

**THE DEVONPORT RSA MEMORIAL TRUST**

**At a meeting of the Trustees held on 13<sup>th</sup> of May 2013**

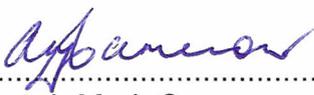
**Moved by C.B. Mullane**

**Seconded by R.N. Butt**

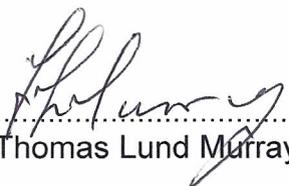
**That** the Trustees unanimously resolve to amend the Trust's Deed of Trust dated 5 May 1981, and varied by a Deed dated 16 June 2006, by adopting and ratifying the Revised Deed dated 13 May 2013 presented to the meeting, a copy of which is annexed hereto, and the Trust Deed shall then be read and construed as though the clauses of the Revised Deed had always constituted the Trust Deed.

**So resolved and signed by the Trustees:**

  
.....  
Raymond Neil Butt

  
.....  
Alastair Mark Cameron

  
.....  
Christopher Bernard Mullane

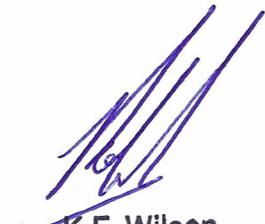
  
.....  
Thomas Lund Murray

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## THE DEVONPORT RSA MEMORIAL TRUST

REVISED DEED DATED 13 MAY 2013  
REPLACING THE 1981 TRUST DEED  
AND THE 2006 AMENDING DEED

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K.F. Wilson  
Justice of the Peace  
Devonport

This is certified as the true copy  
of the Deed referred to as  
annexed to the Trustee's  
resolution dated 13 May 2013

**THIS DEED** made the 13th day of May 2013

**BACKGROUND:**

- A. The Devonport RSA Memorial Trust ("the Trust") was created by Deed of Trust Dated 5 May 1981 ("the Trust Deed") and amended by a Deed dated 16 June 2006.
- B. Raymond Neil Butt, Alastair Mark Cameron, Christopher Bernard Mullane and Thomas Lund Murray are the current Trustees of the Trust.
- C. Pursuant to clause 12 of the 1981 Trust Deed the Trustees may, by unanimous resolution, revoke or vary or add to any of the provisions of the Trust Deed.

**THIS DEED RECORDS** that the Trustees for the time being of the Trust, and being satisfied that it is consistent with the general scope of the Trust Deed, have resolved unanimously to amend the Trust Deed by replacing all the clauses of the Trust Deed dated 5 May 1981 with the following clauses, which also supercede and replace all the clauses of the Deed dated 16 June 2006, and which shall then be read and construed as though such clauses had always constituted the Trust Deed.

**1. INTERPRETATION**

- a. The term "trust fund" shall include the said capital sum and other real and personal property from time to time belonging to or vested in or under the control or management of the Trustees or which shall be vested in them and including the capital and the income thereof and sums of money and property from time to time paid or transferred or donated to the Trustees for the purposes hereof either by the founder or by another RSA or by any person or persons or Corporation or Body or Society whether incorporated or unincorporated or by any other donor.
- b. The singular shall include the plural.
- c. The trust hereby created may be called and referred to as "The Devonport RSA Memorial Trust".
- d. The term "Settlor" shall mean Devonport Returned and Services' Association Incorporated (Incorporation Number: 221443) (previously known as the Devonport Branch (Inc) Auckland Returned Services Association Inc)

**2. PURPOSES**

The purposes of the trust fund which shall be limited to New Zealand shall be as follows:



- a. To assist indigent, aged, sick, disabled or infirm former servicemen and servicewomen and their spouses and dependants;
- b. To assist indigent, aged, sick or infirm widows and widowers of former servicemen and servicewomen;
- c. To assist aged or infirm or disabled indigent persons;
- d. To assist any public charity or any organisation dispensing charity or relieving or caring for the aged or sick or infirm;
- e. To contribute to any medical research fund;
- f. To contribute to any school or other youth fund for the education of any person or persons residing or being educated within the defined geographical boundaries as set from time to time by the Trustees; and,
- g. For other charitable purposes as defined in Part IV of the Charitable Trusts Act 1957 and Section 61 (a) thereof or in any Act passed in substitution thereof.

**3. CAPITAL AND INCOME**

The Trustees may pay or apply the whole or any part of the trust fund including both the capital and the income thereof in or towards all or any of the purposes herein expressed as they may in their absolute discretion decide or they may accumulate any income until the same can in their opinion be usefully applied for all or any of such objects.

**4. SPECIAL TRUSTS**

When property real or personal is accepted by the Trustees upon special trusts declared by the donor thereof all the powers and provisions of these presents shall be deemed to be incorporated in the instrument declaring such special trusts except in so far as the same shall be expressly excluded or modified by or be inconsistent with such special trusts.

**5. POWERS OF TRUSTEES**

The Trustees shall (subject to the provisions hereof herein-before contained) have the following general powers that is to say:-

- a. To sell, exchange, partition, invest, mortgage or otherwise dispose of or deal with any real or personal property at no less than current market rates or any interest therein as fully and effectively as if they were the absolute owners thereof.
- b. To borrow money on the security of any property real or personal or any part thereof at no greater than current market rates with or without

security upon such terms or conditions as to the Trustees shall deem proper.

- c. To pay all expenses and outgoings incurred in relation to the trusts from time to time reposed in them.
- d. To let any property for such term or terms at such rent which shall be no less than current market rates and subject to such conditions as shall be reasonable and proper.
- e. To accept surrenders of leases upon such terms and subject to such conditions as to the Trustees shall appear desirable.
- f. To appoint or remove or suspend and to pay or remunerate officers, clerks or servants for services rendered by them as the Trustees may from time to time deem appropriate and to determine the duties and powers and fix the salaries or remuneration of any such persons provided such payments shall always be for services rendered, and shall not exceed the current market rates.
- g. To repair and maintain or otherwise improve and to insure against loss or damage by fire or otherwise real or personal property held by the Trustees including power to insure for replacement and to discharge out of income or capital all outgoings properly payable in respect of such property without prejudice to the right of the Trustees to make it a condition of letting any person into the possession of any of the property (whether as tenant at will or otherwise) that such person shall pay and discharge all or any part of such outgoings.
- h. To seek incorporation in accordance with the provisions of the Charitable Trusts Act 1957.
- i. To do all such other lawful acts and things as are incidental to or conducive to the attainment of the general purposes of the trusts hereby created.
- j. No benefit or advantage, whether or not convertible into money or any income of any kind shall be afforded to, or received, gained, achieved or derived by any of the persons as provided for by the Income Tax Act 1994, or therefor, where that person is able, by virtue of that capacity as such person specified therein, in any way (whether directly or indirectly) to determine, or to materially influence in any way the determination of, the nature or the amount of that benefit or advantage or that income or the circumstances in which it is or is to be so received, gained, achieved, afforded, or derived, except as specifically exempted by that section.
- k. No private pecuniary profit shall be made by any person from the Trust, except that;

- (i) any Trustee may receive full reimbursement for all reasonable expenses properly incurred by that Trustee in connection with the affairs of the Trust;
- (ii) the Board may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or associated person or not) in return for services actually rendered to the Trust;
- (iii) any Trustee or associated person may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by the Trustee or associated person or by any firm or entity in which that Trustee or associated person has an interest in connection with the affairs of the Trust;
- (iv) any Trustee or associated person may retain any remuneration properly payable to that Trustee or associated person by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee or associated person has acted in any capacity whatsoever, notwithstanding that the Trustee's or associated person's connection with that company or undertaking is in any way attributable to that Trustee or associated person's connection with the Trust.

l. Notwithstanding anything contained or implied in the Trust Deed, any person who is:

- (i) a settlor, trustee or associated person of the Trust, or,
- (ii) a shareholder or director of any company carrying on any business of the Trust, or,
- (iii) a settlor, trustee or associated person of any trust which is a shareholder of any company carrying on any business of the Trust, or,
- (iv) an associated person (as defined in the Income Tax Act 2007) of any such settlor, trustee, shareholder or director; shall not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence in any way the determination of the nature or the amount of any benefit or advantage or income or the circumstances in which it is to be received, gained, achieved, afforded or derived by that person.

m. Any person who in the course of, and as part of the carrying on of his or her professional public practice shall not, by reason of his or her rendering professional services to the Trust or any company by which the business of the Trust is carried on, be in breach of the terms of the preceding clause.

n. The Trust shall not lend money nor lease property or assets at less than commercial rates, having regard to the nature and terms of the loan or lease to any person (as defined in the Income Tax Act 2007),

(i) who is a settlor, trustee or associated person of the Trust, or,

(ii) who is a shareholder or director of any company by which any business of the Trust is carried on, or,

(iii) who is a settlor or trustee of a trust that is a shareholder of any company by which any business of the Trust is carried on, or,

(iv) if that person or that company and the settlor, trustee, shareholder or director referred to in any of the preceding paragraphs of this clause are associated persons as defined in the Income Tax Act 2007.

o. The Trustees and members of the Board, in determining all reimbursements, remuneration and charges payable in terms of the Trust Deed, shall ensure that all restrictions imposed by the preceding clauses are strictly observed.

p. Any Settlor, Trustee or Board Member who is, or may be, in any other capacity whatever, interested or concerned directly or indirectly in any property or undertaking in which the Trust is or may be concerned or involved, shall disclose the nature and extent of that person's interest to the Board and shall not take any part whatever in any deliberations of the Board concerning any matter in which that person is or may be interested other than as a trustee or member of the Board.

## 6. PROCEEDINGS OF TRUSTEES

a. The Trustees shall elect a chairperson and shall hold meetings at such times and in such places as they shall decide and the chairperson shall have the right to call a meeting at any time by providing 10 working days' notice to the Trustees and providing further that the Trustees shall meet periodically as circumstances require but at least once in each year.

b. The Trustees shall appoint a Secretary for the Trust who shall maintain records of all resolutions and proceedings.

c. The quorum for any meeting of the Trustees shall be three Trustees.

d. All questions before the Trustees 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. For the avoidance of doubt, it is confirmed that the chairperson shall not have a casting vote.

e. A resolution signed by all of the Trustees shall be binding and effectual as if passed at a meeting of the Trustees. A meeting conducted by teleconference shall be valid providing that prior written notice of the business to be transacted at such meeting shall have been provided to all the Trustees. Notices and resolutions may include written record sent by facsimile transmission or email.

f. Notices shall be deemed served by one party upon another party

(i) if posted, 2 days following posting;

(ii) if delivered personally, on the date of service; and

(iii) if sent by facsimile or other electronic device, on the date of transmission.

g. Any payment made to any Trustee, or to any person associated with any Trustee, shall not be any more than such amount as is reasonable and relative to that which would be paid in an arm's length transaction for work carried out in connection with the Trust and no Trustee or person associated with any Trustee shall participate in, or materially influence, any decision made on behalf of the Trust in respect of the payment to or on behalf of that Trustee, or associated person, of any income benefit or advantage whatsoever.

h. No Trustee shall be liable for any loss suffered by the trust fund or by any beneficiary arising from any action or omission as Trustees which is not attributable to the dishonesty or wilful commission or omission of any act known to be a breach of trust.

i. Except in the case of a deliberate breach of trust, the Trustees shall be indemnified out of the trust fund against all liabilities which they may incur in the exercise or attempted exercise of the trusts, powers, authorities and discretions vested in them and shall have a lien on and may use moneys forming part of the trust fund in pursuance of this indemnity.

j. This indemnity shall extend to any payments made to any person whom the Trustees bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

k. No Trustee shall be liable for anything done or omitted to be done except in the case of fraud or other wilful misconduct on that Trustee's part.

## **7. ACCOUNTS**

The Trustees shall appoint a Treasurer to keep an account or accounts at such bank or banks as they shall from time to time determine and:

- a. expenditure of less than \$100 may be made by the Treasurer alone using a debit card authorised by the Trustees; and,
- b. cheques and withdrawals and authorities over \$100 shall be drawn, signed or endorsed as the case may be by such person or persons as the Trustees shall from time to time in writing direct.

## 8. REPORTS

- a. The Trustees shall keep true and fair accounts of all money received and expended.
- b. The Trustees shall, as soon as practicable after the end of every financial year of the Trust cause the accounts of the Trust for that financial year to be audited or reviewed by an accountant appointed for that purpose and the audited or examined accounts shall be made available to the public upon request. Where the Trustees elect for the annual accounts to be reviewed (as opposed to audited) the reviewer may be, but need not be, a Chartered Accountant.
- c. The Trustees shall present to the Executive Committee of the Devonport Returned and Services Association Incorporated (Incorporation Number: 221443) (the "RSA") a detailed annual report on the activities, investments, grants and distributions of the Trust and which shall include the annual accounts and audit or accountant's report as the case may be.
- d. In the event the RSA is not satisfied with the annual report, the RSA can request additional information from the Trustees and the Trustees shall immediately provide that information.

## 9. DELEGATION BY TRUSTEES

The Trustees shall have, to the extent permitted by law, full power to delegate to any officers or employees of the Trustees or to any attorney, agent or other person nominated or appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this Deed but without in any way releasing the Trustees from their obligations under this Deed. Without in any way affecting the generality of the foregoing the Trustees may in exercising this power of delegation appoint by writing or otherwise any person to be agent or sub-agent of the Trustees as the Trustees may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Trustees) as they think fit and to supersede or suspend any such agent or sub-agent for any reason as the Trustees think sufficient.

## 10. DISTRIBUTIONS FOR CHARITABLE PURPOSES

- a. The Trustees shall have the overall responsibility for the exercise of discretions to pay or apply the trust fund for charitable purposes.
- b. The Trustees shall, at least once in each financial year, establish policies for the allocation of income towards charitable purposes and shall

take such steps as the Trustees consider expedient to advertise or invite selected individuals and/or organisations to submit formal applications for grants.

c. The Trustees may carry forward unexpended income in any year to a future year or years. The Trustees may also set aside, from income, a reserve to continue any established pattern of grants and to meet fluctuations of income in future years and other contingencies. These powers are in addition to any other power or discretion the Trustees may have to carry forward income or establish reserves.

d. The Trustees may accumulate any funds not distributed in any accounting period for a period not exceeding 60 years from the date of this deed. This accumulated income will be added to the capital of the Trust and is to be held on the same trusts to, as far as possible, maintain the real value of the Trust and to provide for growth of income available for charitable purposes. This power is in addition to any other power the Trustees may have to accumulate income.

e. The Trustees shall meet periodically as circumstances require but at least once in each year, conduct a meeting to approve grants to or for charitable purposes and the Trustees shall not be bound to advise any applicant or organisation seeking a grant of any reason for approval or declining any grant or otherwise any reasons relating to the exercise of any discretions.

f. The Trustees may, at their discretion, as they think fit, apply such terms and conditions or specify any purpose for any grant or any promise or pledge of any future grant from the Trust.

g. Notwithstanding the foregoing provisions, the Trustees may, by written resolution, at any time, approve, promise, pledge, or pay grants to charities or towards charitable purposes out of the income received by or accrued to the Trust, providing, however, that all such grants promises or pledges shall be confirmed by the Trustees at the meeting pursuant to clause 10 e. above.

h. A receipt issued by a person authorised by a recipient of any grant, forwarded to the Trustees, shall be sufficient discharge to the Trustees, who shall not be bound to ensure that funds have been applied by the recipient for or towards the purposes of any such grant.

## **11. APPOINTMENT AND REMOVAL OF TRUSTEES**

a. The administration of the Trust shall be under the control of the Trustees, or such other persons as shall be appointed to act as Trustees.

b. The power to appoint and remove Trustees shall be held:

(i) first by the Executive Committee of the Devonport Returned and Services Association Incorporated (Incorporation Number:

221443) ("RSA") and no Trustee so appointed and while acting as a Trustee shall be considered in the employ of or otherwise have any obligation to the RSA other than to perform the Trust's duties and obligations set out in or arising from this Deed; and

(ii) secondly in the event a receiver, liquidator, administrator, statutory manager is appointed in respect of the RSA, the RSA is liquidated or otherwise ceases to have a validly constituted Executive Committee, then as may be determined by a Judge of the High Court of New Zealand on application by any Trustee or Trustees of the Trust.

c. The maximum number of the Trustees shall be seven and the minimum shall be four.

d. The Trustees shall have a term of office of two years at which time they shall retire provided that a Trustee who has so retired shall be deemed to have continued in office until either reappointed or replaced. A retiring Trustee can be reappointed. There shall be no limitation on the number of terms a Trustee can serve or any prohibition on a Trustee serving consecutive terms.

e. Any Trustee shall be entitled to resign by giving one months' notice in writing.

f. A Trustee shall cease to be a Trustee upon:

(i) expiry of the notice of resignation;

(ii) death;

(iii) notification to the RSA of long term incapacity;

(iv) notification to the RSA of mental illness;

(v) conviction of an indictable offence or an offence involving dishonesty;

(vi) bankruptcy, voluntary administration or determination of insolvency;

(vii) upon notification from the RSA that the Trustee has not managed the affairs of the Trust in an appropriate manner or is otherwise in breach of trust; and

(viii) failure to attend properly called meetings of the Trustees on three consecutive occasions;

(ix) provided that if the number of Trustees shall be reduced below four then those having the power of appointment shall within a period of one month of such notice, appoint a replacement Trustee

so that notwithstanding any temporary vacancy there shall always be a minimum of four Trustees. If the number of Trustees after the departing Trustee's departure shall not be less than four, then there shall be no obligation to appoint a replacement Trustee.

**12. CONFLICT OF INTEREST**

a. An 'interest' under this clause means alleviation of an obligation or a grant or distribution howsoever made from the capital or income of the Trust that will or is likely to benefit a Trustee or any person or body, whether corporate or unincorporated, associated with the Trustee in any pecuniary way.

b. In the event a Trustee has or may have an interest in a decision of the Trustees, the Trustee so affected shall notify the other Trustees of the possible interest in writing at least 5 working days prior to the decision being made. The Trustee so affected shall not be present when the Trustees are considering the decision and shall not be entitled to vote on the decision. If the number of remaining Trustees entitled to vote is less than four the Trustees' decision shall be reported to the RSA.

c. In the event a decision of the Trustees is made without following the process in this clause, the decision shall be void and any loss suffered by the Trust shall be repayable by the Trustees upon demand made by the Trustees.

**13. ALTERATION TO THE DEED**

The Trustees may from time to time by amending deed or instrument alter, rescind or add to any of the provisions of this Deed provided that:

a. Any amendment to this Deed may be made by a resolution passed by at least a seventy per cent (70%) majority of the Trustees present at the meeting at which the resolution is passed, but shall not be made without the prior consent in writing of the Executive Committee on behalf of the Settlor to that amendment first having been obtained;

b. At least 14 days' notice of intention to move any amendment to this Deed must be given to all Trustees; and,

d. If the Trust has been approved for charitable purposes by the Charities Commission under the Charities Act 2005, Inland Revenue Department, or incorporated under the Charitable Trusts Act 1957, then no alteration, rescission or addition may be made to this Deed which is prejudicial to the legal charitable status of the Trust.

**14. LIQUIDATION (DISSOLUTION OR WINDING UP) OF THE TRUST**

If, for any reasons whatsoever, the Trust created by this deed shall be liquidated, wound up, or shall otherwise cease and determine, the Trust Fund, or any part thereof remaining, shall, after payment of costs of liquidation, winding up and dissolution and payment of any debts of the Trust, be given or transferred to the Trustees for carrying out charitable purposes within New Zealand consistent with those set out in this Deed, and no part of the Trust Fund shall be transferred to the Devonport RSA or distributed among the Members of the Devonport RSA. In default of this provision, then as may be determined by a Judge of the High Court of New Zealand on application by any Trustee or Trustees of the Trust.

**EXECUTED AS A DEED by the Trustees**

in the presence of

  
.....  
Raymond Neil Butt

  
.....

**K.F. Wilson  
Justice of the Peace  
Devonport**

  
.....  
Alastair Mark Cameron

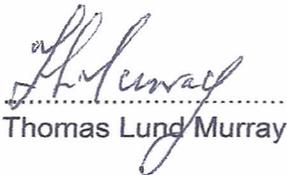
  
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