

DATED

1999

BY

WAITEMATA HEALTH LIMITED

**DEED OF DECLARATION OF VARIATION OF CHARITABLE TRUST
WILSON HOME TRUST**

- E. By reason of changed medical treatments available and changed social conditions and changed treatment approaches available (to a more holistic approach, involving family, home, schools and social agencies rather than institutionalising children for long periods) the Wilson Home site and the facilities thereat and the Trust's assets and funds generally are now under utilised.
- F. As a result of the foregoing, the Trustee has resolved to vary the terms of the Trust in a manner consistent with the original intent of the Deed and so as better to utilise the Trust assets and funds.

NOW THEREFORE subject to the consent of the High Court of New Zealand (as a cy-pres modification to the Trust) and with effect from the date of the Court Order granting such approval (and not otherwise) the Trustee hereby agrees to vary the terms of the Trust in the manner set forth below. The Trustee records that for the purposes of convenience and future administration of the Trust, clauses in this Deed, although in many cases adaptation of the clauses in the original deed, have been repeated in full below, with the intention that with effect from the Court Order of approval, the provisions of the within Deed of Variation shall define exclusively and exhaustively the provisions of the Trust for all purposes for the future.

1. **Name**

The name of the Trust shall henceforth be **The Wilson Home Trust**.

2. **Class of Beneficiaries**

The authorised beneficiaries under the Trust shall henceforth be Children with Disabilities and/or their Families living anywhere in the area which was, in 1937, described as the Auckland Provincial District ("the Qualifying Area"); such Qualifying Area being shown on the map attached to this Order; and

For the purposes of this clause:

"Children" means persons 21 years of age or younger; and

“Disabilities” means physical impairment of the normal functions of the body or limbs, such defective condition being either congenital or acquired but not being solely a defect of the vital organs or solely a defect of the brain. (For the avoidance of doubt but without limiting the foregoing definition, such Disabilities should generally be of a duration exceeding 6 months; they may have multi-causes rather than just a single cause; but the primary disability should be physical and the cause should not solely be mental, arising solely from a defect of the brain); and

“Families” means parents, whanau, primary care givers and/or siblings.

For the avoidance of doubt the Trust shall not be obliged to offer treatment or assistance to every child or family coming within such qualifying criteria but the Trustee may determine as a matter of policy types of Disability which will be the subject of assistance by the Trust and types of Disability which for the time being will not be assisted.

3. **Types of assistance to be provided**

The Trust is an exclusively charitable trust and to the extent any of the purposes set forth in this clause should prove not to be charitable within the legal definition of that term, then such purposes shall automatically be prohibited to the Trustee and stricken from the authorised purposes hereunder. Subject to this qualification the overall purpose of the Trust is to apply its assets and funds generally to provide care and rehabilitation to Children with Disabilities living in the Qualifying Area and to provide respite and assistance to their Families and to work within the community living in the Qualifying Area to further such objectives. Accordingly in particular but not in limitation the following shall be authorised purposes (but none of the following shall be the exclusive object of the Trust at any time) namely:

- (a) Residential care for Children with Disabilities living in the Qualifying Area.
- (b) Provision of medical, dental and nursing services to such children.

- (c) The education, training, rehabilitation, physiotherapy treatment and enhancement of skills and quality of life of such children, with a view to assisting them to help overcome their disabilities and to live more normal lives.
- (d) The providing of residential accommodation for Families of Children with Disabilities either on a one off basis from time to time or for more indefinite longer periods including providing advice, nursing assistance, parent liaison and training for such families.
- (e) The undertaking of training and research into the treatment, assistance, rehabilitation and best practices for dealing with Children with Disabilities and the dissemination of such knowledge through training of staff, holding of conferences, publication of papers and sundry similar activities.
- (f) The co-operation with other service providers in the community having similar or overlapping objectives as the trust with a view to forming partnerships with such other service providers for the provision of assistance, services, the combining of knowledge, the better utilisation of resources and the maximisation of the effectiveness of the Trust's work generally to assist Children with Disabilities.
- (g) The acceptance of contracts from Health Authorities and other agencies for the provision of services to assist Children with Disabilities living in the Qualifying Area and their Families **PROVIDED** such contracts appear at the time of engagement, likely to be profitable.

4. Lake Road Site

- 4.1 The Trust's land in Lake Road is legally described as 5.1082 hectares more or less being Lot 1 Deposited Plan 164021 and being all Certificate of Title 98D/653 (North Auckland Registry). The Trust shall have no power to sell any part of this land shown as Lot 2 on the plan marked "B" attached to this Deed **PROVIDED** it may grant easements over Lot 2. It shall further be obliged to maintain the main Wilson Home building ("the Homestead") and/or where continuing repair becomes

uneconomic to replace such building with a replacement in like character. The Trust in other respects shall be free to demolish, rebuild, add to or otherwise deal with all other buildings on the area shown as Lot 2 on the plan attached marked "B", as it shall see fit in its absolute discretion. The Trust shall respect the wishes of the Settlor **WILLIAM ROBERT WILSON** and shall use that part of the Lake Road site shown as Lot 2 on Plan B for the purposes of the Trust (as set out in clause 3); and further shall maintain the grounds and the homestead building in a character and state which is restful, attractive and assisting of convalescence and in the spirit and to the standard which the original Settlor would have wished to have seen upheld.

- 4.2 The Trust shall be free to subdivide, sell, lease (on any terms it shall see fit), develop, exploit or otherwise turn to account (hereinafter referred to as "Development") any of its site in Lake Road/St Leonards Road shown as Lot 1 and/or shown as Lot 3 on the attached plan "B". The Trustee shall be under no legal duty to consult with descendants of the Settlor **WILLIAM ROBERT WILSON** before deciding upon or carrying out any Development; (but has expressed an intention without creating a binding legal obligation to keep such descendants informed in such circumstances). The proceeds from any such Development (including all funds realised by the Trustee in accordance with paragraph (b) of the attached Schedule C of Trustee Powers) shall be held by the Trustees in a separate capital account and applied to the Trustees only for investments of a capital nature.
- 4.3 In carrying out its obligation to maintain the gardens and grounds (as set out above in clause 4.1) in particular but not in limitation the Trust shall continue to hold \$20,400.00 (as part of the Endowment Fund referred to in Section 2(a) of the 1949 Act), the income from which shall be used for the maintenance and upkeep of the gardens and grounds, but the Trust shall additionally apply such part of its other assets and funds as are necessary to achieve the standard of ground maintenance specified in clause 4.1.

5. **Services off Lake Road Site**

- 5.1 Subject to its obligation to maintain the area shown as Lot 2 on plan "B" on the Lake Road site, and to provide services therefrom the Trust shall further be free to provide any of the services authorised to it under this Deed, at any other location in the Qualifying Area. It shall be authorised to purchase, lease or otherwise acquire properties, facilities and sites anywhere in the Qualifying Area on terms and conditions as it shall see fit, where such facilities are considered best located and designed to enable the Trust to carry out the purposes authorised to it hereunder.
- 5.2 The Trust shall further be authorised to run nursing, physiotherapy, medical, educational, training and other services and whether under contract; using employees of the Trust; using volunteers; or on any basis that the Trust shall determine from time to time. Services for the assistance of Disabled Children and/or their Families may be provided by the Trust in the homes; schools; and at other places where they may best assist such Disabled Children and/or their Families. The Trust shall further have power to pay and provide equipment, facilities (including building alterations and fixtures) learning and other aids in such homes, schools, workplaces and other locations, where the provision of such items or facilities is calculated in the Trust's unfettered discretion to assist such Disabled Children and/or their Families with their care, treatment, rehabilitation or for any other purpose authorised to the Trust hereunder.

6. **Nature of Services**

For the avoidance of doubt the Trust may choose to provide services hereunder itself by employing persons, managers, employees; by the use of volunteers; by engaging outside contractors or service providers; or by subsidising organisations, companies and institutions which do provide such services; by the provision of premises, facilities, equipment or trained staff or experts to provide services; by providing assistance to other service providers assisting Children with Disabilities living in the Qualifying Area; and (in all cases) whether with or without charge; or for a charge at a reduced price less than the market rate for such services; or at full charge should the Trust so decide.

7. **Authorised powers**

For the avoidance of doubt the Trust shall have legal powers, authorities, discretions to carry out its purposes, as are set forth in the attached Schedule marked "C". For the avoidance of doubt, all obligations falling on the Trustee thereunder shall lie solely upon Waitemata Health Limited as trustee, and in the absence of clear mala fides by any individual member or members of the Committee of Management, no personal liability of any nature whatsoever shall attach to such individuals under any circumstances.

8. **Management of Trust**

- 8.1 **WAITEMATA HEALTH LIMITED** as Trustee of the Trust as at the date of this Variation, shall remain in office as sole Trustee while that company is both owned by agencies of the NZ Government and while it continues to offer medical and hospital services from the North Shore Hospital site on the corner of Shakespeare Road and Taharoto Road. Should both these conditions cease to be satisfied then in the absence of any statutory direction as to its continuing trusteeship hereunder Waitemata Health Limited shall within two (2) years nominate a body to replace it and to act as Trustee hereunder which satisfies both these requirements and which has a major role or connection with the provision of health services on the North Shore of Auckland City, and that other body, upon accepting such nomination and committing to be bound by the provisions of the Trust shall become the Trustee hereunder, in the place and stead of Waitemata Health Limited.
- 8.2 The Trustee shall appoint a Committee to have management of the varied Trust (as hereby constituted), subject to the control of the Trustee. The Committee of Management shall consist of an odd number of managers (being either 3 or 5 or 7). A majority of those managers shall be appointed by the Trustee and a minority of those managers appointed by New Zealand CCS (Auckland) Incorporated so long as such Society shall be in existence; and if the same shall have ceased to exist then the President of New Zealand CCS Incorporated and failing his being available, the President of the Auckland District Law Society shall be entitled to submit to the Trustee for its consideration the names of a minority of persons for such committee. For the avoidance of doubt the Committee of Management shall have day to day running of the Trust subject to the control of the Trustee and subject to

any policy decisions set or directed to it by the Trustee from time to time. No member of the Committee of Management appointed by the Trustee shall be an employee of the Trustee; but this requirement shall not apply to any member of the Committee appointed by New Zealand CCS (Auckland) Incorporated.

- 8.3 For the avoidance of doubt, at all times the duty of the Trustee and the duty of the individual members of the Committee of Management shall be to act and to make decisions in the best interests of the Trust; that duty (as it relates to the Trust's affairs) to be independent of and to supersede any obligation the individual Committee of Management members have to the bodies or persons who appointed them under clause 8.2.
- 8.4 Notwithstanding any rule of law to the contrary, the Trustee may provide accounting and administrative services to the Trust from time to time, and to charge reasonable fees therefor. The Trustee is further expressly authorised itself to lease from the Trust land, premises, and/or other assets the property of the Trust on paying a reasonable market rental therefor.

IN WITNESS WHEREOF this Deed of Declaration of Variation of Trust is made, entered into and given on the date above written.

**EXECUTED by WAITEMATA
HEALTH LIMITED**

Director

Director