

**Friends of The University of Auckland, Inc.**

**Policy Manual**

**March 2009**

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## **General Policy Definitions & Abbreviations**

### **1.1 “Friends”**

Friends of The University of Auckland, Inc.

### **1.2 “Directors”**

Means the Board of Directors of the Friends

### **1.3 “University”**

The University of Auckland

### **1.4 “Chairman”**

Means the Chairman of the Directors of the Friends

### **1.5 “Treasurer”**

Means the Treasurer of the Friends

### **1.6 “By-laws”**

Means the By-laws of the Friends

### **1.7 “Board Meeting”**

Means any duly constituted meeting of the Directors

### **1.8 “US”**

The United States of America

### **1.9 “NZ”**

New Zealand

### **1.10 “Donation”**

Means any gift, grant, contribution or bequest made or pledged to the Friends including all dispositions of property, whether goods, real estate, rights or monies

### **1.11 “Foundation”**

The University of Auckland Foundation, a NZ charity established to accept gifts, grants, contributions or bequests to benefit the University

## **Mission Statement**

**“To support the advancement of knowledge and learning at The University of Auckland and the exchange of academic knowledge, faculty and students between United States universities and The University of Auckland.”**

## **Donation Solicitation Policy**

### **1.0 PURPOSE**

Since Friends are set up to solicit Donations in the US that are subsequently transferred to an organization formed outside of the US (i.e., the University or the Foundation), the Friends must exercise and document the requisite amount and kind of discretion and control over the donated funds, primarily in order to ensure that the Friends' US donors may treat their Donations as deductible charitable contributions. In other words, the Friends may not act as a mere conduit of funds from US donors to the University or the Foundation.

While Section 10.3 of the By-laws (set forth immediately below) addresses these requirements, the Friends have adopted the following operating procedures to ensure compliance. **The US Internal Revenue Service has approved operating procedures of this general form.**

### **2.0 POLICY**

Section 10.3 (below) of the By-laws states:

SECTION 10.3. Discretion Retained by Board of Directors. The Board of Directors shall at all times maintain complete control and discretion over the distribution of funds received by the Corporation, and shall not enter into any agreement with any person or organization that would in any way limit such control or discretion. The Board of Directors shall not represent to any person from whom it solicits or receives gifts, grants, bequests, or contributions that any funds received will be distributed other than at the discretion of the Board. The Board of Directors may solicit or receive gifts, grants, bequests, or contributions for a specific project that it has reviewed and approved as in furtherance of the purposes of the Corporation as stated in the Certificate of Incorporation. The Board of Directors may, in its absolute discretion, refuse any conditional or restricted gift, grant, bequest, or contribution and return to the donor any such contribution actually received.

### **3.0 PROCEDURE**

- 3.1 The Friends, and not the University or the Foundation, will control fundraising activities in the US, accounting for Donations made by US donors, the mailing list of US donors and the issuance of acknowledgment letters to US donors.
- 3.2 The Friends will not solicit potential donors to make Donations for a specific project unless the project has been approved by the Directors pursuant to the Friends' Grant Policy (an "Approved Project"), and the Directors will instruct their fundraising counsel and staff accordingly. However, in addition to Donations for Approved Projects ("Specific Gifts"), Donations may be solicited for general, unrestricted purposes, so long as the Friends approve the use of such funds pursuant to the Friends' Grant Policy.
- 3.3 The solicitor may seek external assistance to draw up proposals to give to donors; however, these proposals must:

- 3.3.1 clearly originate from the Friends;
- 3.3.2 be approved in form by the Chairman (or nominee); and
- 3.3.3 make clear either that: (i) the Specific Gift will be used solely for the applicable Approved Project or (ii) if the proposal is for a Donation for general, unrestricted purposes, the Friends must approve the use of such funds.

## **Donation Acceptance Policy**

### **1.0 PURPOSE**

The purpose of this policy is to govern the acceptance of Donations by the Friends and to provide guidance to prospective donors and their professional advisors contemplating Donations to the Friends by providing procedures, a framework and guidelines under which the Friends will accept Donations. This policy will apply to all Donations received by the Friends in order to ensure consistent and equitable relationships between the Friends and donors.

### **2.0 POLICY**

2.1 Authority. The Directors retain the ultimate decision-making authority with respect to whether or not a Donation should be accepted and the terms of such Donation. The Directors may delegate this authority to the officers of the Friends, in particular the Chairman.

2.2 Use of Advisors.

2.2.1 Use of Advisors by the Friends. The Friends may seek the assistance of legal counsel and/or other advisors in matters relating to the acceptance of Donations. It is recommended that legal counsel review all gift agreements or pledge letters between the Friends and a donor (each, a "Gift Instrument").

2.2.2 Use of Advisors by Donors. It is the donor's responsibility to retain the appropriate advisors to represent his or her interests.<sup>1</sup> In particular, the donor's advisors will be responsible for providing advice to the donor with respect to the value of any non-cash Donations and for providing advice to the Friends with respect to the liquidation procedure for such non-cash Donations.

2.3 Conflict of Interest. Any circumstances that may reasonably be perceived as creating a conflict of interest must be brought to the attention of the Chairman. Under no circumstances may a Donation confer an improper personal benefit upon anyone, including any employee, officer, or Director.

2.4 Prohibited Donations. The Friends reserve the right to refuse or return Donations to donors in their discretion. Donations containing restrictions that: (i) are inconsistent with the Friends' purposes and/or (ii) require funds to be given to a University or Foundation project that is not an Approved Project may be refused or returned. The Friends will not accept Donations whose acceptance would restrict the Friends' ability to carry out their purposes.

2.5 Endowment Donations. The Friends may accept Donations that, when granted to the University or the Foundation, will become part of an endowment fund or account in those charitable organisations. An endowment fund is established when a donor's intent is for the charity to preserve the principal of his or her gift in perpetuity and spend only the income. The Friends and the donor should agree in writing at the

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<sup>1</sup> This provision is to clarify for donors that the charity and its counsel do not represent the donor.

time the Donation is made whether the Donation will be considered an endowment gift.

2.6 Restricted Donations. The Friends may accept Donations, to an endowment fund or otherwise, that are restricted for a specific program or purpose, *provided* that:

- 2.6.1 The specified program or purpose is consistent with the Friends' purposes and activities and does not violate any applicable university regulations in New Zealand or any applicable law, rule or regulation (each, a "Law") whether a federal or state Law of the United States;
- 2.6.2 If restricted for a grant to the University or the Foundation, the grant is for an Approved Project (including a project approved by the Directors concurrent with acceptance of the Donation but prior to making the grant to the University or the Foundation);
- 2.6.3 The restriction does not place an undue burden on the resources of the Friends;
- 2.6.4 The restriction does not subject the Friends to adverse publicity; and
- 2.6.5 The restriction does not impede the ability of the Friends to acquire Donations from other sources.

2.7 Nature of Donations. The Directors shall ensure that they understand the origin, nature and conditions prior to accepting any Donation and shall not accept any that are:

- 2.7.1 Inconsistent with the maintenance of the highest ethical standards;
- 2.7.2 Likely to adversely affect the Friends' autonomy or good reputation with the public; or
- 2.7.3 Likely to incur significant additional costs and liabilities for the Friends.<sup>2</sup>

### **3.0 PROCEDURES**

3.1 Donation Proposals. Donation proposals will be approved by the Chairman (or nominee) under the terms of this policy, the Friends' Donation Solicitation Policy and the Friends' Grant Policy before being presented to prospective donors by any professional fundraising counsel or staff of the Friends.

3.2 Donations of Assets. In addition to Donations: (i) paid by cash, cheque, wire or other electronic payment, payroll deduction, or credit card payment and (ii) of publicly traded securities (clauses (i) and (ii) together, "Readily Marketable Gifts"), the Friends may accept Donations of other types of assets, including privately held stock. Each Donation will be assessed by the Treasurer (or nominee) for the risks associated with accepting the Donation. While, as a general matter, the Friends have determined that Readily Marketable Gifts have a "minimal risk" to the Friends and all other Donations carry a "moderate to material risk," in each case the Treasurer (or nominee) will consider the following non-exclusive list of factors in deciding whether or not to accept a Donation:

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<sup>2</sup> Simpson Thacher Bartlett note that standards such as the "Directors shall ensure" that they understand the origin, nature and conditions prior to accepting any Donation and shall not accept any that are inconsistent with the maintenance of "the highest ethical standards" are somewhat vague and hard to comply with and go beyond a Director's fiduciary duties.

- 3.2.1 The expense involved in owning the asset;
- 3.2.2 The expense involved in selling the asset;
- 3.2.3 Staff and volunteer time required to manage or sell the asset;
- 3.2.4 Whether owning or selling the asset will expose the Friends to liability; and
- 3.2.5 The marketability of the asset and the cash flow it can be expected to generate.

3.3 Types of Donations. Specifically, the Friends may accept Donations of the following types of assets:

3.3.1 Non-Publicly Traded Securities. The Friends may accept Donations of closely held securities, including debt and equity positions in non-publicly traded companies, as well as interests in Limited Liability Partnerships (LLPs) or Limited Liability Companies (LLCs). The Friends will consider the following non-exclusive list of factors in deciding whether or not to accept such a Donation: (i) restrictions on resale, (ii) expectations for marketability, and (iii) the nature of the company's business.

3.3.2 Intangible Personal Property. The Friends may accept Donations of intangible personal property including, but not limited to: intellectual property rights; royalties; and any other intangible personal property.

3.3.3 Tangible Personal Property. The Friends may accept tangible personal property that is either (i) saleable or (ii) appropriate for use by the Friends. In either case, the donor agrees that the property can be sold at the Friends' discretion. The donor is responsible for obtaining a qualified appraisal prior to completing the Donation.

3.3.4 Real Estate. The Friends may accept Donations of developed real estate, undeveloped real estate, or Donations of real estate subject to a life interest, *provided* that (i) the property is saleable, (ii) the donor agrees that the property can be sold at the Friends' discretion, and (iii) the donor complies with the following procedures:

3.3.4.1 Environmental Inspection. The Friends require a visual site inspection of all real estate by an approved representative. A Donation of real estate will be accepted only if the inspection results in a satisfactory or higher evaluation. The Friends require a Phase 1 Environmental Audit to be conducted for all proposed Donations of non-residential real estate (and residential real estate if the visual site inspection is unsatisfactory), at the donor's expense.

3.3.4.2 Valuation. The Friends will obtain (at their expense) a market estimate and statement of marketability from at least two independent real estate representatives. The donor is responsible for obtaining a qualified appraisal prior to completing the Donation.

3.3.4.3 Encumbrances and Carrying Costs. The existence of any mortgage or other encumbrance (including liens, home equity loans, delinquent taxes, etc.) must be disclosed and satisfied by the donor before the Friends will accept a Donation of real estate. The donor must also disclose carrying costs (including maintenance, insurance, condo or co-op fees, etc.), and provide to the Friends the results of a title search, recent tax statements and a tax map. The donor is responsible for all carrying costs in the case of a Donation with a retained life estate.

3.3.4.4 Other. Any other requirements or procedures that the Friends deem

necessary or appropriate, including a cost-benefit analysis of non-liquidation.

- 3.3.5 Life Insurance Policies. To the extent permitted by law, the Friends may accept a designation as beneficiary or contingent beneficiary of a life insurance policy, *provided*, however, that the Friends and the donor reach a prior written agreement about arrangements for the payment of any required premiums.
- 3.3.6 Charitable Lead Trusts. The Friends may accept a designation as income beneficiary of a charitable lead trust. The Friends will not accept an appointment as Trustee of a charitable lead trust.
- 3.3.7 Charitable Remainder Trusts. The Friends may accept a designation as remainder beneficiary of a charitable remainder trust. The Friends will not accept an appointment as Trustee of a charitable remainder trust.
- 3.3.8 Other Donations. The Friends may accept other types of Donations on a case-by-case basis.

3.4 Gift Instruments. The Friends and a donor will execute a Gift Instrument for any Donation of ten thousand US dollars (USD10,000) or more, and any restricted Donation or endowment Donation.

Each Gift Instrument will include:

- 3.4.1 The amount of the Donation, including a payment schedule if the Donation will not be paid in full at the time of executing the Gift Instrument, and a description of any condition or contingency to payment;
- 3.4.2 If the Donation is a pledge, language indicating whether the pledged sum is intended to be binding on the donor and enforceable against the donor's estate;
- 3.4.3 Clarification of the donor's intent, including a description of how the Donation will be invested and distributed, and whether the funds are restricted to a specific purpose;
- 3.4.4 A statement indicating the Friends' acceptance of the Donation and any restrictions;
- 3.4.5 Procedures to address changes in circumstances, including how the Gift Instrument can be amended and options in the event that there is inadequate funding to support the stated purpose;
- 3.4.6 Alternative uses of the Donation if the circumstances make it impracticable or impossible for the Friends to carry out the original intent of the donor;
- 3.4.7 Any applicable time limits; and
- 3.4.8 Other appropriate restrictions as may be required.

3.5 Appraisals. It is the responsibility of the donor to secure and cover the cost of an appraisal whenever an appraisal of a Donation is necessary.

3.6 Sale of Assets. The Friends are responsible for filing Form 8282 with the Internal Revenue Service upon the sale or disposition of any asset within three (3) years after the date the Friends receive the property.

3.7 Donation Acknowledgement. The Friends will acknowledge the receipt of all Donations in writing and in a manner which satisfies the substantiation requirements

for the deduction of charitable gifts by individual donors as set forth in the Internal Revenue Code of 1986, as amended. That is, upon receipt of any charitable gift, other than from another charity, the Friends will provide the donor with a substantiation letter indicating (i) the property received (if not cash),<sup>3</sup> (ii) the date that it was received, and (iii) whether the donor received any goods or services in return (not including de minimis gifts such as logo-bearing T-shirts and mugs). If the donor makes a Donation of more than USD75 and receives goods or services in return, the Friends will provide the donor with a substantiation letter indicating the property donated and the fair market value (not cost) of the goods or services received.<sup>4</sup>

3.8 Cost Allocation. Unless otherwise agreed by the parties, the donor and the Friends will each bear their respective costs associated with making or accepting the Donation.

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<sup>3</sup> It is the obligation of the donor, not the Friends, to value a non-cash gift. The Friends provide a substantiation letter describing the property received and the donor then determines the value of the property for purposes of the donor's tax deduction.

<sup>4</sup> Except for out-of-pocket expenses incurred in serving as a volunteer, the value of a donation of services is not deductible as a charitable contribution.

## **Investment Policy**

### **1.0 PURPOSE**

The Directors intend to make grants to the University and/or the Foundation from time to time, pursuant to the Friends' Grant Policy, from funds arising from Donations without holding those funds for the long term.

The Friends will request grant proposals from the University or the Foundation when the Friends' funds exceed \$250,000, or six months have passed since the last grant proposal was received, whichever occurs first.

### **2.0 POLICY**

2.1 Unless otherwise restricted by a Gift Instrument, all Donations will be treated as unrestricted and available to be granted in their entirety.

2.2 All non-cash Donations will be liquidated at the Friends' earliest convenience; provided that if the Donation is valued at more than USD1,000,000, it will be liquidated only after written approval (including via electronic mail) from the Chairman.

## Grant Policy

### 1.0 PURPOSE

Since Friends are set up to solicit Donations in the US that are subsequently transferred to an organization formed outside of the US (i.e., the University or the Foundation), the Friends must exercise and document the requisite amount and kind of discretion and control over the donated funds, primarily in order to ensure that the Friends' US donors may treat their Donations as deductible charitable contributions. In other words, the Friends may not act as a mere conduit of funds from US donors to the University or the Foundation.

While Section 10.2 of the By-laws (set forth immediately below) addresses these requirements, the Friends have adopted the following operating procedures to ensure compliance. **The US Internal Revenue Service has approved operating procedures of this general form.**

### 2.0 POLICY

Section 10.2 (below) of the By-laws states:

**SECTION 10.2. Receipt of Grant Proposals.** A primary activity of the Corporation is to receive grant proposals from The University of Auckland in New Zealand<sup>5</sup> to evaluate these proposals and award grants for purposes which, in the discretion of the Directors, after due consideration, further the charitable and educational purposes of the Corporation.

### 3.0 PROCEDURE

3.1 The Directors will make grants to the University or the Foundation only for specific projects or for clearly charitable administrative or operating expenses identified by the University or the Foundation (e.g., payment of salaries of University employees).

3.2 The Directors will consider, at a Board Meeting or via unanimous written consent pursuant to Section 4.16 of the By-laws, and taking into consideration the non-exclusive list of criteria set forth below, (i) grant applications from the University or the Foundation from time to time for specific projects and (ii) pre-approval requests from the University or the Foundation in a given year of proposed projects for the following year.

3.2.1 The merit of the application;

3.2.2 Direct reports of site visits from any Director; and

3.2.3 Availability of funds.

3.3 The Friends will create a file for each grant. Each such file will contain a written grant proposal from the University or the Foundation, the resolution/unanimous written consent of the Directors authorizing the grant, and a written grant-award contract between the Friends and the University or the

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<sup>5</sup> Unless the Friends have voted to amend the By-laws, this provision must remain as originally written.

Foundation that requires, among other things, periodic reporting to the Friends to ensure that the grant proceeds are used as intended.

## Employee Protection (Whistleblower) Policy

### 1.0 PURPOSE

For the purposes of this document, "Employee" is taken to mean any employee of the Friends of The University of Auckland, Inc ("Friends"), or any contractor to, or employee of, a related organization (including but not restricted to The University of Auckland) which provides services to Friends.

It is the intent of Friends to adhere to all laws and regulations that apply to the organization and the underlying purpose of this policy is to support the organization's goal of legal compliance. The support of all Employees is necessary to achieving compliance with various laws and regulations. An Employee is protected from retaliation only if the Employee brings the alleged unlawful activity, policy, or practice to the attention of Friends and provides the Friends with a reasonable opportunity to investigate and correct the alleged unlawful activity. The protection described below is only available to Employees that comply with this requirement.

### 2.0 POLICY

Friends will not retaliate against an Employee who in good faith, has made a protest or raised a complaint against some practice of Friends, or of another individual or entity with whom Friends has a business relationship, on the basis of a reasonable belief that the practice is in violation of law, or a clear mandate of public policy.

Friends will not retaliate against Employees who disclose or threaten to disclose to a supervisor or a public body, any activity, policy, or practice of Friends that the Employee reasonably believes is in violation of a law, or a rule, or regulation mandated pursuant to law or is in violation of a clear mandate or public policy concerning the health, safety, welfare, or protection of the environment.

### 3.0 PROCEDURE

If any Employee reasonably believes that some policy, practice, or activity of Friends is in violation of law, a written complaint must be filed by that Employee with the Board Chair.

An Employee must be given this page from the Policy Manual and sign the below.

My signature below indicates my receipt and understanding of this policy. I also verify that I have been provided with an opportunity to ask questions about the policy.

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Employee Signature

Date

## **Conflict of Interest Policy**

The conflict of interest policy is laid out in Section 4.12 of the By-Laws of Friends. The form of the Annual Conflict of Interest Statement is as below.

### **Annual Conflict of Interest Statement**

I hereby confirm:

1. I have received a copy of the conflicts of interest policy;
2. I have read and understood the policy;
3. I have agreed to comply with the policy and;
4. I understand that the Friends of The University of Auckland is charitable and in order to maintain its federal tax exemption it must primarily engage in activities which accomplish one or more of its tax-exempt purposes.

Name

Signature

Date

## **Accounting Policy**

### **Preamble**

Friends is a very simple organization that has neither employees nor premises, therefore it has no obligations or activities or accounting processes relating to employment or the occupation of real estate or the utilization of equipment. Its main activities relate to the solicitation and receipt of donations and the making of grants.

### **Receipt of Funds**

#### **1. Banking**

Donor payments are to be sent to FMA, NY to be banked

#### **2. Receipting**

Donor receipts are to be created by FMA and checked by the Secretary (or nominee) before being sent out to the donor.

#### **3. Recording**

Donations are to be recorded against their purpose by FMA and a back-up donation recording is maintained by The University of Auckland.

#### **4. Reconciling**

FMA creates a quarterly bank reconciliation that is checked by the Secretary (or nominee).

### **Application of Funds**

#### **1. Grant approval**

Grants are to be approved at either a regular Board meeting or by a majority of Directors via email communication.

#### **2. Transfer by wire**

Authorized grants are to be transferred by wire by one of the two signatories on the Friends' bank accounts, namely the Treasurer or Chair.

## **Document Retention and Disaster Recovery Policy**

### **1. Receiving, recording, banking of gifts**

Gift instructions and other communications in regards to the purpose of a gift are managed by Angela Rosati and a copy sent to Richard Sorrenson who files the paper copy and scans and stores it electronically on The University of Auckland's secure and backed up servers. The gifts are processed by FMA and also separately recorded on the Raiser's Edge database on The University of Auckland's secure and backed up servers.

### **2. Minutes of meetings, regulatory filings, and related communications**

These are managed by Richard Sorrenson who, after the Chair or other relevant authority has signed them, files the paper copy and scans and stores it electronically on The University of Auckland's secure and backed up servers.

### **3. Policies**

These are managed by Richard Sorrenson who, after the Board has approved them, files the paper copy and scans and stores it electronically on The University of Auckland's secure and backed up servers.

### **4. Disaster Recovery**

All key documents are securely electronically recorded as described above. The University of Auckland's servers are managed internally and backed up on additional servers physically separate from the primary university servers. The University of Auckland has its own disaster recovery policy to ensure the integrity of data stored on its servers.