

IN THE HIGH COURT  
AUCKLAND REGISTRY

M No. 1325/99

IN THE MATTER of the Charitable Trusts Act 1957

AND

IN THE MATTER of an application to vary the **WILSON HOME TRUST** established by Deed of Trust dated 20 July 1937

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**ORDER APPROVING SCHEME UNDER PART III CHARITABLE TRUSTS ACT 1957 TO MODIFY WILSON HOME TRUST**

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**SCHNAUER & Co.**

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Counsel acting: D.L. Schnauer

**ORDER APPROVING SCHEME UNDER PART III CHARITABLE  
TRUSTS ACT 1957 TO MODIFY WILSON HOME TRUST**

**BEFORE THE HONOURABLE JUSTICE LAURENSEN**  
Wednesday, the 15<sup>th</sup> day of December 1999

**UPON READING:**

1. Originating Application for approval of scheme to modify Charitable Trust; and
2. The Deed of Declaration of Variation of Charitable Trust – Wilson Home Trust dated 30 July 1999 (which Deed is expressed to be subject to the consent of the High Court and to take effect from the date of the Court Order granting such approval); and
3. The affidavits in support by:
  - (a) Karen Christine Forrester;
  - (b) Frederick Nelson Watson;
  - (c) William James Wilson;
  - (d) Bernard Bookman; and
4. The first and second reports of the Attorney General on the scheme; and
5. The Memorandum for His Honour in support of application, from Counsel for the Trust dated 30 July 1999; and
6. The Memorandum of Counsel for the Applicant dated 9 November 1999.

**AND UPON HEARING** Mr D.L. Schnauer for Applicant; Mr R.J. Moody for New Zealand CCS Auckland Incorporated (formerly Auckland Branch of the New Zealand Crippled Childrens Society); Mr A.R. Burns for Attorney General and Ms B.L. Sellars for Wilson family.

**THIS COURT ORDERS** pursuant to Section 53(c) Charitable Trusts Act 1957 and pursuant to all other authorising powers and authorities that approval be hereby granted to the scheme under Part III Charitable Trusts Act 1957, to modify the Wilson Home Trust (established by Deed of Trust dated 20 July 1937) by replacing all the provisions of that Deed of Trust with new provisions which are set out in the Deed of Declaration of Variation of Trust entered into by Waitemata Health Limited on 30 July 1999 in the form attached to this Order and marked "A" but modified in the following three respects:

- (a) Clause 2 of the attached Deed of Declaration of Variation of Trust is to be deleted and replaced by:

*"The authorised beneficiaries 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*

- (b) Clause 4.2 of the same Deed is to be deleted and replaced by:

*"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."*

- (c) Clause (v) of the Schedule of Trustees' Powers attached to the same Deed, is to be deleted and replaced by:

*"(v) To start and subscribe to depreciation funds or other reserve funds for any purpose the Trustee may deem advisable **PROVIDED** the Trustee shall not (except to comply with an obligation imposed on it by clause 4.2 of the Deed) be obliged to account for the assets and funds of the Trust in separate capital and/or income accounts, but (subject to clause 4.2 of the Deed) instead may account for all such assets and funds in the most convenient and efficient manner from time to time. In particular but not in limitation (and subject to any capital fund maintained to comply with clause 4.2 of the Deed) the Trustee may apply all of the assets and funds of the Trust from time to time for any purpose authorised to it under the Deed of Declaration of Variation of Trust, whether of the nature of a capital expenditure and/or of the nature of a current*

*operating expenditure in accordance with the within  
Schedule of Trustee Powers."*

**WITH THE INTENT** that from the date of sealing of the within Order, the terms of the Wilson Trust shall be constituted, defined and specified in the Deed of Declaration of Variation of Trust attached marked "A", but modified to the extent specified in this Order.

**IT IS FURTHER ORDERED** that the Applicant pay the Attorney General \$500.00 costs in respect of preparation of his statutory report; but there be no other Order as to Costs.



By the Court

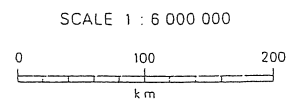
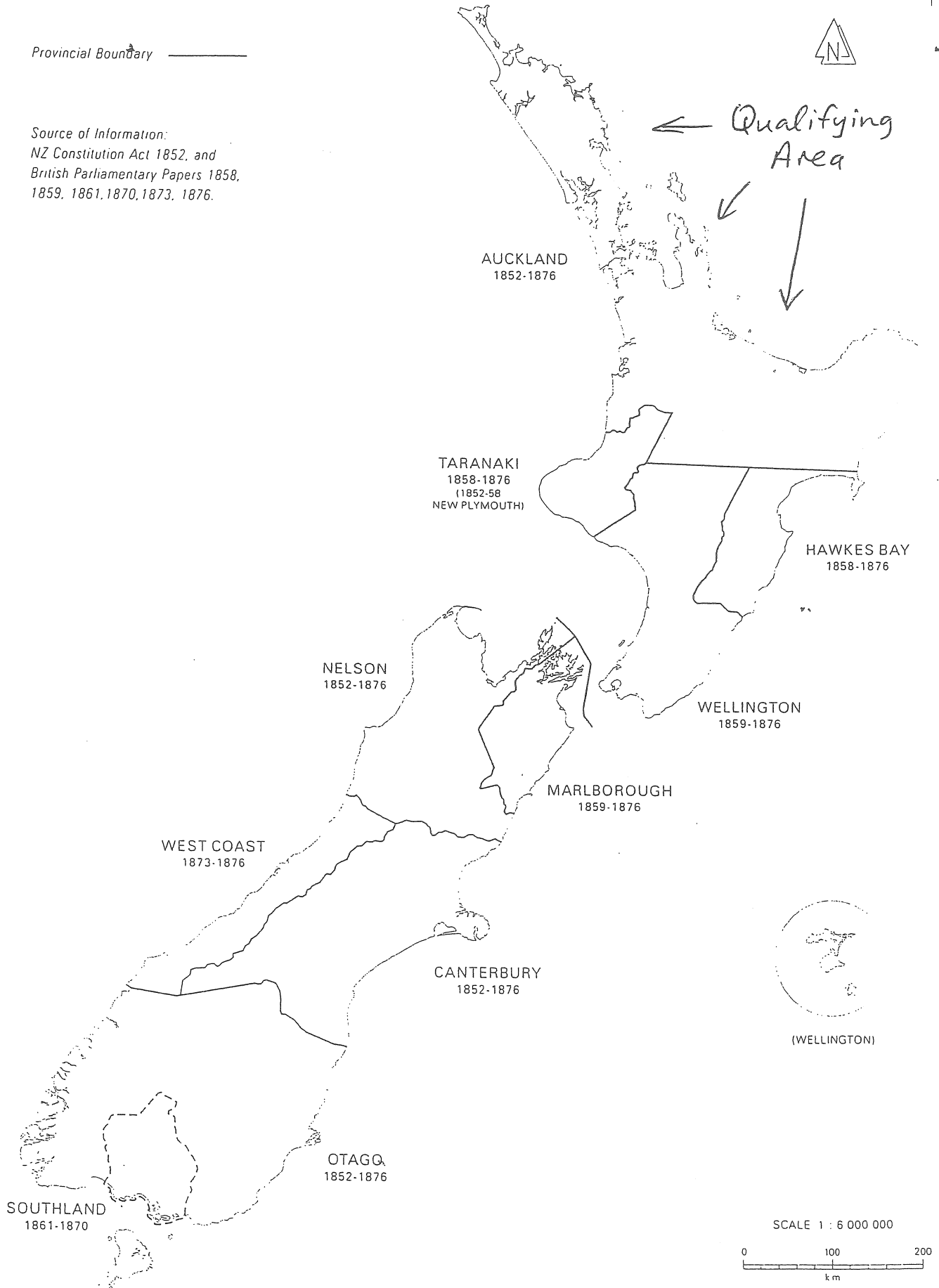
  
\_\_\_\_\_  
Deputy Registrar  
JO GALVAN

SEALED this 21st day of December 1999

# Provinces

Provincial Boundary ———

Source of Information:  
NZ Constitution Act 1852, and  
British Parliamentary Papers 1858,  
1859, 1861, 1870, 1873, 1876.



A

DATED

30th July 1999

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BY

WAITEMATA HEALTH LIMITED

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DEED OF DECLARATION OF VARIATION OF CHARITABLE TRUST  
WILSON HOME TRUST

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**SCHNAUER & Co.**

Barristers & Solicitors

218-224 Kitchener Road, Milford, Auckland 9 (P.O. Box 31-272)  
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THIS Deed of Declaration of Variation of Trust is made entered into and given this 30th day of July 1999

BY **WAITEMATA HEALTH LIMITED** a body corporate established in terms of Section 37(a) Health and Disability Services Act 1993 ("the Trustee")

**WHEREAS**

- A. By Deed of Trust dated 20 July 1937 ("the Deed") between **WILLIAM ROBERT WILSON, ERNEST HYAM DAVIS** and **THE AUCKLAND HOSPITAL BOARD** a Charitable Trust was established ("the Trust") under which:
- (i) Mr Wilson set aside his home and extensive grounds in Lake Road and St Leonards Road, Takapuna as a home for crippled children ("the Wilson Home for Crippled Children"); and
  - (ii) An Endowment Fund was established to fund the running of such home, including maintenance and upkeep of the grounds.
- B. By an amending local Act of Parliament passed in 1949 ("the 1949 Act") the conditions under which children might be treated in the buildings on the St Leonard Road portion of the site were varied to accord with the conditions applying to the Lake Road site, and various other minor amendments to the Trust were authorised.
- C. Pursuant to the Health Reforms (Transitional Provisions) Act 1993 (and especially Section 10 thereof) the Trustee is the trustee of the Trust.
- D. As a result of bequests and accumulation of earnings, there is presently invested in the total funds held by the Trust a total of \$6,877,256.00 as at 30 June 1998. Apart from the sum of \$20,400.00 retained for ground maintenance in terms of section 2(a) of the 1949 Act, all of the capital of the Endowment Fund referred to in Section 2 of that Act has now been exhausted. All of the said funds are assets of the 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 cypres 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 northern half of the North Island to the North of the line shown on the attached map shown marked "A" ("the Qualifying Area"). The area defined is the original geographic area known as Auckland Province, but excluding the Ureweras, East Cape and Gisborne. The line from the north-west corner of the former province of Hawkes Bay bisects the coast of Bay of Plenty 10km east of Opotiki Post Office.

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 Disabilities may be either congenital or acquired and may have multiple causes but the primary disability **must** be physical. This definition of Disabilities excludes children whose disability is primarily an intellectual disability; primarily a behavioural/cognitive disability or primarily a mental illness.

“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 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".
- 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.
- 8.5 For the avoidance of doubt (and in order to avoid an amending Act of Parliament when completing this Variation), the Trustee acknowledges in entering this Variation Deed, that the 1949 Act remains in force and continues to bind it. The provisions of clause 2 of that Act are mandatory (and to the extent that \$20,400.00 is the only remaining part of the Endowment Fund remaining as at the date of the within Variation have been brought forward into clause 4.3 above). The provisions of clause 1 of that Act are merely permissive and at all times after this Variation Deed has been signed, shall continue to confer powers on the Trustee which (in its discretion) the Trustee shall be legally free to act under at any time (while recognising that changing circumstances may make it impractical or impossible, although not illegal, so to act).

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

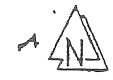
Director

# Provinces

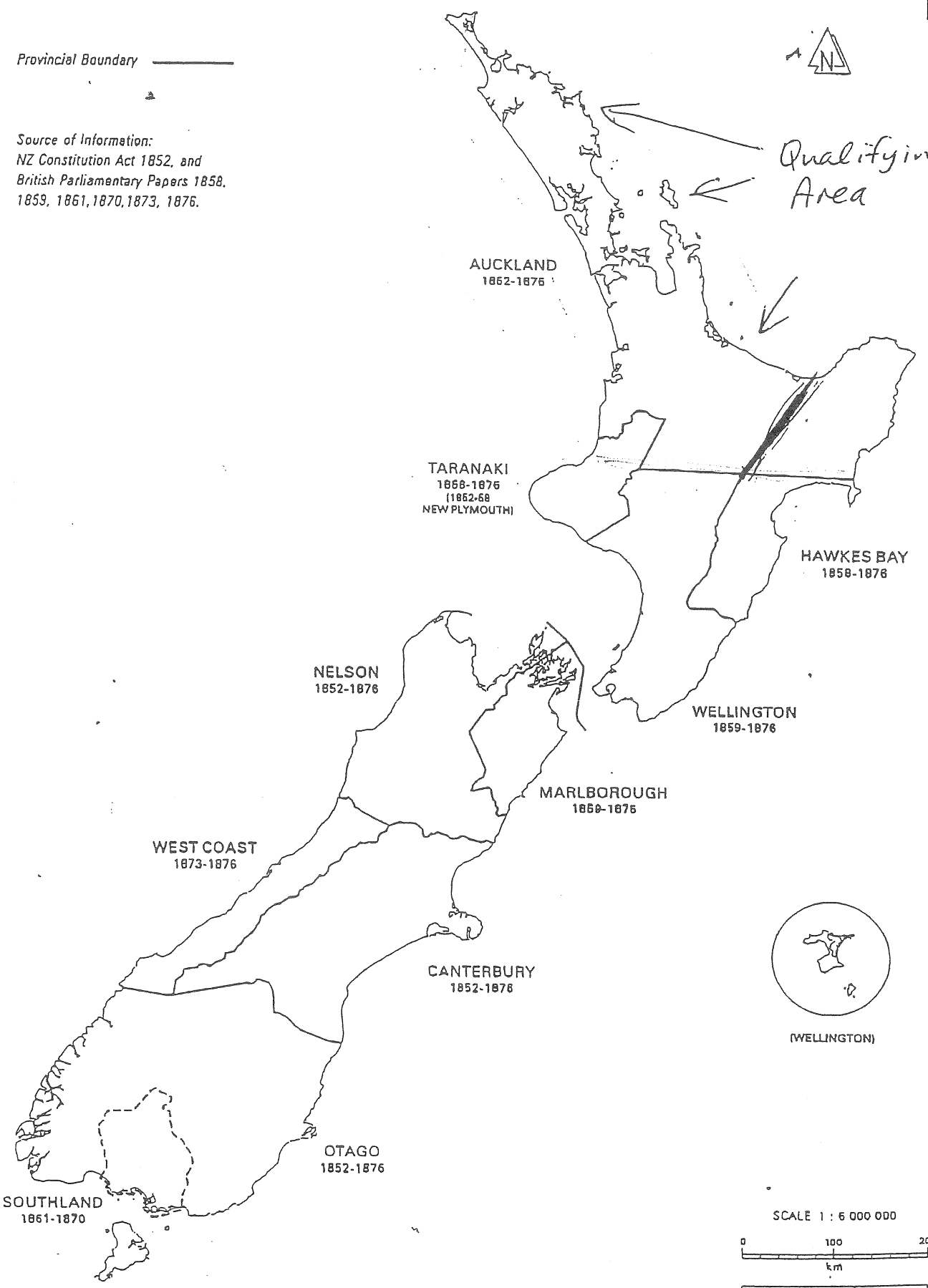
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Provincial Boundary ———

Source of Information:  
NZ Constitution Act 1852, and  
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1859, 1861, 1870, 1873, 1876.

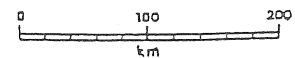


Qualifying Area



(WELLINGTON)

SCALE 1 : 6 000 000



Atlas of New Zealand Boundaries 1994



MAIN LOT  
AREA 5.1082 ha  
CT 311/204 (PT.)  
DP 104021

NOTE:  
ALL AREAS AND DIMENSIONS  
ARE SUBJECT TO SURVEY

(B)



TO BE SURVEYED DATE PLOTTED: 21.04.97 C.O. REFERENCE: 11017PSD A C.O. REF. NO. APPROVED:	DRAWN BY: S. GRAY CHECKED BY: J. GRAY DATE: APRIL 97 BY: HARRISON GRIERSON FOR: HARRISON GRIERSON ENGINEERS SURVEYORS PLANNERS CONSULTING ENGINEERS SURVEYORS PLANNERS	PROJECT: WILSON HOME LAKE ROAD TAKAPUNA TITLE: PROPOSED SUBDIVISION PLAN LOT BEING PART ALLOT 21 SECTION 1 PARISH OF TAKAPUNA	PROJECT No: 09.11017.1 SHEET No: 11017PSD A TOTAL SHEETS: 1:300 ORIGINAL SCALE: 1:1000 REDUCED SCALE: 1:1000(A1)
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## C

### WILSON HOME TRUST Schedule of Trustee Powers

By virtue of clause 7 of the foregoing Deed of Declaration of Variation of Charitable Trust, this Schedule sets forth the legal powers, authorities and discretions of the Trustee in the control, operation and management of the Wilson Home Trust. Within the limits imposed by the terms of the said Deed of Declaration of Variation of Trust, the Trustee shall have the powers, duties and shall meet the standards of care all set forth in S.13A - S.13Q of the Trustee Act 1956 (as inserted by the Trustee Amendment Act 1988); and within the overall constraints and duties in those said sections, in particular but not in limitation the Trustee shall have power to do all or any of the following things either alone or jointly in common with any other person or persons corporation or corporations namely:

- (a) To apply or invest all or any moneys coming into the hands of the Trustee and available for the purpose in or towards the purchase or acquisition of any real or personal property or any interest therein (whether in New Zealand or elsewhere) or in such mode or modes of investment or in such security or securities and whether in New Zealand or elsewhere as in the opinion of the Trustee may be beneficial to the Trust its funds and assets and in particular but without prejudice to the generality of the foregoing in debentures or debenture stock, preference, ordinary or deferred shares or guaranteed preference ordinary or deferred stock issued or guaranteed by any company and whether incorporated in New Zealand, or in any other country anywhere in the world.
- (b) To subdivide, develop sell or join in selling all or any part of the real and personal property forming part of the Trust's assets (other than any part of Lot 2 on the attached plan "B") either by public auction or private contract or in such other manner (including the granting of options to purchase) and subject to such terms and conditions as the Trustee shall think fit with power to give time for payment of the purchase money with or without security AND without being liable for losses to allow such portion of the purchase money as the Trustee think fit to remain owing under Agreement for Sale and Purchase or on mortgage although the margin of security may not be sufficient for the purposes of the Trustee Act 1956 and with power also to buy in any property offered for sale and to rescind any contract of sale and to sell again without being responsible for any diminution in price and generally to deal with the same in all respects as if the Trustee were the absolute owner of the property so sold. For the purposes of this clause, the terms "subdivide" and "develop" shall include engaging consultants; obtaining consents; completing works payments and contracts; and carrying out all other activities needed to obtain new titles for the lands being subdivided and developed.

- (c) To vary or transpose any investments made into or for others of any nature hereby authorised and to reinvest the proceeds of any sale of any real and/or personal property forming part of the Trust's assets in investments of a nature hereby authorised.
- (d) To postpone the sale calling in and conversion of any real and personal property comprising the Trust's assets or any part thereof for so long as they think fit notwithstanding that it may be of a wasting speculative or reversionary nature.
- (e) To let lease or bail and join in so doing any freehold or leasehold property and/or any plant and chattels which or an interest in which for the time being forms part of the Trust's assets either from year to year or for any term of years or otherwise at such rent and subject to such terms and conditions as the Trustee thinks fit including at the discretion of the Trustee an optional or compulsory purchasing clause and also to accept surrenders of leases and tenancies and bailments and generally to manage the same as the Trustee shall think fit AND to take on lease or under bailment any freehold or leasehold property and/or plant and chattels or an undivided interest therein from any person or persons (including any Trustee) either from year to year or for any term of years or otherwise at such rent and subject to such terms and conditions as the Trustee thinks fit including at the discretion of the Trustee an optional or compulsory purchasing clause and also to surrender leases tenancies and bailments and generally to deal with the same as the Trustee shall think fit.
- (f) From time to time to obtain the renewal of any lease grant tenancy or occupation of any lands which or an interest in which for the time being forms part of the Trust's assets and of any easement right or privilege annexed in enjoyment thereto for such term at such rent and upon and subject to such terms and conditions as the Trustee thinks fit.
- (g) To consent to and join in the partition of any assets, an interest in which forms part of the Trust's assets and to take a transfer of such assets or a transfer of an undivided share or interest in such assets and for the purposes aforesaid to settle and agree upon the valuation of any such assets and to receive or pay or agree to pay such moneys as the Trustee shall think proper by way of equality on division of such assets and any such partition valuation and payment shall be final and binding on all persons beneficially interested under these presents.
- (h) To enter into an exchange or exchanges of any real or personal property which or an interest in which for the time being forms part of the Trust's assets with or without payment or receipt of moneys for equality of exchange upon such terms and at such values as the Trustee thinks fit.
- (i) Generally to maintain repair manage improve and develop any real or personal property which or an interest in which for the time being forms part of the Trust's assets and in the discretion of the Trustee to expend any part of the Trust assets or funds for the said purposes or any of them.

- (j) During the period of postponement of sale or conversion of any real or personal property forming part of the Trust's assets to make out of the Trust's funds any outlay the Trustee may think proper for payment of calls on shares or otherwise in respect thereto for the benefit of the Trust's assets AND in respect of any shares in companies to exercise the same powers as the Trustee might do as if the absolute owner thereof.
- (k) To promote form or concur in any steps or proceedings which may be taken to form a company for any purpose whatsoever including the purpose of purchasing or acquiring any undertaking business and/or assets which or an interest in which forms part of the Trust's assets or for the purpose of purchasing or acquiring the undertaking business and/or assets of any company in which the Trustee may hold shares AND to sell and transfer any such undertaking business and/or assets to any company or to the trustees for any company proposed to be formed and to carry out and complete any scheme or arrangement for the amalgamation of any such undertaking business and/or assets with the undertaking business and/or assets of any company or companies on such terms (as to the price or consideration being received) and whether in cash or in shares (ordinary preferred or deferred) or in debentures or debenture stock of the purchasing company or partly in one way and partly in another and generally upon such terms and conditions as the Trustee shall think fit with power to allow time for payment of the whole or part of any cash consideration whether with or without security therefore AND the Trustee shall have the widest authority and discretion to effect any such sale or amalgamation on such terms and conditions in every respect as they could do if it was the absolute and beneficial owner of the Trust's funds and assets.
- (l) To provide out of the Trust's assets further capital for any company in which the Trustee may hold shares or which it may have acquired or propose to acquire or for any business undertaking and/or assets which or an interest in which forms part of the Trust's assets and to do so either by way of advances loans guarantees or taking-up shares or further shares in such company or in such other manner and upon such terms and conditions and in the case of advances loans and guarantees with or without taking security as the Trustee may think fit.
- (m) If at any time any company in which the Trustee shall hold shares shall be reconstructed or rearranged or shall create a further issue of capital or shall carry into effect any scheme for capitalisation of its profits or for merger with any other company THEN and in every such case (in addition to any statutory or other powers vested in the Trustee) to take up further shares in such company or in any new company which may be formed in connection with such reconstruction rearrangement or merger as the Trustee in its absolute discretion thinks fit whether such shares so taken up be wholly paid or partly contributory and the Trustee may agree to such reconstruction rearrangement further issue of capital capitalisation of profits or merger on such terms and conditions as the Trustee thinks fit and may execute any deed agreements or other document relating thereto.

- (n) To acquire any business of any description or an interest therein or to commence any business of any description either alone or in partnership with any other person or persons or company (whether acting in a fiduciary capacity or otherwise) and to carry on or join in carrying on any such business as the Trustee may think fit in such manner and for such period or periods as the Trustee may think fit AND the Trustee shall (subject always however in the case of a partnership or other joint business to the terms and conditions contained in any agreement or company constitution) have absolute and uncontrolled and unfettered power authority and discretion in the management and control of any such business.
- (o) To employ in any such business or withdraw therefrom the whole or any part of the Trust's assets and funds and from time to time to advance to or employ in any such business with or without taking security therefor any additional capital and any income of the Trust's assets which the Trustee may deem advisable for the more effectual carrying on of such business or partnership.
- (p) To concur in or cause the winding up of the affairs of any such business or the withdrawal of the Trustee therefrom upon such terms and in such manner as the Trustee thinks fit.
- (q) To deposit or lend any moneys on current account or otherwise with or without security and whether bearing interest or not with any person bank firm or company as in the opinion of the Trustee may be beneficial to the Trust's assets or to any of the purposes of the Trust or to any beneficiary hereunder.
- (r) To effect or take an assignment of insurances of whatsoever nature type or kind relating to property of whatsoever type kind or description whether real or personal or relating to any person or persons whomsoever and to keep and keep valid and subsisting any such policy of insurance and to transfer assign surrender mortgage and/or otherwise deal with any legal or beneficial interest in any policy of insurance and to accept any transfer or assignment and mortgage of any legal or beneficial interest in any policy of insurance and to hold accept and deal with any interest whatsoever in any policy of insurance or the proceeds thereof in all respects as if the Trustee the absolute owner thereof.
- (s) For the purpose of repaying or rearranging mortgages or subdividing and/or improving any real or leasehold property or for commencing or carrying on or assisting any partnership or other business or assisting any company in which the Trust has an interest or for the purpose of making any investment or purchase authorised by these presents and for any other purpose whatsoever deemed by the Trustee to be in the interest of the Trust or of any beneficiary hereunder to borrow raise or secure either alone or jointly or in common with others or otherwise any moneys on overdraft or otherwise with or without security by way of mortgages charges instruments by way of security liens or securities over land plant shares chattels and the whole or any part of the Trust Fund from any person firm company bank or other corporation at such rate of interest and for such term and generally on such conditions as the Trustee think fit and to sign and execute any mortgage deed agreement or document in connection therewith AND any

person firm company bank or corporation lending money to the Trustee shall be in no manner concerned to enquire as to the application of such moneys or as to the purpose for which such moneys may be borrowed **PROVIDED HOWEVER** that the Trustee shall be entitled to a complete and full indemnity from the Trust Fund and every part thereof for any purpose whatsoever under the provisions hereof **AND** in particular under any mortgage or other security given by the Trustee over the Trust Fund or any part thereof.

- (t) To enter into by the Trustee alone or to join in entering into together with any other person persons or company any guarantee the giving of which the Trustee shall consider to be in the interests of the Trust's assets or of any beneficiary hereunder and to authorise any company in which the Trustee shall hold shares to enter into such guarantee or enter upon any other arrangement whatsoever which the Trustee shall consider to be in the interests of the Trust Fund or of any beneficiary hereunder.
- (u) From time to time to renew or vary or rearrange upon such terms as the Trustee thinks fit any mortgages charges debts or overdrafts payable out of the Trust's funds and assets and guarantees given by the Trustee and also to renew vary or rearrange upon such terms as the Trustee thinks fit any mortgages charges or debts forming part of the Trust.
- (v) To start and subscribe to depreciation funds or other reserve funds for any purpose the Trustee may deem advisable **PROVIDED** the Trustee shall not be obliged to account for the assets and funds of the Trust in separate capital and/or income accounts, but instead may account for all such assets and funds in the most convenient and efficient manner from time to time; and in particular but not in limitation the Trustee may apply all of the assets and funds of the Trust from time to time for any purpose authorised to it under the Deed of Declaration of Variation of Trust, whether of the nature of a capital expenditure and/or of the nature of a current operating expenditure in accordance with the within Schedule of Trustee Powers.
- (w) To agree and settle accounts with all persons firms or companies liable to account to the Trustee and also to compromise all questions relating to the Trust's assets and to grant effectual receipts discharges and releases.
- (x) To employ and discharge such managers, employees, health professionals, contractors, other agents surveyors engineers solicitors accountants and other persons as the Trustee may think fit and to pay such fees salaries wages or other remuneration in every case as the Trustee may deem expedient **AND** generally at its uncontrolled discretion instead of acting personally to employ and pay any person firm company or corporation to do any act of whatever nature relating to the trusts hereof including the receipt and payment of money without being liable for loss incurred thereby.
- (y) To determine all questions arising with reference to these presents and the Trust's funds and the administration thereof.

- (z) To take and act upon the opinion of any lawyer practising in the High Court of New Zealand whether in relation to the interpretation of these presents or any other document or Statute or as to the administration of the trusts hereof without being liable to any of the persons beneficially interested hereunder in respect of any act done by them in accordance with such opinion but nothing this power contains shall prohibit the Trustee from applying to the Court if it should think fit or shall prohibit any beneficiary from so doing.