

**DEED OF TRUST ESTABLISHING
OCEANSWATCH**

between
Christopher Bone
and
Christopher Bone
and
Jane Mary Pares
and
Peter Vine
and
Julia Alabaster
and
Lily Kozmian Ledward
and
Donna Lange



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- 3.2 Secondary Objects:** The secondary objects and purposes for which the Trust is established are:
- a. To promote the economic development and regeneration of coastal communities in the Pacific region which are socially and/or economically disadvantaged;
 - b. To educate coastal communities in the Pacific region in the sustainable management of their marine resources;
 - c. To support marine research in the Pacific region where the result of the research will be disseminated to others;
 - d. The protection of the marine environment in the Pacific region including the preservation of reefs, marine animals and plants;
 - e. To promote and support efforts in the Pacific region to ameliorate the impact of climate change;
 - f. To foster, promote and increase the interest of people in the Pacific region (including the yachting community) in marine conservation;
 - g. To carry on any other charitable objective in the Pacific region which may seem to be capable of being conveniently carried on with the above charitable objects.
- 3.3** The Board shall be empowered to carry on any one or more of the objects of the Trust independently of any other object or purpose of the Trust.

4. Discretion of Board

- 4.1** The Board may in its absolute and uncontrolled discretion at any time or times pay or apply for or towards any purpose:
- a. the income of the Trust Fund as provided in clause 5; and
 - b. the capital of the Trust Fund as provided in clause 7;
- provided that any income, capital, benefit or advantage will only be applied to the charitable purposes of the Trust and not for the private pecuniary profit of any individual.
- 4.2** No private pecuniary profit will be made by any person from the Trust Fund except that:
- a. any member of the Board may receive full reimbursement for all reasonable expenses properly incurred by that member of the Board in connection with the affairs of the Board;
 - b. the Board may pay reasonable and proper remuneration to any officer or servant of the Board (whether a Board member or not) in return for services actually rendered to the Board;
 - c. any member of the Board may be paid all usual reasonable professional, business or trade charges for services rendered, time expended and all acts done by that member of the Board or by any firm or entity of which that member of the Board is a member, employee or associate in connection with the affairs of the Trust Fund; and
 - d. any member of the Board may retain any remuneration properly payable to that member by any company or undertaking with which the Board may be in any way concerned or involved for which that member has acted in any capacity whatever,

notwithstanding that that member of the Board's connection with that company or undertaking is in any way attributable to that member's connection with the Board.

The Board, in determining all reimbursements, remuneration and charges payable in terms of this clause, will ensure that the restrictions imposed by this clause are strictly observed.

4.3 Notwithstanding anything contained or implied in this deed, any person who is:

- a. a member of the Board;
- b. a shareholder or director of any company carrying on any business of the Board;
- c. a settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Board; or
- d. an associated person (as defined by section OD 8(4) of the Income Tax Act 2004) of any such trustee, shareholder or director,

will not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence in any way the determination of, the nature or the amount of any benefit, advantage, income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person.

4.4 The restrictions contained in clauses 4.2 and 4.3 will not be removed from this deed and will be included and implied into any document replacing this deed.

5. Income Appropriation

5.1 The term "Balance Date" where used in this deed means 31 March in each year or such other date for the time being adopted by the Board.

5.2 The Board may at any time or times resolve to appropriate the whole or any part of the net annual income of the Trust Fund to any of the purposes.

5.3 In the exercise of the powers conferred by this clause 5, the Board may at any time or times during any year ending on the Balance Date or within 6 months of the Balance Date appropriate to any of the purposes, the whole or any part of the income derived or accrued or to be derived or to accrue from the Trust Fund during that year whether or not it has been received by the Board at the date of such appropriation or at the end of that year.

6. Income Accumulation

6.1 The Board stands possessed of the annual income arising or accruing from the Trust Fund in any year ending on the Balance Date, which has not on the Balance Date or within 6 months of the Balance Date been paid, applied or appropriated by the Board under clause 5 ("the Surplus Income"), upon trust to invest the Surplus Income and the resulting income.

6.2 All Surplus Income must be added to the capital of the Trust Fund and is to be held by the Board upon the trusts and with the powers declared in this deed in respect of the capital of the Trust Fund.

7. Capital Appropriation

- 7.1 The Board may at any time or times resolve to appropriate the whole or any part of the capital of the Trust Fund or to appropriate any moneys, property or interest in property to any of the purposes.

8. Resettlement of Trust

- 8.1 The Board may by unanimous resolution declare by way of resettlement such trusts (together with any conditions, limitations and provisions to be carried out at the discretion of the Board or any other person or persons) for the advancement or benefit of any charitable purpose and in respect of the whole or any part of the income or capital of the Trust Fund that has not been irrevocably paid or applied under the provisions of this deed in favour of any charitable purpose.

9. Amendments of Trust

- 9.1 The Board may from time to time by deed add to, vary, or revoke all or any of the trusts in this deed or any addition or variation to this deed, and may by the same or any other deed declare any new or other trusts or powers or discretions for the Trust Fund or any part of the Trust Fund.
- 9.2 Any addition or variation to, or revocation of, any trust, powers, discretions, additions or variations:
- a. must not lead to the amended deed becoming unacceptable to the New Zealand Charities Commission;
 - b. must not 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.

10. Structure of Trust

- 10.1 The Trust will be administered by the Board.

11. Members of Board

- 11.1 The Board shall consist of no fewer than three members and no more than ten members.
- 11.2 The First Trustee, Second Trustee, Third Trustee, Fourth Trustee, Fifth Trustee and Sixth Trustee shall compromise the Board.
- 11.3 If an incorporated company is appointed to be a member of the Board, that company may be the sole member of the Board.
- 11.4 The Board also has the following powers:
- a. To appoint at any time an additional member or members of the Board of all or any of the trusts in this deed;
 - b. To appoint any retiring or retired member or any other person at any time as advisory trustee of the trusts in this deed.
- 11.5 A Board member will cease to hold office if that member:
- a. retires from office by giving written notice to the Board or any person designated as Secretary of the Board;

- b. refuses to act;
- c. becomes physically or mentally incapacitated to the extent that in the opinion of the Board, he or she is unable to perform the duties of a Board member properly;
- d. becomes bankrupt or makes any composition or arrangement with his or her creditors;
- e. is convicted of an indictable offence; or
- f. in the opinion of both the Settlor and Jane Pares, is for any other reason unfit to carry out the duties of a Board member.

12. Proceedings of Board

- 12.1 The Board will hold ordinary meetings when it determines, provided that a special meeting may at any time be called by any of the members of the Board upon 7 days notice being given to the other Board members of the business to be transacted or discharged. If a quorum has been formed in terms of clause 12.4, no special meeting will be declared invalid solely by reason of a failure to give 7 days notice to all other Board members.
- 12.2 The Board shall hold at least two ordinary meetings a year. For the avoidance of doubt internet conferencing or audio teleconferencing is an acceptable meeting forum.
- 12.3 The Board may at its discretion elect a Chairperson.
- 12.4 A minimum of three Board members present at a meeting will constitute a quorum ("quorum").
- 12.5 The decision of 75% of the quorum binds the minority.
- 12.6 The Board members, subject to the provisions of the Charitable Trusts Act 1957, may delegate any of their powers to a committee consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed upon it by the Board members.
- 12.7 Minutes of the proceedings of all meetings of the Board shall be recorded in a book to be kept for the purpose by the secretary or any other person for the time being appointed by the Board and will be signed by any person for the time being appointed by the Board to be the Chairperson at the meeting or at the meeting at which the minutes are read and confirmed, and every such minute purporting to be so signed will be prima facie evidence of the facts stated in them.
- 12.8 If the number of Board members falls below three, the remaining Board members will not be entitled to act until an additional Board member or members have been appointed by the Board.
- 12.9 Any Board member who has a personal interest in any Trust property or undertaking in which the Trust is or may be involved, shall disclose the nature and extent of their interest to the Board, and shall take no part whatever in any deliberations of the Board concerning any matter in which that person is or may be interested other than as a member of the Board.

13. Common Seal

- 13.1 The Board will have a common seal which will be kept in the custody of the secretary or such other officer as will be appointed by the Board and will be used only as directed by the Board. It will be affixed to documents only in the presence of and accompanied by the signature of 2 members of the Board.

14. Office

- 14.1 The office of the Trust will be Mamaki, RD 3, Whangarei, or such place as the Board may determine.

15. Winding Up of Trust

- 15.1 If at any time the Board decides that for any reason it is no longer practicable or desirable to carry out the purposes of the Trust, the Board may by a unanimous resolution decide to wind up the Trust and vest the assets of the Trust in such one or more charitable bodies in New Zealand or the South Pacific in such manner and upon such terms and in such proportions as the Board may decide.

16. Accounts

- 16.1 The Board will keep accounts in relation to the affairs of the Trust.
- 16.2 The Board may cause the accounts of the Trust for that financial year to be audited by an accountant appointed by the Board for that purpose and the Board will then present the audited accounts to the annual general meeting of the Board together with an estimate of income and expenditure for the current year.

17. Limitation of Members' Liability

- 17.1 Notwithstanding anything contained in this deed, the liability of the members of the Board is limited at all times to the assets of the Trust and is not personal to the extent that apart from any loss attributable to the fraud or dishonesty of any member, the members of the Board have no personal liability in respect of any act or omission on their part or in any way as a result of their trusteeship under this deed.
- 17.2 Each Board member or former Board member is entitled to a full and complete indemnity from the Trust Fund for any personal liability which that Board member may incur in any way arising out of or in connection with that Board member acting or purporting to act as a Board member of the Trust, provided that such liability is not attributable to that Board member's own dishonesty, or to the wilful commission or omission by that Trustee of an act known by that Board member to be a breach of trust.

18. Administration

- 18.1 In respect of any payment made to any corporation, charitable, educational or benevolent body or institution, the receipt of such payment by the secretary, treasurer or proper officer of that corporation, body or institution is a full discharge to the Board for that payment and the Board is not bound to see to the application of such payment.
- 18.2 This Trust is governed by and construed in accordance with the laws of New Zealand.
- 18.3 The Board has all such powers and are subject to all such duties conferred on and imposed upon trustees under the Trustee Act 1956 (as amended by the Trustee Amendment Act 1988) or any substituted legislation in the exercise of any powers and

duties. Without limiting in any way those powers, the Board has the further powers, authorities and discretions set out in the **Schedule of Board Powers** which forms part of this deed, provided that the Board may not use the Trust Fund for a non-charitable purpose.

- 18.4** In the exercise of any powers and duties, the Board must at all times act in a prudent manner in accordance with currently acceptable practices and legislation (if any) in force from time to time, provided that the Board will not be required to diversify investments of the Trust Fund and will not be liable for any loss or breach caused by, or resulting from, non-diversification of the Trust Fund.

Execution

Signed by **Christopher Bone** as Settlor
in the presence of:

Christopher Bone

Signature of witness

Name of witness

Occupation

Address

Signed by **Christopher Bone** as First
Trustee in the presence of:

Christopher Bone

Signature of witness

Name of witness

Occupation

Address

Signed by **Jane Mary Pares** as Second Trustee in the presence of:

Jane Mary Pares

Signature of witness

Name of witness

Occupation

Address

Signed by **Peter Vine** as Third Trustee in the presence of:

Peter Vine

Signature of witness

Name of witness

Occupation

Address

Signed by **Julia Alabaster** as Fourth Trustee in the presence of:

Julia Alabaster

Signature of witness

Name of witness

Occupation

Address

Signed by **Lily Kozmian Ledward** as
Fifth Trustee in the presence of:

Lily Kozmian Ledward

Signature of witness

Name of witness

Occupation

Address

Signed by **Donna Lange** as Sixth Trustee
in the presence of:

Donna Lange

Signature of witness

Name of witness

Occupation

Address

SCHEDULE 1

SCHEDULE OF TRUSTEES' POWERS

THE Trustees have in the administration, management and investment of the Trust Fund all the rights powers and privileges of a natural person. Subject to the terms of this deed, they may deal with the Trust Fund as if the Trustees were the absolute owners of the Trust Fund. In addition to any specific powers vested in the Trustees by law, or by this deed, they may do or procure the doing of any act or thing or enter into any obligation including (but without limitation) exercising unrestricted powers to borrow and raise money and to give mortgages and other securities, guarantees and indemnities.

By way of illustration (not limitation) and to avoid uncertainty, the Trustees have the following powers:

- A. They may give any guarantee (either alone or jointly with any other person) which the Trustees consider to be in the interests of the Trust Fund or of any one or more Beneficiaries (directly or indirectly). In support of the guarantee, they may give security over the Trust Fund or part of it.
- B. In exercising their powers of investment, the Trustees may acquire any property, or retain or deal with any property which, from time to time, comprises the whole or part of the Trust Fund, notwithstanding that this would be, or could be, contrary to the principles governing the investment of Trust Funds in the Trustee Act 1956. This clause expresses a "contrary intention" for the purposes of section 13D of that Act.
- C. The Trustees may fix the value of the Trust Fund, or any portion of it, in such manner as the Trustees think fit. Every valuation and appropriation is final and binding on all the Beneficiaries.
- D. If there is any dispute or difference relating to the interpretation of this deed, or the administration of the Trust Fund the decision of the Trustees is final and binding. In reaching a decision, the Trustees may take and act upon the opinion of any barrister or solicitor without being liable to any of the Beneficiaries.
- E. Trustees are entitled to act hereunder and to exercise all the powers hereby conferred upon the Trustees notwithstanding that:
 - a. the Trustees are selling or leasing any real or personal property forming part of the Trust Fund to themselves; or
 - b. the Trustees are purchasing any such property to form part of the Trust Fund from themselves or otherwise deal as Trustees of this deed with themselves in a personal capacity;
 - c. the Trustees are or may be associated as Trustees of any other trust; or
 - d. the Trustees are directors, officers or employees of any company or of any subsidiary company of such company the shares, debentures or other investments of which form part of the Trust Fund or with which the Trustees otherwise deal as Trustees of this deed;
 - e. the Trustees are also Beneficiaries of the Trust;
 - f. the interests of all Beneficiaries are not considered by the Trustees;

- g. the exercise would or might be contrary to the interests of any present or future Beneficiary;
 - h. the exercise results in the Trust Fund, or any part, being distributed or resettled on new trusts for any one or more of the Beneficiaries (to the exclusion of the other or others) in equal or unequal proportions;
 - i. they are revocably or irrevocably conferring on one or more of the Beneficiaries (to the exclusion of the other or others) the right to receive future distributions from the Trust Fund, and thereby fetter their discretion to deal with property which will comprise the Trust Fund in the future.
- F. The receipt of the secretary, treasurer or proper officer of any corporation, institution, charitable or educational body to whom a payment is made is a full discharge to the Trustees for that payment. The Trustees are not bound to see to the application of the payment.
- G. At their discretion to apply income from the Trust Fund to pay expenses of:
 - a. administering the Trust Fund (whether relating to capital or income);
 - b. paying for the purchase or acquisition of any further assets;
 - c. repayment or reduction of debts or liabilities either incurred by them or payable to the Trust Fund;
 - d. premiums on any life insurance policy forming part of the Trust Fund.notwithstanding that any such payment would normally be charged against capital.
- H. To set aside income from the Trust Fund to establish or increase a reserve fund for payments of the kind mentioned in clause G. or to equalise income or to capitalise income. The Trustees may at any time resort to such reserve fund for those purposes. Any income from such reserve fund is deemed to be income from the Trust Fund. At the Date of Distribution the balance of any reserve fund then remaining is deemed to be capital of the Trust Fund and shall follow the destination thereof.
- I. The Trustees may direct in writing, either at the time that any part of the Trust Fund is appropriated to a Beneficiary or thereafter that a specified sum (not exceeding the value of that part of the Trust Fund so appropriated) is to be brought into hotchpot in ascertaining the share (if any) of that person or of any Beneficiary taking through or under that person. That specified sum must then be brought into hotchpot in calculating shares in the Trust Fund at the Date of Distribution.
- J. A Trustee who is a solicitor, or an accountant or any other person, employee, or partner in connection with any profession, business or trade is entitled to charge and be paid for all acts or services done or time expended by that person, or any employee, partner, in connection with the Trust. This authorises payment to an employee of a corporate Trustee.