

MILFORD COMMUNITY TRUST

THIS TRUST DEED is made and executed on 1 April 2007.

BETWEEN SOUTHLAND DISTRICT COUNCIL a body corporate under the Local Government Act 2002 (called “The Settlor”) of the one part.

AND ANTOINETTE DIANE RIDLEY of Te Anau, Registered Nurse
JASON DAVID STEELE of Milford Sound, Branch Manager
DEBORAH JANE TAYLOR of Arrowtown, Barrister
ROGER NEIL WILSON of Invercargill, Chartered Accountant
HELEN ELIZABETH THOMAS of Milford Sound, Manager
MICHAEL WILLIAM SCHUCK of Te Anau, Chief Executive Officer
JOHN ROY ROBSON of Te Anau, General Manager
(called “The Trustees”) of the other part

RECITALS

- A.** The Settlor desires to create the Trust to be known as the MILFORD COMMUNITY TRUST as a charitable Trust within the meaning of the Charitable Trusts Act 1957 upon the Trusts declared in this Deed.
- B.** The Trustees have been appointed by the Settlor in accordance with this Deed as the initial Trustees of the Trust subject to their agreeing to accept appointment as a Trustee.
- C.** The Settlor has agreed to pay to the Initial Trustees the sum of ONE HUNDRED DOLLARS (\$100.00) to enable the Trust to be properly constituted.

PROVISIONS OF THE DEED

1. Interpretation

In this Deed, unless the context otherwise requires:

“Chairperson” means the Independent Chairperson.

“Council” means the Southland District Council.

“Financial Year” means a year ending on 30 June.

“Independent Chairperson” means the Trustee appointed in accordance with Clause 9(b)(ii) hereto.

“Milford” means the developed area of land and adjacent coastal marine area at the end of State Highway 94 at the head of Milford Sound.

“Milford Community” means the residents of Milford, the holders of concessions from the Crown operating at Milford and Iwi.

“Objects of the Trust” means the objects or purposes of the Trust specified in Clause 4.

“the Trust” means the Trust established by this Deed.

“the Trustees” means the Trustees for the time-being of the Trust.

“Trust Fund” means all the funds of the Trust described as the “Trust Fund” in Clause 5, and includes all capital and income for the time-being held by the Trustees of the Trust.

“Trustee Appointments Recommendations Panel” means a panel comprising the holders (for the time-being) of the following positions:

Southland Conservator of the Department of Conservation

Chief Executive of the Southland District Council

General Manager of the Southland Regional Council.

The Trustee elected by the community at Milford, in accordance with Clause 9(b)(iv) hereto.

The Chairperson of the Trustee Appointments Recommendations Panel shall be the Chief Executive of the Southland District Council who shall have a casting vote in relation to any appointment.

2. Name of Trust

(a) The Trust established under and by this Deed shall be known as the “MILFORD COMMUNITY TRUST”.

(b) The Trust shall be incorporated under Pt II of the Charitable Trusts Act 1957.

3. Declaration of Trust

(a) The Settlor HEREBY directs and declares and its Trustees HEREBY acknowledge and accept that the Trustees shall stand possessed of the Trust Fund upon the trusts and with the powers herein set forth.

4. Objects of the Trust

The objects and purposes of the Trust shall be:

(a) To manage and carry out services and undertake leadership, planning and advocacy for the general benefit of the Milford community so as to ensure as far as possible that the infrastructure of the community and its sense of identity, viability and wellbeing are maintained and enhanced.

- (b) To liaise with and communicate with all individuals; organisations, groups and other parties with interests in the Milford community for all purposes which are beneficial to the community.
- (c) To represent the interests of the Milford Community to ensure that the natural environments and outstanding values of the Milford Sound area are safeguarded and protected for all residents and visitors to the area.
- (d) To monitor and maintain an overview of all activities and services provided within the Milford community.
- (e) To consider and report on all matters either referred to and/or delegated to it from time to time by the Department of Conservation and the Southland District Council and on any matter of interest or concern to the Milford community.
- (f) To access, use or invest funds and enter into arrangements, contracts and other agreements upon such securities or in such manner and upon such terms and conditions that the Trustees deem suitable for the purpose of furthering the objects and purposes of the Trust.
- (g) To carry out such other lawful activities which are incidental or conducive to attaining the objects and purposes of the Trust.

5. Funds of the Trust

- (a) The Trustees may raise and use moneys for the purposes of the Trust by such lawful means as they deem appropriate and may accept any grants or donations for such purposes from any persons, organisation or group and upon such conditions as they think fit, PROVIDED THAT no condition shall be at variance with the objects of the Trust.

- (b) The Trust Fund shall be applied for and towards those services, and activities necessary for the promotion and advancement of all charitable, recreational and other purposes being purposes beneficial to the Milford Community as a whole.
- (c) The Trust Fund comprises the said sum of \$100.00 and all other moneys or property hereafter paid, transferred or donated to the Trustees to be held on the Trusts hereby declared, or raised, received or collected by them or otherwise required by any means whatever, and the income from any investment thereof and any accumulations of income therefrom made pursuant to the provisions hereafter contained and all moneys investments and property from time to time representing the same.
- (d) In applying or using any part of the capital or income of the Trust Fund in the implementation of the objects and purposes of the Trust, the Trustees may pay any amount to any person or organisation for such purposes as the Trustees may require and direct, being purposes exclusively within the objects of the Trust AND the receipt of such payment by any such person or organisation shall constitute a sufficient discharge for the Trustees.

6. The Trustees

- (a) Each of the Trustees shall signify in writing to the Council agreement to accept appointment as a Trustee.
- (b) The term of office of each Trustee shall be as follows:
 - (i) Councillor Te Anau Ward - ex officio.
 - (ii) Milford Community Elected Trustee - three years.
 - (iii) Independent Chairperson - four years.

- (iv) Trustees appointed in terms of Clause 9(b)(i) (except where the initial term of appointment is specified beside the name of a Trustee in the Schedule) - four years.
- (c) All Trustees shall also be appointed by the Council. In making the appointments of those trustees who have been nominated for appointment in terms of Clauses 9(b)(i) and (ii) the Council shall adopt the recommendation of the Trustee Appointments Recommendations Panel unless the Council considers that there are good reasons not to do so.
- (d) In making any recommendation for the appointment of a Trustee in terms of Clause 9(b) the Trustee Appointments Recommendations Panel shall:
 - (i) Have due regard to the nominee's knowledge of, or experience in business, leadership, governance issues or that person's interest or involvement in the Milford community.
 - (ii) Ensure that in the event of nominations of persons to represent the Milford Sound Development Authority and/or Tourism Holdings Limited and/or Real Journeys Limited recommend one or more of those nominees with the intent that the four Trustees appointed in terms of Clause 9(b)(i) shall subject to nomination, comprise at any one time not less than one and not more than two such nominees.
- (e) Subject to Clause 7(a) a Trustee may hold office on more than one occasion.

7. Eligibility for Appointment as Trustee

- (a) The following persons shall not be capable of being appointed or reappointed, or holding office, as a Trustee:
 - (i) A bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled.

- (ii) A person who is convicted of any offence punishable by imprisonment for a term of two years or more.
- (iii) A person who is convicted of any offence punishable by imprisonment for a term of less than two years and is sentenced to imprisonment for that offence.
- (iv) A person who is disqualified under Section 151 of the Companies Act 1993 applies.
- (v) A mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (vi) A person who is under 18 years of age.

8. Termination of Office of a Trustee

- (a) A Trustee may at any time resign office by notice in writing delivered to the Chairperson for the time being of the Trust. The resignation will take effect as from the date specified in the notice or in the absence of any such date on the date the notice is delivered to the Chairperson of the Trust. The Chairperson of the Trust shall forward a copy of such notice to the Chief Executive of the Council.
- (b) A Trustee shall be deemed to have resigned office as a trustee without notice if at any time that trustee is incapable of acting as a trustee or holding office as a trustee pursuant to Clause 7.
- (c) A Trustee may be removed from office at any time by resolution of the Council upon receiving a recommendation to that effect from the Trust. Any decision to remove a trustee shall only be made where the Council is satisfied on reasonable grounds that:
 - (i) There has been a neglect of duty, or misconduct proved on the part of the Trustee.

AND/OR

- (ii) The Trustee has acted or is acting in a manner prejudicial, or likely to be prejudicial, to the interests of the Trust.

Before passing any resolution in accordance with this clause the Council shall give the Trustee affected a reasonable opportunity to be heard on the matters relating to the recommendation of the Trust.

- (d) If any Trustee dies or resigns or ceases to hold office, the office of that Trustee shall become vacant, the vacancy shall be filled by the Council who shall have regard to any nomination for that vacancy made by the Trustee Appointments Recommendation Panel or the result of any required election and any person appointed shall hold office for the residue of the term of office of that Trustee.
- (e) If any Trustee dies or resigns or ceases to hold office, the Trustees shall immediately inform the Council of that fact by notice in writing.

9. Milford Community Trust

- (a) The Trust shall consist of a total of seven (7) Trustees appointed by the Council.
- (b) The seven Trustees shall comprise:
 - (i) Four Trustees being persons who have been nominated by two members of the Milford community or in accordance with Clause 6(d)(ii) to the Trustee Appointments Recommendation Panel and recommended by that Panel to the Council for appointment.
 - (ii) One Trustee to be appointed as the Independent Chairperson upon the recommendation of the Trustee Appointments Recommendations Panel.

- (iii) One Trustee being the duly elected Councillor for the Te Anau Ward of the Council from time to time.
- (iv) One Trustee to be elected by those persons who are members of the Milford community at a public meeting called by the Trust for that purpose within three months of the triennial local elections.

10. Meeting of the Trustees

- (a) The Trustees may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Except where some other majority is required by this Deed, questions arising at any meeting shall be decided by a simple majority of votes. In the case of an equality of votes (where a simple majority is required), the Chairperson shall have a second or casting vote. The Chairperson or any two of the Trustees may at any time summon a meeting of the Trustees. Notice of each meeting of the Trustees shall be given by sending or delivering the same to the last known place of residence of, or other address for service notified by, each Trustee.
- (b) If the Independent Chairperson is not present within 15 minutes of the commencement time of any meeting of the Trustees, then those Trustees present may choose one of their members to be Chairperson of the meeting.
- (c) The quorum shall be a majority of the Trustees.
- (d) The Trustees shall cause minutes to be kept of their meetings.
- (e) The Trustees may from time to time delegate any of their powers to committees consisting of not less than three members of the Trust and of such other persons (if any) as they think fit. Any committee so formed shall in exercise of the powers so delegated conform to any regulations that may be imposed on it by the Trustees.

- (f) The relevant provisions of the Standing Orders adopted by the Council shall apply to all meetings of the Trust and any of its Committees in so far as they are not inconsistent with the specific terms of this Deed.

11. Conflicts of Interest

It is acknowledged that because of the unique situation in Milford Sound and the size of the community there will be conflicts of interest which arise from time to time for a Trustee. Each Trustee may exercise the Trustee's own discretion, and notwithstanding the existence of an actual or potential conflict of interest of a non-pecuniary nature vote on any such matter before the Trust PROVIDED THAT the Trustee is satisfied that such a vote takes into account the best interests of the Trust and will result in an outcome that is most conducive to the Trust's obligations and responsibilities in Milford.

12. Financial Requirements

- (a) The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets, liabilities and funds are kept.
- (b) The Trustees shall, after the end of each Financial Year, have prepared financial statements including a balance sheet and income and expenditure account and notes thereto, giving a true and fair view of the financial affairs of the Trust for the Financial Year.
- (c) The Trust will prepare and deliver to the Council the "half-yearly report" and the "annual report" in terms of Sections 66 and 67 of the Local Government Act 2002.
- (d) The financial statements shall be audited by the Auditor-General.
- (e) The Auditor-General shall certify whether the financial statements are properly drawn up and give a true and fair view of the financial affairs of the Trust for the Financial Year.

- (f) The Trustees may only invest the Trust Fund in Council approved authorised investments.

13. Officers of the Trust

The Trustees may from time to time appoint such officers of the Trust as the Trustees may think fit. The Trustees shall prescribe the relevant duties and conditions of appointment for any such officers.

14. Powers of Trustees

The Trustees shall have and may exercise the following powers, authorities and discretions:

- (a) To use the whole or any part of the current net annual income derived by the Trustees in any Financial Year and to apply all or any part of such income, for any specified purpose if they should think fit.
- (b) To sell all or any part of the real or personal property or interest therein comprising the Trust Fund or any part thereof at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain on mortgage of the property sold.
- (c) To lease or take on lease any freehold or leasehold property or interest therein with or without chattels for such period at such rent on such terms (including at the discretion of the Trustees a compulsory or optional purchasing clause) and subject to such conditions as they think fit and to accept or effect such renewals or surrenders of leases and tenancies as they think fit.
- (d) To borrow moneys on mortgage bank overdraft or otherwise howsoever for such reasons upon such security by way of mortgage or otherwise on such terms and subject to such conditions as the Trustees think fit.

- (e) To employ, pay and retain the services of any person, firm, company or corporation upon such terms as they think fit.
- (f) To permit any Trustee for the time-being engaged in any profession or business and any firm with which that Trustee may be associated to charge and be paid all proper professional or other charges for any business done by that Trustee or firm for the Trust.
- (g) To make such arrangements as the Trustees think fit for the operation of any bank accounts held by the Trustees, including specification of the signatures required for such operation.
- (h) To pay out of the Trust Fund all property costs incurred in the administration of the Trust including (without limiting the generality of the foregoing) rents, salaries, superannuation contributions for employees, accounting and audit fees, general office expenses and other outgoings.
- (i) Generally to maintain, repair, improve and develop any real or personal property which or an interest in which for the time-being forms part of the Trust Fund in such manner as the Trustees think fit and for that purpose to pay and apply such of the capital and income of the Trust Fund as they think fit.
- (j) The powers conferred by or under the Trustee Act 1956 on a Trustee will be in addition to the powers conferred on the Trustees under this Deed and shall apply to the extent that unless there is a contrary intention expressed in the Deed then the provisions of the Trustee Act 1956 apply.

(k) The Trustees may resolve to alter, amend any provisions of this Deed provided that:

(i) Any resolution to effect an alteration or addition must be passed by a majority of not less than three quarters of the Trustees one of whom must be the Trustee appointed under Clause 9(b)(iii) at a meeting of the Trustees where not less than twenty one clear days prior written notice of intention to move the amendment or alteration is given to all Trustees.

AND

(ii) No amendment or alteration may be made to the Trust Deed in any respect which would have the effect of causing the Trust to cease to be a charitable trust or to amend the objects of the Trust to include any objective which is not a charitable objective.

15. Liability of Trustees

(a) No Trustee shall be liable for any loss not attributable to dishonesty of the Trustee or to the wilful commission by the Trustee of an act known to the Trustee to be a breach of trust.

(b) No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

16. Common Seal

The Common Seal of the Trust shall only be affixed pursuant to a resolution of its Trust Board or of a committee of the Trustees authorised by the Trust Board on their behalf and every instrument to which the Common Seal is affixed shall be signed by two Trustees.

17. Remuneration and Reimbursement of Trustees

- (a) The remuneration payable to the Trustees shall be paid at such rate as the Council from time to time approves in that behalf having regard to the policy of the Council.
- (b) The Trustees shall be entitled to be reimbursed for their expenses in accordance with the provisions of the Fees and Travelling Allowances Act 1951 as if they were members of a Statutory Board within the meaning of that Act.

18. Private Pecuniary Interests

Nothing expressed or implied in this Deed shall permit or allow the activities of the Trust or any business carried on by or on behalf or for the benefit of the Trust to be carried on for the private pecuniary profit of any individual.

19. Liquidation of Trust

- (a) If, in the opinion of the Trust, it shall become no longer possible or feasible to carry out the objects of the Trust then the Trust may, by resolution, liquidate the Trust. No resolution dissolving the Trust shall take effect unless it has been passed by a majority of the Trust and only after three months notice of intention to move such resolution has been given in writing to each Trustee.
- (b) Such dissolution shall not take effect unless at a subsequent meeting of the Trust called for the purpose (such meeting to be held not earlier than 28 days and not later than 42 days after the date of the meeting declaring such dissolution), such dissolution is confirmed by resolution to that effect carried by a majority of the Trust.

- (c) Should the Trust be dissolved, then any moneys and property remaining after the due settlement of the affairs of the Trust and the payment of all just debts and claims shall be handed to such charitable society, association, institution, organisation or corporation as in the sole and absolute opinion of the Trustees has objects similar to those of this Trust as may be specified in the said resolution.

SCHEDULE

<u>Name of Trustee</u> (and “Office” where applicable)	<u>Term of Office</u> [see Clause 6(b)]
1. <u>ANTOINETTE DIANE RIDLEY</u> Councillor for the Te Anau Ward	(not applicable as ex-officio)
2. <u>JASON DAVID STEELE</u> Milford Community Elected Trustee	Three years
3. <u>DEBORAH JANE TAYLOR</u> Independent Chairperson	Four years
4(a). <u>ROGER NEIL WILSON</u> Appointment in terms of Clause 9(b)(i) of Trust Deed	Two years
4(b). <u>HELEN ELIZABETH THOMAS</u> Appointment in terms of Clause 9(b)(i) of Trust Deed	Two years
4(c). <u>MICHAEL WILLIAM SCHUCK</u> Appointment in terms of Clause 9(b)(i) of Trust Deed	Four years
4(d). <u>JOHN ROY ROBSON</u> Appointment in terms of Clause 9(b)(i) of Trust Deed	Four years

THE COMMON SEAL of the)
SOUTHLAND DISTRICT COUNCIL)
as Settlor was hereunto affixed in)
the presence of:)

_____ **MAYOR**

_____ **CHIEF EXECUTIVE**

SIGNED by Antoinette Diane Ridley)
as Trustee in the presence of:)

Signature of Trustee

Witness Signature: _____

Print Full Name: _____

Occupation: _____

Address: _____

SIGNED by Jason David Steele)
as Trustee in the presence of:)

Signature of Trustee

Witness Signature: _____

Print Full Name: _____

Occupation: _____

Address: _____

SIGNED by Deborah Jane Taylor)

as Trustee in the presence of:)

Signature of Trustee

Witness Signature: _____

Print Full Name: _____

Occupation: _____

Address: _____

SIGNED by Roger Neil Wilson)

as Trustee in the presence of:)

Signature of Trustee

Witness Signature: _____

Print Full Name: _____

Occupation: _____

Address: _____

SIGNED by Helen Elizabeth Thomas)

as Trustee in the presence of:)

Signature of Trustee

Witness Signature: _____

Print Full Name: _____

Occupation: _____

Address: _____

SIGNED by Michael William Schuck)

as Trustee in the presence of:)

Signature of Trustee

Witness Signature: _____

Print Full Name: _____

Occupation: _____

Address: _____

SIGNED by John Roy Robson)

as Trustee in the presence of:)

Signature of Trustee

Witness Signature: _____

Print Full Name: _____

Occupation: _____

Address: _____