

**NEW ZEALAND INSTITUTE OF FORESTRY
FOUNDATION**

DEED OF TRUST

between

**New Zealand Institute of Forestry (NZIF) Te Pūtahi Ngāherehere o
Aotearoa Incorporated, as Settlor**

and

**Andrew Durrad McEwen, James Treadwell, and David Evison, as
Original Trustees**

dated this *1st* day of *December* 2011



**Simpson
Grierson**

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DEED OF TRUST dated the 1st day of December 2011

EXECUTED BY NEW ZEALAND INSTITUTE OF FORESTRY (NZIF) TE PŪTAHI NGĀHEREHERE O AOTEAROA INCORPORATED, a society incorporated in New Zealand under the Incorporated Societies Act 1908

AND ANDREW DURRAD MCEWEN, of Wellington, Registered Forester, JAMES TREADWELL, of Auckland, General Manager, and DAVID EVISON, of Christchurch, University Lecturer

BACKGROUND

- A. In furtherance of its objects, NZIF has recognised the need for a charitable trust, to be known as the New Zealand Institute of Forestry Foundation, for the charitable purposes set out in detail in this deed.
- B. The Original Trustees are prepared to act as trustees of the Trust Fund.
- C. By way of initial settlement to establish the Foundation, NZIF has provided to the Original Trustees the sum of NZ\$100 at the date of execution of this deed to be held on the trust terms set out in this deed.
- D. NZIF anticipates that it will settle additional funds, and that the Trustees will receive funding from other sources, to be held on the trust terms set out in this deed once the Foundation has been established.

TRUST TERMS

1. INTERPRETATION PROVISIONS

1.1 **General:** Clauses 1.2 to 1.10 shall apply to this deed unless the context requires otherwise.

1.2 **Definitions:**

"AGM" means an annual general meeting of the Trustees held in accordance with clause 8.1.1;

"Balance Date" means 31 March or, subject to clause 9.2.4, any other date adopted from time to time by the Trustees as the end of the Foundation's Financial Year;

"Chairperson" means any Trustee appointed to that office in accordance with clause 7.5.1;

"Charitable Purposes" means purposes which are charitable in accordance with the law of New Zealand;

"Concessionary Provisions" means:

1.2.1 **Income Tax:** sections CW 41 (Charities: non-business income), CW 42 (Charities: business income), CX 25 (Benefits provided by charitable organisations), DB 41 (charitable or other public benefit gifts by a company) and DV 12 (Maori authorities: donations) and subpart LD (Tax credits for gifts and donations) of the Income Tax Act 2007;

1.2.2 GST: if the Trustees are registered under the Goods and Services Tax Act 1985, the provisions of that Act relating to non-profit bodies as defined in section 2(1) of that Act;

"Financial Year" means any 12 month or other accounting period ending on the Balance Date;

"Forestry" includes all those activities involved in the management and use of forests and their products, the objects of which are the production of wood or other forest benefits and the maintenance of the environment in its most beneficial form;

"Foundation" means the trust established on the terms set out in this deed;

"Officer" means a person for the time being holding an office to which that person has been appointed in accordance with clause 7.5;

"Original Trustee" means a person executing this deed as one of the first Trustees of the Foundation, but only until such time as the person first ceases to hold office as a Trustee;

"NZIF" means the society incorporated under the Incorporated Societies Act 1908, registration number 216334, under the name "New Zealand Institute of Forestry (NZIF) Te Pūtahi Ngāherehere o Aotearoa Incorporated" and with its registered office at Wellington (as at the date of this deed);

"NZIF Council" means the Council that governs the affairs of NZIF, established under Section V of the NZIF Articles of Association;

"Property" means real or personal property of any kind and includes any right or interest in such property and any thing in action;

"this deed" means this deed executed by NZIF and the Original Trustees and, as the context requires, includes any modification of the terms of the Foundation under clause 13;

"Trust Fund" means any Property which may be paid to or held under the control of or vested in or acquired by the Trustees for the Foundation from any source on or after the date of this deed and whether by way of gift, bequest, devise, purchase, exchange or otherwise, and includes the initial settlement made by NZIF on the date of execution of this deed;

"Trustees" means:

1.2.3 Trustees Prior to Incorporation: the trustee or trustees for the time being of the Foundation, whether original, additional or replacement trustees and including the Original Trustees; and

1.2.4 Trustees Incorporated as a Board: where the Trustees have incorporated as a board under the Charitable Trusts Act 1957, either the Trustees acting as a board or the Trustees for the time being constituting the board, as the context requires;

- 1.3 Clauses:** references to clauses are references to the clauses of this deed;
- 1.4 Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;
- 1.5 Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this deed;
- 1.6 Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.7 No Limitation:** references to anything of a particular nature either before or after a general statement do not limit the general statement;
- 1.8 Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.9 Plural and Singular:** singular words include the plural and vice versa; and
- 1.10 Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it or under any such amendment or replacement provision.

2. NAME OF THE TRUST

- 2.1 Name of the Trust:** The full name of the Foundation is the New Zealand Institute of Forestry Foundation, which may be abbreviated to the NZIF Foundation.
- 2.2 Change of Name:** Subject to prior written approval from the NZIF Council, the Trustees may, by resolution, change the name of the Foundation to any other name which they may determine from time to time, provided that:
- 2.2.1 Incorporation:** the Trustees will be incorporated as a board under the Charitable Trusts Act 1957 under the new name; or
- 2.2.2 Not Offensive or Misleading:** if the Trustees will not be incorporated under the new name, the new name is not offensive or liable to mislead any member of the public.

3. PURPOSES OF THE TRUST

3.1 Trust Fund Held for Charitable Purposes: The Trustees hold the Trust Fund on trust upon the terms set out in this deed to pay or apply from time to time so much of the capital and income constituting the Trust Fund as the Trustees think fit for or towards exclusively Charitable Purposes, wholly or mainly within New Zealand, and in particular to advance:

3.1.1 Principal Purposes: wholly or principally, the specific Charitable Purposes relating to Forestry described in clause 3.2; and

3.1.2 Secondary Purposes: as a secondary matter, and subject to prior written approval from the NZIF Council, any other Charitable Purpose relating to Forestry.

3.2 Specific Charitable Purposes and Activities: Without limiting the generality of clause 3.1, the focus of the Foundation is the advancement of education in relation to Forestry, including in particular:

3.2.1 Acquiring, Developing and Disseminating Knowledge: promoting the acquisition, development and dissemination of scientific and technical knowledge and information relating to Forestry; and

3.2.2 Educating the New Zealand Public in relation to Forestry: educating the New Zealand public in relation to the role of Forestry in sustainable economic, environmental and social development and the significant Forestry achievements which form part of the national heritage of New Zealand.

Without limiting the activities that may be carried on by the Foundation in pursuit of its Charitable Purposes, the activities of the Foundation may include (either alone or in conjunction with any other person):

3.2.3 Research, Education and Training Assistance: encouraging and supporting Forestry-related research, education and training through the provision of grants, scholarships, prizes or other forms of assistance;

3.2.4 Educational Initiatives and Publications: promoting the acquisition, development and dissemination of Forestry-related knowledge and information by supporting conferences, seminars, courses and the publication and distribution of Forestry-related publications; and

3.2.5 Activities Incidental to the Foundation's Purposes: carrying on any other activity incidental to, but not any non-charitable purpose independent of, the Charitable Purposes pursued by the Foundation.

3.3 Trust Funds Held for Specific Purposes: The Trustees may receive or set aside any part of the Trust Fund to be held upon the terms set out in this deed and paid or applied for or towards any specific purpose

falling within the Charitable Purposes of the Foundation described in clauses 3.1 and 3.2.

- 3.4 Change in Law:** If because of any change in the law, including any change brought about by the enactment of new legislation and/or the amendment or repeal of existing legislation, or by any change in the official interpretation or official application of any such legislation, it is at any time necessary to modify the terms of this deed in order to achieve and/or preserve the availability of any concession in relation to the Foundation under any Concessionary Provision that would otherwise be available were it not for the change in the law, then despite clause 13 the terms of this deed will at that time be deemed to be modified to the extent necessary, unless the Trustees have unanimously determined that eligibility for the benefit of such provision is not required in the best interests of pursuing the purposes of the Foundation.
- 3.5 Purposes Not Limited or Restricted:** Unless the context requires otherwise, none of the purposes of the Foundation described in clauses 3.1 and 3.2 will be in any way limited or restricted by reference to or inference from the terms of any other clause or the name of the Foundation.
- 3.6 Status of Purposes:** Unless the context requires otherwise, none of the purposes of the Foundation described in clauses 3.1 and 3.2 will be deemed subsidiary or ancillary to any other purpose of the Foundation and the Trustees may pursue any one or more of those purposes independently of the other purposes of the Foundation.

4. POWERS OF TRUSTEES

- 4.1 Pursuit of Purposes:** The Trustees, in connection with the Foundation, must only pursue the Charitable Purposes of the Foundation described in clauses 3.1 and 3.2.
- 4.2 Extent of Powers:** In addition to all other powers conferred by law, but subject to the restrictions contained in this deed:
- 4.2.1 Trustees Prior to Incorporation:** the Trustees will have the same powers as if they were the absolute owners of, and beneficially entitled to, the Trust Fund; and
- 4.2.2 Trustees Incorporated as a Board:** where the Trustees are incorporated as a board under the Charitable Trusts Act 1957, the Trustees acting as a board will have:
- (a) **Full Capacity:** full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
- (b) **Full Rights, Powers, Privileges:** for the purposes of clause 4.2.2(a), full rights, powers, and privileges; and
- 4.2.3 Powers Not Limited or Restricted:** the Trustees' powers will not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.

- 4.3 Status of Powers:** None of the powers or authorities conferred on the Trustees by this deed or otherwise will be deemed subsidiary or ancillary to any other power or authority and the Trustees may exercise any of those powers and authorities independently of any other power or authority. If there is any ambiguity, this provision will be construed so as to widen and not restrict the Trustees' powers provided that at no time shall the provision be construed so as to prevent the availability of any concession in relation to the Foundation under any of the Concessionary Provisions.

5. RESTRICTIONS RELATING TO PRIVATE BENEFITS

- 5.1 General Restriction:** Notwithstanding provision for remuneration and reimbursement under clauses 10.1 to 10.3, nothing expressed or implied in this deed will permit the activities of the Trustees in connection with the Foundation, or any business carried on by, or for, or for the benefit of the Trustees in connection with the Foundation, to be carried on for the private benefit of any person as to affect:

5.1.1 Charitable Purposes: the operation of the Foundation for exclusively Charitable Purposes, for public benefit and not for private profit; or

5.1.2 Concessionary Provisions: the availability of any concession in relation to the Foundation under any of the Concessionary Provisions, unless in relation to any such provision the Trustees have unanimously determined that eligibility for the benefit of that provision is not required in the best interests of pursuing the purposes of the Foundation.

- 5.2 Business Income Restriction:** Notwithstanding provision for remuneration and reimbursement under clauses 10.1 to 10.3, if within the ambit and scope of the Income Tax Act 2007 and in particular section CW 42 of that Act, any business is carried on by, for, or for the benefit of the Trustees in connection with the Foundation, the Trustees must ensure that, within the ambit and scope of clauses 5.3 to 5.5, no person with some control over the business is able to direct or divert, to their own benefit or advantage, any amount derived from that business.

- 5.3 Persons who may have Control:** For the purpose of clause 5.2, a person who may have some control over the business is a person who is, within the ambit and scope of subsections CW 42(5) to (7) of the Income Tax Act 2007:

5.3.1 Settlor or Trustee: a settlor or trustee of a trust carrying on the business or of a trust that is a shareholder in a company carrying on the business; or

5.3.2 Director or Shareholder: a director or shareholder of a company carrying on the business; or

5.3.3 Associated Person: a person associated with any person described in clauses 5.3.1 and 5.3.2.

- 5.4 Relevant Benefits/Advantages:** For the purpose of clause 5.2, an amount is directed or diverted to the benefit or advantage of a person described in clause 5.3 if that person is given or receives from the business any benefit or advantage, whether or not convertible into money, within the ambit and scope of subsections CW 42(6) to (8) of the Income Tax Act 2007, or any income of a kind specified in and not excluded by those subsections.
- 5.5 Control over the Business/Ability to Direct or Divert Amounts:** For the purpose of clause 5.2, a person described in clause 5.3 has some control over the business and is able to direct or divert amounts from the business to their own benefit or advantage if, by virtue of their position described in clause 5.3 and within the ambit and scope of subsections CW 42(5) to (8) of the Income Tax Act 2007, that person is, in any way, whether directly or indirectly, able to determine or to materially influence in any way the determination of:
- 5.5.1 Nature/Extent of Benefit/Advantage:** the nature or extent of any benefit, advantage or income described in clause 5.4; or
- 5.5.2 Circumstances of Receipt:** the circumstances in which any benefit, advantage or income described in clause 5.4 is, or is to be, given or received.

6. MAINTAINING ELIGIBILITY FOR TAX CONCESSIONS

- 6.1 General Requirement:** The Trustees must do all things necessary to ensure that the Foundation, and the Trustees in connection with the Foundation, are and will remain eligible for the benefit of concessions in relation to the Foundation under each of the Concessionary Provisions, unless in relation to any such provision the Trustees have unanimously determined that eligibility for the benefit of that provision is not required in the best interests of pursuing the purposes of the Foundation.
- 6.2 Specific Requirements:** Without limiting the generality of clause 6.1, the things to be done under that clause will include:
- 6.2.1 Registration under the Charities Act:** maintaining registration with the Charities Commission under the Charities Act 2005;
- 6.2.2 Compliance under the Charities Act and Revenue Acts:** complying with all relevant obligations under:
- (a) **Charities Act:** the Charities Act 2005; and
- (b) **Revenue Acts:** the Income Tax Act 2007, the Estate and Gift Duties Act 1968, the Goods and Services Tax Act 1985 and the Tax Administration Act 1994.

7. TRUSTEES AND OFFICERS

7.1 Number of Trustees: The following provisions apply in relation to the number of Trustees:

7.1.1 Maximum/Minimum Numbers: The number of Trustees must be not less than three and must not be more than five.

7.1.2 Less than Minimum Number: If at any time there are less than three Trustees:

(a) **Increase to Minimum:** the remaining Trustee or Trustees must immediately notify NZIF and the power of appointment of Trustees under clause 7.2 must be exercised to increase the number of Trustees to at least three as soon as is reasonably practicable; and

(b) **Actions Pending Increase:** the remaining Trustees will be entitled to act until the number of Trustees is increased, but only for the purpose of increasing the number of Trustees to at least three.

7.2 Appointment of Trustees: The following powers are vested in the NZIF Council or, if the NZIF Council would be ineligible for office as a Trustee under clause 7.3.3, in the Trustees for the time being of the Trust:

7.2.1 Appointment: to appoint at any time or times an additional Trustee or additional Trustees;

7.2.2 Reappointment: to reappoint any retiring or retired Trustee as a Trustee; and

7.2.3 Removal: to remove any person from office as a Trustee.

7.3 Eligibility for Office as a Trustee: The following persons are not eligible to hold office as a Trustee:

7.3.1 Youth: an individual who is under the age of 16 years;

7.3.2 Bankruptcy: an individual who is an undischarged bankrupt or who is a discharged bankrupt but is prohibited by court order from engaging in any form of business activity;

7.3.3 Liquidation, Receivership or Statutory Management: a company, incorporated society or any other body corporate:

(a) **Winding up or Liquidation:** which is being wound up or has gone into liquidation;

(b) **Resolution to Appoint Liquidator:** in respect of which a resolution has been passed appointing a liquidator;

(c) **Order to Appoint Liquidator:** in respect of which an order appointing a liquidator has been applied for or made by the court;

- (d) **Meeting to Appoint Liquidator:** in respect of which a meeting of shareholders or members has been called at which the appointment of a liquidator will be considered;
- (e) **Receiver or Statutory Manager Appointed:** for which a receiver or statutory manager has been appointed in respect of all or any part of its assets;
- (f) **Arrangement in Respect of Creditors:** which has made or entered into, or attempted to make or enter into, any compromise, assignment or other arrangement with or for the benefit of all or any class of its creditors; or
- (g) **Appointment of Administrator:** which has an application made to the Court for, or a resolution proposed for, or any other step taken in the anticipation of, the appointment of an administrator;

7.3.4 Criminal Conviction: a person who has been:

- (a) **Crime Involving Dishonesty:** convicted of any crime involving dishonesty, within the meaning of section 2(1) of the Crimes Act 1961, and sentenced for that crime within the last seven years; or
- (b) **Other Offences:** convicted of any offence punishable by a term of imprisonment of two or more years, or sentenced to imprisonment for any offence, unless that person has:
 - (i) **Pardon:** obtained a pardon; or
 - (ii) **Service of Sentence:** served, or otherwise suffered, the sentence imposed on that person;

7.3.5 Disqualification from Company Positions: a person who is prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a company under any of the Companies Act 1993, the Securities Act 1978, the Securities Market Act 1988 or the Takeover Act 1993;

7.3.6 Incapacity: a person:

- (a) **Property Order:** who is subject to a property order made under the Protection of Personal and Property Rights Act 1988;
- (b) **Property Management:** whose property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or

- (c) **Mental Incapacity:** who is mentally incapable in relation to property or personal care and welfare, as defined in respect of a donor of an enduring power of attorney under section 94 of that Protection of Personal and Property Rights Act 1988; or

7.3.7 Charities Commission Order: a person who is subject to an order made under section 31 of the Charities Act 2005 disqualifying the person from being an officer of a charitable entity.

7.4 Term of Office as a Trustee: The following provisions apply to the appointment (including reappointment) of a person as a Trustee and in particular the person's term of office as a Trustee:

7.4.1 Specific Provisions for Original Trustees: In order to avoid a situation where all or many of the Original Trustees cease to hold office at the same time:

- (a) **Second AGM:** if there are any Original Trustees remaining at the time of the second AGM of the Trust, one Original Trustee will cease to hold office at the close of the AGM, as determined by the Trustees for the time being or otherwise by the NZIF Council;
- (b) **Third AGM:** if there are any Original Trustees remaining at the time of the third AGM of the Trust, one Original Trustee will cease to hold office at the close of the AGM, as determined by the Trustees for the time being or otherwise by the NZIF Council; and
- (c) **Fourth AGM:** any Original Trustees remaining at the time of the fourth AGM of the Trust will cease to hold office at the close of the AGM;

provided that an Original Trustee ceasing to hold office under this clause may be reappointed as a Trustee under the provisions of this deed.

7.4.2 General Provisions for Other Trustees: A person may be appointed to hold office as a Trustee (and reappointed as a Trustee) for a term of up to five years from the effective date of their appointment (or reappointment), as determined by the person exercising the power of appointment under clause 7.2, provided that the aggregate of the following must not exceed ten years:

- (a) **Previous Term:** the period or periods for which the person has held office as Trustee in the ten years immediately preceding the effective date of the proposed reappointment; and
- (b) **Proposed Term:** the term of the reappointment.

7.4.3 Cessation of Office During Term: A person holding office as a Trustee will cease to hold such office, even though the Trustee's term of office under clause 7.4.1 or 7.4.2 has not expired, if that person:

- (a) **Resignation:** resigns by giving 30 days' written notice to the Trustees and to NZIF;
- (b) **Ineligibility:** is not eligible to hold office as a Trustee under clause 7.3;
- (c) **Failure to Attend Meetings:** fails to attend any three or more consecutive meetings of the Trustees without leave;
- (d) **Death:** dies while holding office as a Trustee; or
- (e) **Removal:** is removed from holding office as a Trustee by the person having the power of removal under clause 7.2.

7.5 Officers of the Trust: The Foundation will have the following Officers:

7.5.1 Chairperson: The NZIF Council is entitled to appoint one of the Trustees to hold office as Chairperson, who will hold office only while they remain a Trustee, and the NZIF Council may also remove and replace any Trustee so appointed at any time.

7.5.2 Other Officers: The Trustees may appoint either one of their number or some other person (provided that the person would be eligible for appointment as a Trustee):

- (a) **Secretary:** to hold office as Secretary of the Trust;
- (b) **Other Officers:** to hold any other office (for example, as Treasurer), as determined by the Trustees;

provided that the Trustees may remove and replace any Trustee or other person appointed to hold any such office at any time.

7.6 Record Keeping: On every appointment, reappointment, removal or cessation of office of any Trustee or Officer, the Trustees must cause an entry to that effect to be recorded in the minute book kept by the Trustees in respect of the Foundation.

8. MEETINGS AND RESOLUTIONS

8.1 Meetings of the Trustees: The following provisions apply in relation to meetings of the Trustees in connection with the Trust:

8.1.1 Annual General Meetings: The Trustees must hold an annual general meeting within three months of the end of each Financial Year and in relation to any such meeting:

- (a) **Notice of Meeting:** The Trustees must be given no less than 30 days' notice of the AGM;
- (b) **General Business:** the business to be transacted at the AGM will be:
 - (i) apologies and condolences;
 - (ii) confirmation of minutes of any previous meeting;
 - (iii) presentation of financial statements, as referred to in clause 9.2;
 - (iv) appointment of an auditor (if any), as referred to in clause 9.2; and
 - (v) maintaining eligibility for tax concessions, as referred to in clauses 6.1 and 6.2; and
 - (vi) any other business, which must be treated as special business and dealt with in accordance with clause 8.1.1(c);
- (c) **Special Business:** written notice of any proposed special business must be given to the Trustees no less than 21 days before the AGM; and
- (d) **Notice of Meeting Details:** the Trustees must be given notice of the details of the meeting and the full agenda, including all special business, no later than 14 days before the AGM.

8.1.2 Special General Meetings: The Trustees may otherwise meet at any time which they may agree. In addition:

- (a) **Requisitioning Meetings:** the Chairperson or any two or more of the Trustees may at any time requisition a meeting of Trustees by giving no less than 30 days' notice of the meeting and the general business for the meeting to the Trustees;
- (b) **Special Business and Notice Requirements:** in respect of any such meeting, clauses 8.1.1(c) and 8.1.1(d) shall apply in relation to any additional business (to be treated as "special business") and notice of meeting details.

