



A handwritten signature in blue ink, appearing to read "J. G. O'Regan".

J. G. O'REGAN  
Solicitor  
Brandons

## CERTIFICATE OF INCORPORATION

of

### OTARI-WILTON'S BUSH TRUST (AK/1138965)

**This is to certify that OTARI-WILTON'S BUSH TRUST was incorporated under the Charitable Trusts Act 1957 on the 14th day of May 2001.**



A handwritten signature in black ink, appearing to read "Neville Harris".

Neville Harris  
Registrar of Incorporated Societies  
23 May 2001

DATED

13 March

2001

---

Certified true copy of original

*J. G. O'Regan*

.....  
J. G. O'REGAN  
Solicitor  
Brandons

TRUST DEED

OF

OTARI-WILTON'S BUSH TRUST

---

BRANDONS  
SOLICITORS  
WELLINGTON

## OTARI-WILTON'S BUSH TRUST

### INDEX

1.	Background	Page 1
2.	Definitions	1
3.	Establishment of Trust	2
4.	Name of Trust	2
5.	Office of Trust	2
6.	Purposes of Trust	2
7.	Membership of Trust	4
8.	Termination of Membership	5
9.	Patron	5
10.	Annual General Meetings	5
11.	Special General Meetings	6
12.	Procedure for General Meetings	6
13.	Trust Board	7
14.	Powers of Trust Board	8
15.	Incorporation of Trust	9
16.	Variation of Trust Deed	10
17.	Trustees' Interests	10
18.	Responsibility of Trustees	11
19.	Winding Up	12
	The Schedule : Trustees' Procedural Rules	16

**OTARI-WILTON'S BUSH TRUST**

THIS DEED is made this 13 day of March 2001

**PARTIES:**

**IAN CALDERWOOD FLEMING**, Retired Medical Practitioner

**JOHN ATHOL SWANN**, Retired Accountant

**JOHN WYNDHAM DAWSON**, Botanist

**MARGARET CHETWIN**, Manager

**GLENN MILLAR DENBY**, Accountant

**MARGARET JEAN CRIMP**, Botanist

**GILLIAN REID ROSS**, Community Worker

**SANDRA STELFOX CLARKE**, Librarian

**HELEN MARY WAUGH**, Retired Teacher

all of Wellington

(referred to in this Deed as "the Founding Trustees")

**1. BACKGROUND:**

- 1.1 The Otari Native Botanic Garden and Wilton's Bush Reserve ("Otari-Wilton's Bush") situated in the suburb of Wilton in Wellington City is a native botanic garden of national and international significance and reputation and an important remnant of Wellington's original forest cover. It is managed by the Wellington City Council.
- 1.2 The Founding Trustees, having an interest in New Zealand flora and fauna in general and in the protection, conservation and enhancement of Otari-Wilton's Bush in particular, have resolved to establish a Charitable Trust ("the Trust") for the purposes set out later in this Deed.
- 1.3 This Deed is entered into to give effect to the resolution of the Founding Trustees and to provide for the governance and control of the Trust.

**2. DEFINITIONS**

2.1 In this Deed, unless the context otherwise requires –

- (a) “Otari-Wilton’s Bush” means the Otari Native Botanic Garden and Wilton’s Bush Reserve.
- (b) “The Founding Trustees” means the parties to this Deed.
- (c) “Trust Board” means the Board established by clause 13 of this Deed.
- (d) “Trustees” mean the persons from time to time being members of the Trust Board.
- (e) “Trust Fund” means the donations of the Founding Trustees to establish the Trust and all monies, investments, donations, bequests, grants and property which the Trustees may receive purchase or otherwise acquire for the purposes of the Trust.
- (f) “The Council” means the Wellington City Council.
- (g) “Organisation” means any incorporated or unincorporated body.

### **3. ESTABLISHMENT OF TRUST**

3.1 The Founding Trustees, in order to establish the Trust, have each donated \$10.00 for the purposes of the Trust and acknowledge that they hold those donations (together with all other monies and property from time to time constituting the Trust Fund) upon the trusts and with the powers set out in this Deed.

### **4. NAME OF TRUST**

4.1 The name of the Trust shall be “OTARI-WILTON’S BUSH TRUST”.

### **5. OFFICE OF TRUST**

5.1 The office of the trust shall be in such place in Wellington City as the Trust Board may from time to time determine.

### **6. PURPOSES OF THE TRUST**

6.1 The purposes of the Trust are –

- 6.1.1 To educate the local and wider community in New Zealand flora, thereby fostering public awareness and appreciation of native plants and of the environmental importance of their protection, conservation and rehabilitation and promoting the unique botanic diversity of Otari-Wilton's Bush.
- 6.1.2 In furtherance of that principal purpose –
- (a) To provide educational opportunities for public participation through talks, guided tours and seminars;
  - (b) To support the Council in the development, restoration and enhancement of Otari-Wilton's Bush and to seek to ensure the protection in perpetuity of its natural heritage and environmental values;
  - (c) To encourage study, teaching and research in all aspects of New Zealand flora and in matters related to Otari-Wilton's Bush;
  - (d) To foster an appreciation of the history of Otari-Wilton's Bush and of the people, both Maori and European, who, by their preservation and nurturing of the native bush environment, established and enhanced Otari-Wilton's Bush;
  - (e) To assist in the public use and enjoyment of Otari-Wilton's Bush and to disseminate information of events and activities at Otari-Wilton's Bush;
  - (f) To promote links with conservation, environmental and ecological Organisations;
  - (g) To act as a firm advocate for Otari-Wilton's Bush and to act as an independent watchdog group, prepared to lobby and negotiate on any matters likely to affect Otari-Wilton's Bush.
  - (h) To do all such other things as will in the opinion of the Trust Board further any of the foregoing purposes.

6.2 The foregoing purposes are intended to be charitable within the meaning of that word in the Income Tax Act 1994. If at any time it should become necessary to restrict such purposes in order to preserve the right of the Trust to exemption from income tax (or any other tax) then the Trustees shall have power by unanimous resolution to restrict such purposes to the extent necessary to preserve the charitable nature of the Trust.

## 7. MEMBERSHIP OF THE TRUST

7.1 Any person who or Organisation which supports the purposes of the Trust may, subject to the approval of the Trust Board, become a member of the Trust.

7.2 There shall be three categories of membership :

7.2.1 Corporate membership – which is open to any Organisation. A corporate member shall be entitled to appoint a representative to attend General Meetings of the Trust and to vote on its behalf at any such General Meeting.

7.2.2 Ordinary membership – which is open to any individual person or to any group of two or more members of a family.

7.2.3 Life membership – which may be conferred on any person who by virtue of his or her –

- ◆ outstanding service to the Trust; or
- ◆ outstanding contribution to the protection conservation or rehabilitation of New Zealand flora; or
- ◆ outstanding record as a researcher of or an educator in New Zealand flora; or
- ◆ outstanding contribution to the conservation or enhancement of Otari-Wilton's Bush

- merits special recognition by the Trust. Conferment of life membership shall be by election at an Annual General Meeting of the Trust on the prior recommendation of the Trust Board.

7.3 The Trust Board may from time to time fix the annual subscription payable by corporate members and by ordinary members. For this purpose the Trust Board may create sub-categories of membership with differential rates of subscription (for example, but not by way of limitation, junior members, family members, pensioner members, unwaged members, student members and "not for profit" Organisations). No subscription will be payable by life members.

## **8. TERMINATION OF MEMBERSHIP**

8.1 The membership of corporate and ordinary members of the Trust will terminate on failure to pay the annual subscription within six months of its due date.

8.2 Any member may resign his, her or its membership at any time by notice in writing to the Trust Board.

8.3 The membership of any member of the Trust may be terminated if it is resolved by a majority of three quarters of the Trust Board that it is not in the best interests of the Trust that such member remain a member of the Trust.

## **9. PATRON**

9.1 A patron of the Trust may be elected at an Annual General Meeting of the Trust on the prior recommendation of the Trust Board and, if so elected, shall hold office until the next Annual General Meeting when he or she shall be eligible for re-election.

9.2 The patron shall be entitled to attend and to vote at General Meetings of the Trust.

## **10. ANNUAL GENERAL MEETINGS**

10.1 An annual general meeting of the Trust shall be held each year. The first annual general meeting shall be held within 12 months of the date of this Deed. Subsequent annual general meetings shall be held not later than 3 months after the annual balance date of the Trust.



10.2 The annual general meeting shall conduct the following business –

- (a) receive the minutes of the previous annual general meeting and any special general meeting held since the previous annual general meeting;
- (b) receive the Trust's financial statements for the preceding year;
- (c) receive a report from the Trust Board;
- (d) elect members of the Trust Board for the ensuing year;
- (e) consider and decide any matter which may properly be brought before the meeting.

## **11. SPECIAL GENERAL MEETINGS**

11.1 A special general meeting may be convened at any time by the Trust Board and shall be convened by the Trust Board if requisitioned to do so in writing by not less than 15 members of the Trust. Any such requisition shall state in general terms the business for which the meeting is requisitioned.

11.2 The prescribed notice of a special general meeting shall state in general terms the business for which the meeting is convened and only the business so stated shall be discussed at that meeting.

## **12. PROCEDURE FOR GENERAL MEETINGS**

12.1 In this clause 12 "general meeting" includes both an annual general meeting and a special general meeting.

12.2 Not less than fourteen days written notice of each general meeting shall be given to all members of the Trust. 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.

12.3 Ten members of the Trust present personally or by proxy or fifty per cent of the members, whichever is the less, shall constitute a quorum for a general meeting. A member that is an Organisation shall be deemed to be personally present if it is represented at the meeting by its duly appointed representative.

- 12.4 The Chairperson of the Trust Board or the Chairperson's nominee shall chair each general meeting.
- 12.5 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 over the age of 18 years shall have one vote. Voting shall be by show of hands. If the voting is tied, the motion shall be lost.
- 12.6 Any member unable to attend any general meeting may appoint in writing a proxy (who need not be a member) to vote on his or her behalf at such meeting.

### **13. TRUST BOARD**

- 13.1 There shall be a Board of Trustees ("the Trust Board") which shall consist of such number of Trustees (not being less than five) as the Trust Board shall from time to time resolve. The Founding Trustees shall constitute the first Trust Board and shall hold office until the first Annual General Meeting of the Trust.
- 13.2 Trustees shall be elected to office at each Annual General Meeting of the Trust. Any person who is a member of the Trust shall be eligible to be elected as a Trustee.
- 13.3 Every Trustee shall hold office until he or she –
- (a) resigns that office by notice in writing to the Trust; or
  - (b) dies; or
  - (c) is declared bankrupt; or
  - (d) without leave of the Trust Board is absent from all meetings of the Trust Board for a period of not less than six months; or
  - (e) does not stand for re-election to office at any Annual General Meeting of the Trust; or
  - (f) fails to gain re-election to office at any Annual General Meeting of the Trust; or
  - (g) is guilty, in the opinion of a majority of members of the Trust Board, of grave misconduct likely to reflect unfavourably upon or to damage the reputation of the Trust.

- 13.4 In the case of clauses 13.3(e) and 13.3(f) the Trustee shall cease to hold office as such immediately following the Annual General Meeting at which he or she has not stood for re-election to office or has failed to gain re-election to office.
- 13.5 Any casual vacancy in the membership of the Trust Board may be filled by the Trust Board. Any Trustee so appointed shall hold office until the next Annual General Meeting of the Trust.
- 13.6 If at any time the number of Trustees shall be reduced below five, the Trust Board may act to fill vacancies on the Trust Board but may not otherwise act.
- 13.7 The Trust Board shall have absolute management and entire control of the Trust Fund and may from time to time make such rules and regulations not being inconsistent with the purposes of the Trust and the provisions of this Deed as it may deem necessary or expedient for the management of the Trust Fund.
- 13.8 The procedure of the Trust Board shall be regulated in accordance with the provisions contained in the Schedule to this Deed. The Trust Board shall have power to amend by resolution the provisions in the Schedule whether in whole or in part but no amendments shall be permitted which in any way affect the charitable status of the Trust.

#### **14. POWERS OF TRUST BOARD**

##### **14.1 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 Trust Board may exercise in order to carry out its charitable purposes are as follows:

- (a) to use the Trust Fund as the Trust Board thinks necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisers, 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 personal property and any rights or privileges which the Trust Board thinks necessary or expedient for the purpose of attaining the purposes 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; and
- (c) To purchase, take on lease, sell or otherwise dispose of any land (but only if sanctioned by a unanimous resolution of the Trust Board).
- (d) to carry on any business; and
- (e) to invest surplus funds of the Trust in such manner as the Trust Board sees fit; and
- (f) to borrow or raise money from time to time with or without security and upon such terms as the Trust Board thinks fit (but only if sanctioned by a unanimous resolution of the Trust Board); and
- (g) to seek, accept and receive donations, subsidies, grants, endowments, gifts and bequests both in money and in kind for all or any of the charitable purposes of the Trust and to carry out any trust or stipulation attaching or relating to any such donations, subsidies, grants, endowments, gifts or bequests; and
- (h) to do all things as may from time to time appear necessary or desirable for or conducive to the attainment of the charitable purposes of the Trust.

#### **14.2 Employment:**

Under clause 14.1(a) the Trust Board may employ as agents, officers and staff persons who are members of the Trust (but excluding members of the Trust Board).

### **15. INCORPORATION OF TRUST**

- 15.1 The Trust Board may at any time at its discretion and at the expense of the Trust incorporate the Trust under the provisions of Part II of the Charitable Trusts Act 1957.

- 15.2 If and when the Trust becomes so incorporated, the Trust Board shall provide a common seal for the Trust which shall be affixed by the authority of the Trust Board to any document requiring execution by the Trust. Every such affixation shall be performed in the presence of and accompanied by the signatures of not less than two Trustees and shall be sufficient evidence of the authority to affix such seal; no person dealing with the Trust shall be bound or concerned to see or enquire as to the authority under which any document is sealed and in whose presence it has been sealed.
- 15.3 If the Trust has not been incorporated pursuant to clause 15.1, any document requiring execution by the Trust shall be signed by the authority of the Trust Board by not less than two Trustees; any document so signed shall bind the Trust.

## **16. VARIATION OF TRUST DEED**

- 16.1 It shall be lawful for the Trustees, on the passing of a unanimous resolution of those present and entitled to vote at a properly constituted meeting of the Trust Board called for the purpose, to revoke or vary or add to any of the provisions of this Deed (except this clause 16.1) so long as any such revocation, variation or addition does not impinge upon the exclusively charitable nature of the Trust and has received the prior approval of the Inland Revenue Department. No such revocation, variation or addition shall be valid or effectual until ratified by a three-quarters majority of the members of the Trust present and voting at a subsequent general meeting of the Trust.
- 16.2 A Deed of Variation shall be executed by the Trustees to formally record any such revocation, variation or addition.
- 16.3 The provisions of this clause 16 are not applicable to the Schedule which is governed by clause 13.8.


dishonesty or to the wilful commission or omission by her or him of any act known by her or him to be a breach of trust.

**19. WINDING UP**

19.1 The Trust may be wound up at any time (i) on the passing of a resolution to wind up carried by a unanimous resolution of the Trustees present and voting at a meeting of the Trust Board called for that specific purpose and (ii) the ratification of such resolution by a three-quarters majority of the members of the Trust present and voting at a special general meeting of the Trust called for that specific purpose.

19.2 Upon a winding up for any reason the surplus assets and funds of the Trust after payment of all liabilities shall be disposed of to such charitable purpose or purposes in New Zealand as may be resolved by the Trustees or, in default of a resolution of the Trustees, as the High Court may direct pursuant to Section 27 of the Charitable Trusts Act 1957 (or any enactment in amendment thereof or in substitution therefor).

**SIGNED** by the said )  
**IAN CALDERWOOD FLEMING** )  
as Founding Trustee in the presence of: )

  
.....

WITNESS:  
Signature:.....



Full Name:.....

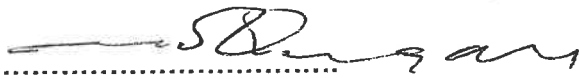
Occupation:..... **John Gerard O'Regan**  
**Solicitor**

Address:..... **Wellington**  
.....

**SIGNED** by the said )  
**JOHN ATHOL SWANN** )  
as Founding Trustee in the presence of: )

  
.....

WITNESS:  
Signature:.....



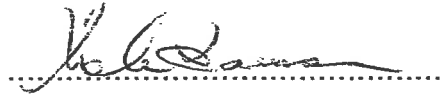
Full Name:..... **John Gerard O'Regan**

Occupation:..... **Solicitor**  
**Wellington**

Address:.....

.....

**SIGNED** by the said )  
**JOHN WYNDHAM DAWSON** )  
as Founding Trustee in the presence of: )



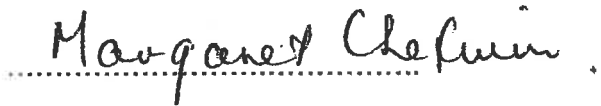
WITNESS:  
Signature:.....



Full Name:.....  
Occupation:.....  
Address:.....

John Gerard O'Regan  
Solicitor  
Wellington

**SIGNED** by the said )  
**MARGARET CHETWIN** )  
as Founding Trustee in the presence of: )



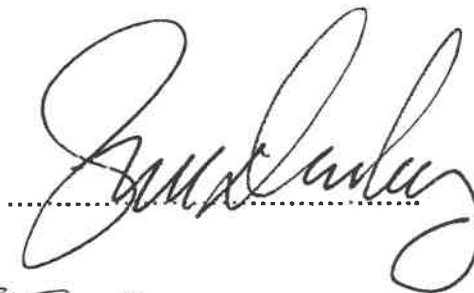
WITNESS:  
Signature:.....



Full Name:.....  
Occupation:.....  
Address:.....

John Gerard O'Regan  
Solicitor  
Wellington

**SIGNED** by the said )  
**GLENN MILLAR DENBY** )  
as Founding Trustee in the presence of: )



WITNESS:  
Signature:.....



Full Name:.....  
Occupation:.....  
Address:.....

John Gerard O'Regan  
Solicitor  
Wellington

SIGNED by the said )  
MARGARET JEAN CRIMP )  
as Founding Trustee in the presence of: )

*Margaret Jean Crimp*

WITNESS:

Signature: *John Gerard O'Regan*

Full Name: .....

Occupation: *John Gerard O'Regan*

Solicitor

Address: *Wellington*

.....

SIGNED by the said )  
GILLIAN REID ROSS )  
as Founding Trustee in the presence of: )

*Gillian Reid Ross*

WITNESS:

Signature: *John Gerard O'Regan*

Full Name: .....

Occupation: *John Gerard O'Regan*

Solicitor

Address: *Wellington*

.....

SIGNED by the said )  
SANDRA STELFOX CLARKE )  
as Founding Trustee in the presence of: )

*Sandra Stelfox Clarke*

WITNESS:

Signature: *John Wyndham Dawson*

Full Name: *John Wyndham Dawson*

Occupation: *Retired Botanist*

Address: *24 Newton Street,  
Coffers Down, Wellington 6000*



SIGNED by the said )  
HELEN MARY WAUGH )  
as Founding Trustee in the presence of: )

*H. M. Waugh*  
.....

WITNESS:

Signature: *John Dawson*  
.....

Full Name: *John Wyndham Dawson*  
.....

Occupation: *Retired Pastor*  
.....

Address: *24 Winton St*  
*Godley Drive, Wellington 6012*  
.....

## THE SCHEDULE

### TRUSTEES' PROCEDURAL RULES

1. The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Except where specified otherwise in this Deed, questions arising at any meeting shall be decided by a majority of votes and every decision so made shall be binding on all the Trustees. In the case of an equality of votes the Chairperson shall have a second or casting vote.
2. Meetings may be held by teleconference or such other means of at-distance intercommunication as the Trustees may from time to time decide.
3. The quorum for meetings of Trustees shall be three if there are seven or less Trustees otherwise not less than half the number of Trustees shall constitute a quorum.
4. A Trustee who is unable to attend a meeting of the Trustees may appoint another Trustee to be her or his proxy to vote on her or his behalf at such meeting. The appointment shall be in writing. The absent Trustee shall not constitute part of a quorum but shall otherwise be deemed to be present at such meeting.
5. The Trustees shall out of their number appoint a Chairperson to preside at their meetings and determine the period for which the Chairperson is to hold office, but if no such Chairperson is elected, or if at any meeting the Chairperson is not present the Trustees present may choose one of their number to be the Chairperson for that meeting.
6. The Trustees may appoint one of their number to be Secretary of the Trust Board. The Secretary may be appointed on such terms and conditions and with such reasonable remuneration (if any) as the Trustees think fit.
7. The Trustees may appoint one of their number to be Treasurer of the Trust Board. The Treasurer may be appointed on such terms and conditions and with such reasonable remuneration (if any) as the Trustees think fit.

8. The Trustees shall cause to be kept minutes of all their meetings and any minute or extract from any minute purporting to be signed by the Chairperson or Acting Chairperson of the meeting at which such minute was confirmed shall be sufficient evidence without further proof of the matters therein contained.
9. The annual balance date of the Trust will be the 31<sup>st</sup> day of March.
10. In each year, and not less than one week prior to the Annual General Meeting of the Trust, the Trustees shall hold a meeting which shall be called the Trust Board's Annual General Meeting and the audited accounts of the Trust shall be placed before this meeting for approval. The first Trust Board's Annual General Meeting shall be held within twelve (12) months from the date of this Deed and each subsequent Trust Board's Annual General Meeting shall be held not later than three months after the annual balance date of the Trust.
11. A resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trust Board.
12. All moneys payable to the Trustees may be paid to any one of them or to any secretary, accountant or other officer appointed by the Trustees for the purpose and the receipt of such Trustee, secretary, accountant or other officer shall be a full and sufficient discharge for all moneys so payable.
13. A Trustee may be paid reasonable out of pocket expenses incurred with the authority of the Trustees.
14. The Trustees shall cause proper books of account to be kept showing all assets comprising the Trust Fund and all moneys received and disbursed by the Trustees and shall prepare annual accounts which shall be audited by a person who shall be appointed by the Trustees (but who shall not be a Trustee).
15. The Trustees shall keep such account or accounts at a Bank or Banks of their choosing as they may from time to time decide; and cheques shall be drawn, signed and endorsed by such person or persons as the Trustees shall from time to time direct.

16. The Trustees may from time to time establish a committee or committees and may delegate to any committee so established such of its powers and functions as it sees fit. The Trustees may co-opt to any such committee persons who are not Trustees but every such committee shall have at least one Trustee among its membership.