

Totara Farm Trust

**Incorporated on 20 May 1992 as Totara Trust Hunua – name changed to Totara Farm Trust
on 17 September 1999**

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Trust Deed

1. Name

The name of the Trust is **TOTARA FARM TRUST ('the Trust')**.

2. Purpose

The Trust exists solely for charitable purposes within New Zealand and to pursue the Objects of the Trust within the constraints of the Trust Deed.

3. Interpretation

Beneficiaries – the beneficiaries of the Trust are the people we support.

4. Objects

The Objects of the Trust are –

- a. To provide a safe and secure home for the people we support.
- b. To promote the general health and wellbeing of the people we support.
- c. To provide opportunities for the people we support to live as full a life as possible.
- d. To establish and maintain appropriate support services for the people we support.
- e. To promote and protect the rights of the people we support.
- f. To encourage as appropriate the involvement of the whanau/family of the people we support.
- g. To enlist the support of government, public and private organisations, and individuals for the benefit of the people we support.

5. Registered Office

The registered office of the Trust will be at 842 Kingseat Road, Kingseat, Auckland, New Zealand or at such other place as the Trustees may determine from time to time.

6. Governance and Management of the Trust

- a. The responsibility for governance and management of the Trust is vested in the Trustees.
- b. The Trustees may appoint and employ a Chief Executive (the CEO) to fulfil the management role without devolving the responsibility for the overall accountability of the Trust. The CEO will employ and be responsible for (under the direction of the Trustees) the appropriate staff to carry out the administration, operations and activities of the Trust in accordance with the Policies of the Trust as determined from time to time.

7. Trustees

There will be no fewer than five members and no more than eight Trustees at all times. The existing Trustees at the time of adoption of this Deed will continue in office until they retire or are replaced. Appointment of Trustees must take into account the following:

- a. At least three of the Trustees will be a parent, guardian or a sibling related to one of the Beneficiaries. If this is not possible, then potential Trustees who can evidence a connection or level of empathy to the Beneficiaries can be appointed.
- b. The remaining Trustees will be appointed for the specific skills or knowledge that he or she may be able to bring to the role and which will enhance the activities of the Trust.
- c. In circumstances where the number of Trustees falls below the minimum number the remaining Trustees will make every reasonable effort to bring the number of Trustees up to the minimum level as a matter of priority.
- d. Trustees will be appointed for a term of three years at the conclusion of which they must stand down. A Trustee may be re-appointed for a further three consecutive terms of two years. Having stood down for two-years, former Trustees are eligible to be considered for fresh terms of appointment. Where the Trustees deem there to be exceptional circumstances a Trustee may serve a longer term.
- e. No current employee of the Trust may be a Trustee.
- f. The power to appoint a Trustee is vested in the Trustees. Each appointment will require a Special Resolution at a Trustee meeting.
- g. Each Trustee will be provided with the Trust's current Trust Deed and will become familiar with its terms.
- h. A version-controlled master copy of the Trust Deed and all Variations will be held at the Trust's Registered Office and also electronically.

8. Retirement and Removal of Trustees

Notwithstanding anything to the contrary in this deed, a Trustee will cease to hold office in the following situations –

- a. A Trustee may retire by submitting a written letter of resignation to the other Trustees.
- b. A Trustee must immediately vacate his or her position if convicted of any criminal offence or be declared bankrupt or insolvent.
- c. The Trustees may, following due consideration of the circumstances and allowing for Natural Justice to prevail, remove a Trustee from their position as a Trustee, following the passing of a Special Resolution.
- d. A Trustee who has been absent from three consecutive Trustee meetings without due cause and/or prior approval of the other Trustees may be considered to have vacated their office.

9. Meetings of Trustees

- a. The operation and activities of the Trust are the responsibility of the Trustees. To fulfil this responsibility, the Trustees will endeavour to meet (including an Annual General Meeting (AGM)) at least eleven times a year and more often should this be deemed necessary.
- b. Trustees will be given a minimum of five days' notice of a meeting with all business papers pertinent to the meeting made available contemporaneously. Notice may be communicated by email or other electronic means to each Trustee's designated email address.
- c. Meetings generally will be held at an appropriate location. Meetings may also be held by audio, or visual and audio means.
- d. The Chairperson (who is also the Chief Governance Officer) will be elected by the Trustees from time to time. This appointment will be formally reconsidered prior to each AGM and the reconfirmation or change of appointment advised to the AGM. Election of the Chairperson will occur through a simple majority vote of the Trustees present.
- e. The Chairperson will preside at all Trustee meetings and the Annual General Meeting. In the absence of the Chairperson the Trustees present may appoint one of their number to chair that meeting.
- f. A quorum will be 60% of the Trustees.
- g. Resolutions - decisions at a Trustee meeting will be formalised by an Ordinary Resolution, or a Special Resolution as required by this Deed. Ordinary Resolutions will be passed by simple majority vote of Trustees present. Special Resolutions will be passed by a 75% majority of all Trustees whether present or not.
- h. Together with the requirement for Special Resolutions recorded elsewhere in this deed the following resolutions will be deemed Special Resolutions —
 - [i] any resolution involving the sale of any land and/or buildings held by the Trust;
 - [ii] any resolution involving the purchase or long-term lease (of 10 years or more) of any land/or buildings;
 - [iii] any resolution involving a substantive change in the use of any land and/or buildings held by the Trust; or
 - [iv] any resolution that would result in a substantial change to the Trust's services or identity in the community.
- i. The Trustees will keep full and proper Minutes of all decisions and their decision making at all meetings, and a copy of each set of Minutes will be securely retained. The Minutes of every Trustee meeting, once agreed, will be formally approved as a true record at the following Trustee meeting.
- j. All members present and able to vote will have one vote and in the case of equality of votes, the Chairperson will (but will not be obliged to use) have a second or casting vote. Proxy votes are not permitted.

- k. Where a Trustee may have a conflict of interest or their duty of impartiality could be reasonably questioned then that Trustee will offer to absent herself or himself from the meeting while such matter is discussed and/or determined. The conflicted Trustee may offer information to the discussion but cannot have a vote in the final decision.
- l. The CEO will attend Trustee meetings with no voting rights. The Trustees may exclude the CEO from parts of the meeting. The Trustees may appoint an independent person as a Secretary to take Minutes of Trustee meetings. The Secretary will not have voting rights.
- m. By invitation of the Trustees, any person who may have a direct interest in the affairs, activities and operations of the Trust, may attend Trustee meetings and the AGM. Speaking rights may be granted at the discretion of the Chairperson, but voting rights will not be granted.

10. Annual General Meeting

An Annual General Meeting of the Trustees will be held at least three months following the close of the financial year. The Trustees may invite other interested parties to attend the AGM, invitees may be granted speaking rights but have no voting rights. The business to be addressed at an AGM will include but not be restricted to –

- Confirmation of the Minutes of the previous AGM
- Adoption of the audited Annual Financial Statements
- Appointment of an Auditor for the following year
- Confirmation of Board Chairperson
- General Business of a pre-notified nature.

Notice of the AGM will be provided at least two weeks (14 days) prior to the meeting.

11. Powers of the Trustees

- a. In addition to all the powers, authorities, and discretions vested in the Trustees by law or by this Deed (but subject to any Donated Property Restrictions as defined in clause 12c), the Trustees in giving effect to the Objects, may in their discretion at all times and from time to time exercise the fullest possible powers and authorities as if they were the beneficial owners of the Trust.
- b. Through the CEO the Trustees will ensure that the management of the Trust's services, activities and operation, assets and chattels of the Trust complies with this Deed, the Trust's policies and directives, and the laws of New Zealand.
- c. The Trustees will be responsible for the acquisition, disposal, maintenance and development of land, buildings, plant and machinery, furniture, fixtures and fittings and motor vehicles owned by the Trust. Some of these responsibilities will be delegated to the CEO with formalised limitations from time to time. The Trustees will be bound by the provisions of Clause 9h (Special Resolutions) in this regard.

- d. The Trustees will be responsible for ensuring that detailed financial records of the Trust are kept and are accessible to the Trustees at all times. The financial records must present the Trust's receipts, credits, payments, creditors, liabilities and assets in a manner in which a true and accurate representation of the financial position of the Trust is available at any time.
- e. As a registered charity, the annual financial statements must be audited by a chartered accountant who is a qualified auditor and a member of Chartered Accountants Australia and New Zealand (CAANZ).
- f. Monthly financial reports summarising the financial position of the Trust will be available to the Trustees, such reports to be determined acceptable (or otherwise) at the Trustee meetings.
- g. The Trustees will establish and maintain all bank accounts necessary for the efficient operation of the Trust. All payments from the Trust's bank accounts will require two signatories for authorisation. The Trustees may appoint up to four signatories for this purpose, two of which will be the Chairperson and one other Trustee as appointed by the Trustees, and the other two being the CEO and one other senior staff member approved by the Trustees. All payments will be made in accordance with the Delegated Authority Policy.
- h. Notwithstanding any other provision in this Deed the Trustees may in their discretion undertake any one or more of the following –
 - [i] to carry on any business, activity, or venture in furtherance of the Objects, and to form (whether by themselves or with others) a company or partnership or other entity to carry on the business, activity or venture;
 - [ii] to raise or borrow funds from any person or organisation subject to a Special Resolution of the Trustees approving such borrowing;
 - [iii] to seek, receive or decline transfers, gifts, donations and bequests of property;
 - [iv] to do all such other lawful acts and things that are incidental or conducive to the attainment of the Objects.
- i. No private pecuniary profit will be made by any Trustee from the Trust, except that each Trustee may receive fees of the amounts determined from time to time by the Trustees and may receive full reimbursement for all costs, charges, and expenses properly incurred by the Trustee in connection with the affairs of the Trust.

12. Trust Funds

- a. The income of the Trust will be applied in accordance with the requirements of this Deed in promoting and attaining the Objects.
- b. Funds derived from Government sources will be applied in accordance with any constraints or requirements that may accompany those funds.
- c. If funds and/or property are received by the Trust subject to reservations, trusts, liabilities or obligations (Donated Property Restrictions) the Trustees must hold the property (and any proceeds of sale of it) as part of the Trust's funds and subject to the

Donated Property Restrictions and must make from the Trust funds whatever payments or provisions or transactions are required by the Donated Property Restrictions.

- d. The Trustees may invest all or any of the Trust funds in any property or in any other investment that is from time to time permitted by the laws of New Zealand for the investment of Trust funds.

13. Execution of Documents

- a. The Trust will have a Common Seal to be kept in safe custody at the registered office of the Trust. The Common Seal will only be affixed to any Deed, contract or agreement pursuant to a resolution of the Trustees.
- b. Whenever the Trustees in the exercise of any power authority or discretion conferred upon them need to sign or attest any Deed it will be sufficient for that Deed to be executed under the common seal of the Trust attested by any two of the Trustees.
- c. Whenever the Trustees in the exercise of any power, authority or discretion conferred upon them need to make any contract or agreement in writing, it will be sufficient for that contract or agreement to be made on behalf of the Trustees in writing signed by any two Trustees or any employee of the Trust plus one Trustee who is acting under the express authority of the Trustees.

14. Limitation of Liability and Indemnity

- a. No Trustee, including any prior Trustee, is liable for the consequence of any act or omission or for any loss unless the consequence or loss is attributable to his or her dishonesty, wilful misconduct, or gross negligence by him or her of any act known by him or her to be a breach of trust.
- b. No Trustee is bound to take any proceedings against another Trustee, including any prior Trustee, for any breach or alleged breach of trust by the other Trustee.
- c. The Trustees are not liable for any loss or cost to the Trust by any breaches of trust or defaults of any attorney, delegate, manager, agent or employee appointed, engaged or employed by them, despite any rule of law or equity to the contrary.
- d. Each Trustee is fully indemnified by and out of the Trust funds (whether from insurance cover, capital or the income of the Trust) for any loss or liability which they incur in carrying out any function, duty, or power of the Trustees under this deed and in respect of any outlay or expenses incurred by him or her in the management and administration of the Trust unless the loss or liability is attributable to his or her dishonesty or to the wilful commission or omission by him or her of an act known by him or her to be a breach of trust. The Indemnity given by this clause extends to any loss or liability which a person, after ceasing to be a Trustee, incurs through carrying out any function, duty or power of the Trustee, whether the carrying out took place before, during or after the period in which the person was a Trustee.

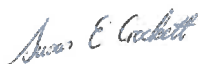
15. Amendment of Trust Deed

Subject to any relevant legislation for the time being in force relating to charitable trusts, the Trustees have the power by Special Resolution to amend, revoke or add to any of the provisions of this deed.

16. Winding Up

- a. The Trustees may at any time by Special Resolution wind up the Trust provided the resolution is confirmed after 30 days by a further Special Resolution.
- b. On the winding up the Trustees will pay or apply such of the capital and income of the Trust as then remains towards other charitable organisations with similar aims or objects within New Zealand as the Trustees determine. If the Trustees cannot agree, the capital and income will be paid or applied as a Judge of the High Court of New Zealand may determine.

Executed as a deed and signed by:



Susan Elizabeth Crockett



Jeff Small (Mar 30, 2022 10:04 GMT+13)

Jeffrey Roy Small



Brian Hussey (Apr 3, 2022 18:13 GMT+12)

Brian Noel Hussey



Peter Lewis Sherwood



Anne Rosemarie Todd



M F Sherwood (Apr 11, 2022 08:05 GMT+12)

Melissa Frances Sherwood