

Trust Deed

Construction Health and Safety New Zealand Trust

Deed dated

26 March

2018

Party

Richard Alexander Herd of Nelson, Chief Executive Officer of Naylor Love, **Francois Rowland Barton** of Lower Hutt, Executive Director of the Business Leaders' Health & Safety Forum, **Roger George McRae** of Auckland, Director of McRae Construction Services, **Graham Paul Burke**, of Otaki, President of the Specialist Trade Contractors Federation, **Nigel William Smith** of Ashburton, Chief Executive Officer of Milestone Homes, and **Stephen Laurence Killeen** of Auckland, Chief Executive Officer of Downer Group (together, the '**Founding Trustees**').

Background

- A The Founding Trustees represent a majority of the key sectors within the construction industry in New Zealand. The Founding Trustees wish to establish a trust as a vehicle for benefitting the community by providing a single voice on health and safety issues and to foster a positive change in the health and safety culture within the New Zealand construction industry, to reduce the rate of workforce injuries and deaths.
- B The Founding Trustees and other stakeholders in the construction industry have a common interest in furthering the safety of workers in the construction industry. The Founding Trustees have accordingly determined to establish a trust for charitable purposes by creating the trusts provided for in this Deed ('**Trust**').
- C The Founding Trustees have further determined to commence the Trust by agreeing to hold an initial sum of \$10.00 in their joint names on the trusts set out in this Deed ('**Initial Gift**').

Covenants

- 1 This Deed witnesses and it is covenanted and declared that the Founding Trustees shall hold the Initial Gift, together with all further sums or other assets acquired by or vested in the Trustees for the purposes of the Trust, upon the trusts and with and subject to the powers and discretions set out or implied in the Schedule to this Deed.
- 2 This deed may be executed in one or more counterparts each signed by one or more of the parties hereto and all of which when taken together (including email or scanned exchanged signed counterparts) shall constitute but one and the same deed.

Schedule

Terms of the Construction Health and Safety New Zealand Trust

1 Interpretation

1.1 Definitions

In this Deed, the following terms have the following meanings except to the extent that they may be inconsistent with the context:

'Appendix' means the Appendix to this Deed.

'Chair' means the person appointed to act as Chair of the Council of Trustees.

'Council of Trustees' and **'Council'** mean the board of trustees of the Trust constituted in accordance with this Deed.

'Deed' means this deed of trust including the Schedule and Appendix as amended from time to time in accordance with clause 13 or as amended in any other manner permitted by law.

'Financial Year' means a year ending on 31 March or any other date adopted by the Trustees as the date up to which accounts shall be made in each year for the Trust.

'Liability' means claims, losses, liabilities, costs or expenses of any kind and however arising, including penalties, fines and interest and including without limitation any obligation binding on the Trust in respect of funds or grants provided to the Trust which have not yet been applied for the purpose for which they were given.

'Mission' means the mission of the Trust, as set out in clause 4.1.

'Objects' means the objects and purposes of the Trust, as set out in clause 4.2.

'Schedule' means this Schedule.

'Special Resolution' means a resolution passed by at least 75% of the votes of those Trustees entitled to vote and voting on the question.

'Stakeholder' means a grouping whose interests are represented on the Council pursuant to paragraphs i to ix of clause 6.2c of this Schedule.

'Stakeholder Entity' means an entity nominated by the Council pursuant to clause 6.3 to represent a grouping referred to in paragraphs i to ix of clause 6.2c of this Schedule.

'Terms' means the terms of the Trust set out in this Schedule.

'Transaction' means a transaction to which the Trust is a party to.

'Trust' means the Construction Health and Safety New Zealand Trust as constituted by this Deed.

'Trustees' means the trustees for the time being of the Trust whether founding, additional or substituted, and as at the date of this Deed means the Founding Trustees.

'Trust Fund' means:

- a the Initial Gift of \$10.00 referred to in the recitals to this Deed;
- b all other moneys, investments and property, both real and personal, which may be received and accepted by the Trustees as part of the Trust Fund from time to time, and in particular:
 - i funds received by the Trust from any public sector agencies or private sector entities and individuals for the furtherance of the Objects of the Trust;
 - ii personal property received by the Trust from ConstructSafe Limited (company number 6116667) for the furtherance of the Objects of the Trust; and
- c the investments and properties from time to time representing the above and accretions to and income from those investments and properties.

1.2 General construction

In interpreting this Deed, the following rules must be applied unless the context requires otherwise:

- a Headings to clauses are for reference only and are not an aid in interpretation.
- b References to statutory provisions will be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
- c References to clauses are to clauses of this Deed.
- d Words importing the plural include the singular and vice versa and words importing gender import all genders.
- e Any reference to a **'law'** includes common law and any constitution, decree, judgment, legislation, order, ordinance, regulation, status, treaty or other legislative measure, in each case of any relevant jurisdiction (and **'lawful'** and **'unlawful'** shall be construed accordingly).
- f The words and expressions defined are indicated by capital letters for convenience. The absence of a capital letter shall not alone imply that the word or expression is used with a meaning different from that given by its definition.

2 Establishment of Trust

The Trustees acknowledge and declare that they stand possessed of the Trust Fund upon trust to apply the same for the objects and purposes set out in clause 4.2 and with the powers and discretions set out or implied in this Deed.

3 Name of Trust

The Trust established will be known and referred to as the **Construction Health and Safety New Zealand Trust** or such other name as the Trustees may determine from time to time by Special Resolution.

4 Objects

4.1 Mission

The mission of the Trust is to reduce the rate of injuries and deaths in the New Zealand construction industry by providing a single voice on health and safety issues and by helping to foster a positive change in health and safety culture in the construction industry.

4.2 Objects and purposes

The Trustees shall hold the Trust Fund upon trust for the following objects and purposes in support of the Mission of the Trust:

- a To create a united and cohesive view on construction health and safety within the construction industry.
- b To foster cultural change in the construction industry to ensure that health and safety is treated as an overriding priority and a shared responsibility throughout the industry.
- c To promote health and safety as an integral part of business operations and culture within the construction industry.
- d To provide readily available guidance on health and safety issues to those sectors and companies and agencies operating in the construction industry.
- e To promote consistent health and safety standards, systems, measurements and expectations within the construction industry.
- f To encourage workforce alignment and engagement in relation to health and safety within the construction industry.
- g To establish New Zealand as a world leader in health and safety performance in the construction sector.
- h Subject to clause 4.2i, to carry on in New Zealand any other charitable purpose which may seem to the Trustees capable of being conveniently carried on in connection with any of the above objects of the Trust or calculated directly or indirectly to advance any or all of the above objects of the Trust or otherwise support the Mission.
- i Notwithstanding anything herein contained the objects and purposes of the Trust shall be limited and restricted at all times so that they shall be within the definition of 'charitable purposes' as defined in the Charities Act 2005.

4.3 Independence of objects

The Objects shall each be regarded as independent objects and shall accordingly, except where otherwise expressed, be in no way limited or restricted by reference to, or inference from, the terms of any other paragraph of clause 4.2, nor from the name of the Trust nor by

reference to or any inference from any other matter or thing whatsoever. However, each Object shall be read consistently with the Mission. None of the provisions of any paragraph of clause 4.2 or the Objects shall be deemed to be subsidiary or ancillary to any other paragraph or paragraphs of clause 4.2 to the end and intent that subject as aforesaid, the Trustees may exercise all or any of the Objects independently of any other Objects. If there is any ambiguity in the interpretation of any of the Objects, subject to clause 4.2i each Object shall be construed in such a way as to widen and not restrict the powers of the Trustees.

4.4 Charitable purposes paramount

Notwithstanding anything herein contained, the activities of the Trust shall be limited and restricted at all times to activities that are beneficial to the community, and the purposes for which they are carried on fall within the definition of 'charitable purposes' as defined in the Charities Act 2005.

5 Powers of the Trustees

5.1 Powers of Trustees

The Council may, in order to achieve the Objects and purposes of the Trust, have all the powers vested in them by law as trustees of the Trust, including, without limitation those Powers set out in the Appendix.

5.2 Delegation of powers

The Council may delegate any or all of the powers, authorities and discretions exercisable by the Council under this Deed to any attorney, agent or person as the Council directs. The Council may in delegating any of its powers, authorities and discretions delegate on such terms and conditions as are prescribed by the Council and may include a power of sub-delegation.

5.3 Extent of powers

The Council shall have absolute discretion in giving effect to the Objects and may at all times and from time to time exercise the fullest possible powers and authorities as if the Council were the beneficial owners of the Trust Fund on such terms and conditions and in such manner and by such means as they think fit.

6 Council of Trustees

6.1 Administration by Council of Trustees

The Trust shall be administered by a Council of Trustees.

6.2 Number and Composition of Trustees

- a As at the date of this Deed, the Council shall comprise the Founding Trustees.
- b The Council shall be comprised of no less than six and no more than 15 Trustees including an independent Chair.
- c By the end of the first full Financial Year of the Trust, the Council shall exercise its powers under clause 6.6 to appoint additional or replacement Trustees to ensure full

representation of, and accountability to, the Stakeholders, who are intended to be representative of the New Zealand construction industry as a whole, with the Council to include a representative from each of the following:

- i the major civil construction sector in New Zealand;
 - ii the major commercial construction sector in New Zealand;
 - iii the residential building construction sector in New Zealand;
 - iv small-medium enterprises operating within the construction industry in New Zealand;
 - v one government entity having an interest in the construction industry;
 - vi one union which represents the interests of the majority of the construction industry workforce in New Zealand;
 - vii public clients utilising the services of the construction industry;
 - viii private clients utilising the services of the construction industry; and
 - ix consultants operating within the construction industry.
- d Subject to clauses 6.2b, in addition to the Trustees appointed pursuant to clause 6.2c, the Council may appoint such other person or persons to be Trustees of the Trust where the Council considers such additional appointment or appointments to be necessary or desirable to ensure that the Council of Trustees are fully representative of the New Zealand construction industry as a whole and also have the necessary skill set to properly govern and administer the Trust.

6.3 Nomination of Stakeholder Entities and Trustees

The Council shall nominate Stakeholder Entities to represent each of the Stakeholders for the purpose of enabling the representative objectives of clause 6.2c, to be fulfilled, on such basis as the Trustees see fit. Stakeholder Entities, in turn, shall have power to nominate an individual for Council to consider and, if agreed, appoint as a Trustee. Recognising that there might be more than one appropriate Stakeholder Entity to represent a particular Stakeholder, when nominating Stakeholder Entities, the Trustees must use reasonable endeavours to canvass the relevant Stakeholder to satisfy themselves that each Stakeholder Entity is an appropriate representative of the relevant Stakeholder.

6.4 Stakeholder Entity ceasing to exist

In the event that a Stakeholder Entity ceases to exist, the Council will determine an appropriate replacement Stakeholder Entity to nominate a Trustee to be appointed to represent the relevant Stakeholder on the Council in accordance with clause 6.3. With the agreement of the Council by Special Resolution, the Trustees may decide not to replace the Stakeholder Entity if the Trustees are unable to identify an appropriate entity to represent the relevant Stakeholder.

6.5 Replacement of Stakeholder Entity

The Council may replace a Stakeholder Entity on giving such notice to the Stakeholder Entity and following such process as the Trustees see fit if:

- a the Trustees consider that such replacement is appropriate, having regard to the need for effective representation of the relevant Stakeholder; and
- b the replacement is approved by Special Resolution.

6.6 Appointment of Trustees

Subject to the foregoing, the Council shall have the power by Special Resolution to appoint and remove Trustees, as well as the power by ordinary resolution to determine the process by which nominations of new or replacement Trustees are made and considered by the Council, and the term of appointment of any Trustee (except for the Chair as set out in clause 6.7), ensuring that the composition of the Council of Trustees always reflects the provisions in clause 6.2.

6.7 Appointment of Chair

The Chair shall be appointed by the Trustees, being a person who the Trustees consider to be free of undue influence from each of the Stakeholders. The term of appointment of the Chair is up to two years, and any sitting or previous Chair will be eligible for reappointment for a further term or terms. The Chair may be removed at any time by Special Resolution of the Trustees, if the Trustees reasonably determine that the Chair is not or is no longer free of undue influence from any Stakeholder, or is otherwise no longer suitable for the role.

6.8 Vacancy

The position of Trustee shall become vacant if any member of the Council:

- a shall resign office; or
- b shall become bankrupt or insolvent; or
- c shall cease to be able to manage his or her affairs in terms of the Protection of Personal and Property Rights Act 1988; or
- d shall be convicted of an indictable offence; or
- e shall be absent from New Zealand for a period of 12 months without obtaining leave of absence from a majority of the other members of the Council; or
- f shall die; or
- g is for any reason unfit to carry out his or her duties as a member of the Council as reasonably determined by a resolution of all the other members of the Council; or
- h being a Trustee holding office as a nominee of a Stakeholder Entity, if the Council is notified by that Stakeholder Entity that the Trustee is no longer an appropriate person to represent that Stakeholder Entity, or if the Stakeholder Entity ceases to exist or is replaced pursuant to clause 6.4 or 6.5; or
- i in the case of the Chair, is removed in accordance with clause 6.7.

6.9 Powers of Council of Trustees during vacancy

The Council shall use reasonable endeavours to ensure any vacancy in the Trustees, whether arising through retirement or otherwise, is filled as soon as is reasonably practicable. The

Trustees shall have full power to act notwithstanding any vacancy in their number from time to time.

6.10 Trustees as representatives

Notwithstanding the fact that Trustees are appointed as representatives of Stakeholders, the Trustees must act solely in the interests of the Trust in pursuing the Mission and furthering the Objects.

7 Proceedings of Council of Trustees

7.1 Regulation of Council proceedings

The proceedings of the Council of Trustees shall be regulated in accordance with the following provisions.

7.2 Meetings of Council and conduct of proceedings

- a The Council shall have the power to carry out its duties and conduct its proceedings in such manner as it determines from time to time. Unless determined otherwise by the Council, proceedings shall be conducted as follows.
- b The Council may meet for the despatch of business adjourn and otherwise regulate the meetings as it thinks fit. Subject to the urgency provisions in this sub-clause, fourteen days' notice shall be given of the meetings. The Chair, or any two Trustees, may at any time summon a meeting of the Council and it shall not be necessary to give notice of the meeting of the Council to any member for the time being absent from New Zealand. Where it is impractical, in urgent circumstances, to give fourteen days' notice of a meeting in accordance with this sub-clause, the Chair and one other Trustee may summon a meeting of the Council on giving not less than 48 hours' notice.
- c The quorum necessary for the transaction of the business of the Council shall be one-half of the Trustees holding office at the time.
- d Continuing members may act notwithstanding any vacancy in their body so long as their numbers are not reduced below eight.
- e The Council shall hold not less than six meetings in each Financial Year.
- f If at any meeting the Chair is not present within five minutes after the time appointed for holding the meeting the members present may appoint one of themselves to be acting Chair of the meeting.
- g The Council may in any particular matter co-opt to its deliberations any person having specialised knowledge in respect of the topic under consideration or investigation and any person so co-opted shall have a right to speak at any meeting of the Council but not to vote unless the Trustees agree otherwise.
- h A resolution in writing signed by all the members of the Council for the time being entitled to receive a notice of a meeting of members of the Council shall be as valid and effectual as if it had been passed at a meeting of the members duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more members and may be communicated by email, facsimile or other electronic process.

- i Notwithstanding any other provision in this Deed, the contemporaneous linking together by telephone or video conference or other electronic means permitting instantaneous communication (referred to as a '**remote meeting**' in this Deed) of a number of the Trustees ('**participants**') being not less than the quorum, shall be deemed to constitute a meeting and all the provisions in this clause 7.2 as to meetings shall apply to such meetings so long as the following conditions are met:
 - i All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a remote meeting and to be linked by remote means for the purposes of such meeting. Notice of such meeting may be given by telephone or by electronic means;
 - ii Each of the participants taking part in the remote meeting must be able to hear or otherwise communicate with each of the others taking part at the commencement of the meeting;
 - iii At the commencement of any remote meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
 - iv A participant may not leave a remote meeting by disconnecting his or her connection with the meeting without having previously obtained the express consent of the Chairperson and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the remote meeting unless having obtained the express consent of the Chairperson to leave the meeting.
- j Minutes of the proceedings at a remote meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by or on behalf of the Chairperson.
- k All proceedings of the Council shall be recorded in the form of minutes entered in a minute book of the Trust.

7.3 **Voting**

Unless otherwise provided in the Deed, questions arising at any meeting shall be decided by seeking consensus wherever possible, and where a consensus is not possible, by a majority of votes of those Trustees eligible to vote on the particular matter. In the case of an equality of votes the Chairperson of the meeting shall have a second or casting vote. Each Trustee shall have one vote. Proxy votes can only be given to another Council member of the Trust and any form appointing a proxy must be presented to the Council in writing in any form the Council determines to be satisfactory in its sole discretion.

7.4 **Disclosure of interests**

- a Subject to sub-clause f of this clause 7.4, a Trustee will be interested in a Transaction to which the Trust is a party if the Trustee:
 - i is a party to, or will derive a material financial benefit from that Transaction;
 - ii has a material financial interest in another party to the Transaction;
 - iii is a director, officer or trustee of another party to the Transaction, or person who will or may derive a material financial benefit from the Transaction, not being a party that is wholly owned by the Trust;

- iv is the parent, child or spouse of another party to the Transaction, or person who will or may derive a material financial benefit from the Transaction; or
 - v is otherwise directly or indirectly interested in the Transaction.
- b As soon as a Trustee becomes aware of the fact that he or she is interested in a Transaction or proposed Transaction with the Trust, they must disclose to their co-trustees at a meeting of the Council of Trustees:
- i if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest; or
 - ii if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.
- c A disclosure of interest by a Trustee must be recorded in the minute book of the Trust.
- d Unless paragraph e applies, any Trustee who is or may be in any other capacity whatsoever personally interested or concerned directly or indirectly in a Transaction entered into or to be entered into by the Trust may not vote on a matter relating to the Transaction or take part in any deliberations relating to the Transaction. However, this restriction shall not apply in relation to any proposed engagement of a charity registered with Charity Services New Zealand with which a Trustee is associated, where the engagement relates to the delivery of services consistent with the Objects.
- e If an interested Trustee has the express agreement of every other Trustee that the other Trustees are satisfied that neither the Trustee, nor the Stakeholder Entity who nominated the Trustee (if applicable) or any other person related to the Trustee (as set out in paragraph iv above), will derive any private pecuniary profit or gain from the Transaction, other than a private pecuniary gain permitted under clause 7.6 or otherwise authorised under the Charities Act 2005, the Trustee may:
- i Vote on a matter relating to the Transaction; and
 - ii Take any part in the deliberations relating to the Transaction.
- f Notwithstanding sub-clause d of this clause 7.4, a Trustee shall not be regarded as being interested in a Transaction:
- i if the Trustee's interest is so remote or insignificant that it cannot reasonably be regarded as being likely to influence the Trustee in carrying out the Trustee's responsibilities under this Deed or the Charities Act 2005; or
 - ii if the Trustee's interest in the Transaction is an interest in common with the general public or those with an interest in the New Zealand construction industry in general.

7.5 Dealing with 'interested' Trustees

Subject to clause 7.4, each Trustee may act as a Trustee and still contract or otherwise deal with Trustees on the Council in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee. The right to continue to act as a Trustee will apply even though a Trustee's interest or duty in a particular matter may conflict with any duty he or she may have in respect of the Trust.

7.6 No private pecuniary profit of any individual with exceptions

- a No Trustee or person with any control (as referred to in section CW 42 of the Income Tax Act 2007) over the business of the Trust may direct or divert to their own benefit or advantage an amount derived from the business of the Trust.
- b No private pecuniary profit shall be made by any person involved in this Trust as a Trustee or employee, except that where it is considered appropriate by the Trustees:
 - i any Trustee or committee/group member appointed by the Trustees or employee of the Trust may be entitled to be reimbursed out of the assets of the Trust for all expenses that they properly incur in connection with the affairs of the Trust;
 - ii the Trust may pay reasonable and proper remuneration to any officer, servant, or consultant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
 - iii any Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust; and
 - iv any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatsoever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

7.7 Restriction on benefits where recipient may influence benefits

- a In relation to any business carried on by the Trust, no payments shall be made from the Trust to any person who is:
 - i a Trustee of the Trust; or
 - ii is a shareholder or director of any company by which the business of the Trust is carried on; or
 - iii is a trustee of a trust that is a shareholder of a company by which the business of the Trust is carried on; or
 - iv an associated person (as defined by the Income Tax Act 2007) of any such Trustee, shareholder or director,

for work done or services rendered in connection with any such business nor shall, in the carrying on of any such business, any benefit or advantage (whether or not convertible into money) or any income of any of the kinds referred to in section CW 42(8) of the Income Tax Act 2007 be afforded to, or received, gained, achieved or derived by such person where that person is able, by virtue of that capacity as Trustee, shareholder, director or associated person, in any way, whether directly or indirectly to determine, or to materially influence the determination of:

- A the nature or extent of a relevant benefit or advantage; or

- B the circumstances in which a relevant benefit or advantage is, or is to be, given or received.

7.8 Professional account and influence

A person who in the course of and as part of the carrying on of his or her business of a professional in public practice shall not, by reason only of his or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of clause 7.7.

7.9 Trustees to comply with restrictions

The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by clauses 7.6 and 7.7 of this Deed are strictly observed.

8 Duties of the Council of Trustees

8.1 Duties

The Council of Trustees will be responsible for furthering the Objects and purposes of the Trust and for declaring general policy relating to the implementation of the Objects and purposes of the Trust.

8.2 Consultation and meeting

The Council shall consult with the Stakeholders, and others having a vested interest in the construction industry as the Council in its discretion considers appropriate, in respect of the activities of the Trust.

8.3 Financial statements and audit

The Council shall cause proper books of account to be kept showing all assets and Liabilities of the Trust and all moneys received and disbursed. The Council shall prepare annual financial statements and such financial statements shall be audited or reviewed by a suitably qualified person appointed for that purpose by the Council, and shall publish or otherwise formalise such record of its affairs as any provider of funding to the Trust may require as a condition of providing funding to the Trust.

8.4 Returns

The Council shall ensure that all relevant regulatory obligations are complied with as required by law, including in respect of the filing of taxation returns for the Trust with the Inland Revenue Department, and the Department of Internal Affairs (if applicable).

9 Committees/groups

9.1 Power to convene committees/groups

The Council will have the power to appoint the convenor and members of such committees/groups as the Council may from time to time deem advisable and may delegate and assign to such committees/groups such particular duties and responsibilities as the Council shall think fit.

9.2 **Proceedings of committees/groups**

Committee/group members may meet together for the dispatch of business, and adjourn or otherwise regulate their meetings as they think fit to carry out their functions and to meet their terms of reference.

9.3 **Budgets**

Committees/groups will not expend any moneys or incur any Liabilities in excess of more than 5% of any budget approved by the Council without the prior approval of the Council.

9.4 **Power of appointment of committee/group members**

The Council will have the power to fill any casual vacancies on a committee/group or make any further appointments to a committee/group from time to time, including in respect of the appointment of a Chairperson for each committee/group.

9.5 **Reporting**

Each committee/group will prepare and provide such reports to the Council as directed by the Council.

10 **Membership**

10.1 **Trustees may establish a membership**

The Trustees may, but shall not be obliged to:

- a invite persons, firms and corporations who wish to support or take an interest in the purposes of the Trust to become members of the Trust;
- b establish different classes of membership;
- c fix and charge membership fees (including joining fees and subscriptions) for members or each class of members, as the case may be;
- d call members' meetings;
- e subject to clause 10.3, confer membership rights on members; and
- f issue membership certificates or other evidence of membership.

10.2 **Power of Trustees to confer membership rights on members**

Subject to clause 10.3, in exercising their powers pursuant to clause 10.1e, the Trustees may confer on members the right to:

- a provide input to the Trustees on matters relating to the administration and governance of the Trust; and
- b be consulted with by the Trustees on matters relating to the administration and governance of the Trust.

10.3 **Limitations on personal benefit arising from membership rights**

- a No member of the Trust or any person associated with a member of the Trust may determine or materially influence any decision of the Trustees relating to:
 - i the payment of any income of the Trust to, or on behalf of, that member or any associated person; or
 - ii the conferring of any benefit or advantage on, or on behalf of, that member or associated person.
- b Any such income paid must be reasonable and relative to that which would be paid in an arm's length transaction (being the market value).
- c Membership shall not confer on any member the right to receive any of the income or capital of the Trust Fund or to control the Trustees in the exercise of their powers.

11 Responsibility of Trustees

11.1 Limitation of liability

- a No Trustee shall be liable for any loss other than those attributable to that Trustee's own dishonesty or to the wilful commission by the Trustee of any act known by that Trustee to be a breach of trust.
- b No Trustee will be bound to take or be liable for failing to take, any proceedings against a co-trustee for breach or alleged breach of trust.
- 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 or engaged or employed by them, despite any rule of law or equity to the contrary.

11.2 Indemnity

- a To the maximum extent permitted by law, each of the Trustees shall be fully indemnified by and out of the Trust Fund (whether from the capital or the income of the Trust Fund) for any personal loss or liability incurred in respect of the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees pursuant to this Deed and in respect of any matter or thing done or omitted to be done in any way relating to the Trust and in respect of any outlay or expenses incurred by him or her in the management and administration of the Trust (provided such liability is not attributable to his or her own 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).
- b The indemnity given by this clause 11.2 extends to any loss or liability which a person after ceasing to be a Trustee incurs through the carrying out of any function, duty or power of the Trustees, whether the carrying out took place before, during, or after the period in which the person was a Trustee.

12 Bank account and expenses

The Council shall open and operate an account or accounts at such bank or banks as they shall from time to time determine. Such account or accounts may be operated by such person or persons as the Council shall from time to time direct.

13 Revocation or amendment

13.1 Alteration of Deed

Subject to clause 13.3, the terms of this Deed may be altered, added to, rescinded, or otherwise amended at any time by a Special Resolution of the Trustees.

13.2 Review of representation

Within the first full Financial Year of the Trust, and from time to time thereafter, the Trustees shall review the mechanisms in this Deed for ensuring the Council composition is appropriately representative of the construction industry in New Zealand, and make any amendments to this Deed that the Trustees consider necessary or desirable to enhance the effectiveness of the governance structure in representing the Stakeholders and pursuing the Mission and Objects.

13.3 Restriction on alterations

No alteration, addition, revision or other amendment shall be made if it would prejudice the charitable nature of the Trust or if it would remove or undermine the effectiveness of this restriction.

14 Winding up

14.1 Voluntary winding up

The Trust may be wound up at any time on the passing of a resolution of 75% of all Trustees.

14.2 Winding up on failure of objects

If at any time the Objects of the Trust shall fail or if for any other reason the purposes of the Trust shall become wholly frustrated and incapable of being carried out then and in such case the Trustees shall proceed to wind up the Trust.

14.3 Distribution of assets on winding up

Upon a winding up for any reason, the surplus assets and funds of the Trust after payment of all liabilities shall be paid, applied, transferred or appropriated towards the Objects of the Trust or for such other charitable purpose within New Zealand consistent with the Objects of the Trust, as may be determined by the Trustees or in default of such determination as may be directed by the High Court of New Zealand.

15 Incorporation

Immediately following the execution of this Deed, the Trustees shall proceed to incorporate the Trust as a board under the provisions of Part II of the Charitable Trusts Act 1957.

16 Registered office

16.1 The registered office of the Trust shall be Level 4, The Terrace, Wellington 6011, or such other address in New Zealand as the Trustees may determine.

16.2 The registered office of the Trust may be changed at any time by Special Resolution.

17 Common seal

On the Trustees becoming incorporated as a board under the Charitable Trusts Act 1957, the Trustees shall provide a common seal for the Trust, which shall be kept at the Trust's registered office or by any person appointed by the Council.

18 Entry into contracts

Contracts may be entered into on behalf of the Council of Trustees as follows:

- a A contract which if made between private persons would be by law required to be by deed may be made on behalf of the Council of Trustees in writing signed by any two Trustees, or by one Trustee and another person duly authorised by the Council of Trustees for this purpose, in each case with their signatures duly witnessed, either with or without the common seal being affixed, with those signatures being sufficient evidence of the authority of the Council of Trustees to enter into such contract, and no person dealing with the Trustees shall be bound or concerned to see or enquire as to the authority under which any such document has been signed.
- b A contract which if made between private persons would be by law required to be in writing, signed by the parties, may be made on behalf of the Council of Trustees in writing signed by a Trustee or by any other person acting under the express authority of the Council.
- c A contract which if made between private persons would by law be valid if made orally, and not reduced to writing, may be made orally on behalf of the Council of Trustees by a Trustee or by any other person acting under the authority of the Council.

19 Counterparts

This Deed may be executed in two or more counterpart copies each of which will be deemed an original, and all of which together will constitute one and the same instrument.

Appendix

Powers of the Trustees

The Council may, in order to achieve the Objects of the Trust, have all other powers vested in trustees by law, including, without limitation, the following powers:

- a Apply all or any part of the capital and income of the Trust from time to time to all or any of the Objects of the Trust.
- b Accumulate the income of the Trust or any part thereof until the same can in the opinion of the Trustees be usefully applied for all or any of the Objects of the Trust.
- c Enter into any agreement with any company, trust or organisation in furtherance of the Objects of the Trust including any management agreement for the management of any of the Trust's assets.
- d Pay all expenses incurred in or in connection with the incorporation of the Board as a board under the Charitable Trusts Act 1957.
- e Accept any property or assets upon a special trust declared or to be declared by the donor provided the purpose of such trust is within the Objects of the Trust.
- f Accept as bare or passive trustees any assets or property received and to apply the same according to any lawful directions given to the Trustees, and any conditions attached thereto by the donor or the will-maker provided the purpose of such trust is within the Objects of the Trust.
- g Apply for, obtain, enter into and/or hold or give any agreements, licenses, easements, consents, covenants or other interests in land or under contract or any other regulatory or statutory authorisation of any kind whatsoever necessary to give effect to the Objects of the Trust.
- h Seek, accept, and receive subscriptions, donations, subsidies, grants, endowments, gifts, legacies, loans and bequests in money, in kind or otherwise.
- i Make, grant or give donations, subsidies, grants or gifts in money, in kind or otherwise to any other person, organisation or group (whether incorporated or not) sharing similar charitable Objects to the Trust.
- j Establish, promote and foster any other person, organisation or group (whether incorporated or not) with similar charitable Objects to the Trust.
- k Establish, promote, and foster community programmes, workshops, public classes and other activities.
- l Make known and advertise the Trust and its purposes by such use of the media as the Trustees may decide.
- m Develop affiliations or achieve accreditation with any other person, organisation or group (whether incorporated or not) sharing similar charitable Objects to the Trust.
- n Subsidise, encourage, and co-operate with any other person, organisation or group (whether incorporated or not) sharing similar charitable Objects to the Trust.

- o Purchase and take on lease buildings and parts of buildings, lease premises to tenants and generally to act as a landlord and a property developer.
- p Construct, maintain and alter any building or any other structure necessary or convenient for the purposes of the Trust.
- q Purchase, take on lease or in exchange, to hire or otherwise acquire any personal property and any rights or privileges which the Trustees may think necessary or convenient for the purposes of the Trust's business.
- r Sell or otherwise dispose of any property vested in the Trustees from time to time or any part thereof for such consideration and upon such terms as may be proper.
- s Borrow for the purpose of the Trust from any person any sum or sums of money on the security of all or any of the Trust's property, both real and personal and its general assets and effects both present and future either under legal mortgages or charges with powers of sale or otherwise and other usual powers or by any other securities of the Trust and generally on such terms and conditions as to the rate of interest or otherwise as the Trustees think fit including any borrowing of moneys from the Trust's bankers on overdraft or otherwise with or without security.
- t Draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments, and execute guarantees at the request of and for the benefit of the Trust.
- u Employ staff and/or engage contractors on such terms and for such purposes as the Trustees think fit.
- v Appoint, remove or suspend and pay such officers, employees or persons either for temporary or special services with the Trustees as they may from time to time deem necessary and determine their duties and powers and fix their salaries and remuneration.
- w If thought fit take any legal step or promote any Act of Parliament to dissolve any board and re-incorporate its members as a new board for any of the Objects specified in this Deed or for effecting any other necessary modifications in the Trust's constitution.
- x Pay all or any of the expenses incurred in and in connection with the incorporation of the Trustees as a board under the Charitable Trusts Act 1957, establishment and maintenance of such board, or for any other of the purposes set out in clause 4 above.
- y Set apart in such manner as the Trustees think fit any portion of the Trust Fund as a special endowment for any charitable body having objects in whole or in part similar to the objectives of the Trust and to apply the same and/or the income thereof with any accretions thereto either for the particular charitable body for which it was set aside or for the general purposes of the Trust.
- z Enter into any partnership union of interests co-operation joint venture or reciprocal concession with any person, company or organisation carrying on or engaged in or about to carry on or engage in any business or transaction which the Trustees are authorised to carry on or engage in or any business or transaction capable of being conducted so as directly or indirectly to benefit the Trust.
- aa Invest money in accordance with the power of investment conferred upon trustees by the Trustee Act 1956 and its amendments.

- bb Lend money to such persons or companies and on such terms as may be proper and at a reasonable rate of interest and in particular to customers and others having dealings with the Trust and to guarantee the performance of contracts by any such persons or companies.
- cc Incorporate any company to undertake any business of the Trust consistent with the Trust's charitable purposes and to seek in respect of such company any tax exemptions and registration of such company with Charities Services or any successor body.
- dd Appoint and obtain the advice of any auditor, solicitor or other professional adviser on such terms as may be agreed by the Board from time to time.
- ee Establish funds for specific objects or purposes of the Trust.
- ff Seek support from companies, firms, individuals, trusts, statutory bodies, local and central government to assist in the work of the Trust.
- gg Establish and maintain connections with organisations in New Zealand and overseas having objects wholly or in part similar to those of the Trust.
- hh Acquire and undertake the whole or any part of the business, property and liability of any person engaged in any enterprise or business in which the Trust is authorised to engage.
- ii Co-operate with other agencies providing similar services.
- jj Seek registration as a charitable entity with Charities Services or any successor body under the Charities Act 2005.
- kk Arrange with any government or other authority any matter which may seem conducive to any of the Objects of the Trust.
- ll Adopt by such means as the Trustees think necessary the making known of the activities and the Objects of the Trust and in particular by advertising in the media, by circulars and by publication of books and periodicals and encouraging sponsoring of support organisations.
- mm In furtherance of the Objects of the Trust, as far as the law will permit and subject to the provisions of any relevant statute, rule, regulation or by-law and/or any licence issued in pursuance thereof, collect funds and solicit, receive, enlist and accept financial and other aid, subscriptions, donations and bequests from individuals, trusts, companies, associations, organisations, societies, institutions, local bodies, public bodies, government departments and other organisations or authorities, and to conduct fundraising campaigns.
- nn Undertake such other activities and enterprises and do all such other acts matters and things to further the charitable purposes of the Trust as the Trustees may decide.