



Passive House Institute New Zealand

Te Tōpūtanga o te Whare Korou ki Aotearoa

12TH FEBRUARY 2021



1 Te Ingoa / Name

The name of the Trust shall be '*Te Tōpūtanga o te Whare Korou ki Aotearoa, Passive House Institute New Zealand (PHINZ)*', or such other name as the Trustees shall determine from time to time, hereafter called 'the Trust'.

2 Mātāpono / Principles

The Trust is committed, in attaining its purposes, to:

- 2.1 Honouring and upholding Te Tiriti o Waitangi (the Treaty of Waitangi) throughout its operations;
- 2.2 Maintaining the highest standards of professionalism, scientific accuracy and integrity;
- 2.3 Working collaboratively with others in the area of Passive Houses and very energy efficient buildings in general;
- 2.4 Maintaining an open and discursive exchange about the science of very energy efficient buildings.

3 Kōpaka / Definitions

3.1 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

3.1.1 References to persons include individuals, partnerships, firms, associations, corporations and unincorporated bodies of persons, government or semi-government or local body or municipal bodies, and agencies or political subdivisions of them in any case whether having separate legal personality or not;

3.1.2 Words in the singular will include the plural and vice versa. Words importing one gender will include the other genders;

3.1.3 Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

3.1.4 Headings have been inserted for convenience only and do not affect the construction of this Deed;

3.1.5 Reference to a statute includes all statutes amending, consolidating or replacing the statute referred to;



3.1.6 References to clauses and schedules are to be construed as references to the same in this Deed;

3.1.7 References to currency or \$ are to New Zealand dollars unless otherwise expressly stated.

3.2 The covenants expressed or implied in this Deed on the part of a party shall bind all persons executing this Deed who form that party and any two or greater number of them jointly and each of them severally.

4 Koronga / Purposes

The Trustees will hold in the Trust Fund upon trust to pay or apply in Aotearoa/New Zealand the income and the capital of the Trust Fund in such amounts, at such times and subject to such terms and conditions, as the Trustees may decide for all or any of the following charitable purposes:

4.1 To advance education through:

4.1.1 Educating the building industry and members of the public about improved energy efficiency in Aotearoa/New Zealand buildings;

4.1.2 Promoting the Passive House standard as defined by the Passivhaus Institut, Darmstadt-Germany, in Aotearoa/New Zealand;

4.1.3 Researching the performance of built Passive Houses in Aotearoa/New Zealand and making such research publicly available;

4.1.4 Researching the Aotearoa/New Zealand housing industry in general and the Aotearoa/New Zealand climate and making such research publicly available in order to promote energy efficient building options;

4.1.5 Providing a platform for the building sector to gain knowledge of highly energy efficient buildings;

4.1.6 Educating building professionals and lay persons about Passive Houses.

4.2 To benefit the community by:

4.2.1 Improving public health and well-being and relieving fuel poverty of the people of Aotearoa/New Zealand through the promotion of healthy and highly energy efficient homes and public buildings;



4.2.2 Working with the public sector of Aotearoa/New Zealand to improve the energy efficiency of Aotearoa/New Zealand homes and public buildings.

5 Ngā Mahi ki Aotearoa Anake / Activities Limited to Aotearoa/New Zealand

The activities of the Trust will be limited to Aotearoa/New Zealand.

6 Tari / Office

The office of the Trust will be in such place in Aotearoa/New Zealand as the Board of Trustees may from time to time determine.

7 Te Rūnanga Whakahaere / Board of Trustees

7.1 The Board will comprise of no less than three (3) Trustees and no more than ten (10) Trustees.

7.2 The signatories to this Deed will be the first Board. The Trustees will elect from among themselves a Chair. A Secretary and Treasurer will also be appointed from among themselves or from non-trust members. An election of office-bearers will be held at the first meeting of the Board following the execution of this Deed and whenever a vacancy occurs. The positions of Secretary and Treasurer may be combined.

7.3 A person will immediately cease to be 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.

7.4 The Board will have the power to fill any vacancy that arises in the Board or to appoint any additional trustees subject to clause

7.5 The Board may continue to act notwithstanding any vacancy, but if their number is reduced below minimum number of trustees as stated in this deed, the continuing trustee/s may act for the purpose of increasing the number of trustees to that minimum but for no other purpose.

7.6 The Board may, by a motion decided by a two-thirds (2/3rd) majority of votes, terminate a person's position as a Trustee and member of the Board, if it believes that such action is in the best interests of the Trust.

7.7 The name of the Board will be '*Te Tōpūtanga o te Whare Korou ki Aotearoa, Passive House Institute New Zealand (PHINZ)*'.

8 Ngā Hui o Te Rūnanga Whakahaere / Meetings of the Board

8.1 The procedure for Board meetings will be as follows:

8.1.1 A quorum will be at least half of its members.

8.1.2 If a Trustee, including an office-bearer, does not attend three (3) consecutive meetings of the Board without leave of absence that member may, at the discretion and on decision of the Board, be removed as a Trustee, and/or from any office of the Trust which she or he holds.

8.1.3 All questions will if possible be decided by consensus. In the event that a consensus cannot be reached then a decision will be made by a majority vote by show of hands, unless otherwise determined by the Board.

8.1.4 If the voting is tied, the motion will be lost.

8.1.5 In the absence of the Chair, the Board will elect a person to chair the meeting from among the Trustees present.

8.2 The Board will meet at least three (3) times every year. Meetings may be held in person or by any other means of communicating as decided on by the Board from time to time. The Secretary will ensure that all members of the Board are notified of the meeting, either verbally or in writing.

8.3 The Secretary will ensure that a minute book is maintained which is available to any member of the Trust and which, for each meeting of the Board, records:

8.3.1 the names of those present;

8.3.2 all decisions made by the Board; and

8.3.3 any other matters discussed at the meeting.

9 Taketake / Powers

In addition to the powers provided by the general law of New Zealand or contained in the Trustee Act 1956, the powers which the Board may exercise in order to carry out its charitable purposes are as follows:

9.1 To use the funds of the Trust as the Board thinks necessary or expedient in payment of the costs and expenses of the Trust, including the employment and dismissal of professional advisors, agents, officers and staff, according to principles of good employment and the Employment Relations Act 2000 or any subsequent enactment;

9.2 To purchase, take on, lease or in exchange or hire or otherwise, acquire any real or personal property and any rights or privileges which the Board thinks necessary or expedient in order to attain the purpose of the Trust and to sell, exchange, let, bail or lease, with or without option of purchase or, in any other manner, dispose of such property, rights or privileges;

9.3 To invest surplus funds in any way permitted by law for the investment of Charitable Trust funds and upon such terms as the Board thinks fit;

9.4 To borrow or raise money from time to time with or without security and upon such terms as to priority or otherwise as the Board thinks fit; and

9.5 To do all things as may from time to time be necessary or desirable to enable the Board to give effect to and attain the charitable purposes of the Trust.

10 Ko Ngā Rawa Hei Painga Mo To Iwi / Income, Benefit or Advantage to Be Applied to Charitable Purposes

10.1 Any income, benefit or advantage will be applied to the charitable purposes of the Trust as set out in clause 4.

10.2 No trustee or members of the Trust or any person associated with a trustee shall participate in or materially influence any decision made by the trustees in respect of any payment to or on behalf of that trustee or associated person of any income, benefit or advantage whatsoever. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).

10.3 The provision and effect of this clause shall not be removed from this deed and shall be implied into any document replacing this deed of trust.

11 Turu Taketake / Power to Delegate

11.1 The Board may from time to time appoint any committee and may delegate any of its powers and duties to any such committee or to any person. The committee or person may without confirmation by the Board exercise or perform the delegated powers or duties in the same way and with the same effect as the Board could itself have done.

11.2 Any committee or person to whom the Board has delegated powers or duties will be bound by the terms of the Trust and any terms or conditions of the delegation set by the Board.

11.3 The Board will be able to revoke such delegation at will, and no such delegation will prevent the exercise of any power or the performance of any duty by the Board.

11.4 It will not be necessary for any person who is appointed to be a member of any such committee, or to whom such delegation is made, to be a Trustee.

12 Pūtea / Financial Arrangements

12.1 The financial year of the Trust will be from 1 January to 31 December.

12.2 At the first meeting of the Board in each financial year, the Board will decide by resolution the following:

12.2.1 How money will be received by the Trust;

12.2.2 Who will be entitled to produce receipts;

12.2.3 What bank accounts will operate for the ensuing year, including the purposes of and access to accounts;

12.2.4 Who will be allowed to authorise the production of cheques and the names of cheque signatories; and

12.2.5 The policy concerning the investment of money by the Trust, including what type of investment will be permitted.

12.3 The Treasurer will ensure that true and fair accounts are kept of all money received and expended by the Trust.

12.4 The Board may arrange for the accounts of the Trust for that financial year to be audited by an accountant appointed for that purpose.

13 Te Tohu Ngātahi/Common Seal

13.1 The Common Seal of the Board will be kept in the custody of the Secretary, or such other officer appointed by the Board.

13.2 When required, the Common Seal will be affixed to any document following a resolution of the Board and will be signed by the Chair (or a trustee acting as the Chair) and one other trustee appointed by the Board.

14 Whakarekētanga Ture/ Alterations of This Deed

14.1 The Trustees may, by consensus or pursuant to a motion decided by a two-thirds majority of votes, by supplemental Deed make alterations or additions to the terms and provisions of this Deed provided that no such alteration or addition will:

14.1.1 Detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or

14.1.2 Be made to the Purpose Clause (4), the Activities Limited to New Zealand Clause (5), the Pecuniary Interests Clause (10) or the Disposition of Surplus Assets Clause (1) unless it will not change the exclusively charitable nature of the Trust.

15 Takawaenga / Mediation & Arbitration

15.1 Any dispute arising out of or relating to this deed may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties. Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' institute of new Zealand Inc.

15.2 The mediation shall be terminated by:

15.2.1 The signing of a settlement agreement by the parties; or

15.2.2 Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or

15.2.3 Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or

15.2.4 The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

15.3 If the mediation should be terminated as provided in clause 15.2, or if the parties do not agree to refer the dispute to mediation, any dispute or difference arising out of or in connection with this deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

16 Taunaha / Trustee Liability

It is declared that:

16.1 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

16.2 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;

16.3 No Trustees shall be liable personally for the maintenance, repair, or insurance of any charges on such property;

16.4 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 Section 13C Trustees Act 1956 (as enacted by the Trustee Amendment Act 1988) (or any statutory replacement or equivalent) unless such loss is attributable:

16.4.1 To his or her own dishonesty; or

16.4.2 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.

16.5 No Trustees shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of Trust committed by that co-Trustee.

16.6 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.

16.7 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 defence at law or in equity in which they may be joined as a party.



17 Te Tuku Toenga Rawa / Disposition of Surplus Assets

On the winding up of the Trust, or on its dissolution by the Registrar, all surplus assets, after the payment of costs, debts and liabilities will be given to other registered charitable organisation/s within New Zealand as the Board will decide. If the Trust is unable to make such a decision, the surplus assets will be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 or subsequent enactment.