

# **Constitution and rules**

of the

# **Ōtākaro Land Trust**

## **1. NAME**

The name of the Trust shall be Ōtākaro Land Trust.

## **2. OFFICE**

The registered office of the Trust shall be in Christchurch at a place determined by the Trustees.

## **3. PRIMARY OBJECT**

The primary object for which the Trust is established is the advancement of community development to enhance social and economic participation in New Zealand/Aotearoa, through encouraging self-sufficiency and sustainability, by

- owning and enhancing land and property for future Trust benefit, and
- advancing and promoting co-operative housing, and
- making cash donations directly to community groups that further the Trust's objective and address those economically and socially disadvantaged within Christchurch/Ōtautahi society.

## **4. SECONDARY OBJECTS**

- (a) The promotion of knowledge of and interest in the objectives of the Trust by means of meetings, exhibitions, lectures, publications, educational courses and all other forms of publicity.
- (b) The maintenance of communication with and co-operation with persons or corporate bodies in New Zealand (including membership of other bodies corporate) for the purposes of promoting directly or indirectly the objects of the Trust.
- (c) To do all such other acts and things as are incidental to or which will further or be conducive to the attainment of the previously stated objectives.

## **5. MEMBERSHIP**

- (a) Any person interested in the objects of the Trust may apply for membership.
- (b) New members shall be admitted upon consensus approval by the Trustees.

- (c) Any member may resign by giving notice in writing to the Trustees.
- (d) Membership is renewed by attendance at the Annual General Meeting or by notification to a Trustee prior to the Annual General Meeting.
- (e) Membership may be ended at any time by a consensus decision by the Trustees, following written notice of Trustees' concerns to the member and Trustees' consideration of the member's written reply.

## **6. CONSTITUTION OF THE TRUSTEES**

- (a) The Trust shall be administered by a Group of Trustees ('the Trustee Group').
- (b) The Trustee Group shall comprise not more than eight nor less than three Trustees who shall be elected at the Annual General Meeting in the manner set out below.
- (c) Trustees shall be elected by 75% majority vote by members at the Annual General Meeting.
- (d) All existing Trustees shall be automatically eligible for re-election at the Annual General Meeting.
- (e) Members wishing to be elected as Trustees must give notice in writing a minimum of seven days prior to the Annual General Meeting to the Trust of their wish to be eligible for election.
- (f) If for any reason a Trustee should be absent from three consecutive meetings of the Trustee Group without reasonable cause or without leave of absence granted by the Trustees, then the Trustee shall at the discretion of the Trustee Group cease to become a Trustee.
- (g) If for any reason a Trustee position should become vacant then the Trustee Group may appoint some other member as a Trustee and that person shall remain a Trustee until the next Annual General Meeting.
- (h) A person will immediately cease to be a Trustee when she or he resigns in writing, dies, is declared bankrupt or is found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or subsequent enactment.

## **7. FUNCTIONS, POWERS AND DUTIES OF THE TRUSTEES**

The Trustees have the following functions, powers and duties:

- (a) To control, administer and manage the property, funds and affairs of the Trust.
- (b) To purchase, erect, build, take on lease or otherwise obtain the use or occupation of, and to manage, extend, improve, develop, alter, maintain and repair and to sell, let, lease, donate, or otherwise dispose of, real and personal property of every description.
- (c) To maintain the land and buildings in such a way as to produce a healthy living environment.
- (d) To accept the custody, control and management of any real or personal property which may be bequeathed, donated, or lent to the Trust or to the Trustees for the benefit of the Trust, and to also carry out any trust attached to gifts or bequests to or for the benefit of the Trust.
- (e) To invest all or any of the moneys held by the Trust which are not required for the immediate operations of the Trust in such securities and upon such terms that the Trustees think fit and not contrary to the objectives of the Trust.
- (f) To use methods determined by the Trustees, for the purpose of raising money and for obtaining property for furthering the objectives of the Trust. Also to accept contributions, collections, donations, legacies, devises, gifts, grants and subsidies.
- (g) To loan monies to any legal entity, either established by the Trustees or not, for the furtherance of the purposes of the Trust, and on such terms as the Trustees may determine, and with or without security.
- (h) To guarantee any loan of monies by a third party to any legal entity established by the Trustees for the furtherance of the purposes of the Trust.
- (i) To make gifts and donations in furtherance of any of the purposes of the Trust.
- (j) To carry on any business, and it is declared that in the carrying on of any business under these presents and in the exercise of any power authorising the remuneration of trustees, no benefit or any income of any land shall be afforded to, or received, gamed, achieved or derived by any persons specified in paragraphs (a) to (d) of the second proviso or section 61/(27) of the Income Tax Act 1976 or any other enactment in amendment thereof or in substitution therefore, where that person is able, by virtue of that capacity as such person specified therein, in any way (whether directly or indirectly) to determine, or to materially influence in any way the determination of, the nature or the amount of that benefit or advantage or that income or the

circumstances in which it is or is to be so received, gamed achieved, afforded or derived except as specifically exempted by that section.

- (k) To borrow money for the purposes of the Trust, and to secure in such manner as the Trustees shall think fit, the repayment of any moneys borrowed or raised by the Trustees and in particular by issue of debentures or debenture stock perpetual or otherwise charged upon all or any of the property of the Trust both present and future and to give and execute in the prescribed manner mortgages, debentures and other instruments as security for such repayment and to payoff, redeem or purchase any such securities.
- (l) To draw, make, accept, endorse, discount, execute and issue promissory notes, cheques, bills of exchange, warrants and other negotiable securities or transferable instruments.
- (m) Subject to the provisions of the Charitable Trusts Act 1957 to enter into, seal, execute and perform all deeds, documents, instruments, agreements, papers and writings, and to do all such other things, acts, deeds and matters as shall be necessary, incidental, or conducive to the attainment of the previously stated objectives.
- (n) To institute, initiate, or take and to defend, compromise or abandon legal proceedings involving the property or affairs of the Trust.
- (o) To employ staff to assist in the work of the Trust at such wages and on such terms as may be deemed expedient and to obtain and pay for professional and other advice and services.
- (p) To appoint officers, assistants and other employees whether honorary or otherwise whether members or trustees, on terms and conditions and remuneration as the Trustees think fit and from time to time to remove and to replace any person so appointed.
- (q) To appoint sub-committees as the Trustees see fit for the carrying out of the objects and purposes of the Trust. Members of any sub-committee need not necessarily be Trustees.
- (r) To carry out and perform the objects according to law and as provided in and by the Charitable Trusts Act, 1957, and in accordance with these rules.
- (s) To do other things deemed necessary by the Trustees providing they are not contrary to the law or prohibited by these Rules, for the carrying out and performance of the objects and purposes of the Trust.

## 8. OFFICE HOLDERS OF THE TRUSTEE GROUPS AND THE TRUST

- (a) The office holders of the Trustee Group shall be the facilitator and minute taker each of whom will be appointed at each meeting, and the treasurer who will be appointed annually.
- (b) The office holders at the Trust Annual General Meeting or Extraordinary General Meetings shall be the facilitator and minute taker each of whom will be appointed at each meeting.
- (c) An auditor or auditors who shall not be a member or members of the Trustee Group shall be appointed at each Annual General Meeting to audit the books and accounts of the Trust.

## 9. ANNUAL GENERAL MEETINGS

- (a) At a date fixed by the Trustees in each year, an Annual General Meeting shall be held in the following manner. The business to be carried out at the Annual General Meeting shall be
  - (i) To approve the minutes of the previous Annual General Meeting
  - (ii) To receive from the Trustee Group their charter, report, balance sheet and statements of accounts for the preceding financial year
  - (iii) To elect the Trustees as provided by these Rules
  - (iv) To elect an auditor or auditors
  - (v) To consider and decide any other matter which may properly be brought before the meeting.
- (b) Procedure for calling an Annual General Meeting

Notice of each Annual General Meeting shall be given at least fourteen clear days prior to the date set for the meeting by forwarding written notice and minutes of the previous Annual General Meeting and any subsequent Extraordinary General Meetings to each member at their last known residential or work address. The notice shall specify the place, date and time of the Annual General Meeting.

- (c) Representation and Decision Making at the Annual General Meeting

Every member shall be entitled to attend Annual General Meetings. All decisions will be made by consensus. Consensus refers to a process whereby decisions are reached by mutual participation of members of the Trust through discussion and debate. Any member not able to be present may express an opinion or point of view relate to an agenda item in writing. This will be put forward at the meeting and considered part of the discussion and debate towards reaching a decision.

If consensus on a particular item cannot be reached by discussion, then in the case of a Trustee election and auditor, it will be decided by a 75%

majority decision Any other undecided matters are to be referred to the Trustee Group meeting for their decision.

(d) Quorum at an Annual General Meeting

Subject to clause 10 (e) eight members shall constitute a quorum for an Annual General Meeting.

**10. EXTRAORDINARY GENERAL MEETINGS**

(a) From time to time the Trustees Group may convene an Extraordinary General Meeting. The business to be carried out at an Extraordinary General Meeting shall be

- (i) To consider any proposed amendments to the Constitution
- (ii) To consider and decide any other matter which may properly be brought before the meeting.

(b) Procedure for calling an Extraordinary General Meeting

An Extraordinary General Meeting can be called at any time by either

- (i) a minimum of three Trustees
- (ii) a minimum of three Members

In the case of 10(b)(ii) the Members shall give notice of their decision to the Trustees Group, who must then call a meeting in accordance with Para 10(c) below.

(c) Procedure for calling an Extraordinary General Meeting

Notice of an Extraordinary General Meeting shall be given by the Trustees at least fourteen clear days prior to the date set for the meeting by forwarding written notice to each member at their last known residential or work address. The notice shall specify the place, date and time of the Extraordinary General Meeting.

(d) Representation and Decision Making at the Extraordinary General Meeting

Every member shall be entitled to attend Extraordinary General Meetings. All decisions will be made by consensus subject to clause 9 (c).

If consensus on a particular item cannot be reached by discussion, then in the case of a Trustees status, it will be decided by a 75% majority

decision. Any other undecided matters are to be referred to the Trustee Group meeting for their decision.

(e) Quorum at an Extraordinary General Meeting

Eight members shall constitute a quorum for an Extraordinary General Meeting.

## **11. MEETINGS OF THE TRUSTEES GROUP**

- (a) The Trustees may hold meetings of the Trustee Group at any convenient time and place that they choose.
- (b) Any three Trustees may from time to time arrange a meeting of the Trustee Group at any time and place that they choose.
- (c) Notice of each Trustee Group meeting shall be given prior to the meeting to the Trustees. Dates, times and places for meetings may be fixed at previous meetings or communicated by telephone or personal contact by other Trustees.
- (d) Members of the Trust are welcome to attend and speak at Trustee Group meetings, but do not have decision making rights. Notice of meetings are to be displayed on Trustee Group's notice board.
- (e) No business shall be conducted at any meeting unless a quorum of three Trustees is present for a Group meeting.

## **12. CHARTERS AND RULES**

- (a) The Trustee Group shall prepare a charter setting out how in its operations it will attain the objectives of the Trust. The charter shall be consistent with the primary objective as set out in clause 3. In the case of dispute, clause 3 shall be paramount.
- (b) The Trustee Group may amend the charter to keep it relevant to attaining the objectives of the Trust.
- (c) The Trustee Group shall present the charter to each Annual General Meeting for comment and evaluation by the members of the Trust.
- (d) To further the implementation of its charter the Trustee Group may make, amend or rescind any bylaws consistent with these rules and consistent with their responsibilities.

## **13. ACCOUNTS**

The Treasurer of the Trustee Group shall prepare and submit to each Annual General Meeting an audited statement of the income and expenditure of the Trust Group up to the end of the financial year and a balance sheet as at that date.

#### **14. CONTROL OF FUNDS**

- (a) All funds received by or on behalf of the Trust shall be paid into a bank account or accounts maintained by the Trustee Group.
- (b) All payments, except petty cash, shall be paid by cheques signed by two Trustees appointed by the Trustee Group as signatories. The Trustee Group may appoint up to four Trustees each as signatories.

#### **15. SEAL**

The common seal shall be kept in the custody and control of the Trust. When required the seal shall be affixed to any deed or document following a resolution of the Trustee Group. The seal shall be affixed by two Trustees who shall also sign the document.

#### **16. PECUNIARY GAIN**

##### Income Tax Act 1976

- 1 Any income, benefit or advantage shall be applied for the charitable purposes of the organisation.
- 2 No member of the organisation or any person associated with a member shall participate in or materially influence any decision made by or on behalf of that member or associated person or any income benefit, or advantage whatsoever.
- 3 Any such income paid shall be reasonable and relative to that which would be paid in an arms' length transaction (being the open market value).
- 4 The provisions and effect of this clause shall not be removed from this document and shall be included and implied in any document replacing this document.

#### **17. ALTERATION OF CONSTITUTION**

- (a) These rules and regulations may be altered by a motion passed by consensus or failing that a 75% majority vote, of the members present at an Annual General Meeting or Extraordinary General Meeting.
- (b) At least fourteen days' notice of the proposed alteration must be given to members of the Trust in the manner prescribed in Rule 9(b).
- (c) The notice must include all detail of the proposed alteration.
- (d) Duplicate copies of alterations passed will be delivered to the Registrar in accordance with the requirements of the Act.
- (e) No revision, alteration, amendment or addition to these Rules shall be permitted that detracts from the exclusively charitable objects of the Trust or

that is in conflict with any of the provisions of the objects or powers of the Trust or the Charitable Trusts Act 1957.

## **18. WINDING UP**

In the event of the Trust being wound up the surplus assets after payment of the Trust's liabilities and expenses of the winding up shall be given on such terms as the Trustees shall decide to one or more exclusively charitable societies or trusts in New Zealand with similar objects to this Trust approved as charitable by the Inland Revenue Department, and in default thereof by the High Court of New Zealand.

## **19. TRUSTEE LIABILITY**

- (a) The Trustees are chargeable respectively only in respect of the money and securities they actually receive, or which, but for their own acts, omissions, neglects or defaults they would have received, notwithstanding their signing any receipt for the sake of conformity; and
- (b) They are each answerable and responsible respectively only for their own acts, receipts, omissions, neglects and defaults and not for those of each other, or of any banker, broker, auctioneers, or other person with whom, or into whose hands, any Trust money or security is properly deposited or has come;
- (c) No Trustees shall be liable personally for the maintenance, repair or insurance of any charges on such property;
- (d) No Trustees hereof shall be liable for any loss arising from any cause whatsoever including a breach of the duties imposed by Section 13B and/or 13C Trustees Act 1956 (as enacted by the Trustee Amendment Act 1988)(or any statutory replacement or equivalent) unless such loss is attributable to his or her own dishonesty or to the wilful commission by him or her of an act known by him/her to be a breach of trust, and pursuant to Section 13D of the Trustees Act 1956 it is intended by this clause that the duties imposed by Section 13B and 13C of the Trustees Act 1956 shall not apply to any Trustee hereof.
- (e) No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of Trust committed by that co-Trustee.
- (f) Notwithstanding the procedure or otherwise of retaining assets in the Trust Fund no Trustee shall be liable for any loss suffered by the Trust Fund by reason of the Trustees retaining any asset forming part of the Trust Fund.
- (g) The Trustees shall from time to time and at all times be indemnified by and out of the Trust property from and against all costs, charges, losses, damages and expenses sustained or incurred by them or in or about the execution and discharge of their office or in or about any claim, demand, action, proceeding or defense at law or in equity in which they may be joined as a party.

**20. GENERAL**

- (a) In the event of any questions as to the construction or application of any of these rules, the Trustees are hereby empowered to decide the same, subject to the over-riding power of the Courts of New Zealand to resolve such a dispute.
- (b) The Trustees may co-opt any member or other person not a member, who may be in a position to assist the Trustees on any subject under discussion or otherwise assist in the Trustees' deliberations.
- (c) No Trustee, member or group of members shall make any public statements purporting to be made by or on behalf of the trust without the prior consensus of the Trust.

Dated at Christchurch on **the 14 December 2007**

Signed

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Signed

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- on behalf of the members and trustees of the **Ōtākaro Land Trust**