



Environmental Legal Assistance Fund

Deed of Funding

Her Majesty the Queen in right of New Zealand acting by and through the Minister for the Environment

Summary of Details		
Proceedings	Environment Court / Board of Inquiry:	
MFE Ref No	AF-EL-	
Contract number		
Application Date		
Expiry Date		
Funding (plus GST if any)	Maximum \$	
Recipient's details	Full legal name:	
	Trading name (if different):	
	Physical address:	
	Address for correspondence:	
	MAIN CONTACT PERSON	ALTERNATIVE CONTACT
	Name: Title: Phone: Mobile: Fax: Email:	Name: Title: Phone: Mobile: Fax: Email:
Type of organisation		
Description of Proceedings		
Lawyer(s)		
Expert witness(es)		

PURPOSE OF DOCUMENT	<ol style="list-style-type: none"> 1 The Environmental Legal Assistance Fund (ELA Fund) provides not-for-profit groups with financial assistance to advocate for an environmental issue of public interest in resource management cases at the Environment Court and at Boards of Inquiry appointed under the section 146 of the Resource Management Act 1991. 2 ELA Fund funding is subject to Parliamentary appropriation of funds each year and is administered for the Minister by the Ministry for the Environment. 3 The Recipient has sought funding from the ELA Fund for expenses incurred in relation to the Proceedings specified above. 4 This document records the amount of Funding that has been approved by the Minister, and the terms and conditions upon which the Funding will be made available.
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Minister for the Environment details	MAIN CONTACT PERSON	ALTERNATIVE CONTACT
	Name: Title: Phone: Fax: Email:	Name: Title: Phone: Fax: Email:
	Physical address: Environment House, 23 Kate Sheppard Place, Wellington 6011 PO Box: PO Box 10362, The Terrace, Wellington 6143 City: Wellington	

SECTION 1: SPECIAL CONDITIONS

The following Special Conditions are in addition to the Standard Terms and Conditions in Section 2 of this Deed.
In the event of a conflict between the Special Conditions and the Standard Terms and Conditions, the Special Conditions shall prevail.

SECTION 2: STANDARD TERMS AND CONDITIONS

These provisions apply between HER MAJESTY THE QUEEN in right of New Zealand, acting by and through the Minister for the Environment ("Minister" or "Crown") and the Recipient. If any other provision is to apply or prevail it must be agreed to in writing by the Minister and be attached to this document.

General contractual provisions	1	Duration: This Deed will start on the execution date and will finish on the Expiry Date.
	2	Entire Deed: This Deed (including any attachments) contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Deed was executed, save as permitted by law.
	3	Variation: No variation of this Deed will be of any force or effect unless it is in writing and signed by the parties to this Deed.
	4	Governing Law and Jurisdiction: This Deed is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.
	5	Severability: If any part of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any part of this Deed is illegal, unenforceable or invalid, that part is to be treated as removed from this Deed, but the rest of this Deed is not affected.
	6	Survival: Any clauses of this Deed intended to survive will survive and continue in force after expiry or termination of this Deed.
	7	Force Majeure: Neither party will be liable to the other for any failure or delay in performance of this Deed due to any circumstance reasonably beyond the control of the affected party.
	8	Disputes: If a party believes that there is a dispute concerning this Deed, that party will promptly notify the other party giving details of the dispute. If it is not resolved within 5 working days by the specified contact persons, it will be immediately referred to senior representatives of the parties. If they do not resolve it within 10 working days, the parties must, in good faith and acting reasonably, do their best to resolve the dispute through mediation with an independent mediator. If the parties do not agree on a mediator then the mediator will be appointed by the President of the New Zealand Law Society. Unless the parties agree otherwise, the mediator's fee and other costs of the mediation itself will be shared equally between the parties but the parties will each pay their own costs of preparing for and participating in the mediation.
	9	Approval: Subject to clause 10, where either party to this Deed is required to give its approval for any matter under this Deed it shall not be unreasonably or arbitrarily withheld or delayed.
	10	Any approval sought under Section 2, Funding, clause 13 and Section 2, Recipient's obligations/rights, clauses 21(b) and 36, is solely within the discretion of the Ministry and there can be no presumption either that approval will be given, or that it will be unconditional.
	11	Interpretation: In the interpretation of this Deed, unless specifically otherwise stated: <ul style="list-style-type: none">a) "Deed" means the Summary of Details, and Sections 1 and 2 (inclusive) including any appendices, addenda or schedules appended to this Deedb) "Expenses" means the fees charged by the named lawyers and/or expert witnesses for the preparation work for the hearing of the Proceedings and/or attendance at the Court or Board specified in the Summary of Details, and the costs of those persons which are directly associated with the hearing of the

	<p>Proceedings (such as photocopying and travel).</p> <p>c) "Funding" means amounts payable by the Ministry to the Recipient pursuant to this Deed up to the maximum amount specified in the Summary of Details</p> <p>d) "Including" and similar words do not imply any limitation</p> <p>e) "Minister" includes the Ministry for the Environment</p> <p>f) "Ministry" means the Ministry for the Environment</p> <p>g) "Proceedings" means the proceedings described in the Summary of Details</p> <p>h) "Summary of Details" means the details set out at the beginning of this Deed</p> <p>i) Amounts are in NZ\$ and exclude GST and any other relevant taxes</p> <p>j) Headings are to be ignored</p> <p>k) If the Recipient comprises more than one person, each of those person's liability to the Minister is joint and several</p> <p>l) No executive or prerogative power or right, or any immunity, of the Crown is affected by this Deed</p> <p>m) References to a party or a person includes any form of entity and their respective successors, assigns and representatives</p> <p>n) Time is of the essence.</p>
<p>Funding</p>	<p>12 The Ministry agrees to provide the Funding for the Expenses, provided that funds are available. Funds may not be available if the Parliamentary appropriation is reduced or eliminated or the New Zealand Government directs that funds will not be made available.</p> <p>13 The Funding will be paid directly to the lawyers or expert witnesses named in the Summary of Details, on behalf of the Recipient in accordance with all the conditions of this Deed, unless the Recipient obtains prior written consent from the Ministry to be reimbursed for the lawyers' or expert witnesses' expenses directly.</p> <p>14 The Ministry will pay the invoiced amount by the 20th day of the calendar month following the calendar month in which the Ministry receives any invoices and/or receipts.</p> <p>15 There shall be no obligation on the Ministry to provide funding for expenses incurred in the Proceedings which do not comply with the conditions of this Deed.</p> <p>16 The Ministry's agreement to provide Funding shall not be regarded as an indication that any future funding will be granted by the Ministry. Any further application by the Recipient, whether in respect of the Proceedings, or any other proceedings, will be assessed by the Ministry under its then current policies and guidelines and having regard to the resources and other priorities at that time.</p> <p>17 This Deed does not create any form of agreement between the Ministry and the named lawyers and/or expert witnesses.</p> <p>18 It is intended that any named lawyers and/or any named expert witnesses will prepare and present a complete case for the Proceedings to which this Deed relates. Funding must not be used to pay security for costs, an award of costs, or be used to finance an action pursuing costs.</p> <p>19 If the Recipient is awarded or receives costs in respect of the Proceedings (whether those costs are awarded in the Proceedings or settled between parties outside of the Proceedings) the Ministry may:</p> <p>a) where the Recipient has not yet been paid all or part of the Funding, reduce the Funding to be paid to the Recipient by an amount up to the value of the costs awarded to or received by</p>

	<p>the Recipient; and/or</p> <p>b) where the Recipient has been paid all or part of the Funding, require all or part of the Funding to be repaid to the Ministry within 30 Working Days, but only by an amount up to the value of the costs awarded to or received by the Recipient.</p> <p>The Ministry acknowledges that generally any reduction to or repayment of the Funding (as the case may be in (a) and/or (b)) of this clause 19 will be proportionate to the actual total costs the Recipient has incurred in the Proceedings.</p> <p>Despite the acknowledgement above, any decision as to the amount of any reduction or repayment is at the Ministry's sole discretion. The amount may range from nil up to a full reduction or repayment up to the value of the costs awarded to or received by the Recipient.</p>
<p>Recipient's obligations/rights</p>	<p>The Recipient:</p> <p>20 Use Funding correctly: must only use the Funding for expenses incurred in respect of the retention of services of the named lawyers and expert witnesses in relation to the Proceedings. The Ministry reserves the right to recover any funding which is misappropriated or not spent in accordance with this Deed;</p> <p>21 Personnel/named lawyers and expert witnesses:</p> <p>a) will only involve appropriate persons in the Proceedings and ensure they use due care and skill;</p> <p>b) will not change the named lawyers and/or expert witnesses without first obtaining written approval from the Ministry;</p> <p>c) must inform any named lawyers and/or any named expert witnesses of the conditions of the Funding, in particular the intention for any named lawyers and/or any expert witnesses to prepare and present a complete case for the Proceedings to which this Deed relates;</p> <p>22 Conduct of Proceedings: must act in accordance with good practice in preparing and presenting the case to the Court or Board. In particular, the Recipient must:</p> <p>a) comply promptly and fully with any directions of the Court or Board, and</p> <p>b) avoid conduct likely to impede the prompt resolution of the Proceedings, including failing to proceed with a hearing at the time arranged for it by the Court or Board, or failing to give adequate notice of abandonment of Proceedings;</p> <p>23 Proceedings for costs: in the event of an application for security for costs or any costs proceedings, will make the information in the form set out in Appendix 1 of this Deed available to the Court;</p> <p>24 Proceedings priority: will give the Proceedings appropriate priority over other activities and not divert resources away from the Proceedings which may cause delays in its completion;</p> <p>25 Keep Minister informed: must keep the Minister properly informed (in writing, and in electronic form if requested by the Minister) about progress and important issues in relation to the Proceedings, including about the following:</p> <p>a) any change which occurs after signing the application form in relation to:</p> <p>(i) the Proceedings (including by way of an application by the Recipient, by direction of the Court or Board, or by the joining of any other party) or any such change has been or is discussed, proposed or made;</p> <p>(ii) any agreements reached between the parties to the Proceedings that the Recipient becomes aware of;</p> <p>b) if the Recipient applies for, is awarded, or reaches a settlement</p>

	<p>on costs, and of the amount of any such costs even if the application, award or settlement is made after the expiry of this Deed;</p> <p>c) any change in financial circumstances of the Recipient, particularly, but not limited to, a change in relation to sources of funding available to the Recipient in respect of the Proceedings;</p> <p>26 Provide reports: must provide to the Ministry:</p> <p>a) within six months of execution of this deed and by 1 June in each year thereafter, until a decision has been made or settlement reached, an update on the progress of the Proceedings;</p> <p>b) within one month of receiving the decision of the Court or the Board a report, in the form attached as Appendix 2;</p> <p>27 Submit invoices: must ensure that invoices or receipts submitted for payment by the Ministry:</p> <p>a) are associated with the Proceedings and limited to the Expenses;</p> <p>b) relate to expenses incurred from the Application Date to the Expiry Date;.</p> <p>c) are received by the Ministry prior to the Expiry Date;</p> <p>28 No carry overs: accepts that eligibility for payment of funding will be lost if claims for payment and related information required is not given to the Minister in accordance with the conditions of this Deed;</p> <p>29 Keep records: must keep accounts (to Generally Accepted Accounting Practice standards) and other records, and have a system acceptable to the Minister, which enables prompt and accurate verification of any matter in relation to the Proceedings, particularly about how the Funding has been or will be used, and what expenditure by item has been made. Records must be retained and available for review, copying and use by the Minister's representatives at any time during, and for at least 12 months after completion of, the Proceedings;</p> <p>30 Allow access: will allow the Minister's representatives free access at reasonable times to any property and information related to the Proceedings for verification and other reasonable purposes;</p> <p>31 No Minister authority: does not have the Minister's authority to say or do anything for the Minister;</p> <p>32 No endorsement: accepts that the Minister does not necessarily endorse the Proceedings, will not represent that the Minister endorses the Proceedings, but will appropriately acknowledge Funding in all publications and publicity about the Proceedings (the form and content of which acknowledgement the Minister may specify);</p> <p>33 Ministry publicity: irrevocably authorises the Minister to disclose to anyone at any time any information in relation to the Proceedings (including on the Ministry's website on the Internet);</p> <p>34 Comply with law: will comply with all New Zealand, and each relevant jurisdictions, laws, codes and standards;</p> <p>35 Minister not liable: accepts that the Minister will not be liable (in contract or tort, including negligence) to the Recipient for any direct or indirect damage, loss or cost in relation to the Proceedings; and</p> <p>36 No assignment: may not assign any benefit or burden of this Deed without first obtaining written approval from the Ministry.</p>
<p style="text-align: center;">Minister's obligations/rights</p>	<p>The Minister:</p> <p>37 Authority to incur costs: authorises the Recipient to incur the costs specified in this Deed for the purposes specified in this Deed on the understanding that if all the conditions of this Deed are complied with, the Ministry will pay the invoiced or receipted amount in the manner specified in this Deed;</p>

	<p>38 Review/audit Proceedings: may, or may have the Minister's representatives, review or audit anything at any time in relation to the Proceedings, or the results or outcome of the Proceedings; and</p> <p>39 Action for failures: may suspend or cancel this Deed, or withhold any payment, if:</p> <ul style="list-style-type: none">a) the Recipient is in breach, or has failed to properly or promptly perform, any of its obligations and fails to remedy the situation to the Ministry's satisfaction within 5 working days after written notice from the Ministry of the breach or failure;b) the Recipient is or becomes insolvent or bankrupt, or is in or goes into receivership or liquidation, or Ministry believes the Recipient is generally in financial difficulty which, in the reasonable opinion of the Ministry reduces the Recipient's ability to perform its obligations under this Deed;c) any direct or indirect change of ownership or control of the Recipient occurs which in the reasonable opinion of the Ministry reduces the Recipient's ability to perform its obligations under this Deed; ord) the Minister reasonably considers that anything in relation to the Proceedings:<ul style="list-style-type: none">(i) is bringing the ELA Fund or the Minister into disrepute; or(ii) has become undesirable in light of the objectives of the ELA Fund or the Minister; ore) Any change in relation to the Proceedings (including any change of the kinds described in Section 2, Recipient's obligations/rights, clause 6).
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EXECUTION

SIGNED as a deed on: _____ 201_

[The date that the Deed is signed is the date at which both parties have signed the Deed i.e. the date the final party signed the Deed. This date must be handwritten on both original copies of the Deed by the party who signs the Deed last.]

Signed and delivered as a deed by *Steven Long*,

Manager, Funds Management

on behalf of the **Ministry for the Environment**

Signature

In the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signed as a deed pursuant to the Incorporated Societies Act 1908 by affixing the common seal of
[Recipient] Incorporated in the presence of:

Signature

Print Full Name
(Person authorised to affix common seal)

Signature

Print Full Name
(Person authorised to affix common seal)

[This deed must be executed by an Incorporated Society incorporated under the Incorporated Society Act 1908 in accordance with that Act and the Incorporated Society's rules.]

APPENDIX 1: INFORMATION TO MAKE AVAILABLE TO THE COURT

IN AN APPLICATION FOR SECURITY OF COSTS OR ANY COSTS PROCEEDINGS

"We, _____ have received a grant of up to \$ _____ (exclusive of GST) from the Ministry for the Environment, Environmental Legal Assistance Fund. The condition of this grant is that it is only available for the lawyers/expert witnesses named in the Deed of Funding for our involvement in _____. This funding is only available for these specified expenses and is not available for security for costs or costs awards.

To assist with transparency and accountability, the grant under the Deed of Funding is generally paid by the Ministry directly to the lawyers and/or expert witnesses named in the Deed, so the invoices from those people will generally be addressed to the Ministry. The Deed also provides that the Recipient may be required to refund to the Ministry all or a proportion of this grant if costs are awarded to the Recipient in these proceedings."

APPENDIX 2: ENVIRONMENTAL LEGAL ASSISTANCE FUND FINAL REPORT FORM

The Final Report Form can be downloaded from <http://www.mfe.govt.nz/withyou/funding/ela-fund-report-form.pdf>