

HER MAJESTY THE QUEEN
in right of New Zealand,
acting by and through the
Minister for the Environment

Environmental Legal Assistance Fund
Deed of Funding

Court proceedings:

MFE Ref No: RA-PR-81-

Contract Number:

Duration of agreement: From execution date to 30 June 2010

Fund Amount: maximum \$ (inclusive of GST)

Funding in accordance with this agreement is payable for expenses incurred from to by persons and in relation to proceedings specified in clause 1 of this agreement. This agreement will start on the execution date and will finish on .



Ministry for the
Environment
Manatū Mō Te Taiao

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Parties

HER MAJESTY THE QUEEN in right of New Zealand, acting by and through the Minister for the Environment ('Minister', 'Ministry' or 'Crown')

, being an **Incorporated Society under the Incorporated Societies Act 1908**, ('the recipient').

Background

- A. The recipient has made an application to the Ministry for a grant of funding under the Environmental Legal Assistance Fund.
- B. The recipient is **a/an** in **Environment Court appeal proceedings**. This matter involves .
- C. The recipient is an **incorporated society** pursuant to the Incorporated Societies Act 1908, and its objectives include .
- D. The Ministry has decided to grant the recipient's application for funding on the following terms.

By this Deed the following conditions are agreed to:

Funding

1. The Ministry agrees to provide funding up to (inclusive of GST) for the following expenses incurred in respect of

the retention of the services of:

- Lawyer,

and the following expert witnesses:

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2. All funding specified in this agreement includes goods and services tax and any other relevant taxes.
3. All funding will be paid directly to the lawyers or expert witnesses as named above, on behalf of the recipient in accordance with all the conditions of this agreement. The recipient will be reimbursed for lawyers' or expert witnesses' expenses, in accordance with all the conditions of this agreement, only if the prior written consent of the Ministry has been obtained.
4. This agreement to provide funding shall not be regarded as an indication that any future funding will be granted by the Ministry and any further application by the recipient, whether in respect of the proceeding referred to in clause 1, or any other proceeding, will be assessed by the Ministry under the policies and guidelines then applying and having regard to the resources and other priorities at that time.

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5. This agreement to provide funding does not create a contract, or any form of agreement, between the Ministry and the named lawyers and/or expert witnesses.
 6. There shall be no obligation on the Ministry to provide funding for expenses incurred in the specified Court proceedings which do not comply with the requirements of this agreement. Funding from this grant cannot be used to pay security for costs, an award of costs, or be used to finance an action pursuing costs.
 - 6A. 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, or those limited aspects of the proceedings as specified in clause 1 of this deed.
 - 6B. If the recipient is awarded costs in the proceedings, the Ministry may reduce the amount of the grant of funding proportionately to reflect the value of costs awarded. If costs are awarded after the Ministry has paid the recipient, the recipient will refund such part of the funding as the Ministry considers appropriate up to the value of the costs awarded.

Duration

7. Funding in accordance with this agreement is payable for expenses incurred from to **30 June 2010** by persons and in relation to proceedings specified in clause 1 of this agreement. This agreement will start on **the execution date** and will finish on **30 June 2010**.

Obligations of the recipient

8. In preparing and presenting the case before the Court the recipient must act in accordance with good practice, and specifically the recipient must avoid conduct likely to impede the prompt resolution of proceedings, including failing to proceed with a hearing at the time arranged for it by the Court, or failing to give adequate notice of abandonment of proceedings, and must comply promptly and fully with any directions of the Court.
9. The recipient:
 - Must inform the Ministry in writing immediately if any change occurs after signing the application form in relation to:
 - the proceedings (including by way of an application by the recipient, by direction of the Court, or by the joining of any other party) has been or is discussed, proposed or made;
 - any agreements reached between parties to the proceedings that the recipient becomes aware of;
 - the financial circumstances of the recipient occurs or has occurred, particularly, but not limited to, a change in relation to sources of funding available to the recipient;

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- Shall not change the named lawyers and/or expert witnesses without first obtaining written approval from the Ministry.
10. In the event of an application for security of costs or any costs proceedings, the recipient will make the following information available to the Court:
- “We, _____ have received a grant of up to _____ (inclusive 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 this Deed of Funding for our involvement in _____. This funding is only available for these specified expenses and is not available for security of costs or costs awards.
- "To assist with transparency and accountability, the grant under this Deed of Funding is generally paid by the Ministry directly to the lawyers and/or expert witnesses named in this 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."
- 10A. The recipient must inform the Ministry if it applies for or is awarded costs, and of the amount of any such award even if the application or award is made after the expiry of this agreement.
11. The recipient must provide the Ministry with invoices and/or receipts for any expenses claimed under this agreement.
12. Any invoices and/or receipts submitted to the Ministry for payment under this agreement must comply with the following conditions:
- Any invoices and/or receipts must be associated with the proceedings specified in this agreement and must be limited to the preparation work for the court hearing and/or court attendance of lawyers and/or expert witnesses, and the costs directly associated with the court hearing specified in this agreement (such as photocopying and travel).
 - Any invoices and/or receipts must relate to expenses incurred from _____ and to **30 June 2010**.
- Funding in accordance with this agreement is payable for expenses incurred from _____ to 30 June 2010 by persons and in relation to proceedings specified in clause 1 of this agreement. This agreement will start on the execution date and will finish on 30 June 2010.
- Any invoices and/or receipts must be received by the Ministry prior to **30 June 2010** being the date on which this agreement finishes.
13. The recipient must report to the Ministry in a format approved by the Ministry.
- Within one month of receiving the decision of the court the recipient must report to the Ministry on the form attached as Appendix 1 to this Deed of Funding.
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- If the proceeding has not been heard by the court or no decision has been made in the case, or if a settlement is being negotiated or has been reached, the recipient is required to send the Ministry an update on progress of the case within six months of receiving this Deed and thereafter by June 1 each year.
14. The recipient will produce and maintain records to the extent and in a form which enables prompt and accurate verification of all matters in relation to this agreement.
 15. The recipient shall not transfer or assign any right or obligation derived from this agreement without first obtaining written approval from the Ministry.
 16. Any approval sought under clauses 3, 9 and/or 15 in this agreement 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.
 17. The recipient must inform any named lawyers and/or any named expert witnesses of the terms and conditions of funding provided under this agreement, 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, or those limited aspects of the proceedings as specified in clause 1 of this deed (refer clause 6A).
 18. The recipient accepts that the Ministry will not be liable (in contract or tort including negligence or in any other respect) to the recipient for any indirect damage, loss or cost in relation to this agreement.
 19. The recipient accepts that the recipient does not have the Ministry's authority to say or do anything on the Ministry's behalf.
 20. The recipient accepts that in interpreting the recipient's obligations, time is of the essence.

Obligations and rights of the Ministry

21. The Ministry authorises the recipient to incur the costs specified in clause 1 of this agreement for the purposes specified in this agreement on the understanding that if all the conditions of this agreement are complied with, the Ministry will pay the invoiced or received amount in the manner specified in this agreement.
 22. The Minister will pay the grant (to the extent approved) from the ELA Fund to the Recipient if:
 - The recipient complies with this Deed; and
 - Funds are available. The 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.
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23. If the Ministry accepts that the relevant service has been performed to the Ministry's satisfaction, and the invoices and/or receipts for the relevant service delivered comply with the requirements in this agreement, the Ministry will pay the invoiced amount directly to the named lawyer or named expert witness on behalf of the recipient, or the recipient directly as applicable, by the 20th day of the calendar month following the calendar month in which the Ministry receives any invoices and/or receipts.
24. If:
- the recipient breaches, or fails to properly or promptly perform any of the recipient's 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, or
 - any change in relation to the proceedings (including any change of the kinds described in clause 9) is proposed or made; or
 - 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 the agreement, or
 - the recipient is or becomes insolvent, is in or goes into receivership or liquidation, or the 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 agreement,
- then the Ministry may:
- withhold any payment otherwise due in accordance with this agreement until the matter is resolved to the Ministry's satisfaction,
 - suspend or cancel (in whole or in part) this agreement by written notice to the recipient.
25. The Ministry may at any time perform any review or audit of the service obtained through this agreement, or the results or outcome of the proceedings.

Liability for failure or delay

26. Neither party will be liable to the other party for any failure or delay in performance of this agreement due to any circumstances reasonably beyond the control of the affected party.

Dispute resolution

27. If either party believes that there is a dispute concerning this agreement, that party will promptly notify the other party giving details of the dispute. The contact persons for each party will in good faith use prompt efforts to resolve the dispute themselves.

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28. If the dispute is not resolved within 5 working days by the contact persons for each party specified in this agreement, it will immediately be referred to senior representatives of the parties. If these representatives are not able to resolve the matter within 10 working days of being so referred, it will be submitted to arbitration as governed by the Arbitration Act 1996. The arbitration will take place in Wellington if requested by the Ministry.
29. Clauses 27 and 28 do not apply to any decision made under clauses 9 or 15.

Approval

30. Subject to clause 16, where either party to this agreement is required to give its approval for any matter under this agreement it shall not unreasonably or arbitrarily withhold or delay approval.

Severability

31. If any part of this agreement is held by any court or administrative body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining parts of the agreement which shall remain in force.

Crown powers

32. Unless specifically otherwise stated no executive or prerogative power or right, or any immunity, of the Crown is affected by this agreement.

Expenses

33. For the purposes of this agreement, the term 'expenses' means the fees charged by the named lawyers and/or expert witnesses for the preparation work and/or court attendance, and the costs of those persons which are directly associated with the court hearing (such as photocopying and travel) for the Court proceedings specified in this agreement.

Contact details

34. Contact details for the parties are shown in Schedule 1 to this agreement.

Schedule 1 - Contact details for parties

Ministry details

| | | | |
|--------|--------------------------------|------------------------------|--------------------------|
| Name: | Alisdair Hutchison | Name of alternative contact: | Steve Merito |
| Title: | Co-ordinator | Title: | Adviser |
| Phone: | (03) 365 9267 | Phone: | (03) 365 9556 |
| Fax: | (03) 365 9560 | Fax: | (03) 365 9560 |
| Email: | Alisdair.hutchison@mfe.govt.nz | Email: | steve.merito@mfe.govt.nz |

Address for correspondence:

Ministry for the Environment
Level 7, Te Waipounamu House
158 Hereford Street
CHRISTCHURCH

or

Ministry for the Environment
PO Box 1345
CHRISTCHURCH

Recipient details

| | |
|------------------------|------------------------------|
| Name of contact: | Name of alternative contact: |
| Position in the group: | Position in the group: |
| Phone: | Phone: |
| Fax: | Fax: |
| Email: | Email: |

Address for correspondence:

Execution

This Deed is executed on the date it is signed by the recipient of funding.

Signed by the Deputy Chief Executive)
 on behalf of the **Minister for the**)
Environment) _____
 Deputy Chief Executive

Date:

in the presence of:

Witness signature:

Witness name:

Occupation:

Address: Ministry for the Environment, 23 Kate Sheppard Place,
Wellington

Signed by:)
 :)
 by affixing its common seal) _____
 Signatory

Signatory

Date:

and signed in the presence of:

Witness signature:

Witness name:

Occupation:

Address:

*Note: the appropriate number and position of witnesses may be specified in the **Society's/Trust's** rules (if applicable).*