

The Longbush Ecological
Restoration Trust



Deed of Trust

Dated
27 October 2009

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THE LONGBUSH ECOLOGICAL TRUST DEED OF TRUST

DATED

PARTIES:

ANNE SALMOND of 14 Glen Road, Devonport, Auckland, University Professor, and **JEREMY SALMOND** of 14 Glen Road, Devonport, Auckland, Architect, proprietors of Longbush; **STEVE SAWYER** of 369 Wharerata Road RD1, Gisborne, conservation contractor; **JOHN THORPE**, Barker's Hill, Gisborne, company director; and **MEIKLE MCNAB**, weaver, of Riverside Road, Gisborne.

BACKGROUND:

- A. The parties to this deed wish to establish a charitable trust ("the Trust") for the purposes described in clause 5 of this Deed.
- B. These purposes include the ecological restoration of 113.2 hectares of indigenous semi-coastal lowland forest 9 kilometres north of Gisborne, covenanted with Queen Elizabeth II National Trust Open Space Covenants ("Longbush").
- C. The Trustees have consented to become the Trustees of the trust created by this Deed with and subject to the powers and provisions in this Deed.
- D. They have paid into the joint names of the Trustees the sum of \$1,000 to be held by the Trustees on the trusts and with the powers set out in this Deed.

OPERATIVE PART

1. Interpretation

In this Deed unless the context otherwise requires:

"Charitable Purposes" shall have the meaning as is given to that phrase by the Income Tax Act 2004 or any amendment thereof or any Act in substitution thereof PROVIDED HOWEVER that if by any reason of any alteration in the law relating to income tax is at any time or times necessary to restrict such purposes to preserve the right to exemption from income tax of the kind referred to in the said Act, such purposes shall thereupon be deemed restricted to the extent so necessary;

"Property" includes real and personal property, and any estate, share, and interest in any property, real or personal, any debt, anything in action, and any other right or interest, whether in possession or not;

"Trustee" includes the trustee or trustees for the time being of the trusts evidenced by this Deed whether original, additional or substituted;

"Trust Fund" means the sum of \$1,000.00 referred to in Background D above. It also includes any money, investments or other property paid or given to or acquired by the Trustees after this Deed has been signed with the intention that it is to be held by the Trustees on the trusts and with the powers set out in this Deed.

2. Constitution and Name

- 2.1 This Deed establishes a Charitable Trust upon the terms set out in this Deed which shall be known as the "Longbush Ecological Restoration Trust" ("the Trust").

- 2.2 The Trust is established exclusively for charitable purposes within New Zealand and:
- (a) all actions carried out by the Trustees pursuant to this Deed shall be carried out exclusively for charitable purposes;
 - (b) any business carried on by the Trustees shall be carried out exclusively for charitable purposes and not for pecuniary gain of any person.

3. Office

- 3.1 The office of the Trust shall be such place in Gisborne as the Board of Trustees may determine.

4. Foundation Trustees

- 4.1 The foundation Trustees and members of the trust created by this Deed shall be those persons who are named as "the Parties" and who have executed this Trust Deed.

5. Declaration of Trust

The Trustees acknowledge and declare that the Trustees shall stand possessed of the Trust Fund and shall apply the same for charitable purposes within New Zealand for the benefit of the community and in accordance with the law of New Zealand including the following specific charitable purposes:

- a. To assist in the ecological restoration, management and enhancement of the covenanted lands at Longbush as a safe haven for endangered and other species of native plants and animals;
- b. To foster community knowledge of and interest in the ecological restoration activity at Longbush;
- c. To ensure the continued protection and restoration of Longbush where possible restoring biodiversity values which existed prior to human occupation in Tairāwhiti;
- d. To create a safe haven for endangered and other native plant and animal species, controlled for plant and animal pests, which will be the largest fully protected and managed indigenous forest area in the Turanga and Waiapu Ecological Districts;
- e. To collaborate with other relevant organisations and individuals to reintroduce locally extinct or threatened plant and animal species, to ensure their long-term survival, including (but not limited to) brown kiwi, North Island weka, robin, and kokako;
- f. To develop self-sustaining threatened species populations which will act as source populations for the creation of future community restoration projects in the Turanga and Waiapu Ecological Districts;
- g. To care for some special collections, including the Renee Orchiston flax collection presently established at Longbush;
- h. To educate the general public, especially school children, about the need to conserve and protect wildlife and native forest environments in New Zealand;

6. Powers of Trustees

The Trustees shall have power to do all of any of the following things either alone or in common with any other person provided all actions of the Trustees are in accordance with the charitable purposes set out in this Deed:

6.1 Investments

To invest the Trust Fund in any manner, whether at the time in a state of investment or not. Any such investments may be varied in any manner from time to time;

6.2 Donations

To solicit donations, legacies, devises, bequests, financial support gifts and grants of all kinds from the public or institutions;

6.3 Subsidies and Grants

To apply for and accept any subsidy, grant, donation or suspensory loan from any source calculated directly or indirectly to benefit the charitable purposes of the Trust;

6.4 Fund Raising

To take such steps to publicise the charitable purposes and activities of the Trust and to secure the assistance, co-operation and encouragement of any institutions, organisations and persons involved in the fund raising and publicity activities;

6.5 Property

To purchase, acquire and obtain and to sell, lease, exchange, partition or otherwise dispose of or deal with any property or any part thereof or any interest therein;

6.6 Expenses

To pay all costs, expenses and outgoings in any way related to the Trust Fund and its charitable purposes.

6.7 Employment

To employ and remove or suspend and pay such officers, specialists, employees, agents, contractors, or other persons for any services rendered as the Trustee may from time to time deem necessary and to determine the duties and powers of such persons and fix their salaries and remuneration PROVIDED THAT

- a. Any income, benefit or advantage shall be applied solely to the purposes of the Trust;
- b. No Trustee may participate in any decision made by the Trustees in respect of the payment to or on behalf of that person of any income, benefit or advantage whatsoever;
- c. Any such income or benefit paid shall be reasonable and relative in that which would be paid in an arm's length transaction (being the open market value);
- d. The provisions and effect of this clause shall not be removed from this Deed and shall be included and in any document amending or replacing this Deed.

6.8 Receive Applications for Grants

To receive applications for grants or other payments from the Trust Fund and to deal with the same in accordance with the objects of the Trust and otherwise upon such terms and conditions as the Trustee shall determine;

7. **Application of Trust Fund**

The income and property of the Trust Fund shall be applied solely towards the promotion and charitable purposes of the Trust as set forth in this Deed and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any person PROVIDED THAT nothing in this Deed shall prevent the payment in good faith of any reasonable and proper salaries and remuneration to any officers, specialists, employees, agents, contractors or other persons in return for any services actually rendered to the Trust.

8. **Management**

The management and control of the Trust and the affairs of the Trust shall be vested in the Trustees with full power and authority at their discretion at any time to appoint or make provision for the appointment of any persons as a committee or committees or otherwise and to delegate any of their powers, duties and authorities for the purpose of the administration of the Trust in such manner and subject to such terms, conditions and rules as the Trustee may determine.

9. **Meetings**

9.1 Timing:

- a. An annual meeting of the Trustees shall be held within the first 4 months of each calendar year;
- b. The Trustees may also hold other meetings as if they may from time to time think fit for the transaction of such business as the Trustees may consider desirable at the times and places to be fixed by the Trustees.

9.2 Officers:

The Trustees may appoint a Chairperson, a secretary and a treasurer or such like officers as the Trustees think fit.

9.3 Conduct:

- a. Every question before the Trustees must be decided by a majority vote of all Trustees (not just a majority of those present at the meeting);
- b. At any meeting of the Trustees the Chairperson or other person presiding will have a deliberative vote and in the case of an equality of votes the Chairperson will also have a casting vote;
- c. Sub-clauses (a) and (b) of this clause do not apply to:
 - (i) to any variation under clause 17 of this Deed; or
 - (ii) any amalgamation under clause 18; or
 - (iii) any dissolution under clause 19.

Any such variation, amalgamation or dissolution may only be made if at least two-thirds of all of the Trustees at that time holding office agree to it;

- d. Four Trustees present at a meeting of the Trustees shall constitute a quorum for all business of the Trustees;
- e. A Trustee may not vote on any matter in which he or she has a vested monetary interest;
- f. Subject to the provisions of this Deed the Trustees may regulate their own procedure in such manner as they think fit.

10. **Accounts**

- 10.1 The Trustees shall cause true and fair books of accounts to be kept in respect of the Trust and the Trust Fund including all sums of money received and expended by the Trustee, the matters to which such receipts and expenditure relate and the assets and liabilities of the Trust. The books of accounts of the Trust shall be kept at the office of the secretary or such other place as the Trustees shall think fit.
- 10.2 The Trustees may resolve to have the financial statements including the balance sheet and books of accounts and other records audited. In such event the Trustees shall appoint one or more chartered accountant(s) to be auditor or auditors and other records audited the same shall be open to inspection by the auditor or auditors at all times and auditor or auditors shall within 30 days before the annual meeting of Trust audit and report to the Trustees upon the financial affairs of the Trust and the Trust Fund.

11. Vacancy of Trustee

- 11.1 The office of Trustee shall be vacated if a Trustee:
- a. Being a company goes into receivership or liquidation; or
 - b. Being an individual:
 - i. Becomes bankrupt or makes any arrangement or composition with creditors generally; or
 - ii. Is convicted of any offence against the law of New Zealand for which the Trustee may be liable on conviction to imprisonment; or
 - iii. Becomes of unsound or becomes a protected person; or
 - iv. Resigns office by notice in writing to the secretary or chairperson for the time being; or
 - v. Fails to attend 3 consecutive meetings of the Trust without having first obtained leave of the chairperson for the time being.
- 11.2 Upon ceasing to be a Trustee pursuant to clause 11.1 the vacating Trustee shall if and when required by the remaining Trustees execute and do all such deeds, acts, matters and things as may be necessary for the purpose of vesting any property held by the Trustee in the Trustees for the time being or as they shall direct.

12. Appointment of New Trustees

- 12.1 The power of appointing a new Trustee or Trustees shall be vested in the Trustees.
- 12.2 A minimum of five (5) trustees are required for the Trust.

13. Removal of Trustees

- 13.1 The trustees will have the power to call a Special General Meeting at which a trustee may be removed from office by consensus of the quorum of that special general meeting.
- 13.2 A trustee may also be removed as a trustee by the unanimous vote of all the other trustees.

14. Liability of Trustees

A Trustee will be liable for loss from the Fund only if that loss arises from:

- a. The Trustee's dishonesty; or
- b. The wilful commission or omission by the Trustee of an act known to be a breach of trust.

In particular, no Trustee will be bound to take any proceedings against a co-Trustee or a former Trustee for any breach or alleged breach of trust committed by such co-Trustee or former Trustee.

15. Indemnity for Trustees

Every Trustee and employee of the Trust Fund will be indemnified out of the Trust Fund for:

- a. Any liability, other than one arising under clause 14, incurred while acting in good faith for or in connection with the Fund; and
- b. Any legal or other costs reasonably incurred in successfully defending any proceedings that relate to his or her actions for or in connection with the Fund.

16. Trustees' Rights to Charge for Professional Services

16.1 Any Trustee who is a professional or business person will be entitled to charge all usual and proper fees for services performed as a Trustee and for all professional and other services performed in the administration of the Trust Fund, whether performed personally or by that person's firm. The right to charge will also extend to acts which a Trustee, not being a professional or business person, could have done personally.

16.2 However, this clause is to be read subject to clause 6.7.

17. Variation of Trust Deed

17.1 The Trustee may by resolution passed at a duly convened meeting of the Trustee revoke, vary or add to any of the provisions of this Deed so long as such revocation, variation or addition is not inconsistent with the charitable intention of this Deed.

17.2 However, this clause is to be read subject to clause 6.7.

18. Amalgamation

18.1 The Trustees may amalgamate and merge the Trust Fund with any other charitable trust which has objects that are the same as the Purpose of the Trust (or are substantially the same in the opinion of the Trustees).

18.2 For this purpose, the provisions of clause 17 shall extend to allow a variation of the provisions of this Deed to the extent necessary to enable such a merger to take place. The Trustees will then be released from all further obligation except to the extent that any trustee becomes a trustee of the new amalgamated trust body.

18.3 However, any such amalgamation or merger must not result in the Trust ceasing to qualify as a charity (or for any similar status) under New Zealand Tax Law at that time.

19. Dissolution

- 19.1 If:
- (a) In the event of it becoming impossible, impractical or inexpedient to carry out the charitable purposes of the Trust; or
 - (b) In the opinion of the Trustees the charitable purposes become sufficiently effected or accomplished by any other associations, societies, trusts, institutions, organisations, persons or agents (whether governmental or otherwise) other than by the Trust; or
 - (c) For any other reason,

it shall be lawful for the Trustee to dissolve and wind up the Trust in which case the net assets of the Trust Fund, being the surplus of assets remaining after payment of

all liabilities and expenses, shall be disposed of to another charitable trust or trusts which are dedicated to enhancing the bio-diversity of the Gisborne region, and the provisions and effect of this clause shall not be removed from this Deed and shall be included and implied into any document replacing or varying this deed.

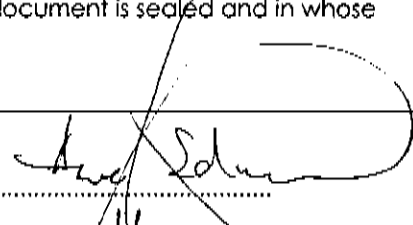
20. Incorporation and Common Seal

20.1 The Trustees may at any time resolve to apply for the incorporation of the Trustee as a Board under Part II of the Charitable Trust Act 1957 and will make application for registration as a charitable entity under the Charities Act 2005.

20.2 If the Trust becomes incorporated it shall provide a common seal for the Board which shall always be deposited with the chairpersons or secretary for the Trustees for the time being.

20.3 The common seal shall only be affixed to any document requiring execution by the Trustee by the authority of the Trustee previously given at a meeting of the Trustee. Every such affixing of the common seal shall be performed in the presence of and accompanied by the signatures of two persons so authorised by the Trustee which shall be sufficient evidence of the authority to affix the common seal. No person dealing with the Trustee shall be bound or concerned to see or enquire as to the authority under which any document is sealed and in whose presence.

Signed by **ANNE SALMOND** in the presence of:



Signatory: Mary Anne Salmond

Witness:

MENG FOON

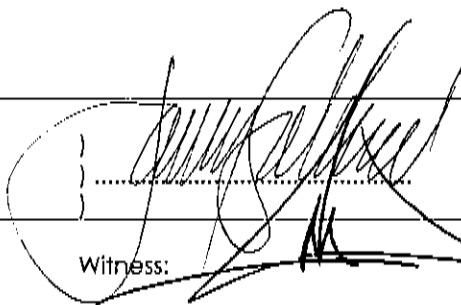
Occupation: University Professor

Occupation: *MAYOR*

Address: 14 Glen Road, Devonport, Auckland 0624

Address: *90 MANU RD GISBORNE*

Signed by **JEREMY SALMOND** in the presence of:



Signatory: Laurence Jeremy Elder Salmond

Witness:

MENG FOON

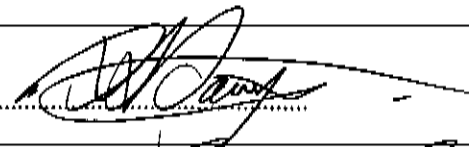
Occupation: Architect

Occupation: *MAYOR*

Address: 14 Glen Road, Devonport, Auckland 0624.

Address: *90 MANU RD GISBORNE*

Signed by **STEVE SAWYER** in the presence of:



Signatory: Stephen Leslie Sawyer

Witness:

SALLY GADDAM

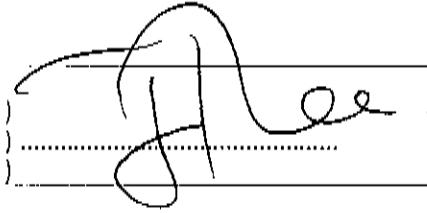
Occupation: Company Director

Occupation: *Teacher*

Address: 1048 Waimata Valley Road, Gisborne

Address: *Kotare Station RD Mataurari*

Signed by **JOHN THORPE** in the presence of:



Signatory: John Alan Thorpe

Witness: **Ryan Raggatt.** 

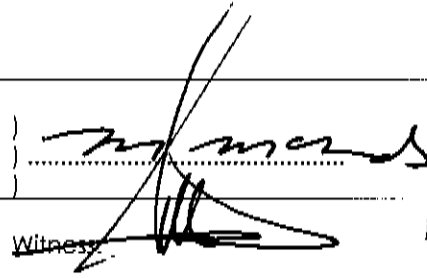
Occupation: .Company Director

Occupation: **winemaker.**

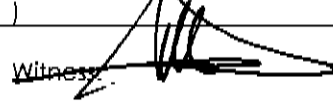
Address: .Barker's Hill, Gisborne

Address: **10 Adams Rd Gis.**

Signed by **MEIKLE McNAB** in the presence of:



Signatory: . Meikle Edwina Harvey McNab

Witness:  **MAX POON**

Occupation: Weaver

Occupation: **Maor**

Address: P.O.Box 917
(1117 Riverside Road)
Gisborne.

Address: **90 MAIN RD
GISBORNE**