

Constitution & Trust Deed

HOHEPA HOMES



Table of Contents

1	HISTORY AND BACKGROUND
2	NAME
3	OBJECTS
4	FUNCTIONS OF THE TRUST BOARD
5	APPOINTMENT, REMOVAL AND RETIREMENT OF TRUSTEES
6	POWERS OF THE TRUST BOARD
7	PROCEEDINGS OF THE BOARD
8	FINANCIAL REPORTING AND AUDIT
9	APPOINTMENT AND POWERS OF REGIONAL BOARDS
10	REMUNERATION AND PAYMENTS TO TRUSTEES
11	INDEMNIFICATION OF TRUSTEES AND REGIONAL BOARD MEMBERS
12	VARIATION OF TRUST
13	WINDING UP OR DISSOLUTION
14	DEFINITIONS



THIS CONSTITUTION AND TRUST DEED is intended to take effect on the date of its approval by the High Court pursuant to Sections 33 and 34 of the Charitable Trusts Act 1957.

1. HISTORY AND BACKGROUND

- 1.1 Hohepa Homes was established as a charitable trust by a Trust Deed dated 24 September 1956 ("the 1956 Deed"). Originally called "NZ Trust Board for Home-Schools for Curative Education", the trust's objects were to provide residential, educational and vocational services and facilities for persons of all ages with an intellectual disability. The facilities were to be conducted in accordance with the curative education principles advocated by Dr. Rudolf Steiner.
- 1.2 The trust was incorporated as a Board under the provisions of the Religious, Charitable and Educational Trusts Act 1908 on 27 September 1956. A new Constitution was adopted in 1992 by way of an administrative scheme under Sections 33 and 34 of the Charitable Trusts Act 1957 ("the 1992 Deed").
- 1.3 Hohepa Homes originally established in Hawkes Bay currently administers a school in Hawkes Bay and residential communities in Hawkes Bay, Canterbury and Auckland.
- 1.4 The Trustees consider that the administrative provisions of the Trust are again in need of review and the 1992 Deed does not reflect changes to the basis of governance in each region in which the Trust operates and the changed constitutional role of the Trustees.

The Trustees have unanimously resolved that subject to approval of the High Court pursuant to the Charitable Trusts Act 1957 the Deed set out herein now be adopted as the Constitution of Hohepa Homes.



2. NAME

The name of the Trust shall be HOHEPA HOMES and the Board shall be known as HOHEPA HOMES TRUST BOARD.

3 OBJECTS

The objects of the Trust shall be:

- 3.1 To establish and maintain homes, schools, clinics, farms, workshops, laboratories, and hostels anywhere in New Zealand for the curative education and social therapy of intellectually disabled¹ children young persons and adults and to carry on and extend at such establishments educational work among such children, young persons and adults based on the principles of the late Dr Rudolf Steiner.
- 3.2 To assist in the education, upbringing, training and starting in life of young persons or adults who are or have been residents.
- 3.3 To support any form of research into diseases or other medical or physical disability of children and young persons.
- 3.4 To establish and support or assist in any way associations, institutions or trusts which have as an object the provision of benefits to intellectually handicapped persons.

4. FUNCTIONS OF THE TRUST BOARD

- 4.1 The Trust Board shall be responsible for the governance of Hohepa Homes and for overseeing all of the facilities services and activities of the Trust throughout New Zealand.
- 4.2 The Trust Board shall in addition and without limitation carry out the following primary functions.
 - (a) The appointment and removal of members of the Trust Board.

Footnote

1. The legal constitution used the word 'handicapped'. The Trust Board recognizes 'disability' as a more appropriate terminology for today

- (b) The establishment and appointment of Regional Boards and the delegation to such Boards of responsibilities, authorities and powers as provided in clauses 9.1 to 9.4 inclusive of this Deed.
- (c) The approval of any borrowing by any Regional Board by way of mortgage or loan including the granting of any overdraft or credit facilities with any Bank.
- (d) The legal ownership of the trust property and assets and ensuring that all assets are applied to the objects of the trust.
- (e) The formulation and adoption of missions and values, strategic direction and policies for the organisation as a whole.
- (f) Monitoring statutory compliance, financial reporting and risk management on a national basis.
- (g) The determination and monitoring of policies for the admission of persons to services and quality standards for the delivery of services in each region.

5. APPOINTMENT, REMOVAL AND RETIREMENT OF TRUSTEES

- 5.1 The Board may from time to time determine the criteria for the qualifications, basis of appointment and the term of appointment of trustees. The Board shall comprise not fewer than five (5) nor more than twelve (12) members.
- 5.2 The persons in office as Trustees at the date of approval of this Constitution by the High Court shall continue in office until their retirement or removal in accordance with these provisions.
- 5.3 Every Trustee shall prior to appointment sign an acknowledgement that such Trustee is familiar with the objects of the Trust and will in performing the duties of a Trustee act in accordance with this Constitution.
- 5.4 A Trustee shall hold office until such Trustee:
- (a) resigns office by notice in writing to the Board;
 - (b) is disqualified from being an officer of a charity under the provisions of the Charities Act 2005;

- (c) is removed under clause 5.5 or 5.6;
 - (d) retires under clause 5.7.
- 5.5 The Board may by ordinary resolution remove a Trustee who:
- (a) has been absent from three (3) consecutive meetings of the Board without leave of absence from the Chairperson;
 - (b) is adjudged bankrupt or is convicted of an offence punishable by more than two (2) years imprisonment.
- 5.6 A Trustee may be removed by a Special Resolution of the Trustees passed at a special meeting of the Trustees called to consider the resolution. The Trustee concerned shall be given reasonable notice of the intention to move the resolution and shall be given an opportunity of being heard.
- 5.7 On the date of the Annual Meeting convened pursuant to clause 7.6 one third of the Trustees then in office or (where the number of trustees is not a multiple of three) such lesser number closest to one third shall retire. The Trustees to retire shall be those who have been longest in office since their last appointment. As between Trustees appointed in the same year the Trustees to retire (unless they otherwise agree among themselves) shall be determined by lot.
- 5.8 A retiring Trustee shall be eligible for re-appointment, but a decision to re-appoint anyone who has already served on the Board for a continuous period of nine (9) years shall require a Special Resolution.
- 5.9 The Trust Board may as it thinks fit establish one or more sub-committees for any purpose and may co-opt persons who are not Trustees to serve on such sub-committees.
- 5.10 A Trustee may with the consent of the Board appoint an alternate to represent that Trustee's views at the meeting in the Trustee's own

absence. The alternate shall count towards a quorum but shall not have the right to vote.

6. POWERS OF THE TRUST BOARD

In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956 the Board or, if so delegated pursuant to Clause 9.3, the Regional Board is empowered:

- 6.1 To purchase, sell, lease, hire, exchange or acquire any real or personal property and any rights or privileges and to develop and maintain any land or buildings forming part of the Trust.
- 6.2 To borrow money on such terms and conditions and for such purposes as it thinks fit and to guarantee the repayment of money borrowed for the purposes of the Trust. The Trust Board may give security for repayment over the whole or any part of the trust fund even if some part given as security does not benefit from the borrowing.
- 6.3 To invest any moneys held by the Board in such manner as the Board considers desirable.
- 6.4 To effect insurance in such manner, against such risks and for such sums as the Board considers appropriate.
- 6.5 To print and publish material to publicise the nature of the work done and the principles under which the Board operates.
- 6.6 To accept donations, legacies, subscriptions or fees paid or transferred to the Board and to apply them either for the general purposes of the Trust or for any special purpose designated by the donor.
- 6.7 To act as trustee of any funds to which a service user may be entitled or in which a service user may have a beneficial interest.

- 6.8 To enter into any arrangement or contract with any individual, government department or corporate body.
- 6.9 To do all such other things as are incidental or conducive to the attainment of the objects of the Trust.

7. PROCEEDINGS OF THE BOARD

- 7.1 The Trust Board shall meet at least twice in each calendar year and may regulate its meetings as it thinks fit. The quorum for meetings shall be half the number of Trustees. Decisions shall be made by a majority of members present and voting. In the case of equality of votes the Chairperson shall (except in the case of a Special Resolution) have a casting as well as a deliberative vote.
- 7.2 The Trust Board shall record the proceedings of its meetings and the decisions made in its Minute Book which shall be available at the Board's office during business hours for inspection by any Board member.
- 7.3 The Chairperson or any two other members of the Board may, in writing, require a meeting of the Board to be convened.
- 7.4 Written notice shall be sent to each member at least fourteen days before each meeting of the Board provided that the proceedings shall not be invalidated by any irregularity in respect of such notice.
- 7.5 No Trustee or any "associated person" within the meaning of Section OD7 of the Income Tax Act 2004 shall vote or take part in or be present during the discussion of any matter in which such member has an interest whether personal or as a director or shareholder of any company or as a trustee of any trust with which the Board is dealing. Any such interest shall be declared at the first opportunity. Such member shall not materially influence any decision made by other members in respect of the payment to or on behalf of such member of any income, benefit or advantage whatsoever. Subject to these requirements a Trustee may

contract with the Board notwithstanding the possibility of a conflict of interest.

- 7.6 The Trust Board shall once in each calendar year within six months of the expiry of its Accounting Period, conduct an "Annual Meeting" for the purpose of:
- (a) The appointment of one of its members as Chairperson.
 - (b) The appointment of any replacement trustees or reappointment of any trustees who may retire by rotation.
 - (c) The appointment or re-appointment of an Audit Committee the composition of which shall include at least one person whether a Trustee or co-opted person who is a Member of The New Zealand Institute of Chartered Accountants.

Regional Board

- (d) The adoption of Financial Statements for the preceding accounting period.
 - (e) The appointment of an auditor for the ensuing year.
- 7.7 A resolution in writing signed by all the Trustees shall be as effective as if it had been passed at a meeting. Such a resolution may consist of several like documents each signed by one or more Trustees.
- 7.8 The Trust Board may as it thinks fit conduct any meeting by way of teleconference, video conference, or electronic mail. Decisions made at such meetings shall be recorded and transmitted by electronic mail as soon as practicable after the meeting. A member may with the consent of the Board participate in any ordinary meeting by teleconference.
- 7.9 The seal of the Board shall not be affixed to any instrument except pursuant to a resolution of the Board and shall be attested by any two trustees.

8. FINANCIAL REPORTING AND AUDIT

- 8.1 The Trust Board shall as soon as reasonably practicable after the end of each Accounting Period, prepare an Annual Report and Financial Statements relating to the affairs of the Trust during that period in accordance with accepted financial reporting standards and requirements.
- 8.2 The Board shall ensure that the Financial Statements of the Trust are independently audited by a member of the New Zealand Institute of Chartered Accountants appointed by the Board.
- 8.3 Within six (6) months after the end of each Accounting Period the Board shall send a copy of the Annual Report and audited Financial Statements to:
- (a) Each member of the Board and of each Regional Board; and
 - (b) Every person or organisation who the Board consider has made a substantial contribution to the work of the Trust during the Accounting Period or has a continuing interest in the work of the Trust; and
 - (c) Such other persons as the Board directs or the Charities Act requires.

9. APPOINTMENT AND POWERS OF REGIONALBOARDS

- 9.1 In any region of New Zealand where the Trust Board is providing facilities or services or wishes them to be provided, it may establish a Regional Board, to be known as "Hohepa Homes [name or region] Board", which shall be responsible for the provision of any or all facilities and services of the Trust and the conduct of other activities of the Trust in that region as the Trust Board shall determine.
- 9.2 The members of each Regional Board from time to time shall be appointed by the Trust Board, which shall prescribe policies and procedures regarding the composition of Regional Boards, the nomination of candidates for membership, the tenure and conditions of

service of members and the confirmation of the nominee of a member of a Regional Board as Chairperson of that Board.

- 9.3 The responsibilities and authority of each Regional Board shall be specified in a Delegation Agreement entered into between the Trust Board and the Regional Board. In the Agreement the Trust Board shall delegate to the Regional Board the powers necessary to carry out its responsibilities effectively, including without limitation powers to employ managers and staff, to purchase services, supplies and equipment, to receive funds from government agencies and donations from public and private entities and invest or spend the proceeds for purposes of the Trust, and to make financial commitments incurred in the day to day operations of the Regional Board. In the Agreement or in separate by-laws or regulations the Trust Board shall also prescribe limits, conditions and guidelines on the exercise of such powers by the Regional Board and by managers and staff acting under the authority of that Board. The Trust Board shall not delegate any of the primary functions set out in Clause 4.2.
- 9.4 The Trust Board shall periodically review the terms of each Delegation Agreement, and may at any time vary, suspend or revoke any of the responsibilities, authorities and powers specified therein and any limit, condition or guideline on the exercise of such powers.
- 9.5 The Chairperson of the Trust Board shall be entitled to attend and speak at any meeting of a Regional Board and may appoint another Trustee to attend any such meeting in place of the Chairperson. A copy of the agenda and board papers shall be sent by each Regional Board to the Chairperson. The Chairperson may require a meeting of the Regional Board to be convened and may include any matter in the agenda for such meeting.

- 9.6. The Minute Book of each Regional Board and its financial records shall be available during business hours for inspection by the Chairperson of the Trust Board or any person appointed by the Chairperson.
- 9.7 Regional Boards may regulate their meetings as they think fit. The provisions of Clauses 5.3 and 5.4 shall apply to members of Regional Boards and clauses 7.1 to 7.3 inclusive and 7.5, 7.7 and 7.8 shall apply to meetings of Regional Boards.
- 9.8 The Trust Board may remove any Regional Board or any member of a Regional Board by special resolution passed at a meeting of the Trust Board specially called to consider such resolution and of which the Chairperson of such Regional Board and the member concerned shall have been given reasonable notice. The notice shall also be given to all members of such Regional Board all of whom shall be given an opportunity of being heard at the meeting. In the event of the removal or dissolution of any Regional Board the Trust Board may assume the functions of such board for such periods as it thinks fit or may appoint a replacement Regional Board.

10. REMUNERATION AND PAYMENTS TO TRUSTEES

- 10.1 Trustees and members of each Regional Board shall be entitled to reimbursement of travelling and out of pocket expenses incurred in the conduct of duties.
- 10.2 The Trust Board may as it thinks fit establish the basis and maximum amounts to be paid to Trustees or Regional Board members as an allowance for attendance at meetings.
- 10.3 The Trust Board may as it thinks fit establish an honorarium to be paid to its Chairperson and impose limits on any honorarium proposed to be paid to the chairperson of a Regional Board.

- 10.4 The Trust Board may by way of Special Resolution appoint any Trustee or Regional Board member to perform services for the Trust and may agree to the payment of a fee that is reasonable and relative to the services.
- 10.5 Any allowance, honorarium, remuneration or fee for services paid to any Trustee or member of any Regional Board shall not exceed the amount which would be reasonably paid in an arms length transaction and shall not exceed limits prescribed by the Commissioner of Inland Revenue and/or the Charities Commission for the purpose of retaining the charitable status of the Trust.
- 10.6 Clause 7.5 shall apply to any decision made under Clause 10.3 or 10.4.

11. INDEMNIFICATION OF TRUSTEES AND REGIONALBOARD MEMBERS

- 11.1 Trustees and members of each Regional Board shall be entitled to be indemnified against all claims losses and expenses arising out of their duties and shall not be liable for loss other than as a result of that person's own dishonesty or the wilful commission of an act known or which should reasonably have been known was a breach of trust.
- 11.2 The care diligence and skill to be exercised by the Board or any Regional Board in exercising any power of investment shall not be that required of persons by Section 13C of the Trustee Act 1956 but shall at all times be the care diligence and skill that a person of business would exercise in the management of the affairs of others.

12. VARIATION OF TRUST

- 12.1 The Trustees may by supplementary deed or deeds authorised by Special Resolution alter, modify, add to, or cancel the provisions of this Trust Deed (including this present clause) in such manner and to such extent as in the opinion of the Trustees may be required to:
- (a) Enable the Trust to retain its tax exempt status as a charity under tax legislation and other laws from time to time applying in New Zealand.

- (b) Extend the powers of the Trustees or facilitate the administration of the Trust provided that no such alterations will be made that are in conflict with the objects or charitable nature of the Trust, the Charitable Trust Act 1957 and its amendments or the conditions of any exemption granted by the Inland Revenue Department.

13. WINDING UP OR DISSOLUTION

- 13.1 The Trust may be wound up by a resolution passed by a majority of not less than three-fourths of the members of the Board. Three months notice of intention to move such a resolution shall be given to members of the Board and of each Regional Board. If, after payment of all debts and liabilities, any surplus funds or assets remain these shall be transferred to some other charitable institution or institutions within New Zealand selected by the Board having objects of a similar nature to the objects of this Trust.

14. DEFINITIONS

“Accounting Period” means 12 months ending on 30th of June in each year or such other period and date as the Board shall fix.

“Annual Meeting” means a meeting of the Board convened as an Annual Meeting held within six months of the expiry of each Accounting Period.

“The Trust Board” and “The Board” means the corporate body comprising the Trustees for the time being appointed under clause 4.233(a).

“Chairperson” means the chairperson of the Board unless it is clear from the context that it is intended to refer to Chairperson of a Regional Board.

“Constitution” means the trusts powers and rules set out in this document which upon approval by the High Court shall govern the administration of the Trust in substitution for the 1992 Deed.

“Regional Board” means the Boards appointed by the Trustees pursuant to Clause 4.2 to administer facilities in Auckland, Canterbury and Hawkes Bay or any other facility established by the Board.

“Member” means a member of the time being of the Board or where the context admits a Regional Board.

“Special Resolution” means a resolution of the Board passed, other than by a teleconference meeting, by a two-thirds majority of all members (whether present or not). The Chairperson shall not have a casting vote on any such Special Resolution.

“The Act” means the Charitable Trusts Act 1957.

“The Charities Commission” means the Commission established by the Charities Act 2005.

“The Trust” means the charitable entity created by the 1956 Deed and known as “Hohepa Homes” to administer the property and assets held by the Trustees upon the terms of the 1956 Deed as amended by this Constitution.

“The Trustees” means the persons appointed under Clause 5 of this Constitution.

This Constitution was adopted by unanimous resolution of the Trust Board and approved by Order of the High Court at Wellington on 24 July 2007 under No. 2007-485-1263