

# Draft Trust Deed for the Earthsong Centre Trust (Feb 04)

1. **Name** – The name of the Trust shall be **The Earthsong Centre Trust**
2. **Objects** – The objects of the Trust shall be:
  - 2.1 To educate the general population of New Zealand, and the Waitakere City community in particular, in the principles of socially, environmentally and economically sustainable urban living based on the cohousing model.
  - 2.2 In pursuit of the above primary object, to establish at the Earthsong Eco-Neighbourhood in Ranui the Earthsong Centre, which embodies the principles of social, environmental and economic sustainability.
  - 2.3 At the Earthsong Centre to host conferences, seminars and meetings on sustainability issues for business, local bodies, government departments, international visitors, community groups and individuals.
  - 2.4 To provide at the Earthsong Centre a venue for art, music, literature and other cultural activities for the benefit of the community.
  - 2.5 To support Waitakere City Council's eco-city vision in promoting the principles set out in para.1 above.
  - 2.6 To promote and support community projects and activities which advance the Trust's primary educational and other charitable objects set out above.
3. **Powers** – The Trust shall have the following powers:
  - 3.1 Responsibility for the management of all the affairs of the Trust and the exercise of all the powers given to it by this deed.
  - 3.2 To purchase, lease, hire or otherwise acquire any real or personal property.
  - 3.3 To sell, let, mortgage, insure hire out or otherwise dispose of or deal with any of the property or assets of the Trust.
  - 3.4 To construct, maintain or alter any buildings or property.
  - 3.5 To borrow, raise or invest money in any manner and on such terms as may be thought fit by prudent trustees.
  - 3.6 To seek, accept and receive donations, subscriptions, subsidies, grants, sponsorships, endowments, gifts, legacies, loans and bequests either in money or in kind or partly in money and partly in kind for all or any of the purposes, objects and aims of the Trust and to carry out any specified trust attaching or relating to the same to the intent that donations, grants, and other payments made to the Trust may be made for the benefit of the general aims of the Trust specified in particular cases by donor or donors and lender or lenders.
  - 3.7 To enter into any contract or arrangement with any individual, government department, or corporate body, to further the purposes of the Trust.

- 3.8 To pay all or any of the expenses incurred in establishing and running the Trust.
- 3.9 To employ or engage staff, advisers or other people whether or not they are trustees, and to pay their wages, salaries and/or their expenses on terms suitable to the Trustees.
- 3.10 To determine whether any money shall for the purpose of these presents be considered as capital or income and out of what part of the Trust Fund any expense or outgoing shall be paid.
- 3.11 In any year to pay out of the capital or income of the Trust Fund such sum or sums (if any) as the Trustees in their absolute discretion think fit, in or towards the establishment or maintenance of a scholarship or scholarships to be known by such name or names as the Trust may determine.
- 3.12 To join or promote in New Zealand Clubs, Associations and Foundations supporting the objects of the Trust.
- 3.13 To charge for admission to the property held by the Trust and to exhibitions and displays, lectures, films, performances and other educational services arranged by the Trust as the Trustees may deem reasonable.
- 3.14 To apply for incorporation as a Charitable Trust.
- 3.15 To take or defend legal actions involving the property or affairs of the Trust.
- 3.16 To do all such other things that in the opinion of the Trustees will further the Trust's aims and powers provided that nothing will be done to detract from the charitable purposes of the Trust.

**4. Office -** The office of the Trust shall be at 457 Swanson Rd, Ranui, Waitakere City, or at such other address as the trustees from time to time determine.

**5. Trustees –**

- 5.1 The Trust shall have no fewer than seven (7) and no more than nine (9) trustees.
- 5.2 The initial trustees of the Trust shall be :
  
- 5.3 At each annual general meeting of the Trust the trustees for the ensuing year shall be selected by the owners of units at Earthsong, on the basis of one vote for each unit.
- 5.4 Not less than 75% of all trustees at any time shall be Earthsong unit owners.
- 5.5 Casual vacancies among trustees which occur between annual general meetings of the Trust may be filled by resolution of the remaining trustees.
- 5.6 The office of trustee shall become vacant if a trustee for the time being:
  - a. Dies; or

- b. Resigns office by notice in writing; or
  - c. Is adjudged bankrupt; or
  - d. Becomes a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
  - e. Is convicted of an indictable offence; or
  - f. Fails to attend three or more consecutive meetings of the trustees without the approval of the trustees or their chairperson.
- 5.7 A trustee may be removed from office by way of resolution of not less than 75% of Earthsong unit owners at a meeting convened for the purpose, on not less than 14 days' notice to all Earthsong unit owners and trustees.
- 5.8 Trustees shall retire after two years, but are eligible for reappointment.
- 5.9 The trustees may from time to time elect a chairperson.
- 5.10 The trustees may appoint a treasurer secretary or other officers as they see fit, whether from within or outside the trustees, for such term and on such conditions as the trustees think fit.
- 5.11 The trustees may from time to time appoint two or more of their number to form a sub-committee, which may also include such other members not being trustees as the trustees determine, to have such powers as are allocated to the sub-committee by the trustees.

## **6. Meetings –**

- 6.1 The trustees shall convene an annual general meeting not less than 15 months after the establishment of the Trust, and once in each calendar year thereafter, to consider an annual report from the trustees and the Trust's annual accounts, to appoint an auditor, for the selection of trustees, and for any other general business. Such meetings shall be held on not less than 14 days' notice.
- 6.2 All Earthsong members shall be given notice of annual general meetings and entitled to attend and participate.
- 6.3 The trustees may meet at such other times as they determine, but not less frequently than once every three months, on such notice as they from time to time decide.

## **7. Conduct of meetings –**

- 7.1 A quorum for meetings of trustees shall be five.
- 7.2 At any meeting the trustees may appoint a chairperson/facilitator.
- 7.3 The procedure at all meetings of trustees and any other meetings held pursuant to this Trust deed, including decision-making, shall be the Group Decision-Making Process.
- 7.4 Minutes of all meetings of trustees, including any committee or sub-committee meetings, shall be kept and be circulated promptly to all trustees and all Earthsong members.
- 7.5 Prior to relevant decisions being made by the trustees, any trustee who may have an actual or potential conflict of interest in connection with any undertaking in which the Trust is or may become involved, other than a conflict arising simply out of the trustee being a member and/or unit owner of Earthsong, shall disclose the nature and extent of that trustee's interest to the other trustees, and shall not take any part

whatever in any deliberations or decisions of the trustees concerning the matter.

## **8. Control of funds –**

- 8.1 The trustees shall cause proper books of account to be kept in which shall be kept full true and complete accounts of the affairs and transactions of the Trust. The books of account shall be kept at the Trust's office or at such other place or places as the trustees think fit and shall always be open to the inspection of any trustee or Earthsong unit owner and any other person or professional adviser appointed by the trustees (or any one of them).
- 8.2 At the end of each financial year a Profit and Loss Statement and Balance Sheet shall be prepared.
- 8.3 The annual accounts shall be audited by someone competent to audit who shall not be one of the trustees and who shall be appointed annually.
- 8.4 All funds received by the Trust will be paid into such trading bank or savings bank account or credit union account as the trustees shall from time to time appoint as the account or accounts of the Trust.
- 8.5 The trustees shall from time to time determine who shall have authority to sign cheques and other banking documents on behalf of the Trust.
- 8.6 No trustee or any person associated with a trustee shall participate in or materially influence any decision made by the Trust in respect of payment to or on behalf of that person of any income of any of the kinds referred to in Section 65(2) of the Income Tax Act 1976. Any such income paid shall be reasonable and relative to that which would be paid in an arms-length transaction.
- 8.7 A copy of the end of year Profit and Loss Statement and Balance Sheet and audit report shall be posted to each trustee at least seven (7) days prior to the Annual General Meeting. A copy shall also be available on request to any Earthsong member.

## **9. Financial Issues –**

**NO PRIVATE PECUNIARY PROFIT FOR ANY INDIVIDUALS ;  
RESTRICTIONS, EXCEPTIONS, AND INFLUENCE**

- 9.1 All funds and assets of the Trust shall be applied within New Zealand towards furthering the exclusively charitable objects, aims and purposes.
- 9.2 No private pecuniary profit shall be made by any person involved in this Trust, except that:
  - (a) any trustee, officer or member may receive full reimbursement for all expenses properly incurred in connection with the affairs of the Trust;
  - (b) the Trust may pay reasonable and proper remuneration to any trustee, officer or servant of the Trust in return for services actually rendered to the Trust;

- (c) any trustee, officer or member may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that person or by any firm or entity of which that person is a member, employee or associate in connection with the affairs of the Trust;
- (d) any trustee, officer or member may retain any remuneration properly payable to them by any company or undertaking with which the trustee, officer or member has acted in any capacity whatever, notwithstanding that that trustee, officer or member's connection with that company or undertaking is in any way attributable to their connection with the Trust.

9.3 The trustee and any committees or sub-committees, in determining all reimbursements, remuneration and charges payable in the terms of the foregoing clause or of any of the kinds referred to in section CC 1, subpart CD and sections CE 1, CE 3, CF 1, CG 1 and CH 3 of the Income Tax Act 1994, shall ensure that the restrictions imposed by the following clause are strictly observed:

- (a) PROVIDED ALWAYS and notwithstanding anything contained or implied in this deed, any person who is –
  - (i) a settlor, trustee or member of the Trust; or
  - (ii) a shareholder or director of any company carrying on any business of the Trust; or
  - (iii) a settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Trust; or
  - (iv) an associate person (as defined by the Income Tax Act 1994) of any such settlor, trustee, shareholder or director;

shall not, by virtue of that capacity be able to determine or materially influence in any way (whether directly or indirectly) whatsoever, the determination of :

- (a) the nature or the amount of any benefit or advantage or income; or
- (b) the circumstances in which such benefit, advantage or income is or is to be or is able to be afforded to, or received, gained, achieved, or derived

as a result of their employment by or involvement with the Trust, and such persons shall not participate in any deliberations and proceedings by which such benefit or advantage or income is being determined.

- (b) AND notwithstanding anything expressed or implied in this deed, no commercial transaction, including the relinquishing of assets, will be entered into unless, having regard to the terms and conditions of the loan or agreement
  - (i) payment by way of interest or rent shall not exceed current commercial rates;
  - (ii) receipts by way of interest or rent shall not be at less than current commercial rates; and
  - (iii) sale of Trust property will always be at current market value.

- (c) AND any member who is in any way interested or concerned directly in any property undertaking in which the Trust is or may be concerned or involved, shall disclose the nature and extent of their interest to the Trustees/Committee concerning any matter in which that person is or may be interested other than as a member of the Trust.

9.4 Professional account and influence: 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.

## **10. Common Seal –**

The Common Seal of the Trust shall be held in the custody of such person as shall be decided by the trustees and will be used only when authorised by a resolution of the trustees. When the Seal is used it shall be affixed to documents only in the presence of and accompanied by the signatures of two trustees.

## **11. Indemnity of Trustees -**

11.1 No trustees of these presents shall be liable for any loss other than loss attributable to his or her own dishonesty or to the wilful commission by him or her of an act known by him or her to be a breach of trust and in particular no trustee shall be bound to take any proceedings against any co-trustee for any breach of trust committed or alleged to have been committed by such co-trustee.

11.2 The trustees shall from time to time and at all times be indemnified by and out of the Trust property from and against all costs charges losses damages and expenses sustained or incurred by them or in or about the execution and discharge of their office or in or about any claim demand action proceeding or defence at law or in equity in which they may be joined as a party.

## **12. Alterations and Additions to Trust Deed –**

The trustees may alter, add to or cancel any provisions of this Trust deed by unanimous resolution, endorsed by not less than 75% of Earthsong unit owners at a meeting of Earthsong convened for the purpose, PROVIDED THAT:

- (a) Notice of the proposed change is included in the notice calling the meeting;
- (b) The meeting may amend the proposed change;

- (c) No alteration, addition or cancellation will be made to these rules that is in conflict with:
- (i) The aims of the Trust;
  - (ii) The charitable nature of the Trust;
  - (iii) The Charitable Trusts Act 1957;
  - (iv) The conditions of any exemption granted by the Inland Revenue Department.

**13. Winding Up -**

- 13.1 The Trust may be wound up by unanimous resolution of the Trustees provided that such resolution is confirmed by not less than 75% of Earthsong unit owners at a subsequent general meeting called for that purpose, held not sooner than the 28<sup>th</sup> day and not later than the 42<sup>nd</sup> day after the date on which the resolution so to be confirmed was passed.
- 13.2 In the event of winding up the surplus assets of the Trust will be distributed to another charitable group or groups within New Zealand which have charitable objects aims similar to those of this Trust, to be determined by the Trust at or before the time of winding up, or in default thereof by a Judge of the High Court of New Zealand.

**14. Incorporation –**

The Trust shall be incorporated as a Trust under Part II of the Charitable Trusts Act 1957.

**15. Definitions –**

In this trust deed the following definitions shall apply :

**“Earthsong”** means the unincorporated society known as the Earthsong Eco-Neighbourhood at 457 Swanson Rd Ranui, and (where the context requires) the development at that address.

**“Group Decision-Making Process”** means the meeting and decision-making processes used by Body Corporate No. 2105417.

**“Earthsong member”** means a full or associate member of Earthsong.