

CHARITABLE TRUST DEED

between

Dianne Judith Smeehuyzen

and

Murray Robert Warrington

and

Ronald Lambert Archer

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Charitable Trust Deed

Date:

16 FEBRUARY

2011
2010

Parties

1. Dianne Judith Smeehuyzen of Dunedin, Credit Manager
2. Murray Robert Warrington of Napier, Practice Manager
3. Ronald Lambert Archer of Auckland, Company Director

Background

- A. The parties to this Deed wish to establish a charitable trust ("the Trust") for the purposes described in clause 3 of this Deed.
- B. The parties have agreed to enter into this Deed specifying the purposes of the Trust and providing for its control and government.

This Deed Witnesses:

1. Name

- 1.1 The name of the Trust shall be the "BRASS BAND ASSOCIATION OF NEW ZEALAND CHARITABLE TRUST".

2. Office

- 2.1 The office of the Trust shall be such place in Wellington as the Board of Trustees may determine.

3. Charitable Purposes

- 3.1 The principal charitable objects of the Trust will be:
 - a. To undertake, promote or assist in the musical education of brass players at every level; and
 - b. To support the activities of the Brass Band Association of New Zealand Incorporated so long as it remains a charitable entity.
- 3.2 Other charitable objects of the Trust will be to do all such things as are incidental or conducive to the attainment of the above objects.
- 3.3 In interpreting the terms of this Trust Deed and undertaking the rights, powers, and duties:
 - a. The principle objects in clause 3.1 shall take precedence; and
 - b. All other objects shall be pursued to further the principle object.
- 3.4 The objects of the Trust may not extend to any matter or thing which is not charitable within the laws of New Zealand.

4. **Members of the Board**

4.1 **Number of Board.** The Board of Trustees ("the Board") shall consist of not less than three (3) nor more than five (5) members. The initial members of the Board shall be the signatories to this Deed.

a. **Appointment of new trustees.** The filling of vacancies on the Board shall be by appointment by the Brass Band Association of New Zealand Incorporated.

4.2 A trustee shall ipso facto cease to hold office if he or she:

a. Becomes bankrupt; or

b. Is convicted of any offence punishable by imprisonment for a term of two years or more; or

c. Is convicted of any offence punishable by imprisonment for a term of less than two years and is sentenced to imprisonment for that offence; or

d. Is required to undergo assessment pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

e. Becomes a protected person within the meaning of the Personal and Property Rights Protection Act 1988; or

f. Resigns his office by notice in writing delivered to the Trust Board; or

g. Is absent without leave of the Trust Board from four consecutive meetings of the Trust Board.

4.3 **Termination of trusteeship.** The Board may, by a motion decided by a two-thirds majority of votes, terminate a member's membership of the Board if it believes that such action is in the best interest of the Trust.

4.4 **Name of the board.** The name of the Board shall be BBANZ CHARITABLE TRUST BOARD.

5. **Powers**

5.1 The Trustees shall in addition to all other powers conferred by law have the following powers, which shall be exercised prudently to promote the Objects:

a. To raise money by all means and in particular to solicit, receive and enlist financial or other aid from individuals and organisations, including gifts and bequests from individuals and organisations, and to conduct fundraising activities;

b. To promote and further the Objects by the publication and distribution of papers, journals and other publications and by advertising in any medium or by any other means;

c. To make such payments, grants, loans or provide such other financial assistance to any person on such terms and conditions as the Trustees think proper;

d. To enter into any arrangements with any government or municipal or local authority that may seem conducive to the Objects and to obtain from any such government or authority any rights, privileges or concessions which the Trustees may think is desirable to obtain, and to carry out and to comply with any such arrangements, privileges, rights and concessions;

- e. To acquire, dispose of, lease, or otherwise deal with the property on such terms and conditions as the Trustees think fit;
- f. To maintain the property;
- g. To provide such amenities as considered necessary;
- h. To operate any lawful trading activity;
- i. To borrow money or provide guarantees on such terms, conditions or security (including mortgages) as the Trustees consider appropriate;
- j. To invest or lend money on such terms as the Trustees decide and to vary such loans or investments from time to time;
- k. To subscribe for, pay up and accept shares in any limited liability company and to purchase or otherwise acquire and hold shares in such companies and to join in and become a member of any partnership, joint venture or other business enterprise of which the Trustees approve. This includes the power to act as a shareholder and exercise all powers of a shareholder;
- l. To employ and act as a good employer towards any person engaged to carry out the services of the Trust with power to dismiss such person as necessary;
- m. To contribute to any IRD approved charitable trust having substantially similar objects as the Objects;
- n. To collect funds and raise money by all lawful means and to receive, accept and encourage financial and other contributions, subscriptions, donations, legacies, endowments or bequests from any source and to conduct fundraising campaigns in order to further the charitable objects of the Trust;
- o. To receive from the New Zealand Government or any council, board or body under the jurisdiction thereof or any other government, state or national body or any international organisation, any grant, subsidy or payment whatsoever in order to further the charitable objects of the Trust;
- p. To charge any person for use of the property such charges as may be fixed by the Trust;
- q. To join with any other person, group, body or organisation under such arrangement as the Trustees think fit to provide for the charitable object;
- r. To pay all or any of the reasonable expenses incurred in and in connection with the establishment, incorporation and running of the Trust;
- s. To insure against loss or damage by any cause whatsoever any insurable property forming part of the Trust Fund, and to insure against any risk or liability against which it would be prudent for a person to insure if he were acting for himself, for such amounts and on such terms as the Trustees may from time to time think fit;
- t. To appoint committees as expedient to carry out the Objects. Members of any committee need not be Trustees;
- u. To do the above things as principal, agent, contractor, trustee or otherwise and by or through agents, trustees or otherwise and either alone or in association with others;

- v. To do such other lawful acts and things as in the opinion of the Trustees are incidental or conducive to the attainment of the charitable object of the Trust.
- 5.2 None of the powers conferred on the Trustees by this clause or otherwise shall be deemed subsidiary or ancillary to any other power or authority and the Trustees shall be entitled to exercise all or any of the said powers and authorities independently of any other or others of them. In the event of any ambiguity this provision shall be construed so as to widen and not restrict the powers of the Trustees provided however that at no time shall any provision be construed so as to detract from the charitable object of the Trust.
- 5.3 When property is accepted by the Trustees upon special trusts to be declared by the donor all the powers and provisions of these presents shall be deemed to be incorporated in the deed declaring such special trusts except insofar as the same shall be expressly excluded or modified or be inconsistent with such special trusts.
- 5.4 Where property is accepted by the Trustees on bare or passive trusts they shall from time to time apply such property according to the lawful directions of the Trustees or managers to whom the management and administration thereof may have been confided.
- 6. Income, Benefit or Advantage to be Applied to Charitable Purposes**
- 6.1 **Application.** Any income, benefit or advantage shall be applied to the charitable purposes of the Trust.
- 6.2 **Influence.** No member or person associated with a member of the Trust shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage 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. Proceedings of the Board**
- 7.1 **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.
- 7.2 **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.
- 7.3 **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.
- 7.4 **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. The Chairperson is not entitled to a casting vote.
- 8. Accounts**
- 8.1 **True and fair accounts.** The Board shall keep true and fair accounts of all money received and expended.

8.2 **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 a Chartered Accountant appointed for that purpose and the audited accounts shall be made available to the public.

8.3 The financial year for the Foundation shall be from the 1st of July in each year until the 30th of June in the following year.

9. **Power to Delegate**

9.1 **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.

9.2 **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.

9.3 **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.

9.4 **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.

10. **Common Seal**

10.1 The Board shall have a Common Seal which shall be kept in the custody of such person 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.

11. **Alteration of Rules**

11.1 The Board may with the consent of the nominating parties 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. 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
- b. Be made to Rules 6 or 12 unless it is first approved in writing by the Department of Inland Revenue and the Charities Commission.

12. **Disposition of Surplus Assets**

12.1 On the winding up of the Trust or on its dissolution by the Registrar, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisation or organisations within New Zealand of a similar nature to the trust other than the nominating parties as the Board decides, to be used for exclusively charitable purposes, or, if the Board is unable to make such decision, shall be disposed of

in accordance with the directions of the High Court pursuant to Section 27 of the Charitable Trusts Act 1957.

Signed by Dianne Judith Smeehuyzen in the presence of:

Dianne Judith Smeehuyzen

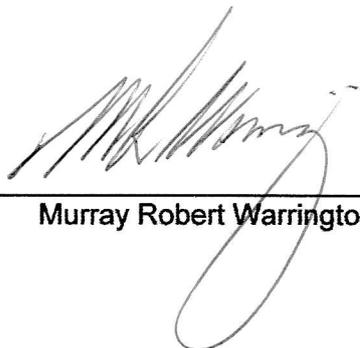
Signature of witness

Name of witness

Occupation

Address

Signed by Murray Robert Warrington in the presence of:



Murray Robert Warrington



Signature of witness

Name of witness

Occupation

L. W. WILLIS
SOLICITOR
NAPIER

Address

Signed by Ronald Lambert Archer in the presence of:



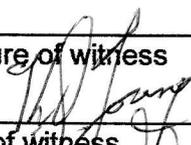
Ronald Lambert Archer

Signature of witness

Name of witness

Occupation

Address


Kenneth Q Young
Travel Executive
2A Hillary Heights Ave
Auckland 0612