

# **Moths and Butterflies of NZ Trust**

## **Trust Deed**

**THIS DEED** is made the 3rd day of August 2005.

### **PARTIES:**

- (1) **PATRICIA JACQUELINE KNIGHT** of Russell
- (2) **DENISE MICHELLE GIFFORD** of Russell
- (3) **GILL JACKSON** of Russell

### **WHEREAS:**

- A The parties to this Deed wish to establish a charitable trust (“the Trust”) for the objects described in Clause 4 of this Deed and have agreed to enter into this Deed specifying the purposes of the Trust and providing for its control and governance.
- B It is intended that the Trust will be registered as a Charitable Trust pursuant to the Charitable Trusts Act 1957.

### **NOW THIS DEED WITNESSES**

#### **1. Name**

The name of the Trust shall be the ‘Moths and Butterflies of NZ Trust’.

#### **2. Definitions and Interpretations**

“Trust Fund” means the sum of \$10.00 gifted to the Trustees to establish the Trust together with any other moneys, shares or property paid to, purchased by or transferred to the Trustees and all money and investments from time to time representing the same;

“the Board” shall mean the Board of Trustees appointed or elected pursuant to Clause 7 of this Deed;

“members of the Trust” are persons who have become and remain members pursuant to Clause 9 of this Deed.

#### **3. Office**

The office of the Trust shall be such place as the Board may determine.

#### 4. **Objects**

The objects of the Trust are as follows:

- i. to raise public awareness and increase biodiversity within New Zealand for the benefit of present and future New Zealanders;
- ii. to maintain, protect and increase biodiversity within New Zealand, so that the natural habitat of Lepidoptera species are protected and enhanced;
- iii. to increase opportunities for members of communities and visitors to New Zealand to enjoy and experience Lepidoptera species as part of the natural environment;
- iv. to enable research groups and individuals to carry out research and education projects relevant to the Trust's objects;
- v. to liaise with groups with similar objectives;
- vi. to seek funding support for any of the objectives of the Trust.

The objectives for which the Trust is established shall be restricted at all times to operation within New Zealand.

#### 5. **Tangata whenua**

In attaining its purposes the Trust shall recognise the views and expectations of tangata whenua.

#### 6. **Structure of the Trust**

The Trust shall be administered by a Board of Trustees who shall be accountable to (subject to the provisions of Clause 7 hereof) elected by members of the Trust.

#### 7. **The Board**

##### 7.1 **Number of Board**

The Board shall consist of not less than three Trustees.

##### 7.2 **Initial Membership of Board**

The signatories to this Deed shall be the first Board and shall remain in office until the first Annual General Meeting of the Trust.

##### 7.3 **Term of Office**

Subject to Clause 7.4 the term of office of a Trustee shall be four years.

##### 7.4 **Retirement of Initial Trustee**

At the first meeting of the Board after the date of this Deed, straws shall be drawn so that one Trustee who is a member of the first Board shall retire at the first Annual General Meeting of the Trust, and another Trustee who

was also a member of the first Board shall retire at each of the succeeding two Annual General Meetings.

#### **7.5 Reappointment**

Any Trustee whose term of appointment has expired shall be eligible for re-election at the same and subsequent meetings.

#### **7.6 Nomination to Board**

Nomination for a position on the Board shall be by way of notice of nomination in writing endorsed with the consent of the nominee and given to the Secretary not less than 24 (twenty-four) hours before the time fixed for the Annual General Meeting. If there are insufficient nominations to fill the vacant positions on the Board, oral nominations may be received at the Annual General Meeting provided that no person shall be elected who has not consented to being nominated.

#### **7.7 Cessation of Trustee Office**

The office of a Trustee shall become vacant if he or she:

- (i) dies; or
- (ii) resigns; or
- (iii) is absent from New Zealand for a period of six months without obtaining leave of absence from the Board; or
- (iv) fails without prior leave of absence from the Board to attend three consecutive Board meetings; or
- (v) becomes mentally incapable as certified by an independent medical practitioner; or
- (vi) ceases to be a financial member of the Trust; or
- (vii) is deemed by a majority vote of the Board to have failed to have fulfilled the duties of trusteeship.

#### **7.8 Vacancies**

Subject to Rule 7.1, the Board shall have the power to co-opt further persons to the Board and to fill any casual vacancy on the Board in each case until the next Annual General Meeting.

## 7.9 Name of Board

The name of the Board shall be the “**Moths and Butterflies of NZ Trust Board**”.

## 8. Proceedings of the Board

### 8.1 Meetings

The Board shall meet at such times and places as it determines.

8.2 At its first meeting after the date of this Deed the first Board shall:

- (a) elect from among its members a Chairperson who shall hold office until the first Annual General Meeting of the Trust; and
- (b) elect or appoint persons to the offices of Secretary and Treasurer, who shall hold office until the first Annual General Meeting of the Trust. These offices may be combined. The Secretary and Treasurer need not be member(s) of the Board.

### 8.3 Chairperson

The Chairperson shall preside at all meetings of the Board at which she or he is present. In the absence of the Chairperson from any meeting the members present shall appoint one of their number to preside at that meeting.

### 8.4 Quorum

At any meeting of the Board three members of the Board shall form a quorum, and no business shall be transacted unless a quorum is present.

### 8.5 Voting

All questions before the Board shall be decided by consensus. However, where a consensus decision cannot be reached on a question, it shall be put as a motion to be decided by a majority of votes. If the voting is tied the Chairperson of the Board may cast a deciding vote as well as a deliberative vote.

### 8.6 Minutes

The Secretary shall keep Minutes of all Board Meetings, which shall be available for inspection by any member of the Trust at reasonable times.

## **8.7 Attendance at Meetings**

Any Member of the Trust may attend a Board meeting but the Board shall not be required to notify Members of the Trust of the dates and times of such meetings provided that if the Board determines that any business to be considered by it involves issues of personal privacy or has commercial sensitivity that the Board may determine that it deals with such matters “in Committee” and with persons who are not members of the Board excluded.

## **9. Membership of the Trust**

Any person who, or any group or organisation (including any family group) which agrees with the purposes of the Trust may, subject to the Board’s approval, become a member of the Trust by application in writing and upon payment of a subscription.

## **10. Subscription**

10.1 Members of the Trust shall pay a subscription of such amount or amounts as is from time to time fixed by resolution in General Meetings provided that until the first Annual General Meeting such subscription may be fixed by the Board.

10.2 Subscriptions may be fixed at different amounts for individuals, family groups or corporates.

## **11. Resignation of Members of the Trust**

### **11.1 Resignation by Notice**

Any member of the Trust may resign membership at any time by giving to the Secretary notice in writing to that effect and such notice, unless otherwise expressed, shall take effect immediately.

### **11.2 Resignation Deemed**

Any member who fails to pay the annual subscription on or before the expiration of two months after it has become due shall be deemed to have resigned from membership of the Trust.

## **12. Expulsion of Members of the Trust**

### **12.1 Notice of Complaint**

Any person may make a complaint to the Board that the conduct of a member of the Trust is or has been injurious to the character of the Trust. Every such complaint shall be in writing and addressed to the Secretary.

## **12.2 Meeting**

If the Board considers that there is sufficient substance in the complaint, it may invite the member to attend a meeting of the Board and to offer a written or oral explanation of the member's conduct.

## **12.3 Notice of Meeting**

The Board shall give the member at least 14 (fourteen) days written notice of the meeting. The notice shall:

- (a) sufficiently inform the member of the complaint so that the member can offer an explanation of the member's conduct; and
- (b) inform the member that, if the Board is not satisfied with the member's explanation, the Board may expel the member from the Trust.

## **12.4 Board may Expel**

If, at the meeting, the Board decides to expel the member from the Trust, the member shall cease to be a member of the Trust.

## **12.5 Appeal**

A member expelled by the Board may within 14 (fourteen) days give written notice of appeal to the Secretary. The Secretary shall then call a Special General Meeting of the Trust to take place within 21 (twenty-one) days of receipt of the notice of appeal. If that meeting passes a resolution rescinding the expulsion, the member shall be reinstated immediately.

# **13. Annual General Meeting of the Members of the Trust**

## **13.1 Time and Place of Meeting**

The Annual General Meeting of the Trust shall be held each year not later than nine months after the end of the financial accounting year of the Trust at such place, date and time as the Board shall determine.

## **13.2 Business of Meeting**

The Annual General Meeting shall carry out the following business:

- (a) receive the Minutes of the previous Annual General Meeting and of any other Special General Meetings held since the last Annual General Meeting; and
- (b) receive the Trust's Statement of Accounts for the preceding year and a budgeted estimate of Income and Expenditure for the current year; and

- (c) receive reports from the Board and its Committees; and
- (d) subject to Clause 7, elect Members of the Board; and
- (e) elect a Chairperson (who will be the Chairperson of the Trust and the Board) from among those who are to be the Trustees for the ensuing year;
- (f) elect or appoint persons to the offices of Secretary and Treasurer. These offices may be combined. The Secretary and Treasurer need not be from members of the Board;
- (g) fix the annual subscriptions; and
- (h) consider and decide any other matter which may properly be brought before the meeting.

## **14 Special General Meeting**

### **14.1 Secretary may call Meeting**

A Special General Meeting of the Trust shall be called by the Secretary as a result of a resolution to that effect by the Board or on receipt of a request in writing for such a meeting stating the reason for having the meeting and signed by not less than ten members of the Trust.

### **14.2 Meeting for Appeal against Expulsion**

Subject to the provision of Rule 9.4 a Special General Meeting of the Board shall be called by the Secretary for the purpose of hearing an appeal from an expelled member.

### **14.3 Notice of Meeting**

The prescribed notice calling a Special General Meeting shall state in general terms the business for which the meeting is called and at that meeting only the business so stated shall be discussed.

## **15 Procedure for General Meeting**

### **15.1 Definition**

In these rules the term “General Meeting” includes both an Annual General Meeting and a Special General Meeting.

## 15.2 Notice of Meeting

Fourteen days' written notice of each General Meeting shall be given to all members of the Trust in the newsletter. In addition a notice shall be sent by email to all members who have provided their email address, together with brief details of the business to be discussed. This notice shall state that the meeting is the Annual General Meeting or a Special General Meeting as the case may be and shall specify the place, date and time at which the meeting is to be held. The meeting may also be held simultaneously in an on-line conference room.

## 15.3 Quorum

Ten members of the Trust present personally or by proxy shall constitute a quorum for a General Meeting. A member that is a group or organisation shall be deemed to be personally present if it is represented at the meeting by its duly appointed nominee or proxy.

## 15.4 Chairperson

The Chairperson shall preside at all meetings of the Board at which she or he is present. In the absence of the Chairperson from any meeting the Members present shall appoint one of the other Trustees to preside at that meeting.

## 15.5 Voting

All questions at a General Meeting shall be decided by consensus. However, if a consensus decision cannot be reached on any question, it shall be put as a motion to be decided by a majority of votes. Each member shall have only one vote. Voting shall be by show of hands of those members present together with those votes made by proxies properly appointed pursuant to Clause 15.6. If the voting is tied, the motion shall be lost.

## 15.6 Proxy Voting

- (a) a member may exercise the right to vote either by being present or by proxy;
- (b) a proxy for a member is entitled to attend, be heard, and vote at a meeting of members as if the proxy were the member;
- (c) a proxy must be appointed by notice in writing signed by the member and the notice must state whether the appointment is for a particular meeting or for a specified term not exceeding 12 (twelve) months;
- (d) no proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting;



- (e) a body corporate which is a member, or a family group which is a member, may appoint a representative to attend a meeting of members on its behalf in the same manner as that which it could appoint a proxy.

## 16. Powers

### 16.1 General and Specific Powers

In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956, the powers which the Board may exercise in order to carry out the charitable objects of this Deed as follows:

- (a) to use the funds of the Trust as the Board thinks necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisors, agents, officers and staff as appears necessary or expedient; and
- (b) to purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of attaining the objects of the Trust, and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; and
- (c) to invest the Trust Fund in any way permitted by law for the investment of trust funds and upon such terms as the Board thinks fit; and
- (d) to borrow or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Board thinks fit; and
- (e) to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and to attain the charitable purposes of the Trust;
- (f) to receive grants of money or other resources and to make grants of money or otherwise provided such grants are to charitable organisations or for educational or research purposes as the Trustees deem reasonable and proper in achieving the objects of the Trust;
- (g) to make known and further the objectives of the Trust by the publication and distribution of papers, journals and other publications and by advertising in any media or by any means;
- (h) to hold meetings to which the public is invited to hear speakers and be involved in discussion relevant to the objects of the Trust;

- (i) for all the purposes above to raise money and to solicit, receive and enlist financial or other aid from Government, local authorities, individuals and organisations of any kind and to conduct fundraising.

**PROVIDED HOWEVER** that all moneys, benefits or advantages received by the Trust shall at all times be applied to the charitable purposes of the Trust.

## 17. **Power to Delegate**

### 17.1 **Power to Delegate**

The Board may from time to time appoint any Committee and may delegate in writing any of its powers and duties to any such Committee or to any person, and the Committee or person as the case may be, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them.

### 17.2 **Delegate Bound**

Any Committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the Trust.

### 17.3 **Delegation Revocable**

Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

### 17.4 **Delegate need not be Board Member**

It shall not be necessary that any person who is appointed to be a member of any such Committee, or to whom any such delegation is made, be a member of the Board but such person shall be required to be a member of the Trust.

## 18 **Accounts**

### 18.1 **True and Fair Accounts**

The Board shall keep true and fair accounts of the Trust Fund and of all money received and expended.

### 18.2 **Financial Year**

The financial year of the Trust shall commence on 1 July or such other date as the Trust Board may determine.

### 18.3 Signatories

All cheques or other moneys to be drawn out of the Trust Bank Account shall require the signature of two persons authorised by the Board to sign cheques of whom one at least shall be a Trustee.

### ~~18.4 Audit~~

~~The Board shall as soon as practicable after the end of every financial year of the Trust, 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 shall present the audited accounts to the Annual General Meeting of the Trust together with a budgeted estimate of income and expenditure for the current year.~~

18.54 All financial members of the Trust shall have access to the financial records of the Trust at any reasonable time.

### 19. Common Seal

The Board shall have a Common Seal which shall be kept in the custody of the Secretary, or such other officer as shall be appointed by the Board and shall be used only as directed by the Board. It shall be affixed to documents only following a resolution of the Board and in the presence of and accompanied by the signature of two members of the Board.

### 20. Alteration of Rules

These rules may be altered, added to, rescinded or otherwise amended by a resolution passed by a two-thirds majority of members of the Trust, including their proxies, who are present at a general meeting, provided that no such amendment shall 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.

### 21. Trustees' Conflict of Duties

#### 21.1 Conflicts

A Trustee shall be entitled to enter into any contract and to act and exercise all of the powers hereby conferred upon them without being liable to account for any resulting income or profit, notwithstanding that their interests in any private capacity or duties as Trustees of any other Trust or as shareholders in or directors or officers of any company conflict with their duties as Trustees of the Trust.

#### 21.2 Declaration of Interest

A Trustee who is in any way, whether directly or indirectly, interested in any matter in terms of Clause 21.1 shall declare the nature of his or her interest at a meeting of the Board.

### **21.3 Voting**

A Trustee, having declared his or her interest in accordance with Clause 21.2 shall be counted in the quorum present at the meeting and may witness the affixing of the Common Seal to any contract or agreement but shall not vote in respect of the matter in which the Trustee is interested.

### **21.4 Trustee may be Officer or Employee**

Any Trustee may be appointed as an officer or employee of the Trust notwithstanding that he or she is also a Trustee.

## **22. No Private Pecuniary Profit for any Individual, and Exceptions**

### **22.1 No Private Pecuniary Profit**

No private pecuniary profit may be made by any Member of the Trust, except that:

- (a) any Trustee may receive full reimbursement for expenses properly incurred by him or her in connection with his or her position as a Trustee;
- (b) the Trust may pay reasonable remuneration to any officer to the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
- (c) any Member of the Trust may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by him or her or by any firm or entity of which he or she is a member, employee or associate in connection with the affairs of the Trust.

### **22.2 Arm's Length Basis**

Any such money paid shall be reasonable and relative to that which would be paid in arm's length transaction (being open market value).

## **22.3 Trustees to comply with Restrictions**

The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by Clause 23 are strictly observed.

## **23. Restrictions on Benefits to and Influence by Interested Persons**

### **23.1 Recipient not to Influence Benefits**

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

- (a) a Trustee of the Trust;
- (b) a shareholder or director of any company or a member of any Board, Committee or Society carrying out the charitable purposes of the Trust;
- (c) a Trustee of any Trust which is a shareholder of any company or is a member of any Board, Committee or Society carrying out the charitable purposes of the Trust; or
- (d) an associated person (as defined by Section OD7 of the Income Tax Act 1994) of any such Trustee, shareholder, director or member;

shall 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 or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person.

## **24. Professional Account and Influence**

24.1 A person who in the course of, and as part of the carrying on of, his or her business of a professional public practice shall not, by reason only of his or her rendering professional services to the Trust, or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause.

## **25. Liability**

A Trustee will not be liable for any loss which is not attributable to dishonesty or to the wilful commission by that Trustee of an act known to him or her to be a breach of trust.

## **26. 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 shall be given to such exclusively charitable organisation within New Zealand as the Board decides, or

if the Board is unable to make such decision, shall be disposed of in accordance with the directions of the High Court pursuant to Section 27 of the Charitable Trusts Act 1957.

IN WITNESS this deed is duly executed.

**Signed by** )  
**PATRICIA JACQUELINE KNIGHT** )  
..... )

**REBECCA BIBBY** )  
..... )

**GLENN JOHNSTONE** )  
..... )

**XANTHE-JANE NOBLE** )  
..... )

**HUGH SMITH** )  
..... )

**PATRICIA JACQUELINE KNIGHT** )  
..... )

in the presence of: )

Witness:  
Signature: .....

Name: .....  
[please print in BLOCK letters]

Occupation: .....

Address: .....