST 5032

Dear Hilary

RE: APPOINTMENT AS COUNCIL REPRESENTATIVE

Thank you for your willingness to be nominated as a Council Representative on the Te Newhanga Kāpiti Community Centre Trust.

The Elected Members were very pleased to appoint you as the Council Representative. They agreed that you are an ideal person to take on this role with your extensive Council experience and long connection to the Centre. Your appointment is for two years with the possibility of a second term of two years in line with the Trust Deed.

The Te Newhanga Kāpiti Community Centre plays an important part in promoting social wellbeing in our District. The Council looks forward to the Centre working creatively to expand its role in the community.

Yours sincerely



Pat Dougherty
CHIEF EXECUTIVE

DATED this 11th day of June 2014

Lorraine Williams, Debbie Mattingley, and Janette Smith
(“the Trustees”)

DEED OF CHARITABLE TRUST

OF

TE NEWHANGA KĀPITI COMMUNITY CENTRE

**KAPITI LAW
LAWYERS
WAIKANAE**

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DEED dated

2014

PARTIES:

1. LORRAINE WILLIAMS
2. DEBBIE MATTINGLEY
3. JANETTE SMITH ("the initial Trustees")

BACKGROUND

- A. The Trustees have recognized a need in the community to provide a vibrant and welcoming community facility, that is responsive to community needs; enhances community connections and wellbeing; and which can be enjoyed by the diverse community. The Kāpiti Community Centre was established as such a facility, and to meet the above need, the Trustees have formed the Te Newhanga Kāpiti Community Centre Trust, to govern the utilization of the Community Centre, in accordance with a management arrangement with the Kāpiti Coast District Council, for the benefit of the people of the Kāpiti community.
- B. The Trustees consider it desirable to establish a Charitable Trust for the community based purposes set out in this deed.
- C. The Trustees are prepared to act as Trustees of the Trust fund.
- D. The Trustees have received the sum of \$10,000 in assets to establish the Trust as at the date of execution of this deed.

AGREEMENT

1. **INTERPRETATION**

In this deed unless the context indicates otherwise:

1.1 **Definitions:**

"Act" means the Trustee Act 1956;

"Balance Date" means 30 June or any other date adopted from time to time by the Trustees as the end of the Trust's Financial Year;

"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, lease, exchange or otherwise;

"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, the Trustee or Trustees for the time being constituting the board, whether original, additional or replacement;

- 1.2 **Gender:** references to one gender include the other gender;
- 1.3 **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;
- 1.4 **Plural and Singular:** singular words include the plural and vice versa;
- 1.5 **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

- 2.1 **Name of Trust:** The name of the Trust is Te Newhanga Kapiti Community Centre Trust.
- 2.2 **Change of Name:** 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 the new name is not offensive or liable to mislead any member of the public.

3. PURPOSE

The purposes of the Charitable Trust are:

- 3.1** To provide a warm, welcoming and safe environment where members of the Kāpiti Coast diverse community can connect and socialize to help build and develop social cohesion and community resilience and wellbeing.
- 3.2** To provide a focus for community based activities in response to the Kāpiti Coast community's changing needs and characteristics.
- 3.3** To facilitate collaboration with other community Organisations around the management of the facility, including the Kāpiti Coast District Council as the owner of the facility, in order to foster and support community based initiatives for the wider community.
- 3.4** To provide a facility that recognizes ethical and culturally sensitive principles; supports the Treaty of Waitangi principles; has multigenerational appeal; and is accepting of all people.
- 3.5** To act in a manner which reflects its obligation to the wider Kāpiti community in terms of being accountable; financially responsible in its governance of the facility; and in complying with statutory and contractual requirements.
- 3.6** To stand possessed of the Trust fund and to obtain any community grants to help promote its purposes.
- 3.7** To manage the Trust resources effectively to ensure their sustainability to meet the above purposes, including the application of capital and income of the Trust fund as the Trustees determine, for or towards any of the above described purposes, providing those purposes are exclusively charitable and of benefit to the Kāpiti Coast community.
- 3.8** To adopt such means as the Trustees determine in making known the availability of the facility, including the marketing and promoting of the purposes of the Trust.
- 3.9** To purchase or otherwise acquire any equipment required to achieve the above purposes of the Trust.
- 3.10** To do any act or thing incidental to, or conducive with the attainment of any of the above purposes.

4. LOCATION:

- 4.1** The activities of the Trust will be limited to New Zealand and will operate in the community defined by the Kāpiti Coast District, being Otaki to Paekakariki.
- 4.2** The office of the Trust will be at the Te Newhanga Kāpiti Community Centre at 15 Ngahina Place, Paraparaumu, or such other place as the Board of Trustees may from time to time determine.

5. BOARD OF TRUSTEES

- 5.1** The Board of Trustees will comprise six members made up as follows:
- 5.1.1** The initial three Trustees named in this Deed;
- 5.1.2** A further trustee to be appointed by the initial three Trustees in accordance with clause 5.2;
- 5.1.3** A trustee appointed by the Kāpiti Coast District Council;
- 5.1.4** A Treasurer appointed by the initial three Trustees in accordance with clause 5.4.
- 5.2** The signatories to this deed will be the initial three Trustees. With the exception of the appointment of a Trustee at the discretion of Kāpiti Coast District Council, any further appointments including the appointment of the remaining Trustee referred to in clause 5.1 above, and the appointment of replacement Trustees to cover future vacancies, shall be made by a majority vote of the existing Board. The Board may appoint a subcommittee comprised of two continuing trustees to make recommendations to assist with the appointment process.
- 5.3** Each Trustee shall serve a minimum term of two years, subject to their right of voluntary resignation prior to the end of their term or to mandatory resignation on death or because they are no longer entitled to be Trustee in accordance with clause 5.5. No minor may be appointed a Trustee and Trustees reaching the end of their term may offer themselves for reappointment.

- 5.4** The Board shall appoint a Treasurer as a non-voting member of the Board and the Board may co-opt a further non-voting member to perform the duties of Secretary to the Board.
- 5.5** A person will cease to be entitled to be a Trustee if:
- 5.5.1** they are declared bankrupt;
 - 5.5.2** being a company, incorporated society, or other body corporate, are subject to any winding up or liquidation proceedings;
 - 5.5.3** is convicted of any crime involving dishonesty within the meaning of the Crimes Act 1961 or any offence punishable by a term of imprisonment of two or more years;
 - 5.5.4** becomes a person who is prohibited from being a Director or taking part in the management of a company under the Companies Act 1993 .
 - 5.5.5** is a person who is subject to a Property Order made under the Protection of Personal and Property Rights Act 1998 or is a person who is subject to an Order made under the Charities Act 2005 disqualifying them from being an Officer of a Charitable entity.
- 5.6** The Board of Trustees may disqualify a Trustee from continuing to be a Trustee if they fall into any of the categories referred to in clause 5.5, or if they fail to attend three consecutive Trustee meetings or participate fully in the Trust's affairs. Any such disqualification shall be noted in writing and shall have immediate effect.
- 5.7** Three (3) Trustees shall be required to sign on behalf of the Trust to bind the Trust in any contractual relationship, or to represent the Trust in any transaction, or to authorise any expenditure on behalf of the Trust.
- 5.8** Decisions of the Board shall be made by a majority of votes with each Trustee having one (1) vote, except where any Trustee has declared a conflict relating to the issue under vote, in which case they shall stand down from the voting on any associated decisions.
- 5.9** The Trustees may choose to elect among themselves a Chairperson and/or Deputy Chairperson and if so, that Chairperson shall, if present, preside at Board meetings. In the absence of the Chairperson at a Board meeting the Trustees present shall elect one of them to preside.

- 5.10** The Board of Trustees shall arrange for minutes to be kept of their Trustee meetings and shall maintain a Conflicts Register recording the declared conflicts of any Trustee. They shall meet as regularly as the Board determines but in any event not less than ten times per year.
- 5.11** A quorum at meetings of Trustees will be comprised of three (3) Trustees.

6. TRUSTEES' POWERS

- 6.1** The Trustees shall have such powers as are contained in the general laws of New Zealand and the Trustee Act 1956, which shall not be limited or restricted by any principle or law or statutory power, except to the extent that the powers must be used in order to promote the exclusively charitable purposes of the Trust described in clause 3. In particular the Trustees shall have the power to, and shall be responsible to, determine the vision, mission and values of the Kāpiti Community Centre; oversee the administrative and financial functions associated with managing the Kāpiti Community Centre; and develop, and modify as required, the strategic plan, policy direction and annual business plan for the Kāpiti Community Centre including the approval of the refurbishment and expansion plans.
- 6.2** The Trustees shall use the funds of the Trust in accordance with the Board's discretion, in payment of the costs and expenses of the Trust and may employ professional advisors, officers and staff.
- 6.3** The Trustees may purchase, take on lease, hire or otherwise acquire any real or personal property and any rights or privileges which the Board thinks necessary and may dispose of such property rights or privileges under the Board's discretion. Notwithstanding this, in respect of the management and maintenance of the Kāpiti Community Centre, the Trustees acknowledge the existence of a management agreement with Kāpiti Coast District Council and will operate in accordance with that agreement including any variation of it, in the exercise of their powers.

- 6.4 The Trustees may invest surplus funds in any way permitted by the Law for the investment of Charitable Trust Funds upon such terms as the Board thinks fit.
- 6.5 The Trustees may borrow or raise money from time to time with or without security and upon such terms as the Board thinks fit.
- 6.6 The Trustees may do all things as may from time to time be necessary to enable the Board to give effect to and attain the charitable purposes of the Trust.
- 6.7 The Board may from time to time appoint any committee or may delegate any of its powers and duties to a committee or to any person not being a Trustee of the Board, in which case the Committee or person to whom the Board has delegated will have such powers and duties as the terms of the delegation contain. The Board will be able to revoke such delegation at will, and no such delegation will prevent the exercise of any power by the Board.

7. FINANCIAL ARRANGEMENTS

- 7.1 Any income, benefit or advantage received by the Trust will be applied to the charitable purposes of the Trust and not to the pecuniary interest of any individual unless that person is a beneficiary falling within the charitable purposes of the Trust:
- 7.2 If the Board is paying compensation or a salary to any person, the amount of any such compensation shall be reasonable and relative to that which would be paid in an arm's length transaction and if such compensation is to be paid to a Trustee, that Trustee shall not participate in, or materially influence the decision of the other Trustees to make such compensation payable.
- 7.3 The financial year of the Trust will be from 1 July to the last day of June in each year.

7.4 The Trust shall operate a bank account and the Board shall determine:

7.4.1 who is entitled to produce receipts;

7.4.2 who is entitled to have access to that bank account provided at least two Board Members must sign, or, authorise payments from the account;

7.4.3 who is entitled to authorise the production of cheques or make payments;

7.4.4 the investment policy to be adopted by the Trust from time to time; and

7.4.5 the appointment of an appropriately qualified person to audit the accounts of the Trust for each financial year.

7.5 The Trust shall produce financial accounts including a statement of financial position, a statement of financial performance, a statement of cash flows and any relevant notes to those statements giving a true and fair view of the financial position of the Trust Fund at the conclusion of each financial year.

8. ALTERATIONS TO TRUST DEED

8.1 The Trustees may from time to time by a majority of votes modify or amend any term of this Trust Deed subject to 8.2.

8.2 The Trustees may not at any time agree to an alteration or modification that will:

8.2.1 Detract from the exclusively charitable nature of the Trust's purposes.

8.2.2 Alter the provisions relating to the distribution to the Trust's assets on winding up or dissolution that require them to be paid to another Organisation with similar charitable purposes.

8.2.3 Alter the provisions that require the activities to be limited to New Zealand.

8.2.4 Alter provision 7.1 relating to the restriction of any person receiving private pecuniary profit.

9. TRUSTEES' LIABILITY

- 9.1** No Trustee will be liable for any loss to the Trust Fund arising from any act or omission of that Trustee unless it is attributable to the Trustee's own dishonesty or to the willful commission or omission of any act known by that Trustee to be a breach of trust.
- 9.2** The Trustees shall exercise the care, diligence and skill to be exercised by that of a prudent person of business when managing the affairs of others, but that care, diligence and skill will not be that required by section 13C of the Trustee Act.
- 9.3** No Trustee will be bound to take, or be liable for failure to take, any proceeding against any other Trustee or former Trustee for any breach or alleged breach of trust committed by that other Trustee or former Trustee.
- 9.4** A Trustee will be chargeable only for any money or securities, which that Trustee has received or which, but for their own acts, omissions, or commissions they would have received, notwithstanding the signing of any receipts for the sake of conformity. A Trustee is deemed to have received money or securities, even if not actually paid to that Trustee, if that money or securities have been credited into an account, reinvested, accumulated, capitalised, carried to any reserve fund or otherwise dealt with on that Trustee's behalf.
- 9.5** 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 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 were incurred as a result of the Trustee or former Trustee's dishonesty or willful commission or omission of an act known to be a breach of trust.

10. WINDING UP

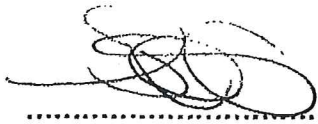
- 10.1** The Trustees may determine by unanimous resolution to wind the Trust up.

10.2 If, on the winding up of the Trust, any portion of the Trust Fund remains in monetary or property form, after satisfaction of all the debts and liabilities, that portion must be paid out or distributed to another Organisation carrying out similar charitable purposes, exclusively within New Zealand.

11. GOVERNING LAW

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

SIGNED by LORRAINE)
WILLIAMS as Trustee in the)
presence of:)



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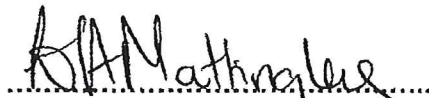
Signature: Angela C. Roberson

Full name: ANGELA CATHERINE ROBESON

Occupation: MANAGER

Address: 2, BELFORD COURT, PARAPARAMU

SIGNED by DEBBIE)
MATTINGLEY as Trustee in the)
presence of:)



.....

Signature: Debbie Mattingley

Full name: Kenneth Allen Spencer

Occupation: Retired

Address: 4 Matuku Place
Paraparamu Beach

SIGNED by JANETTE SMITH)
as Trustee in the presence of)



.....

Signature: Angela C. Roberson

Full name: ANGELA CATHERINE ROBESON

Occupation: MANAGER

Address: 2, BELFORD COURT, PARAPARAMU