

TRUST DEED

THIS DEED made the *fifteenth* day of *September* 2003

BY:

1. Michael Nutt, Rob McPherson, Roger Gilbert, Kelvin Coe, Neil Brailsford, Peter Chamberlain, Colin Hill, Fiona Cox, Jason Arnold, Don Crerar, Ken Hughey, Terrianna Smith, Kay Lough, Julie May, David O'Connell (the "Trustees")

WHEREAS:

- (a) The Trustees wish to establish a charitable trust (the "Trust") for the purposes described in clause 3.
- (b) The Trustees have agreed to enter into this deed specifying the purposes of the Trust and providing for its control and governance.
- (c) The Trustees may apply for incorporation as a Board under the Charitable Trustees Act 1957 and wish to provide for certain matters in the event that this occurs.

THIS DEED WITNESSES as follows:

1 INTERPRETATION

1.1 In this document the following terms have the following meanings (unless the context requires otherwise):

- (a) "Act" means the Charitable Trusts Act 1957,
- (b) "AGM" means annual general meeting of the Members,
- (c) "Charitable Objects" means the following objects (clause 4)
- (d) Lake Ellesmere/Te Waihora and its environs includes the lake and its tributaries,
- (e) "Member" means a person or organisation who has been admitted as a member under Part 12, and whose status as a member continues for the time being,
- (f) "Member of the Trust Board" means one of the persons comprising the Trust Board as appointed or elected from time to time ,
- (g) "Secretary" means the person appointed as Secretary for the Trust from time to time in accordance with Part 9,
- (h) "SGM" means special general meeting of the Members,
- (i) "Treasurer" means the person appointed as treasurer for the Trust from time to time in accordance with Part 9,
- (j) "Trust means the charitable trust created by this document, and
- (k) "Trust Board" means a Board constituted under the Act upon application for incorporation by the Trustees in respect of the Trust.

- (l) "Trust Fund" includes:
 - (i) All property now or in the future held or received by the Trustee for the purposes of the Trust; and
 - (ii) All accretions or additions to the Trust Fund; and
 - (iii) All income of the Trust Fund; and
- (m) "Trustees" includes any replacement or substituted trustees.

1.2 In this document (unless the context requires otherwise):

- (a) The singular includes the plural and the plural includes the singular.
- (b) A reference to a gender includes the other gender.
- (c) A reference to a person includes individuals, a partnership or incorporated body.
- (d) A reference to a person includes (where applicable) its successors, personal representatives and permitted assigns.
- (e) A reference to a statute, regulation or provision of a statute or regulation includes a reference to that statute, regulation or provision as amended or re-enacted from time to time.

2 CREATION OF TRUST

2.1 The Trustees covenant and declare that they hold the Trust Fund in trust for the charitable purpose in Clause 3.1.

2.2 The name of the Trust shall be Waihora Ellesmere Trust.

3 OBJECTS

- (i) To promote and, where appropriate, support best management practices as a means of maintaining/and or enhancing the ecological health of Lake Ellesmere/Te Waihora, including its tributaries.
- (ii) To raise awareness regarding the cultural and historical significance of the lake and its environs, including its settlement history and current status;
- (iii) To provide appropriate dialogue opportunities for decision-making to ensure the various economic, social, cultural, recreational and environmental interests are considered;
- (iv) To maintain the sense of place and character that makes the lake and its environs special to current residents and users, and for future generations;
- (v) To raise awareness and understanding of the values of the lake to recreational and other users to ensure the integrity of the lake is not compromised.
- (vi) In attaining its objects the Trust shall recognise the views and expectations of Mana Whenua, to respect and implement dual heritage of the partners of Te Tiriti O Waitangi.

4 OFFICE

4.1 The office of the Trust will be at such a place as the Trustees may from time to time determine.

5 MEMBERSHIP

- 5.1 The Members will comprise those individuals and organisations which have applied and been accepted as Members by the Trust Board. Each membership will represent a single vote entitlement.
- 5.2 There shall be two categories of membership: Individual membership and Organisational membership. Such persons/Organisations shall become members by approval of the Trust Board following application in writing to the Trust Board, agreeing to support the objects of the Trust, and paying the appropriate subscription.
- 5.3 Individual membership shall be open to all persons who support the objects of the Trust and pay all required subscriptions and other dues agreed upon by the Trust Board. Individual members will have speaking and voting rights at the AGM and any Special General Meeting and can also become members of committees established to carry out the objects of the Trust. Individual members are eligible to be voted onto the Trust Board.
- 5.4 Organisational membership shall be open to Organisations and Statutory bodies (eg. Councils, DoC, Fish and Game, community organisations and agencies etc) who support the objects of the Trust and pay all required subscriptions and other dues agreed upon by the Trust Board. Organisations can nominate their representative who will have speaking rights and voting rights, at the AGM and any Special General Meeting. Organisations can also become members of committee established to carry out the objects of the Trust. Organisations are not eligible to be voted onto the Trust Board, but may be invited to participate at Trust Board meetings to provide advice and expertise at times deemed appropriate by the Trust Board.
- 5.5 The Trust Board may (from time to time) determine:
 - (a) The requirement of members to pay a subscription of such an amount or amounts as may be fixed by resolution in general meeting of the Trust from time to time. The Trust Board may require that Special members of the Trust pay a different amount from that required of other ordinary members and the Trust Board may grant a discount of subscription for more than one member of the same legally recognised family.
 - (b) All members must comply with the terms and conditions of membership of the Trust as laid down from time to time by the Trustees.; and
 - (c) Such other terms and conditions of being a Member, not being terms and conditions which conflict with the express provisions of this document, as the Trust Board consider necessary.
- 5.6 The continuing status of a person as a Member depends on that person complying with all terms and conditions of being a Member imposed on that person by the Trustees (from time to time).
- 5.7 A Member is entitled to attend, speak at, and vote at AGMs and SGMs in accordance with the provisions of this document. However, for the avoidance of doubt, nothing in this document enables a Member to directly control the management of the Trust by the Trustees, other than by resolutions passed at the AGM or an SGM.

6 STRUCTURE OF THE TRUST AND THE TRUST BOARD

- 6.1 The business and affairs of the Trust will be managed by the Trust Board comprising the Trustees.
- 6.2 The Board shall consist of not fewer than seven (7) nor more than fifteen (15) persons elected by the members of the Trust. A person nominated as a member of the Trust Board need not be an ordinary member of the Trust prior to nomination but, must become a member upon election to the Board only natural persons may be Trustees.
- 6.3 A representative of an Organisation or Statutory Body as may be deemed appropriate, may be appointed by the Board as non-voting ex officio members of the Board, subject to clause 5.4 above.
- 6.4 Prior to the first Annual General Meeting the signatories to this Deed shall be the first Board. At the first Annual General Meeting of the Trust and at each subsequent Annual General Meeting the business of the meeting shall include the election of members of the Trust Board by the ordinary members of Trust.
- 6.5 Subject to clause 6.6 and 10.1 in respect of the first two years of the Trust, the members of the Board shall retire at the Annual General Meeting after a 3 year term, but shall be eligible for re-election at the same and subsequent meetings, provided that a member of the Board shall retire after nine (9) years continuous service on the Board, however, at the Annual General Meeting the year following the retirement the member may stand again for nomination as a Board Member.
- 6.6 The retirement of Board members shall be on a rotational basis (a third each year) so not all members retire at once. At the first meeting of the new Trust Board a ballot will be held to determine the rotational retirement of members.
- 6.7 Nomination for a position on the Board shall be by way of nomination in writing by two members of the Trust endorsed with the consent of the nominee and given to the Secretary not less than twenty-four (24) hours before the time fixed for the Annual General Meeting. If there are insufficient nominations to fill the vacant positions on the Board, oral nominations may be received at the Annual General Meeting, provided that no member shall be elected who has not consented to be elected.
- 6.8 Subject to clause 6.2 above, the Board shall have the power to co-opt further members on to the Board and to fill any casual vacancies on the Board until the next Annual General Meeting. A retiring member may be co-opted to the Board to fill a casual vacancy.
- 6.9 If a Trustee, including an office bearer, does not attend three (3) consecutive meetings of the Board without leave of absence that member may, at the discretion of the Board, be removed as a Trustee, and/or from any office of the Trust which he or she holds.
- 6.10 When a subscription has been fixed, Board members must be paid-up financial members.

7 PROCEEDINGS OF THE BOARD

- 7.1 The Board shall meet at such times and places as it determines, but not less than four (4) times a year, and shall elect a Chairperson and Vice-Chairperson from among its members at its first meeting and annually thereafter.
- 7.2 The Board shall appoint a Secretary and a Treasurer. These offices may be combined. The Secretary and Treasurer need not be members of the Board but shall be members of the Trust or become members upon appointment.

- 7.3 The Chairperson shall preside at all meetings of the Board at which she or he is present. In the absence of the Chairperson the Vice Chairperson (clause 7.1) should chair meetings or in the absence of both, the members present shall appoint one of their number to preside at that meeting.
- 7.4 At any meeting of the Board a two thirds majority of current members of the Board shall form a quorum, and no business shall be transacted unless a quorum is present.
- 7.5 All questions before the Board shall be decided by resolution by majority vote. If the voting is tied, the Chairperson shall be deemed to have the casting vote.
- 7.6 All members (Individual and Organisational) of the Trust shall have the right to attend meetings of the Trust Board and with prior approval from the Chair may be allocated limited time to speak to a specific agenda item. Only the members of the Board shall be entitled to vote.
- 7.7 Meetings may be held in person or by any other means of communicating as decided on by the Board from time to time. The Secretary shall ensure that all members of the Board are notified of the meeting, either verbally or in writing. Minutes of all meetings must be kept and the minutes accepted as being accurate after endorsement by all members.
- 7.8 The Secretary shall keep minutes of all Board meetings which shall be available for inspection by Board members at reasonable times. The minutes shall record:
- (a) The names of those present;
 - (b) All decisions which are required by this Constitution or by law to be made by the Trust Board; and
 - (c) Any other matters discussed at the meeting.

8 THE POWERS AND DUTIES OF THE BOARD

In addition to the powers and duties implied by the general law of New Zealand or contained the Trustee Act 1956, the powers which the Board may exercise in order to carry out its charitable objects are as follows:

- 8.1 To use the funds of the Trust as the Board thinks necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisors, agents, officers and staff as appears necessary or expedient.
- 8.2
- (a) To purchase, take on lease, in exchange, hire or otherwise acquire land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of attaining the objects of the Trust; and
 - (b) To sell, exchange, bail, lease (with or without option to purchase), or dispose of any of its property rights or privileges in any manner the Board thinks necessary or expedient.
- 8.3 To carry on any business consistent with the objects of the Trust.
- 8.4 To accept bequests, donations, gifts and grants from all sources to advance the objects of the Trust as the Board may think fit, and to apply them as the Board determines and/or as the benefactor may require.
- 8.5 To invest surplus funds in any way permitted by law for the investment of Trust funds and upon such terms as the Board thinks fit.
- 8.6 To borrow or raise money from time to time with or without security, and upon such terms as to priority and otherwise as the Board thinks fit.

- 8.7 To do all things as may from time to time appear necessary or desirable to enable the Board to give effect to and to attain the charitable purposes of the Trust.
- 8.8 Under Clause 11.1, the Board may employ as agents, officers and staff, persons who are members of the Board, provided that:
- (a) No member of the Trust or any person associated with a member shall participate in or materially influence any decision made by the Trust Board in respect of the payment to or on behalf of that member or associated person of any income, benefit, or advantage whatsoever.
 - (b) Any such income paid shall be reasonable and relative to that which would be paid in an arms length transaction (being open market value).
 - (c) The provisions and effect of clause 10.8 (a) and 10.8 (b) shall not be removed from these rules, and shall be included and implied into any rules replacing these rules.

9 APPOINTMENT OF TRUSTEES

- 9.1 The parties named as Trustees in this document are the first Trust Board.
- 9.2 Thereafter replacement and additional Trustees may be appointed from time to time by the Trust Board in accordance with the requirements of the Act and subject to the provisions contained in this Part 9 and Clause 10.2.
- 9.3 Despite Clause 9.2:
- (a) The minimum number of Trustees is seven (7) and the maximum number is fifteen (15) and
 - (b) No person can be appointed a replacement Trustee under Clause 9.2 if that person was removed as a Trustee under Clause 10.2 after the conclusion of the last AGM.
 - (c) Only natural persons may be Trustees.

10 REMOVAL OF TRUSTEES

- 10.1 Subject to Clause 6.2, the term of appointment of any Trustee will be three consecutive terms of three (3) years but Trustees named as parties in this document to retire at the end of the first year and at the end of the second year shall be entitled to be relected and serve for three (3) consecutive three terms thereafter.
- 10.2 A person will cease to be a Trustee if he or she
- (a) Resigns in writing (unless this would leave the Trust with fewer than the minimum number of Trustees as set out in Clause 9.3(a), in which case the purported resignation will be ineffective); or
 - (b) Dies; or
 - (c) Is declared bankrupt; or
 - (d) Is found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (e) Becomes a protected person within the meaning of the Protection of Personal and Property Rights Act 1988; or

- (f) Is convicted of any offence punishable by imprisonment; or
- (g) Does not attend three consecutive Trustee meetings without leave of absence; or
- (h) Has held office for nine consecutive years; or
- (i) Is removed as a Trustee of the Trust by a motion decided by a two thirds majority of all Trustees provided that those Trustees believe on reasonable grounds that such an action is in the best interests of the Trust.

11 POWER OF THE TRUST BOARD TO DELEGATE

- 11.1 The Trust Board may from time to time appoint a Management Committee (and/or any other committee or person) which shall be comprised of Members and persons who are not Members or both and may delegate any of its powers and duties to the Management Committee. Such delegation must meet the requirements of this Part 11 to be valid.
- 11.2 Any delegation must be in writing and set out the powers and duties delegated. The committee or person may without confirmation by the Trust Board exercise or perform the delegated powers or duties in the same way and with the same effect as the Trust Board could themselves have done.
- 11.3 Any committee or person to whom the Board has delegated powers or duties shall be bound by the terms of the Trust and any terms or conditions of the delegation set by the Trust Board.
- 11.4 The Trust Board may revoke the delegation at will. No delegation shall prevent the exercise of any power or the performance of any duty by the Trust Board.

12 FINANCIAL ARRANGEMENTS

- 12.1 All funds received by the Trust Board must be paid into its bank account.
- 12.2 All cheques or withdrawals made from the bank account must be signed by the authorised cheque signatories of the Trust Board.
- 12.3 The financial year of the Trust will be from 1 July to 31 June in the following year.
- 12.4 The Treasurer shall ensure that true and fair accounts are kept of all money received and expended by the Trust Board.
- 12.5 The Trust Board will, as soon as practicable after the end of the financial year of the Trust, arrange for the accounts of the Trust for that financial year to be audited by an auditor appointed for that purpose.

13 ANNUAL GENERAL MEETING (AGM)

- 13.1 The Trust Board must convene an AGM of the Members in each calendar year, on a date determined by the Trust Board between the end of the Trust's financial year and the next occurring 30 September.
- 13.2 The business of the AGM will be:
 - (a) To confirm the minutes of the last preceding AGM and of any SGM held since then; and
 - (b) To receive from the Trust Board reports upon the transactions of the Trust during the last preceding financial year, together with audited financial statements; and

- (c) To consider the management of the Trust by the Trust Board, and vote in nonbinding resolutions to express the Members' wishes regarding the management of the Trust including the nomination of persons to be members of the Board; and
- (d) To discuss any other matters of general business.

14 SPECIAL GENERAL MEETING (SGM)

- 14.1 The Trust Board may, whenever the Trustees think fit, convene a SGM.
- 14.2 The Trust Board must convene a SGM on the requisition in writing of 20% of the total number of Members. Any requisition for a SGM must:
- (a) State the objects of the meeting; and
 - (b) Be signed by the Members making the requisition (whether in one document, or in several documents in a like form each signed by one or more of the Members making 'the requisition); and
 - (c) Be sent to the address of the Secretary or the office of the Trust.
- 14.3 If, within one month after the date on which the requisition referred to in Clause 14.2 is sent, the Trustees do not cause a SGM to be held, the Members signing such requisition, or any one of them, may convene a SGM to be held not later than three months after that date.
- 14.4 The business of an SGM will be to consider and vote on the matter or matters referred to in the notice convening the SGM.

15 MEMBER ORDINARY MEETINGS

- 15.1 The Trust Board may provide for meetings of members of the Trust (ordinary meetings) at any time to discuss any matter or matters relating to furthering the objects of the Trust. Such meetings may make recommendations to be forwarded to the Trust Board. Such meetings shall be chaired by the chairman of the Trust Board, or by another trustee appointed by the Board or by such other person as the Board may appoint.

16 INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES

- 16.1 Any income, benefit or advantage must be applied to the Charitable Objects of the Trust.
- 16.2 No Trustee, or associated person of a Trustee, shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
- (a) Professional services to the Trust rendered in the course of business charged at no greater rate than current market rates; or
 - (b) Interest on money lent to the Trust at no greater rate than current market rates.

17 ALTERATION OF RULES

- 17.1 These rules may be altered, added to, rescinded or otherwise amended by a resolution passed by a two-thirds majority at a general meeting or special general meeting, provided that no such amendment shall:
- (a) Detract from the exclusively charitable nature of the Trust or result in the distribution of its asset on winding up or dissolution for any purpose that is not exclusively charitable.
 - (b) Be made to clause 3, clause 8.8 (a), 17.2, or clause 18.2 of this Constitution unless it is first approved in writing by the Department of Inland Revenue.

- 17.2 Proposals to amend these clauses must be circulated, in writing, to members at least one (1) calendar month prior to the general meeting at which they are to be discussed.
- 17.3 The provisions and effect of this clause shall not be removed from these clauses and shall be included and implied into any clauses replacing these clauses.

18 DISTRIBUTION OF SURPLUS ASSETS ON VOLUNTARY WINDING-UP

- 18.1 The Trust Board may be wound-up if:
- (a) If the Trust Board resolve to wind-up the Trust; and
 - (b) The decision of the Trust Board is confirmed by a resolution of the Members at an AGM or SMG
- 18.2 On the winding-up of the Trust all surplus assets after the payment of costs, debts and liabilities shall be given to an IRD approved charitable organisation within New Zealand which has similar objects to those of the Trust and is specified:
- (a) By the Trustees, within 3 months of the date of the resolution referred to in Clause 18.1 (b) (the "Winding-Up Date"); or
 - (b) If no organisation is appointed under subclause (a), then by the primary funding agency (or his or her nominee), within 1 year of the Winding-Up Date; or
 - (c) If no organisation is appointed under subclauses (a) or (b), then the surplus assets of the Trust will be disposed of in accordance with the directions of the High Court.

19 INDEMNITY AND LIMITATION OF LIABILITY

- 19.1 The Trustees (and for the avoidance of doubt each of them) are indemnified out of the Trust Fund against all costs, expenses, claims, and liabilities in respect of the Trust and under this document, except where caused by the dishonesty or negligence of the Trustee.
- 19.2 The Trustees (and for the avoidance of doubt each of them) will have no liability for losses of any kind to the Trust Fund however they are caused except those which are wholly or mainly caused by the dishonesty or negligence of the Trustee.

20 GIFTS

- 20.1 The Trust Board shall have the power to receive any monies or other property of any kind which may be donated, gifted or otherwise transferred to the Trust from time to time.

21 MISCELLANEOUS

- 21.1 Unless the context requires otherwise, the provisions of the Trustee Act 1956 and the Charitable Trusts Act 1957 apply to the Trust.

22 DISPUTES RESOLUTION

- 22.1 Any dispute arising out of or relating to this Constitution shall, in the first instance be resolved by the parties to the dispute personally.
- 22.2 Failing resolution, the dispute shall be referred to mediation. Mediation shall be initiated by either party writing to the other identifying the matter in dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances.

- 22.3 The parties will agree on a suitable person to act as a mediator or, failing agreement, the Arbitrators and Mediators Institute of New Zealand shall appoint a mediator.
- 22.4 The mediation shall be in accordance with the Mediation Protocol of the Arbitrators and Mediators Institute of New Zealand Inc.
- 22.5 The mediation shall be terminated by:
- (a) The signing of a settlement by the parties; or
 - (b) Notice to the parties by the mediator, after consultation with the parties to the effect that the further effort at mediation is no longer justified; or
 - (c) Notice by one or more of the parties to the mediation to the effect that the further effort at mediation is no longer justified; or
 - (d) The expiry of sixty (60) days from the date appointment of the mediator, unless the parties expressly consent to an extension of this period.
- 22.6 If the mediation is terminated under clause 22.5 (a), (b), (c) or (d) any dispute or difference remaining in connection with this Constitution, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators and Mediators Institute of New Zealand Inc.
- 22.7 The arbitration shall be by one arbitrator to be agreed upon by the parties or, failing agreement within twenty-one (21) days, to be appointed by the President of the Arbitrators and Mediators Institute of New Zealand Inc.
- 22.8 Nothing in this clause shall exclude the jurisdiction of the High Court of New Zealand or the powers given to the Court by the Act.