

10/10/17

IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

CIV-2004-441-458

IN THE MATTER

of the Charitable Trusts Act 1957

AND

IN THE MATTER

of an application pursuant to Part III of that Act for approval of a scheme of charitable trust

BETWEEN

HAWKES BAY CHILDRENS HOME a charitable trust under the Charitable Trusts Act 1957

First Applicant

AND

BIRTHRIGHT (NAPIER) INCORPORATED an incorporated society under the Incorporated Societies Act 1908

Second Applicant

AND

FAMILYCARE (HB) INCORPORATED an incorporated society under the Incorporated Societies Act 1908

Third Applicant

AND

HER MAJESTY'S ATTORNEY-GENERAL for New Zealand

Respondent

ORDERS OF COURT

Sainsbury Logan & Williams
Solicitors
DX MP70039
NAPIER
Ref: SJ Webster

ORDERS OF COURT

Before Justice Wild

Upon reading the Originating Application, the Affidavits of Bryan Stuart King, Brian Guy Wilson and Dean Noel Hyde, the Memorandum of Counsel for the Applicant and the Report of the Attorney-General and upon hearing Stuart John Webster Counsel for the Applicant this Court orders that:

1. The annexed Scheme be approved pursuant to Part III of the Charitable Trusts Act 1957;
2. The Trustees' costs of and incidental to this Application be paid out of the trust fund;
3. The Attorney-General's costs in the sum of \$500.00 be paid out of the trust fund.

DATED this 30th day of August 2004.



(Deputy) Registrar
MELISSA MAXTED

To: The abovenamed Applicants

And To: The abovenamed Respondent

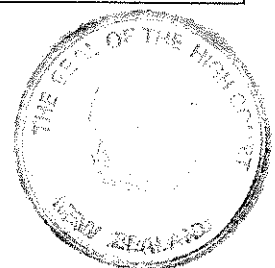


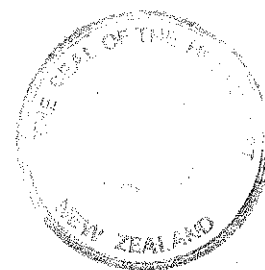
HAWKE'S BAY CHILDRENS HOLDING TRUST
(A Scheme under Part III Charitable Trusts Act 1957)

CHARITABLE TRUST DEED

Sainsbury Logan & Williams
Solicitors
Napier

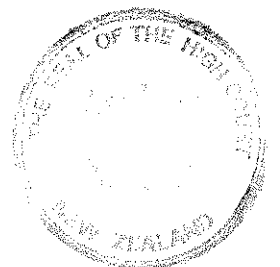
WAD6\HAW01071\17\Hawke's Bay Childrens Holding Trust Deed#1.DOC





Contents

| | |
|----|---|
| 1 | Declaration of trust |
| 2 | Objects of the trust |
| 3 | Appointment and removal of trustees |
| 4 | Proceedings of trustees |
| 5 | Distributions for charitable purposes |
| 6 | Trustees' powers |
| 7 | Charitable Status |
| 8 | Income, benefit or advantage to be applied to charitable purposes |
| 9 | Alteration of Deed |
| 10 | Liquidation (dissolution or winding up) of trust |





THIS TRUST DEED made the

day of

2004

PARTIES

- 1 **HAWKE'S BAY CHILDRENS HOME**, a charitable trust under the Charitable Trusts Act 1957 ("HBCH")
- 2 **BIRTHRIGHT (NAPIER) INCORPORATED**, an incorporated society under the Incorporated Societies Act 1908 ("Birthright")
- 3 **FAMILYCARE (HB) INCORPORATED**, an incorporated society under the Incorporated Societies Act 1908 ("Familycare")

BACKGROUND

- A HBCH, Birthright and Familycare have been operating independently as charitable organisations for some time.
- B Each of them has its own charitable objects. Those objects are similar in focus and are directed to the support and assistance of children and their families in Hawke's Bay.
- C Each has its own resources.
- D Each has resolved that a pooling and amalgamation of resources is likely to best achieve the financial stability, continuity of purpose and quality of assistance that each party has undertaken to achieve.
- E Each of the parties has resolved to pool those resources by transferring them to a trust designed to preserve, protect and make those resources available to assist in achieving the common objects of each of the parties and for that purpose making available to Birthright (HB) Child and Family Care Trust and any other body within Hawke's Bay of a similar nature and with similar objects to Birthright HB.

THIS DEED WITNESSES that the parties irrevocably declare and acknowledge, as follows:

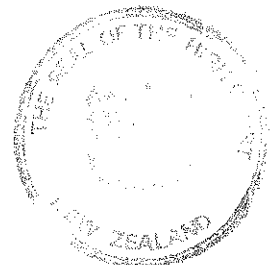
1 Declaration of trust

- 1.1 The trustees hold the sum of one hundred dollars (\$100.00) and all further money, property or other assets as may from time to time be added to the trust ("the trust fund") on the trusts and with the powers expressed or implied in this deed and that the trust be known as **Hawke's Bay Childrens Holding Trust** ("the trust").
- 1.2 It is declared that in the construction of this deed the plural number includes the singular and vice versa and the section headings appear as a matter of convenience.

2 Objects of the trust

The trust fund shall be held, protected, preserved and utilised for the benefit of the children and young adults in Hawke's Bay and for that purpose:

- (a) to provide education, support, assistance, advancement and betterment;



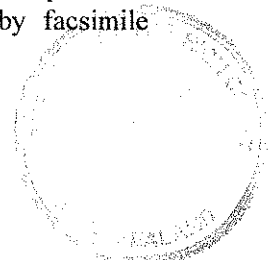
- (b) to provide advice, guidance and counselling;
- (c) to provide accommodation, material support and long term care;
- (d) to promote confidence and life skills;
- (e) to provide physical, mental and spiritual care;
- (f) to provide respite care and engage in social work;
- (g) to provide protection and prevent abuse and neglect;
- (h) to act as an advocate for the needs of children and young persons including prevention of abuse and neglect;
- (i) to assist and strengthen the families of such children and young persons in providing care in accordance with these objects.

3 Appointment and removal of trustees

- 3.1** The initial trustees shall comprise six trustees, four of whom shall be nominated by HBCCH and one each by Birthright and Familycare (respectively). The administration of the trust shall be under the control of the initial trustees, or such other persons as shall be appointed by the trustees to act as trustees.
- 3.2** Any trustee shall be entitled to resign by giving three months notice in writing, and, on receipt of such notice or on the death of any trustee, the remaining trustees shall within a period of six months of such notice, appoint a replacement trustee so that notwithstanding any temporary vacancy there shall always be a minimum of three trustees.
- 3.3** It is declared that in the exercise of the power to appoint any replacement or additional trustee as provided herein a resolution signed by a clear majority of not less than two thirds of the trustees shall be required.

4 Proceedings of trustees

- 4.1** The trustees shall elect a chairperson and shall hold meetings at such times and in such places as they shall decide and the chairperson shall have the right to call a meeting at any time by providing 14 days written notice to the trustees and providing further that the trustees shall meet at least twice in each year.
- 4.2** The trustees may appoint a secretary of the trust who shall maintain records of all resolutions and proceedings. Written notices signed by the secretary on behalf of the trustees shall be sufficient proof of any resolution or proceedings of the trustees, and such documents can be relied on without further evidence being sought.
- 4.3** The quorum for any meeting of trustees shall be four persons. All decisions of the trustees shall require a majority of four trustees.
- 4.4** A resolution signed by all of the trustees shall be binding and effectual as if passed at a meeting of trustees. A meeting conducted by teleconference shall be valid providing that prior written notice of the business to be transacted at such meeting shall have been provided to all trustees. Notices and resolutions may include written record sent by facsimile transmission.



- 4.5 The trustees shall be entitled and empowered to employ and to discharge such managers, employees, solicitors, accountants, investment advisers, agents or other persons as the trustees deem expedient for the purposes of inviting charitable organisations to make applications to the trust or for carrying out any of the objects of the trust, and to pay such fees or other remuneration as the trustees think fit.
- 4.6 Any payment made to any trustee, or to any person associated with any trustee, shall not be any more than such amount as is reasonable and relative to that which would be paid in an arm's length transaction for work carried out in connection with the trust and no trustee or person associated with any trustee shall participate in, or materially influence, any decision made on behalf of the trust in respect of the payment to or on behalf of that trustee, or associated person, of any income benefit or advantage whatsoever.
- 4.7 No trustee shall be liable for any loss suffered by the trust fund or by any beneficiary arising from any action or omission as trustees which is not attributable to the dishonesty or wilful commission or omission of any act known to be a breach of trust.
- 4.8 The trustees shall be indemnified out of the trust fund against all liabilities which they may incur in the exercise or attempted exercise of the trusts, powers, authorities and discretions vested in them and shall have a lien on and may use moneys forming part of the trust fund in pursuance of this indemnity.
- 4.9 This indemnity shall extend to any payments made to any person whom the trustees bona fide believe to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.
- 4.10 No trustee shall be liable for anything done or omitted to be done except in the case of fraud or other wilful misconduct on that Trustee's part.
- 5 Distributions for charitable purposes**
- 5.1 The trustees shall have the overall responsibility for the exercise of discretions to pay or apply the trust fund for charitable purposes.
- 5.2 The trustees may carry forward unexpended income in any year to a future year or years. The trustees may also set aside, from income, a reserve to continue any established pattern of grants and to meet fluctuations of income in future years and other contingencies. These powers are in addition to any other power or discretion the trustees may have to carry forward income or establish reserves.
- 6 Trustees' powers**
- The trustees shall, in the administration, management and in the investment of the trust fund, and in exercising their discretions to achieve the objects of the trust, have all the rights, powers and privileges of a natural person, and, subject to the provisions of this deed, may deal with the trust fund, or with any appropriated or partitioned part of the trust fund, as if the trustees were beneficially entitled to it, and may exercise all or any of the following powers, discretions and functions in addition to all other powers conferred by law:
- (a) resettle any part of the income or capital or specified fund on trust on such terms as they consider appropriate for any purpose consistent with the charitable purposes of the trust;
 - (b) vary the trust by providing such additional or supplementary powers as may be considered necessary or desirable for the proper administration thereof, providing



however, that no alteration or variation shall be made to the objects of the trust or be inconsistent with the charitable nature and purpose of the trust; and

- (c) notwithstanding anything herein contained or implied, no power or reservation, expressed or implied, in this deed shall authorise the trustees to do or suffer any act which does not further the charitable purposes of the trust and the declaration of charitable purposes in this deed shall, at all times, be paramount so as to exclude any act or omission which is or may be deemed to be not in accordance with such purposes.

7 **Charitable Status**

It is declared that the provisions and effect of the objects clause shall not be altered negated or otherwise modified on a basis which would result in the trust ceasing to be for charitable purposes within New Zealand.

8 **Income, benefit or advantage to be applied to charitable purposes**

8.1 **Application**

Any income, benefit or advantage shall be applied to the charitable purposes of the trust.

8.2 **Influence**

No trustee or person associated with a trustee shall participate in, or materially influence, any decision made by the trust in respect of the payment to or on behalf of that trustee or associated person of any income, benefit or advantage whatsoever, except where that income, benefit or advantage is derived from:

- (a) professional services to the trust rendered in the course of business charged at no greater rate than current market rates; or
- (b) interest on money lent at no greater rate than current market rates.

8.3 **Reasonableness required**

Any such income paid shall be reasonable and relative to that which would be paid in an arms length transaction (being open market value).

8.4 **Entrenchment**

The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

9. **Alteration of Deed**

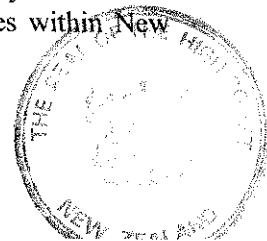
This deed may be amended by supplemental deed on a resolution passed by 75% of the trustees in attendance at a meeting called for the purpose provided that no such amendment shall be valid:

- (a) if it would make a fundamental change to this clause or destroy the charitable status of the trust; and
- (b) unless it has been approved by the Attorney-General and it does not result in a fundamental change to the objects of the trust.

In this clause "fundamental change" means such a change as would not have been within the contemplation of a person making a donation to the trust.

10. **Liquidation (dissolution or winding up) of trust**

If, for any reason whatsoever, the trust created by this deed shall be liquidated or shall otherwise shall cease and determine, the trust fund, or any part thereof remaining, shall, after payment of costs of liquidation, winding up and dissolution and payment of any debts of the trust, be given or transferred to trustees for carrying out charitable purposes within New



Zealand similar to those set out in this deed, or be applied to any such charitable purposes within New Zealand as the trustees may, by resolution, determine at or before the winding up, failure or dissolution (as the case may be). In default of this provision, then as may be determined by a Judge of the High Court of New Zealand on application by any trustee or trustees of the trust.

IN WITNESS this deed is duly executed.

SIGNED by)
HAWKE'S BAY CHILDRENS HOME)
by the affixing of its common seal in the)
presence of:)

Trustee

Trustee

SIGNED by)
BIRTHRIGHT (NAPIER) INCORPORATED)
by the affixing of its common seal in the)
presence of:)

SIGNED by)
FAMILYCARE (HB) INCORPORATED)
by the affixing of its common seal in the)
presence of:)

