

TRUST DEED

THIS DEED made the 23rd day of September 2013

WHEREAS:

- (a) The Waihora Ellesmere Trust (the "Trust") was established by Trust Deed dated 15th September 2003 (the "original Trust Deed") by the Settlers and Trustees listed in the appendix for the charitable purposes described in Part 3.
- (b) The Trust was incorporated as a Board under the Charitable Trustees Act 1957 on and registered as a Charity under the Charities Act 2005 on 1 April 2009.
- (c) Certain changes to the original Trust Deed have been made over time and the current Trustees have agreed to enter into this new Deed to consolidate these changes, to recognise and affirm the purposes of the Trust set out in the original deed and to provide for its ongoing control and governance.
- (d) On the adoption of this Deed in accordance with the requirements of Part 17, this will be the operative Trust Deed.

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 objects in Part 3,
- (d) "Management Committee" means a committee appointed by the Trust Board and delegated certain powers and duties of the Trust under Part 11;

- (e) "Member" means a person or organisation who has been admitted as a member under Part 5, and whose status as a member continues for the time being,
- (f) "Secretary" means the person appointed as Secretary for the Trust from time to time in accordance with Part 7,
- (g) "SGM" means special general meeting of the Members,
- (h) "Te Waihora/ Lake Ellesmere" and its environs includes the lake and its tributaries,
- (i) "Treasurer" means the person appointed as treasurer for the Trust from time to time in accordance with Part 7,
- (j) "Trust" means the charitable trust created by this document, and
- (k) "Trust Board" means a Trust Board constituted under the Act upon application for incorporation by the Trustees in respect of the Trust.
- (l) "Trustee" means a Member who has been elected as a Trustee under Part 9 and includes any replacement or substituted trustees,
- (m) "Trust Fund" includes:
 - (i) All property whether cash or otherwise 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, net of expenses of the Trust Fund.

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 Part 3.

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 enhancing the ecological health of Te Waihora/Lake Ellesmere, 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. Such Individuals/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.

- 5.2 There shall be two categories of membership: Individual membership and Organisational membership.
- 5.3 Individual membership shall be open to all persons who support the objects of the Trust and shall pay all required subscriptions and other dues set by the Trust Board. Individual Members will have speaking and voting rights at the AGM and any SGM and can also become members of committees established to carry out the objects of the Trust. Individual Members are eligible to be elected as Trustees.
- 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 shall pay all required subscriptions and other dues set by the Trust Board. Organisations can nominate one representative who shall have speaking rights and voting rights, at the AGM and any SGM. Organisations can also become members of any committee established to carry out the objects of the Trust. Representatives of Organisations are not eligible to be elected as Trustees, 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 at an AGM of the Trust.. The Trust Board may require that certain Members or groups of Members pay a different subscription from that required of other Members and the Trust Board may grant a discount of subscription to 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, and those terms and conditions shall not conflict with the express provisions of this document
- 5.6 The continuing status of a Member depends on that Member complying with all terms and conditions of being a Member as imposed on that Member 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 Trust Board shall consist of not fewer than seven (7) nor more than fifteen (15) persons elected by the Members. A person nominated as a Trustee need not be a Member prior to nomination but must become a Member upon election to the Trust 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 Trust Board as non-voting ex officio Trustee, subject to clause 5.4 above.
- 6.4 Prior to the first AGM the signatories to this Deed shall be the first Trustees of the Trust Board. At the first AGM and at each subsequent AGM the business of the meeting shall include the election of Trustees by the ordinary Members of Trust in accordance with the requirements of this Trust Deed.
- 6.5 The retirement of Trustees 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.
- 6.6 Nomination for a position on the Trust Board shall be by way of nomination in writing by two Members 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 AGM. If there are insufficient nominations to fill the vacant positions on the Trust Board, oral nominations may be received at the AGM, provided that no Member shall be elected who has not consented to be elected.
- 6.7 Subject to clause 6.2 above, the Trust Board shall have the power to co-opt further Members on to the Trust Board and to fill any casual vacancies on the Trust Board until the next AGM.

A retiring Trustee may be co-opted to the Trust Board to fill a casual vacancy.

6.8 If a Trustee, including an office bearer, does not attend three (3) consecutive meetings of the Trust Board without leave of absence that Trustee may, at the discretion of the Trust Board, be removed as a Trustee, and/or from any office of the Trust which he or she holds.

6.9 When a subscription has been fixed, Trustees must be paid-up Members.

7 PROCEEDINGS OF THE TRUST BOARD

7.1 The Trust 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 Deputy-Chairperson from among its Members at its first meeting following the AGM.

7.2 The Trust Board shall appoint a Secretary and a Treasurer. These offices may be combined. The Secretary and Treasurer need not be Trustees but must be Members or become Members upon appointment.

7.3 The Chairperson shall preside at all meetings of the Trust Board at which they are present. In the absence of the Chairperson the Deputy Chairperson should chair the meeting 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 Trust Board a two thirds majority of current Trustees shall form a quorum, and no business shall be transacted unless a quorum is present.

7.5 All questions before the Trust 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 Chairperson may be allocated limited time to speak to a specific agenda item. Only the Trustees shall be entitled to vote.

7.7 Meetings may be held in person or by any other means of communication as decided on by the Trust Board from time to time. The Secretary, or any nominated person, shall ensure that all Trustees 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 Trustees.

- 7.8 The Secretary shall keep minutes of all Trust Board meetings which shall be available for inspection by Trustees and 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 TRUST BOARD

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

- 8.1 To use the Trust Fund as the Trust 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, exchange, hire or otherwise acquire personal property and any rights or privileges which the Trust 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 Trust 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 Trust Board may think fit, and to apply them as the Trust Board determines and/or as the benefactor may require.
- 8.5 To invest funds in any way permitted by law for the benefit of the Trust Fund and upon such terms as the Trust Board thinks fit.
- 8.6 To do all things as may from time to time appear necessary or desirable to enable the Trust Board to give effect to and to attain the charitable purposes of the Trust.
- 8.7 Under clause 11.1, the Trust Board may employ as agents, officers and staff, persons who are Trustees, provided that:

- (a) No Member 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 remuneration 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 8.7 (a) and 8.7 (b) shall not be removed from these rules, and shall be included and implied into any rules replacing these rules.

8.8 To cause insurance to be put in place to insure the assets of the Trust and provide such liability insurance as is necessary to protect the Trust and the Trustees against claims. The Trust shall indemnify Trustees against claims made against them while acting under the authorities granted to them in this Trust Deed.

8.9 The Trust Board may not, without resolution passed by a two-thirds majority at an AGM or SGM:

- (a) purchase, lease, exchange or otherwise acquire land or any rights or interests in land;
- (b) sell, exchange, lease (with or without option to purchase), or dispose of any land held by the Trust or any of its rights or interests in land;
- (c) borrow or raise money from time to time with or without security, and upon such terms as to priority and otherwise as the Trust Board thinks fit.

9 APPOINTMENT OF TRUSTEES

9.1 The parties named as Trustees in this document are the first Trust Board after the signing of this Deed.

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 10.1.

10 REMOVAL OF TRUSTEES

- 10.1 A person will cease to be a Trustee if he or she
- (a) Dies; or
 - (b) Is declared bankrupt; or
 - (c) Is found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (d) Becomes a protected person within the meaning of the Protection of Personal and Property Rights Act 1988; or
 - (e) Is convicted of any offence punishable by imprisonment; or
 - (f) Does not attend three consecutive meetings without leave of absence; or
 - (g) 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 may include 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 Trust Board has delegated powers or duties shall be bound by the terms of the Trust Deed 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 two of the authorised cheque signatories of the Trust Board.
- 12.3 The financial year of the Trust will be from 1 July to 30 June in the following year.
- 12.4 The Treasurer shall ensure that proper financial records of the Trust are kept for all money received and expended by the Trust Board.
- 12.5 The Treasurer shall, following the end of the Trust's Financial Year, produce a set of Financial Statements that shall set out the Financial position of the Trust, its Income and Expenditure and cash flows for the year in a form that meets the Trust's statutory financial reporting requirements and are suitable for audit.
- 12.6 The Trust Board shall arrange for the Financial Statements of the Trust for that financial year to be audited by an auditor appointed for that purpose
- 12.7 Such Audited Financial Statements shall be presented at the AGM immediately following the end of the Financial Year. .

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 accept and vote on nominations of Trustees, and
 - (c) 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
 - (d) To consider the management of the Trust by the Trust Board, and vote in non binding resolutions to express the Members' wishes regarding the management of the Trust including the nomination of persons to be Trustees; and

- (e) 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 ORDINARY MEETINGS

15.1 The Trust Board may provide for meetings of Members (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 Chairperson of the Trust Board, or by the Deputy Chairperson of the Trust Board or by such other person as the Trust 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 an AGM or SGM, provided that no such amendment shall:
- (a) Detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.
 - (b) Contravene any statutory or legal requirement that would result in the loss of the charitable status of the Trust.
- 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.
- 17.4 Any alterations to these rules must be notified to the appropriate statutory agency so as to meet the requirements of the agency and no later than 30 days of the amendment.

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 donated to an approved charitable organisation registered under the Act 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.
- 19.3 The Trust must insure the Trustees for costs and claims arising under 19.1

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, the Charitable Trusts Act 1957 and the Charities Act 2005 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.


SIGNED by Hamish Rennie)

as Chairperson in the presence of:)

Witness name:  **BRIAN RED**

Witness occupation: **RETIRED**

Witness address: **88 SAUMILL ROAD RDI AKAROA.**

Appendix

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 Settlers and Trustees of the original Trust Deed).