

TRUST DEED OF THE MOHUA CHARITABLE TRUST

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THIS DEED is made this 31st day of May 2010.

PARTIES

1. The Settlor, **Nigel Babbage** wishes to establish a charitable trust (in this Deed referred to as the **Trust**) for the purposes described in Clause 3 of this Deed, and
2. The Settlor has agreed to contribute \$20.00 to establish the Trust, such sum to be held by the Trustees upon the trusts and purposes and with the powers contained in this Deed.; and
3. The Trustees named at the end of this deed have agreed to act as trustees of this Trust.
4. This document has been completed by the Settlor and Trustees to establish the terms of the Trust and providing for its control and government.

1. Definitions and Interpretation

- 1.1 **Definitions:** In this Deed unless the context otherwise requires:

Board means the Mohua Charitable Trust Board following registration of incorporation of the Trustees under the *Charitable Trust Act 1957*;

Trust Fund means:

- (a) the sum of \$20.00 and the property and investments from time to time representing the same;
- (b) any further property whether real or personal which is otherwise acquired by the Trustees from any source and by any means whatever to be held on trust under this Deed; and
- (c) the moneys and investments from time to time representing such property and accumulations of income; and

Trustees includes the Trustees or Trustee for the time being of the trust created under this Deed whether original additional or substituted;

2. Name

The name of the Trust is the **Mohua Charitable Trust**, thereafter called **Trust**.

3. Purpose

- 3.1 The purposes of the Trust are to provide benefits to the public of New Zealand;
- 3.1.1 to aid preservation and rehabilitation of native birds and wildlife, especially the Mohua in the South Island of New Zealand;
 - 3.1.2 to promote education about native birds in New Zealand and their preservation;
 - 3.1.3 to provide funding for the discovery, collection, relocation and rehabilitation of native birds including the Mohua.

3.1.4 to engage, promote and assist in any manner directly or indirectly, individuals, movements, groups and organisations which are endeavouring to preserve native birds and wildlife in New Zealand or engaged in any charitable activity in New Zealand with similar objects as approved by the Commissioner of Inland Revenue and/or the provisions of the Charities Act 2005;

3.1.5 to do all such things as are conducive to the provision, supply and promotion of the above objects and any other charitable purpose which the Trustees desire and which are acceptable to the Commissioner of Inland Revenue and/or the Charities Act 2005 or any Act in substitution.

3.2 The objects and purposes of the Trust are or shall be charitable as approved by the Commissioner of Inland Revenue and/or the provisions of the Charities Act 2005 and shall be deemed not to include or extend to any matter or thing which is or shall be held or determined to be non-charitable or to be a non-charitable purpose other than and an ancillary non-charitable purpose within the meaning of Section 5 of the Charities Act 2005, and the powers and purposes of the Board and Trusts hereby created shall be restricted accordingly.

4. Activities limited to Aotearoa/New Zealand

The activities of the Trust will be limited to Aotearoa/New Zealand.

5. Office

The office of the Trust will be in such place in New Zealand as the Board of Trustees may from time to time determine.

6. The Board of Trustees

6.1 The Trust shall be administered by a Board.

6.2 The Board will comprise of no less than [three (3)] Trustees and no more than ten (10) Trustees.

6.3 The signatories to this Deed will be the first Board. The Trustees will elect from among themselves a Chairperson. A Secretary and Treasurer will also be appointed from among themselves or from non-trust members. An election of office-bearers will be held at the first meeting of the Board following the execution of this Deed and whenever a vacancy occurs. The positions of Secretary and Treasurer may be combined.

6.4 The Board members shall hold their appointment for a period of three years from their date of appointment or such shorter periods as his/her terms of appointment may specify. Each Board member shall retire at the end of his/her term of appointment, but may be eligible for re-appointment by the Board. Not less than one month prior to the expiry of the Board member's current term the Board shall either confirm the reappointments to the Board or appoint a new replacement member for the next three year or appropriate term.

6.5 A person will immediately cease to be a Trustee when she or he resigns in writing, dies, is declared bankrupt or is found to be a mentally disordered person within the meaning of the Mental health (Compulsory Assessment and Treatment) Act 1992 or subsequent enactment.

6.6 The Board will have the power to fill any vacancy that arises in the Board or to appoint any additional trustees subject to clause 6.2

- 6.7 The Board may continue to act notwithstanding any vacancy, but if their number is reduced below minimum number of trustees as stated in this deed, the continuing trustee/s may act for the purpose of increasing the number of trustees to that minimum but for no other purpose.
- 6.8 The Board may, by a motion decided by a two-thirds (2/3rd) majority votes, terminate a person's position as a Trustee and member of the Board, if it believes that such action is in the best interests of the Trust.
- 6.9 The name of the Board will be the **Mohua Charitable Trust Board**.

7. Meetings of the Board

- 7.1 The procedure for Board meetings will be as follows:
- 7.1.1 A quorum will be at least half of its members, and no business shall be transacted unless a quorum is present. A member that is a group or organisation shall be deemed to be present if it is represented at the meeting by its duly appointed nominee.
- 7.1.2 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 and on decision of the Board, be removed as a Trustee, and/or from any office of the Trust which she or he holds.
- 7.1.3 All questions before the Board shall be decided by consensus. However, where a consensus decision cannot be reached on a question, it shall, unless otherwise specified in this Deed, be put as a motion to be decided by a majority of votes. If the voting is tied, the chairperson shall have a deliberative and a casting vote.
- 7.1.4 If the voting is tied, the motion will be lost.
- 7.1.5 In the absence of the Chairperson, the Board will elect a person to chair the meeting from among the Trustees present.
- 7.2 The Board will meet at least three (3) times every year. 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 will ensure that all members of the Board are notified of the meeting, either verbally or in writing.
- 7.3 The Secretary will ensure that a minute book is maintained which is available to any member of the Trust and which, for each meeting of the Board, records
- 7.3.1 the names of those present;
- 7.3.2 all decisions made by the Board; and
- 7.3.3 any other matters discussed at the meeting.

8. Powers

- 8.1 In addition to the powers provided by the general law of New Zealand, contained in the Trustee Act 1956, or otherwise stated in this Deed, the powers which the Board may exercise in order to carry out its charitable purposes are as follows:
- 8.1.1 to use the funds of the Trust as the Board thinks necessary or expedient in payment of the costs and expenses of the Trust, including the employment and dismissal of professional advisors, agents, officers and staff, according to principles of good employment and the Employment Relations Act 2000 or any subsequent enactment;
 - 8.1.2 to purchase, take on, lease or in exchange or hire or otherwise, acquire any real or personal property and any rights or privileges which the Board thinks necessary or expedient in order to attain the purpose of the Trust and to sell, exchange, let, bail or lease, with or without option of purchase or, in any other manner, dispose of such property, rights or privileges which the Board thinks necessary or expedient for the purpose of attending the objects of the Trust;
 - 8.1.3 to carry on any business;
 - 8.1.4 to invest surplus Trust Funds in any way permitted by law for the investment of Charitable Trust funds and upon such terms as the Board thinks fit;
 - 8.1.5 to borrow or raise money from time to time with or without security and upon such terms as to or otherwise as the Board thinks fit; and
 - 8.1.6 to do all things as may from time to time is necessary or desirable to enable the Board to give effect to and attain the charitable purposes of the Trust.
- 8.2 The Board is empowered to seek incorporation in accordance with the provisions of the Charitable Trusts Act 1957.
- 8.3 The Board is empowered to seek registration of the Trust as a charitable entity in accordance with the provisions of the Charities Act 2005.

9. Income, Benefit or Advantage to be Applied to Charitable Purposes

- 9.1 Any income, benefit or advantage will be applied to the charitable purposes of the Trust.
- 9.2 No trustee or members of the Trust or any person associated with a trustee shall participate in or materially influence any decision made by the trustees in respect of any payment to or on behalf of that trustee or associated person of any income, benefit or advantage whatsoever, except where that income, benefit or advantage is derived from:
- 9.2.1 professional services to the Trust rendered in the course of business charged at no greater than current market rates; or
 - 9.2.2 interest on money lent at no greater rate than current market rates.
- 9.3 Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).
- 9.4 The provision and effect of this clause shall not be removed from this deed and shall be implied into any document replacing this deed of trust.

10. Power to Delegate

- 10.1 The Board may from time to time appoint any committee and may delegate any of its powers and duties to any such committee or to any person. The committee or person may without confirmation by the Board exercise or perform the delegated powers or duties in the same way and with the same effect as the Board could itself have done.
- 10.2 Any committee or person to whom the Board has delegated powers or duties will be bound by the terms of the Trust and any terms or conditions of the delegation set by the Board.
- 10.3 The Board will be able to revoke such delegation at will, and no such delegation will prevent the exercise of any power or the performance of any duty by the Board.
- 10.4 It will not be necessary for any person who is appointed to be a member of any such committee, or to whom such delegation is made, to be a Trustee.

11 Financial Arrangements

- 11.1 The financial year of the Trust will be from 1st April to 31st March.
- 11.2 At the first meeting of the Board in each financial year, the Board will decide by resolution the following:
 - 11.2.1 how money will be received by the Trust;
 - 11.2.2 who will be entitled to produce receipts;
 - 11.2.3 what bank accounts will operate for the ensuing year, including the purposes of and access to accounts;
 - 11.2.4 who will be allowed to authorise the production of cheques and names of cheque signatories; and
 - 11.2.5 the policy concerning the investment of money by the Trust, including what type of investment will be permitted.
- 11.3 The Treasurer will ensure that true and fair accounts are kept of all money received and expended by the Trust.
- 11.4 The Board may arrange for the accounts of the Trust for that financial year to be audited by an accountant appointed for that purpose.

12. Contracts

- 12.1 Contract on behalf of the Trust may be made as follows:
 - 12.1.1 A contract which if made by private persons would be by law required to be by deed may be made on behalf of the Trust by two Board members signing for and on behalf of the Trust.
 - 12.1.2 A contract which if made between private persons would be by law required to be in writing, signed by the parties, may be made on behalf of the Trust by any one person

acting under the Board's express authority.

- 12.1.3 A contract which if made between private persons would by law be valid although made orally only, and not reduced into writing, may be made orally on behalf of the Trust by any one person acting under the Board's express authority.

13. Alteration of this Deed

- 13.1 The Trustees may, by consensus or pursuant to a motion decided by a two-thirds majority of votes, by supplemental Deed make alteration or additions to the terms and provisions of this Deed provided that no such alteration or addition will:
- 13.1.1 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; or
- 13.1.2 be made to the Purpose Clause 3, the Activities Limited to New Zealand Clause 4, the Pecuniary Interests Clause 9 or the Disposition of Surplus Assets Clause 16 unless it is first approved in writing by the Department of Inland Revenue.

14. Mediation and Arbitration

- 14.1 Any dispute arising out of or relating to this deed may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties. Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' institute of New Zealand Inc.
- 14.2 The mediation shall be terminated by-
- 14.2.1 The signing of a settlement agreement by the parties; or
- 14.2.2 Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
- 14.2.3 Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or
- 14.2.4 The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.
- 14.3 If the mediation should be terminated as provided in 14.2.2, 14.2.3, or 14.2.4 any dispute or difference arising out of or in connection with this deed, 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. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

15. Trustee Liability

15.1 It is declared that:

- 15.1.1 The Trustees are chargeable respectively only in respect of the money and securities they actually receive, or which, but for their own acts, omissions, neglects, or defaults they would have received, notwithstanding their signing any receipt for the sake of conformity; and
- 15.1.2 They are answerable and responsible respectively only for their own acts, receipts, omissions, neglects and defaults and not for those of each other, or of any banker, broker, auctioneers, or other person with whom, or into whose hands, any Trust money or security is properly deposited or has come;
- 15.1.3 No Trustees shall be liable personally for the maintenance, repair, or insurance of any charges on such property;
- 15.1.4 No Trustees hereof shall be liable for any loss arising from any cause whatsoever including a breach of the duties imposed by Section 13B and/or Section 13C Trustees Act 1956 (as enacted by the Trustee Amendment Act 1988) (or any statutory replacement or equivalent) unless such loss is attributable:
- (a) To his or her own dishonesty; or
 - (b) To the wilful commission by him or her of an act known by him/her to be breach of Trust.
- 15.1.5 And pursuant to Section 13D of the Trustees Act 1956 it is intended by this clause that the duties imposed by Section 13B and 13C of the Trustees Act 1956 shall not apply to any Trustee hereof.
- 15.1.6 No Trustees shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of Trust committed by that co-Trustee.
- 15.1.7 Notwithstanding the procedure or otherwise of retaining assets in the Trust Fund no Trustee shall be liable for any loss suffered by the Trust Fund by reason of the Trustees retaining any assets forming part of the Trust Fund.
- 15.1.8 The Trustees shall from time to time and at all times be indemnified by and out of the Trust property from and against all costs, charges, losses, damages, and expenses sustained or incurred by them or in or about the execution and discharge of their office or in or about any claim, demand, action, proceeding or defence at law or in equity in which they may be joined as a party.

16. Disposition of Surplus Assets

On the winding up of the Trust, or on its dissolution by the Registrar, all surplus assets, after the payment of costs, debts and liabilities will be given to other charitable organisation/s within New Zealand as the Board will decide. If the Trust is unable to make such a decision, the surplus assets will be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 or subsequent enactment.

EXECUTED as a Deed

Signed by
Mr Nigel Babbage as a Trustee
in the presence of

Witness signature

Full name

Occupation

Address

Signed by
Associate Professor Ian Jamieson as a Trustee
in the presence of

Witness signature

Full name

Occupation

Address

Signed by
Dr Graeme Elliott as a Trustee
in the presence of

Witness signature

Full name

Occupation

Address