

FRIENDS OF ROLAND'S WOOD CHARITABLE TRUST

FAR NORTH DISTRICT COUNCIL

**AGREEMENT FOR THE MAINTENANCE, OPERATION, DEVELOPMENT AND
ADMINISTRATION OF ROLAND'S WOOD**

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PARTIES:

FRIENDS OF ROLAND'S WOOD CHARITABLE TRUST
(“FRWCT”)

FAR NORTH DISTRICT COUNCIL AS TRUSTEE OF THE ROLAND'S WOOD TRUST
(“FNDC”)

BACKGROUND:

- A. Roland Sanson gifted 4.0ha of land to Council in 2007 and small trust fund of around \$200,000. was provided for the upkeep of the wood lot.
- B. The FNDC was appointed as the sole trustee of the Roland's Wood Trust (“the Trust”) and it cannot be relieved of this role without the consent of the High Court.
- C. The purpose of the Trust is “the provision and maintenance of a woodland public park for recreational use, enjoyment and benefit of the public”.
- D. The land was planted as woodland with annual bulbs and exotic trees, which require a high level of service. A reserve of this type does not sit easily or practically within a Council structure and as a result the wood was not maintained for a period of time.
- E. Rotary re-established the grounds and when their role ceased a voluntary group “the Friends of Roland's Wood” took over that role.
- F. The Friends are involved in the development and implementation of a management plan for Roland's Wood and are actively involved in the in the ongoing maintenance and presentation of the wood.
- G. The Friends have formed a Charitable Trust (FRWCT) to be responsible for the work undertaken by the friends.

H. FWRCT wish to take over the responsibility for the management, administration, development, maintenance and presentation of the wood and FNDC, subject to the agreement of the High Court, agrees to;

- (a) retain ownership of the land.
- (b) transfer the obligation to manage, administer, develop, maintain and present the wood to FRWCT.
- (c) Transfer the balance of the trust fund provided for the upkeep of the wood lot to FWRCT.

IT IS THEREFORE AGREED:

1. FNDC Shall, subject to the condition precedent in paragraph 4, transfer to FRWCT the rights and obligations to manage, administer, develop, maintain and present the Roland's Wood and FRWCT accepts the transfer of all those rights and obligations.
2. FRWCT shall comply and uphold the purpose of the original trust being "the provision and maintenance of a woodland public park for recreational use, enjoyment and benefit of the public".
3. Upon receipt of the High Court's consent FNDC shall transfer the balance of funds held in the Roland's Wood Trust fund to FRWCT to be used for the sole purpose as set out at clause 4.2 (a) of the Roland's Wood Trust namely:

“(a) **Maintenance Expenses:** To pay out the annual income received from Roland's Bequest (and such portion of the capital of Roland's Bequest as the trustees may from time determine) expenses relating to the maintenance, development and improvement of Roland's Wood and for the enforcement of the covenants over the adjoining land as described in Schedule A. The capital and income of Roland's Bequest shall not be used for any other purposes other than those set out in this clause and such incidental expenses resulting to such purposes without the prior consent of the High Court.”
4. Upon the signing of this agreement FNDC shall make an application to the High Court to allow it to transfer the rights and obligations and balance of the trust fund to FRWCT.

5. To assist FRWCT with the maintenance and management of Roland's Wood, FNDC shall make an annual payment to FRWCT of the equivalent amount that Council would otherwise pay in maintaining this reserve to a standard in accordance with FNDC specifications.
6. The Trust shall annually supply written report to the Chief Executive detailing its financial position, management and plans for the ongoing maintenance and development of Roland's Wood, Council within 3 months of the expiry of FRWCT's financial year.
7. In the event of FRWCT being terminated or it being no longer able to manage, administer and maintain the woodland those obligations shall revert back to FNDC and any funds held by the FRWCT shall be paid over to FNDC.
8. Nothing in this Agreement shall be construed as constituting a joint venture, partnership, agency or representative of either party to this agreement.
9. Nothing in this agreement shall be construed as giving any party any right or authority to act for or represent or otherwise assume any obligation on behalf of or in the name of the others and each party agrees to indemnify and hold harmless each of the others from and against any claims, losses or damages whatsoever arising in respect of liabilities incurred as a result of an unauthorised act or representation or assumption on behalf of or in the name or names of the others.
10. Each party shall retain and maintain their own public liability insurance either as owner or as manager of Roland's Wood.
11. No party shall assign or purport to assign (whether in part or in whole) their interest in this Agreement without the prior written consent of the other party.
12. No waiver, amendment or other modification of this Agreement shall be effective unless in writing and signed by or on behalf of each party to be bound thereby.
13. The parties agree to execute all such documents and do all such acts or things as may reasonably be required in order to give effect to the terms of this Agreement.
14. Any failure by a party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this Agreement.

15. If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provision which will be deemed deleted.
16. This Agreement will be governed by, and construed in accordance with the laws of New Zealand.
17. In the event of any dispute between the parties in respect of or in connection with the Agreement the parties shall, without prejudice to any other right or entitlement they may have pursuant to this Agreement or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted shall be as agreed between the parties or as recommended by the President of the New Zealand Law Society.
18. The parties agree to treat each other in good faith as to the matters contained within this Agreement.

Dated this day of 2016

SIGNED by
FRIENDS OF ROLAND'S WOOD CHARITABLE TRUST

SIGNED by
FAR NORTH DISTRICT COUNCIL