

Ian Dwyer

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FAR NORTH DISTRICT COUNCIL
(Trustee)

**DECLARATION OF TRUST ESTABLISHING
THE ROLAND'S WOOD TRUST**

Brookfields
LAWYERS

DECLARATION OF TRUST ESTABLISHING THE ROLAND'S WOOD TRUST

DECLARATION dated the 25th day of June

2007

PARTIES

1. FAR NORTH DISTRICT COUNCIL ("Trustee")

INTRODUCTION

- A. The Trustee wishes to record the establishment of a trust for the charitable purposes set out in this Declaration.
- B. The Trustee wishes to record that it holds the sum of \$10 upon the trusts and with and subject to the powers and provisions expressed in this Declaration.
- C. The Trustee wishes to declare that it has held the initial capital of the Trust since the date of this Declaration.
- D. The Trustee is to have vested in it by way of an order of the High Court more or less four hectares of land at Inlet Road, Kerikeri.
- E. The Trustee is to receive the sum of approximately \$200,000 (plus interest accrued and less costs for Trust establishment expenses and subdivision and land survey costs).
- F. Both the land referred to in D above and the money referred to in E above are part of the estate of Roland Lever Hatton Sansom who in his will probate of which was granted by the High Court of New Zealand at Whangarei on the 19th day of July 2001 under number 297/01 made provision for a charitable trust to be established for the charitable purposes set out in this deed.

THIS DECLARATION RECORDS that:

1. DEFINITIONS AND INTERPRETATIONS

Definitions

- 1.1 In this declaration and the Introduction to this declaration, unless the context otherwise requires:

"Charitable Purposes" are as set out in clause 3.

"FNDC" means the Far North District Council and its statutory successors.

"High Court" means the High Court of New Zealand.

"Operative Date" means the date of this Declaration.

"Roland" means Roland Lever Hatton Sansom.

"Roland's Bequest" means the sum of \$200,000 more or less received from the estate of Roland Lever Hatton Sansom and referred to in introduction E.

"Roland's Wood" means four hectares more or less of land at Inlet Road, Kerikeri as described in Introduction D being Lot 15 on the plan of subdivision approved under the Resource Management Act 1991 by FNDC on 8 November 2005 (copy of which is **attached** as Schedule A)

"Trustee" shall include the trustee for the time being of this Declaration whether original, additional or substituted.

"Trust Fund" means:

- (a) the sum of \$10 referred to in paragraph B of this declaration being the initial capital settled on the Trustee; and
- (b) the land referred to in paragraph D and the moneys referred to in paragraph E of this declaration; and
- (c) all other moneys or Property (both tangible and intangible) paid or transferred to or acquired by the Trustee to be held by it upon the trusts established by this declaration; and
- (d) all income received from the property held by the Trustee upon the trusts established by this declaration unless inconsistent with the context; and
- (e) all moneys invested and Property from time to time representing the items mentioned in (a), (b) and (c) of this definition.

Interpretation

1.2 In this declaration:

- (a) where the context permits, the singular includes the plural and vice versa;
- (b) references to one gender include the other gender;
- (c) references to a section number are references to all clauses of this deed identified by that number as the initial numbers;
- (d) references to sections, clauses and schedules are references to sections and clauses in and schedules to this declaration unless stated otherwise;
- (e) headings are inserted for guidance only and shall not govern the interpretation of the sections and clauses that they introduce;
- (f) all references to statutes and regulations are (unless stated otherwise) references to New Zealand legislation and include all substituted and subordinate legislation.

1.3 Defined words and expressions bear the defined meaning throughout this declaration including the Introduction.

2. ESTABLISHMENT OF TRUST

- 2.1 The Trustee declares and acknowledges that the Trustee shall with effect from the Operative Date stand possessed of the Trust Fund and all income deriving from the Trust Fund in perpetuity upon the trusts and with the powers set out in this declaration.

Name

- 2.2 The name of the Trust shall be "**Roland's Wood Trust**". The name of the Trust shall not be changed unless the prior consent of the High Court has been obtained.

Sign

- 2.3 The Trustee shall use a part of Roland's Bequest to erect a plaque at one of the two entrances to the wood. This plaque shall include details of the wood and of Roland's bequest. The design of the plaque and the wording on it shall be approved by Roland's sister, Lavender Sansom ("Lavender"). A simpler sign can be placed at the other entrance. The Trustee, in consultation with Lavender, if considered necessary, may also erect a sign on the adjoining berm.

3. CHARITABLE PURPOSES

- 3.1 The Trustee shall hold the Trust Fund upon trust to pay or apply in New Zealand the income and capital of the Trust Fund in such amounts, at such times, and subject to such terms and conditions, as the Trustee may decide only for the following charitable purposes:

The provision and maintenance of a wooded public park for the recreational use, enjoyment and benefit of the public.

General

- 3.2 All such things as are incidental or conducive to the attainment of the Charitable Purposes described in clause 3.1.

Means of Achieving Charitable Purposes

- 3.4 The Trustee may, in order to achieve the Charitable Purposes, in addition to all other powers vested in the Trustee, but without limiting the powers of the Trustee:
- (a) seek, accept and receive subscriptions, donations, subsidies, grants, endowments, gifts, legacies, loans, and bequests and moneys, in kind or partly in both;
 - (b) publish and distribute brochures and any other means of disseminating information relating to the Trust and the Charitable Purposes;
 - (c) make known and advertise the Trust and the Charitable Purposes by such use of any of the media as the Trustee may decide.

4. APPLICATION OF THE TRUST FUND

Trust Fund

- 4.1 Subject as follows, the Trustee shall stand possessed of the Trust Fund only upon the trusts and with the powers set out in this declaration.

Application of Trust Fund

- 4.2 The Trustee shall hold the Trust Fund upon trust:

- (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 Trustee may from time to 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.
- (b) **Administration Expenses:** Subject to clause 4.2(a), which shall be paramount, and at all times having regard to the size of Roland's Bequest, to pay out of the annual income of the Trust Fund for each income year all expenses of and incidental to the administration of the Trust.
- (c) **Application of Income:** Subject to clause 4.2(a) to use or apply, or decide not to use or apply, all or any of the income of the Trust Fund for the Charitable Purposes as the Trustee may from time to time determine.
- (d) **Application of Capital:** Subject to clause 4.2(a) to use or apply any of the capital of the Trust Fund for the Charitable Purposes as the Trustee may from time to time determine, without first using or applying the whole or any portion of the income of the Trust Fund for any income year.

Payment of Income and Capital

- 4.3 The capital and income of the Trust Fund shall be applied within New Zealand to meet the Charitable Purposes.

Capitalising of Income

- 4.4 Any income in any income year not paid or applied as such within six months after the end of that income year shall be accumulated and added to the capital of the Trust Fund.

Reserves

- 4.5 The Trustee may set aside reserves or accumulations for future use or application.

5. TRUSTEE

- 5.1 The Far North District Council has been appointed as the first trustee of the Trust. The Trustee shall not be changed unless the prior consent of the High Court has first been obtained.

Advisory Trustees

- 5.2 The Trustee may appoint any person at any time to act as an advisory Trustee of the Trust and the Trustee shall have the power to remove such advisory Trustee. An advisory Trustee shall not take part in any resolution of the Trustee on the management or the application of the Trust Fund.
- 5.3 An Advisory Trustee may retire as an Advisory Trustee by execution by the Advisory Trustee of a deed poll recording the retirement, such retirement to be effective upon the execution of the said deed and shall not require the consent or approval of any other person.

6. TRUSTEE'S GENERAL AND SPECIFIC POWERS

- 6.1 To promote the charitable purposes of the Trust in addition to the powers contained in this deed the trustees shall have the powers vested in trustees by the Trustee Act 1956 except as limited or restricted by clauses 6.3, 6.4, 6.5, 6.6 and 6.7 of this deed.
- 6.2 Pursuant to clause 4.2 the Trustee shall have the specific power to use the Trust Fund to enforce the covenants on the adjoining land.
- 6.3 Roland's Wood is to be held by the Trustee as a wooded public park upon the trusts of this declaration, and maintained, developed and improved as a wooded public park for the public benefit. The use of Roland's Wood shall be not varied in any way without the prior consent of the High Court.
- 6.4 The Trustee shall not sell, part possession with, lease, licence or subdivide Roland's Wood or any part thereof without the prior consent of the High Court.
- 6.5 The Trustee shall not use Roland's Wood as security for any borrowings whether by way of mortgage or guarantee.
- 6.6 The Trustee may not permit Roland's Wood or any part thereof to be used for any trade, business or accommodation purpose.

Maintenance, Development and Improvement

- 6.7 The Trustee in exercising its discretion in regard to the maintenance, development and improvement of Roland's Wood as a wooded public park shall keep to a minimum the number and size of artificial structures on the land. Not by way of limitation, structures may include signage, park benches, rubbish bins, lighting, any installation enhancing the safety of the public and a small tool shed sited on the boundary of the land and installations of a similar nature or purpose. The Trustee may not install any other structure on the land:
- (a) which is or may be used for public entertainment or other community use;
 - (b) which is or may be used for or in connection with any trade or business or for accommodation purposes;
 - (c) any advertising material;
 - (d) which facilitates any use of Roland's Wood which is inconsistent with use as a public park for the community as a whole; and

unless in the opinion of the Trustee it is essential for the proper functioning and enjoyment of Roland's Wood.

7. ADMINISTRATION OF THE TRUST

Trust Administration Committee

- 7.1 The Trustee shall establish a committee, to be known as the Trust Administration Committee, comprised of the following executives of FNDC:

Chief Executive Officer;

General Manager Finance and Business Services (or equivalent manager of FNDC Financial Affairs);

Community Services Manager (or equivalent manager of the administration of FNDC's parks and reserves);

and shall delegate to the Trust Administration Committee the day to day administration of the Trust.

- 7.2 The Trustee shall be entitled to review and amend the structure of the Trust Administration Committee from time to time.

8. ANNUAL REPORT

- 8.1 The Trust Administration Committee shall present an annual report to the Trustee. The annual report shall contain copies of the financial accounts of the Trust for the immediately preceding year and such other information as will fairly provide a record of the Trust's performance and the management of the Trust and the Trust Fund.

- 8.2 The Trust's annual report to be included in the annual report of FNDC.

9. COUNCIL CONTROLLED ORGANISATION

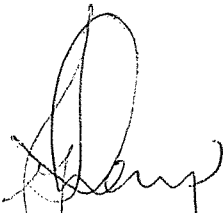
- 9.1 The Trust is a Council Controlled Organisation within the meaning of the Local Government Act 2002 and at all times shall be subject to the applicable provisions of that Act.

10. GOVERNING LAW

10.1 The Trust shall be governed by and construed in accordance with the laws of New Zealand.

EXECUTION

THE COMMON SEAL of
FAR NORTH DISTRICT COUNCIL)
was affixed in the)
presence of:)



Mayor

