SUMMARY

The Otago Mayoral Forum has recently discussed the issue of wilding trees, which are a problem in many parts of Otago, and has supported the establishment of a regional trust. The initiative has been taken by the Queenstown Lakes District Council but the Mayors agreed it would help if there was an Otago-wide approach.

The trust would have a lobbying and educational role, not operational or funding, and would be administered by the Queenstown Lakes District Council. The trust deed (attached) provides for trustees to consist of the Mayors of the five territorial local authorities and an appointee of the Otago Regional Council, as well as representatives from the Department of Conservation and Community Control Groups.

IMPLICATIONS FOR:

(i) Policy: No
(ii) Approved Annual Budget: No
(iii) LTP/Funding Policy: No
(iv) Activity Management Plans: No
(v) Community Boards: Yes – wilding pines are a problem in some areas
(vi) Sustainability: Yes
RECOMMENDATIONS

1. That the Council supports the initiative.
2. That Mayor Dave Cull be appointed a trustee of the Otago Wilding Trust.

Report prepared by:

Paul Orders
Chief Executive

Date report prepared: 4 September 2012

Attachments

1. Otago Wilding Trust – Charitable Trust Deed
OTAGO WILDING TREE TRUST
Charities Act 2005

CHARITABLE TRUST DEED

MACALISTER TODD PHILLIPS
Barristers, Solicitors, Notaries
Queenstown • Wanaka • Lyttelton

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BACKGROUND

A. The parties to this Deed wish to establish a trust to be known as the Otago Wilding Tree Trust ("the Trust").

B. The Trustees named herein have agreed to be the first trustees of the Trust.

C. The Trustees acknowledge and declare that the Trustees stand possessed of the sum of ten dollars ($10.00) and all other monies, grant investments and other property in future paid, transferred, purchased or agreed to be paid, transferred or purchased or to be held by the Trustees together with income arising from it upon the within trusts to support the objects of the Trust.

D. The Trustees have resolved to be bound by the trusts set out in this Trust Deed.

E. It is desired that the Trust shall be incorporated as a board under the Charitable Trusts Act 1957 and registered under the Charities Act 2005.

1. INTERPRETATION

1.1 In this Deed, unless the context requires a different interpretation:

   (a) "The Board" means the Board of Trustees;
   (b) "Community Control Group" means any group formed at a community level within the Otago area for the control of wildings in that community area;
   (c) "The Deed" means this Charitable Trust Deed;
   (d) "Financial Year" means the period beginning the 1st day of July in any year and ending on the 30th day of June in the next year;
   (e) "Introduced Conifers" means Contorta Pine (Lodgepole Pine), Corsican Pine, Scots Pine, European Larch, Douglas Fir, Maritime Pine, Radiata Pine, Muricata Pine and Ponderosa Pine;
   (f) "The Objects" means the Objects in Rule 4;
   (g) "The Powers" means Powers in Rule 8;
   (h) The Trust" means the Otago Wilding Tree Trust created by this Deed;
   (i) "Trustee" means a member of the Board under Rules 9.1 to 9.6;
(i) “Wildings” means the unintended natural regeneration or seedling spread of Introduced Conifers to New Zealand.

1.2 This Deed shall come into force on the date on which it is registered with the Registrar of Charitable Trusts.

2. **NAME**

2.1 The name of the Trust is “Otago Wilding Tree Trust”.

3. **OFFICE**

3.1 The Registered Office of the Trust shall be at 10 Gorge Road, Queenstown.

4. **OBJECTS**

4.1 The objects of the Trust are:

(a) To form an “umbrella” entity to oversee and liaise with all Community Control Group in the eradication of wilding trees in the Otago area.

(b) To share information, methods and knowledge with and between Community Control Groups and the various district city and regional Councils within Otago.

(c) To establish and implement collaboration with the Community Control Groups to establish measures to eradicate wildings in Otago.

(d) To identify, seek and lobby for funding from various sources to fund the work of the Community Control Groups.

(e) To campaign central government for funding and other assistance in the eradication of wilding trees.

(f) To develop relationships with the Community Control Groups at a local level, to ensure that the operations of eradication of wilding trees are carried out by the Community Control Groups and endorsed by the Trust.

(g) To provide support to the Community Control Groups by encouraging the implementation of control mechanisms at regional, district and city level where appropriate, and where
feasible, encouraging the amendment of the relevant district plans and strategy plans of
the trustee Councils to provide such support.

(h) To promote and protect values including but not limited to biodiversity, landscape,
recreation and historic features within Otago, and to advance education and raise
awareness by promoting the Trust’s achievements and increasing community support for
the eradication of wildings.

(i) To establish, implement and manage a system for the purposes of seeking, raising,
accepting, receiving, accumulating, investing and managing funds for the purposes of the
Trust generally.

(j) To seek, accept and receive by public subscription or appeal by raffles and other fund
raising activities and by both public and private donations, subsidies, grants, endowments,
gifts, legacies, loans, diversions and bequests either in money or in kind or partly in money
and partly in kind for all or any of the purposes and objects of the Trust, and to carry out
any specified trust attaching or relating to the same to the intent that donations, grants etc
made to the Trust may be made for the benefit of the general purposes within the general
objects of the Trust specified in particular cases by donor or donors and lender or lenders.

(k) To apply for incorporation of the Trust under Part II of the Charitable Trusts Act 1957, and
registration under the Charities Act 2005 under the name Otago Wilding Tree Trust or such
other name as the Trustees by written resolution may determine or which is approved by
the Registrar of Incorporated Societies or the Charities Commission, and upon such
incorporation and registration the powers and discretions hereby conferred upon the
Trustees shall be conferred and the within Trust shall devolve upon them as the Trustees.

(l) To do all things incidental to the charitable objects and purposes described in clauses
4.1(a) to (n).

(m) To conduct the operations of the Trust for “Charitable Purposes” as defined in Section 5 of
the Charities Act 2005.

5. PERSONAL BENEFIT

5.1 Any income, benefit or advantage shall be applied to the charitable purposes of the Trust.
5.2 No individual or associated person shall receive any form of private income, benefit or advantage from the operations of the Trust.

5.3 No member of the Trust or any person associated with a member shall participate in or materially influence any decision made by the Trust in respect of the payment to or on behalf of that member or associated person of any income, benefit or advantage whatsoever.

5.4 Any such income paid shall be reasonable and relative to that which would be paid in an arm’s length transaction (being the open market value).

5.5 The provisions and effect of this clause shall not be removed from this Deed and shall be included and implied in any document replacing this Deed.

6. TRUSTEES’ REMUNERATION AND EXPENSES

6.1 Subject to clause 6.2, each Trustee is entitled to be indemnified against, and reimbursed for, all travelling, hotel and other expenses properly incurred in connection with the Trust.

6.2 Any payment to a Trustee referred to in clauses 6.1 must not exceed fair market value for services provided and no Trustee receiving any such payment may:

(a) take part in any deliberations or proceedings relating to that payment; or
(b) in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid;

7. INDEMNITY

7.1 Each Trustee or former Trustee is entitled to be indemnified out of the Trust Fund against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together called “liabilities”) suffered or incurred by that Trustee or former Trustee in connection with the Trust, except to the extent that those liabilities are due to:

(a) That Trustee or former Trustee’s own dishonesty or lack of good faith; or
(b) That Trustee or former Trustee’s wilful commission or omission of an act known by that Trustee or former Trustee to be a breach of trust.
8. **CAPACITY AND POWERS**

8.1 In pursuit of the Objects and subject to the Charities Act 2005 and any other enactment and the general law the Trust has within New Zealand full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and for those purposes full rights, powers and privileges. Without derogating from or limiting that capacity or those rights, powers and privileges the Trust may also exercise the following powers:

(a) To co-operate and liaise with the Central Otago District Council, the Clutha District Council, the Dunedin City Council, the Queenstown Lakes District Council, the Waitaki District Council and the Otago Regional Council and any Community Control Group within those districts.

(b) To co-operate with and receive grants and endowments from various community trusts and other similar organisations and from commercial and private sponsors and donors.

(c) To allocate any funding raised pursuant to the objects of the Trust to the Community Control Groups in a fair and equitable manner.

(d) To use such of its funds as they may consider necessary or proper in payment of the costs and expenses in the furthering or carrying out of the objects of the Trust including the employment of counsel, solicitors, accountants, agents, officers, consultants, experts and servants as shall appear necessary or expedient.

(e) To engage or employ any Trustee to provide services and carry on activities for the Trust, and remunerate such Trustee for his or her services and to pay or reimburse all reasonable expenses incurred by the Trustees in execution of their duties as Trustees.

(f) To open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another or others at any bank or banks and in additional to the powers conferred by the Trustee Act 1956 to make arrangements with any bank for any one or more of the following in namely the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate on any account from time to time opened to or existing at that bank.
(g) To adopt such means as the Trustees may from time to time determine for the purpose of marketing the Trust and its objects, raising money, and obtaining funds for the furtherance of any object of the Trust, and to accept contributions, collections, donations, legacies, devises, gifts, grants and subsidies.

(h) To enter into any arrangement with any government or local authority or otherwise that may seem conducive to the Trust objects or any of them and to obtain from any such government or authority any rights privileges and concessions which the Board may think desirable to obtain and carry out, exercise and comply with any such arrangements, rights privileges and concessions.

(i) To co-operate with any other society, trust, association, institution, Council or Community Control Group whether incorporated or not whose objects are altogether or in part similar to those of this Trust and to procure from or communicate to such society, trust, association, institution, Council or Community Control Group such information as may be likely to forward the objects of this Trust.

(j) To apply the funds and income of the Trust however derived towards all or any of the foresaid objects and purposes of the Trust as the Trustees may in their absolute discretion think fit.

(k) To do all such other things as in the opinion of the Trustees may be incidental or conducive to the attainment of any of the forgoing objects or the exercising of any of the forgoing powers.

9. **BOARD OF TRUSTEES**

9.1 The entire control and management of the Trust and of its assets and investments is vested in the Board of Trustees comprising ten (10) people appointed as set out in the following subclauses:

9.2 The Board shall initially comprise the following who are signatories to this Deed as Trustees of the Trust:

(a) The Mayor of Central Otago District Council from time to time

(b) The Mayor of Clutha District Council from time to time

(c) The Mayor of Dunedin City Council from time to time
(d) The Mayor of Queenstown Lakes District Council from time to time
(e) The Mayor of Waitaki District Council from time to time
(f) An appointee of the Otago Regional Council from time to time
(g) A representative from the Department of Conservation
(h) A representative from each of three (3) Community Control Groups within the Otago area.

9.3 The Trustees will elect from among themselves a Chairperson, Secretary and Treasurer. An election of office-bearers will be held at the first meeting of the Board following execution of this Deed and whenever a vacancy occurs. The positions of Secretary and Treasurer may be combined.

9.4 The office of a Trustee shall only become vacant at any time if:

(a) One or more of the Community Control Groups referred to in clause 9.2(h) elects not to have a representative as a Trustee;
(b) In the circumstances set out in clause 9.4(a) the remaining Trustees shall seek another representative from another Community Control Group to be a Trustee.
(c) In the opinion of a majority of two-thirds of fellow Trustees so expressed by formal resolution the Trustee is for any reason unfit to carry out the duties of a Trustee but no such resolution shall take effect until the Trustee has had reasonable opportunity to be heard in his or her own defence.

9.5 The Board may continue to act notwithstanding any vacancy, but if their number is reduced below the minimum number of Trustees as stated in this Deed, the continuing Trustees may act for the purpose of increasing the number of Trustees to that minimum but for no other purpose.

9.6 The Board may, by a motion decided by a two-thirds majority of votes, terminate a person’s position as a Trustee and member of the Board, if it believes that such action is in the best interest of the Trust.

10. **PROCEEDINGS OF THE BOARD**

10.1 The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the Chairperson shall have a second or casting vote.
10.2 Five Trustees may, at any time summon a meeting of the Board by giving ten working days notice in writing to all other members of the Board.

10.3 Notices of meetings and other business may be sent to any Trustee by ordinary post at his or her last known address in New Zealand or by fax or email notwithstanding that the Trustee may be absent from New Zealand.

10.4 The quorum necessary for the transaction of business by the Board shall be one-half of the number of members of the Board then present in New Zealand entitled to vote.

10.5 The continuing Trustees may act notwithstanding any vacancy in their body so long only as their number is not reduced below the minimum number fixed pursuant to clause 9.1.

10.6 In the event of there being any vacancy in the number of Trustees, the Board may at its discretion appoint a suitable person to fill such a vacancy subject to clause 9.1 and 9.2.

10.7 The Chairperson of the Board shall be elected by the Board and shall be eligible for re-election. At the first meeting of the Board after the Annual General Meeting each year the Chairperson shall retire and the Trustees shall elect one of their number as Chairperson. If at any meeting the Chairperson is not present within five minutes after that time appointed for holding the meeting, the Trustees present may choose one of their number to be Chairperson of the meeting.

10.8 The Board may appoint Committees composed of such Trustees as it thinks fit. The Board may delegate any of its powers and functions to a Committee and may settle disputes between Committees. Each Committee shall have powers and functions limited by the terms of its appointment or by subsequent decisions of the Board. Each Committee shall, subject to the approval of the Board, have the power to co-opt suitable persons who are not Trustees. A Trustee may sit on more than one Committee.

10.9 A resolution in writing signed by all Trustees for the time being shall be as valid and effectual as if it had been passed at a meeting of the Board. Any such resolutions may consist of one or more documents in similar form (including letters, facsimiles, electronic mail or other similar means of communication) each signed or assented to by or on behalf of one or more of the Trustees.
10.10 All proceedings of the Board shall be recorded in the form of minutes entered in a proper Minute Book.

10.11 Queenstown Lakes District Council shall provide administrative support to the Board for 12 months from the date of this Deed. Thereafter the Board shall resolve how administrative support to the Board is to be provided from amongst the Trustees of the Board.

11. **EXECUTION OF DOCUMENTS**

11.1 Deeds and other documents shall be executed by the Board by the affixing of its Common Seal except where individual Trustees are authorised to sign specified documents or classes of documents on behalf of the Board without the affixing of the Common Seal. Such authority shall be given only by resolution of the Board or a Committee of the Board empowered to do so.

11.2 Every document to which the Common Seal is affixed shall be signed by two Trustees and shall be so affixed only with the authority of the Board or of a Committee of the Board empowered to do so.

11.3 No guarantee or indemnity shall be executed except under the Common Seal.

11.4 The Secretary shall have custody of the Common Seal.

12. **ANNUAL GENERAL MEETING**

12.1 No later than the 31st day of October in each year a meeting known as the Annual General Meeting shall be called by the Board to review the activities of the Trust during the preceding financial year.

12.2 The Secretary shall notify all Trustees either verbally or in writing of the time, date and place of the Annual General Meeting.

12.3 At the Annual General Meeting the Chairperson of the Board shall take the chair or, in his or her absence, a person appointed by the Board.

12.4 The business of the Annual General Meeting shall be:
(a) To receive the Annual Report from the Board for the period of the previous financial year, copies of which shall be available from the office of the Board one week before the meeting and also available at the meeting. The Report shall include full financial statements of the affairs of the Trust.

(b) To consider any Notice of Motion or Notices of Motion proposed and seconded in writing, the text of which has been delivered to the registered office of the Board ten working days before the meeting provided that the Board shall not be bound to carry out or to support any request or direction contained in any such motion passed by the meeting.

(c) To consider any other business.

13. **FINANCIAL RECORDS**

13.1 The Board shall cause proper financial records to be kept incorporating complete accounts of its affairs and transactions. The books of account and other records shall be kept at the registered office of the Board or at such other place or places as the Board may direct. All such records shall be open to inspection by any Trustee during normal office hours.

14. **BANKING**

14.1 The Board may open, close or operate cheque and other bank accounts at any bank or building society.

14.2 Overdraft and other borrowing facilities shall be arranged only with the approval of the Board.

14.3 Cheques, promissory notes and other bills of exchange shall be drawn or endorsed by at least two persons appointed by the Board whose names are recorded in the minutes.

15. **AUDIT**

15.1 The Board may but shall not be obliged to have the accounts of the Board audited by a practising Accountant who shall not be a member of the Board and who shall be appointed by the Board.

16. **ALTERATIONS TO THE TRUST DEED**

The Trust Deed may be altered at any meeting of the Board subject to the following conditions:

16.1 Notice stating the general tenor of any proposed alteration to the Trust Deed shall be given to each Trustee fifteen working days before the meeting at which the matter is to be considered.
16.2 The meeting may amend any such proposals.

16.3 No resolution of any meeting shall effect any alteration to the Trust Deed unless it be carried by the greater of five Trustees or at least three quarters of the Trustees present at such meeting and entitled to vote.

16.4 No alteration shall be made to the Trust Deed which shall have the effect of detracting from the charitable purposes of the Trust.

17. WINDING UP AND DISPOSAL OF FUNDS

17.1 The Trust may be wound up by a resolution of the Board passed by three quarters of Trustees present and entitled to vote.

17.2 No such resolution shall have any effect unless notice in writing of the proposed resolution has been given to each Trustee entitled to vote at least one month before the date of the meeting at which the motion will be considered.

17.3 Should the Trust be dissolved in accordance with Rules 17.1 and 17.2 approved by the Board having charitable objects and being approved as charitable bodies by the Charities Commission for the time being.

17.4 Should the trust be liquidated by Order of the Court under Section 25 of the Charities Act 2005 the Trustees shall use their best endeavours to see that the Court directs that surplus funds and property be paid or distributed to the same organisation or organisations as are described in Rule 17.3.

SIGNED by MAYOR OF CENTRAL OTAGO
DISTRICT COUNCIL
as Trustee
In the presence of

SIGNED by MAYOR OF CLUTHA
DISTRICT COUNCIL
as Trustee
In the presence of
SIGNED by MAYOR OF DUNEDIN CITY COUNCIL
as Trustee
In the presence of

SIGNED by MAYOR OF QUEENSTOWN LAKES DISTRICT COUNCIL
as Trustee
In the presence of

SIGNED by MAYOR OF WAITAKI DISTRICT COUNCIL
as Trustee
In the presence of

SIGNED by CHAIRPERSON OF OTAGO REGIONAL COUNCIL
as Trustee
In the presence of

SIGNED by DEPARTMENT OF CONSERVATION REPRESENTATIVE
as Trustee
In the presence of

SIGNED by COMMUNITY CONTROL GROUP REPRESENTATIVE
as Trustee
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as Trustee
In the presence of