

**CONSTITUTION
OF
ST JAMES KIDSWAY INCORPORATED
("the Trust")**

1. NAME

The name of the Trust shall be St James Kidsway.

2. PURPOSE

The purpose of the Trust is to provide high-quality, Christian-based early childhood education in accordance with biblical principles and the values of St James.

2.1 The Trust shall operate as a not-for-profit entity.

3. PHILOSOPHY/PROGRAM DISTICTIVE

Working within the webbing of Te Whariki ("the Early Childhood National Curriculum of the New Zealand Ministry of Education as at the date of this constitution") the trust will assert and affirm its Christian philosophies as follows:

3.1 Provide a Christian outreach to the people of Pukekohe and the wider Franklin District;

3.2 Provide a suitable environment with high quality Early Childhood Education;

3.3 Within this environment encourage the awareness that God is a part of every aspect of the life of everyone by Christian teaching and action;

3.4 Within specific Christian teaching introduce people to Jesus Christ, Son of God, friend of little children, Lord and Saviour;

4. INTERPRETATION

4.1 "Area" (means Aotearoa - New Zealand in general and in particular the area of the former Franklin District Council area).

"Board" means the Board of Trustees of the Trust constituted from time to time.

"Constitution" means these terms and the terms of the Trust formally adopted, registered and effective from time to time.

“Objects” mean the Objects as provided in clause 6.

“Officer” means any Trustee, treasurer, secretary, manager, or other employee of the Trust designated by the Board as such.

“Standing Orders” means the standing orders as for the conduct of meetings of the Board and the Trust as set and amended by the Board from time to time.

“Trust” means the charitable Trust established to carry out the Objects.

“Trustee” means a Trustee for the time being acting in the Trust.

- 4.2 Words importing the singular include the plural and vice versa. Words importing any gender include other genders. References to persons include companies, incorporated societies and corporations.

5. OBJECTS

- 5.1 The objects of the Trust shall be to provide the area with quality preschool education in keeping with the Christian philosophy set out in paragraph 3.

- 5.2 The Trust will accept all children regardless of gender, ethnicity, religion, ability or socioeconomic circumstances.

- 5.3 The Trust will operate with a distinctive Christian character which shall be practically expressed by creating a loving, caring, culturally inclusive and educational environment for all children and their parents and other family and Whanau members.

- 5.4 The Trust will support parents and families in their efforts to educate their children.

- 5.5 Without limiting the foregoing in any way the Trust shall be empowered to carry on the following;

- i. The establishment and maintenance of the facility.
- ii. All other activities in keeping with the operation of the objects of the Trust.
- iii. Cooperation with other schools and educational agencies.
- iv. The receiving and distribution of grants or subsidies for the work of the Trust.
- v. To operate the Trust and to use any funds belonging to it as the Trustees may consider necessary and proper in furthering in its objects and purposes and generally to do all such acts matters and things and enter into and make such arrangements that are incidental or conducive to the attainment of any of the aforesaid objects.

PROVIDED that all objects and purposes shall be limited to New Zealand and the services offered by the Trust shall be within the defined area.

6. POWERS

In addition to any powers conferred upon the Board by law it shall have the following powers;

- 6.1 To employ any person either paid or voluntary to carry out the objects of the Trust.
- 6.2 To employ a manager to be responsible to see that the Trust's programme is run in accordance with its philosophy and also with directions given by the session of St James Presbyterian Church Pukekohe ("St James Church") and the Board as specified in clause 10.10.
- 6.3 To establish erect maintain improve alter demolish any building to further the objects of the Trust to accommodate its employees.
- 6.4 To act as Trustee alone or jointly with others for any property held or to be held upon Trust.
- 6.5 To purchase; exchange; lease; accept by way of gift, devise or bequest; or otherwise acquire upon such terms as it shall think fit any real or personal property or any rights or privileges and whether encumbered or unencumbered or subject to any Trust or condition.
- 6.6 To sell; transfer; subdivide; exchange; lease (or surrender thereof); mortgage; grant easements or rights over; or otherwise deal with all or any of the real property of the Trust in any way it shall think fit.
- 6.7 To invest funds of the Trust in such manner as in its absolute discretion it shall think fit.
- 6.8 To create, establish or participate in any fund or system of superannuation retiring allowances or pensions to or for any officers, servants, employees, or staff members of the Trust and to allow any bonus or bonuses to such persons or any of them out of the Trust.
- 6.9 To join in or undertake (including in conjunction with any other person) any project or activity designed to further the objects of the Trust or any like object or any religious or charitable object whatsoever and with full power for the purpose of effectively carrying out any such project or activity to do so alone or jointly or in common or in partnership with anybody or person any of the following things that is to say:-
 - i. To acquire any real or personal property whatsoever and deal with it or dispose of it as thought fit;
 - ii. To advance moneys on any terms thought fit.

- 6.10 To take and act upon the opinion of any Barrister and Solicitor of the High Court of New Zealand whether in relation to the interpretation of this deed or any other document or any statute or as to the administration of any of the Trusts declared and authorised by this deed without being liable to any person who may claim to be in any way beneficially interested in respect of any act done in accordance with such opinion.
- 6.11 To effect insurance to indemnify a trustee or an officer in respect of;
- (a) Liability, not being criminal liability or liability in respect of a breach of any fiduciary duty owed to the Trust, for any act or omission in his or her capacity as an officer; or
 - (b) Costs incurred by that Officer in defending or settling any claim or proceeding relating to any liability; or
 - (c) Costs incurred by that officer in defending any criminal proceedings in which he or she is acquitted.
- 6.12 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.

7. POWER TO DELEGATE

- 7.1 The Board may delegate its powers as it shall decide.
- 7.2 The Board shall delegate the day to day management and running to the Manager for the time being. In turn the Manager may delegate aspects of the day to day running to other individuals so long as they are under the control of and answerable to the Manager. The Manager shall keep the Board fully informed of all major matters that may affect the Board's role as governor.
- 7.3 The board may otherwise delegate any of its functions and responsibilities as it shall see fit to any other person provided that such delegation shall not derogate from the ultimate power and authority of the board and its responsibility for St James Kidsway.

8. TRUSTEES' LIABILITY AND INDEMNITY

8.1 Limit on Liability

No Trustee shall be liable for any loss to the Trust that is not attributable to that Trustee's own dishonesty, wilful misconduct, or deliberate breach of trust. In particular, no Trustee shall be obliged to take proceedings against a co-Trustee for any breach or alleged breach of trust committed by that co-Trustee. The provisions of the Trusts Act 2019, or any enactment replacing or amending it, shall apply except to the extent expressly modified by this Deed.

8.2 Reimbursement for Liability

If the Trustees shall be held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Trust or any action taken or omitted in connection with the Trust, then the Trustees shall be entitled to be indemnified and reimbursed out of the Trust to the full extent of such liability shall have been determined, including, without limitation, legal fees and disbursements.

8.3 Indemnity

The Trustees shall be indemnified out of the Trust against all liabilities incurred by them in the exercise or attempted exercise of the Trusts, powers, authorities and discretion vested in them and shall have a lien on and may use moneys forming part of the Trust in pursuance of this indemnity. 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 but shall not extend to any liability for loss attributable to a Trustees known dishonesty or to the wilful commission by him or her of any act known by him or her to be a breach of Trust.

8.4 Reimbursement of Expenses and Remuneration

- 8.4.1 The Manager and qualified Early Childhood teaching staff will be appointed by the Committee subject to the confirmation of the Session. Each will serve under conditions of service and remuneration negotiated with them in good faith. All Staff and Volunteers will report to the Manager who shall be responsible for their standards of performance and welfare.
- 8.4.2 Any Trustee shall be entitled to reimbursement from the Trust for all reasonable expenses incurred in the course of carrying out their duties. This includes, but is not limited to, legal costs incurred in bringing or defending any action related to the Trust or this Constitution, provided such costs are incurred in good faith and in the best interests of the Trust.
- 8.4.3 Nothing shall prevent the payment of reasonable remuneration to any member or other persons for services actually rendered to St James Kidsway, or reimbursement for expenses actually incurred, provided that:
- (a) The payment complies with the applicable provisions of the Income Tax Act 1994 (or any subsequent enactment).
 - (b) The recipient does not have the ability to determine or materially influence the nature or amount of their own remuneration or reimbursement.
 - (c) Any person receiving such remuneration or reimbursement shall not participate in any deliberations, discussions, or decisions relating to their own payment.

- 8.4.4 The Trust shall indemnify Trustees against any reasonable expense or liability they may incur while acting in good faith on behalf of the Trust. However, this shall not extend to cases involving gross negligence, misconduct, or breach of fiduciary duty.

9. ADMINISTRATION

St James Kidsway is owned by St James Presbyterian Church of Pukekohe and operated by the Board of Trustees of St James Kidsway.

9.1 Constitution of Board

The governance of the Trust shall be in the hands of a Board of 7 persons who shall constitute the Trustees of the Trust.

9.2 Composition of Board

The Trustees shall comprise the following:

- 9.2.1 The minister for the time being of St James Church. If there shall be no incumbent Minister then that place shall be taken by a Session member of St James Church;
- 9.2.2 One representative of the Session of St James Church;
- 9.2.3 Two other representative of the membership of St James Church;
- 9.2.4 The Manager of St James Kidsway ex officio;
- 9.2.5 One person to be appointed by the Friends of Kidsway;
- 9.2.6 One representative of the parents and caregivers of children attending or intending to attend St James Kidsway.
- 9.2.7 In addition the Board may co-opt any other person or persons onto the Board for the particular skills or contribution they may bring to Kidsway. Such co-opted member or members will not have the right to vote; and will serve at the pleasure of the Board.

9.3 Length of Trustees' Term of Office

The Trustees representing St James Church shall be appointed for a term not exceeding 3 years on a rotational basis whereby one Trustee shall stand down each year at the annual general meeting. However, the particular body of St James Church for whom such trustee is appointed to represent may resolve at the annual general meeting that such trustee may be reappointed to represent that body at the annual general meeting.

9.4 Cessation of Trustees

A Trustee of St James Kidsway shall cease to hold office if;

- (a) They resign in writing.
- (b) They become incapacitated or unable to fulfil their duties.
- (c) Death.
- (d) They become bankrupt or becoming subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988.
- (e) Are convicted of an offense involving dishonesty
- (f) They are removed by unanimous agreement of the other Trustees due to misconduct, negligence, or bringing the Trust into disrepute.

9.5 Retirement and Casual Vacancies

Any casual vacancy under clause 10.1 of a St James Church Trustee shall be filled by the representative body of St James Church.

9.6 Quorum/Decision Making

- 9.6.1 A quorum will comprise of half of the Committee plus one person, of which at least 50% shall be members of St James Church.
- 9.6.2 At all levels decisions will normally be made by consensus. Where voting is required, this may be by a show of hands or secret ballot if requested. A simple majority of those present and voting will carry any motion subject to provisions of 10.6.3. The Chairman may exercise a casting vote.
- 9.6.3 In Board Meetings a 75% majority of those present and voting is required to effect a change to the constitution, to vote to wind up St James Kidsway or for any special business to pass *PROVIDED THAT no amendment to this constitution shall alter the charitable status of St James Kidsway or alter or revoke the provisions in **clause 12** (application of funds for exclusively charitable purposes), **clause** (limitation of personal pecuniary benefit) and **clause 19** (winding up.)*.
- 9.6.4 Minutes of all meetings will be kept and confirmed at the following committee or General Meeting. This will be available to all entitled to be present at that particular meeting.

9.7 Board Meetings

The Board shall meet at such times in places as it may decide and shall have power to make such terms and conditions for its internal management not conflicting with these terms as it may think fit and to revoke and to alter such terms or conditions. At the date of this constitution, it is envisaged the Board shall meet once a school term during a calendar year for regular business – that is, four times a year.

9.8 Conduct of Board Meeting

Save insofar as it may conflict with any of these rules all meetings shall be conducted in accordance with the standing orders of St James Kidsway. Should there be no such appropriate or applicable orders then the meeting shall be conducted in accordance with those standing orders commonly understood and accepted for the conduct of meetings of organisations.

9.9 Voting

The Trustees may exercise all powers and directions vested in them by the majority vote of those who are present at Board meetings. If the voting is tied the motion shall be lost.

9.10 Roles and Responsibilities of Officers

The Board shall appoint the following officers:

- (a) **Chairperson** - Provides leadership, chairs meetings, and ensures the Trust fulfils its purpose.
- (b) **Secretary** - Maintains records, prepares minutes, and manages correspondence.
- (c) **Treasurer** - Oversees financial management, prepares budgets, and ensures compliance with financial regulations.

9.11 Chairperson

The Board at its first meeting in each calendar year shall elect one of its members being one of the representatives of St James Church as its Chairperson and then at the same meeting the board shall elect another member also being a member of St James Church as Deputy Chairperson. Any chairperson at any time may be removed from office by a resolution of the Board passed by not less than three-fourths of its members.

10. COMMON SEAL

The Trust may have a Common Seal. If the Trust decides to adopt a Common Seal it shall be kept by such officer as the Board shall from time to time appoint and shall not be affixed except pursuant to a resolution of the Board or of a committee thereof having power to authorise the affixing thereof and in the presence of 2 members of the Board 1 of whom will be the current chairperson or secretary of the Board and 1 member and 1 officer appointed for such purpose who shall add their signatures to the document in which the Seal is affixed.

11. FUNDS

All income, property and funds of St James Kidsway shall continue to be applied exclusively for the charitable and religious objects of St James Kidsway and not for the private pecuniary gain or profit of any individual.

11.1 Trust Income

The income of the Trust shall be obtained from payments and grants from the Ministry of Education, donations, subscriptions, grants, special collections, bequests, gifts, rent, interest payments and fees for service that is affordable for most members of our community or by any other means the Board shall from time to time approve. However, the Trust shall not be funded from any source connected to gaming, gambling or the sale of intoxicating liquor.

11.2 Trust payments

All moneys received on behalf of the trust shall be paid into a bank account under the name of the Trust. The trustees may delegate the operation of this bank account to the manager, and any treasurer elected to the management committee. All payments made by or on behalf of the Trust shall be made by approved means of monetary transfer by such persons as shall from time to time be authorised by the Board. All accounts in the name of the Board shall be under the scrutiny and control of St James Church shall be subject to the same audit as is required by the Presbyterian Church of Aotearoa New Zealand in its Book of Order and also by the New Zealand Ministry of Education.

11.3 Financial Statements

The Board shall cause a true statement of financial performance of the Trust in each financial year together with a statement on financial position at the close thereof to be prepared, audited and submitted to the annual general meeting for consideration and shall also submit a report on the years activities and matters affecting the same. A copy of sorts shall also be submitted to St James for the consideration and approval of the appropriate Court of St James.

11.4 Budget

The Board shall determine financial policies on setting fees, accepting donations, and expenditure limits within Budget provided.

11.5 Financial Year

The financial year of the Trust shall end each year on the 30th of June or on such other date as may be determined by the Board.

12. NO INFLUENCE

No Trustee, beneficiary or potential beneficiary or person associated with a Trustee of the Trust shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage except where that income benefit is derived from

- (a) Professional services to the Trust rendered in the course of business charged at no greater rate than current market rates;
- (b) Interest on money lent at no greater rate than current market rates or as authorised by this Constitution.

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

13. CONFLICT RESOLUTION & DISPUTE RESOLUTION

In the event of a dispute between Trustees, staff, or members, the following procedure shall apply:

- (a) The parties shall attempt to resolve the issue through discussion and mediation.
- (b) If unresolved, the matter shall be referred to an independent mediator.
- (c) If mediation is unsuccessful, the matter shall referred to the Board for a final decision. Where necessary, arbitration may be sought in accordance with New Zealand law.

14. CODE OF CONDUCT & ETHICAL STANDARDS

- 14.1 Trustees, staff, and volunteers shall uphold Christian values and ethical standards in all dealings.
- 14.2 Confidentiality shall be maintained regarding sensitive matters of the Trust.
- 14.3 Any conflicts of interest must be declared, and the affected individual shall abstain from related decision-making.

15. AUDITOR

The board at its annual meeting shall appoint a suitably qualified person to audit the trust's accounts. This may be the same auditor appointed by St James to audit its annual accounts, but such decision shall ultimately be that of the board.

16. TRUST MEETINGS

16.1 Annual Meeting

An annual meeting of the Trust shall be held at such time within each calendar year at such place as the Board shall decide. The period between successive annual general meetings shall not exceed 18 months.

16.2 Notice of Annual Meeting

Notice of such meeting shall be given at least 14 days before the date thereof by posting written notice together with copies of the agenda and financial statements to the Board members and to the parents, caregivers, and other family or Whanau of the children attending the school operated by the Trust and to the minister and a session member of St James.

16.3 Business of Annual Meeting.

The business of the Annual meeting shall be;

- (a) To consider the annual report and financial statements
- (b) To elect the chairperson, deputy chairperson, treasurer, secretary, staff representative and any other officers as may be required from time to time.
- (c) To deal with any business specified in the notice of the meeting and any other business which a majority of the Board members present resolve shall be dealt with.

16.4 Quorum

A quorum at the Annual General Meeting or any Special General Meeting, shall be five (5) board members personally present.

16.5 Meeting Chairperson

The chairperson of the Board if present within 15 minutes of the time affixed for any meeting shall preside thereat but otherwise such meeting shall elect a chairperson.

16.6 Meetings not invalidated

The accidental omission to give notice of any meeting to any person entitled to receive notice or the non-receipt of any such notice by any such persons shall not invalidate the proceedings of such meeting.

17. NEW TERMS OR ALTERATIONS TO TERMS OF TRUST

New terms or alterations to these terms of Trust shall be made only at a meeting of the Board by a resolution passed by a majority of the members present thereat provided always that they constitute a quorum and provided further;

- (a) That a copy of the proposed resolution shall have been laid before a previous meeting of the Board.
- (b) That requisite notice of such proposed alterations shall have been given in not less than 14 days to:
 - i. All other Board members
 - ii. The parents, family, whanau and other members, of the children then attending the Trust's school.
- (c) That no addition or alteration to the terms shall;
 - i. Detract from the nature of the Trust
 - ii. In any way deviate from the aims and objects of the Trust.
 - iii. Result in the distribution of its assets on winding upon dissolution for any purpose that is not exclusively charitable.
- (d) Before being adopted any new terms or alterations to the terms of the trust shall not come into effect until approval by the session of St James which shall always have a right of veto to any such proposed changes

18. WINDING UP

In the event of the winding up of the Trust, the property and assets shall be disposed of by the Trustees in a manner that ensures they remain applied exclusively for charitable purposes. Any surplus assets shall be transferred to one or more registered charitable organisations operating a similar Christian educational programme within the local area. If no such programme exists, the surplus assets shall be transferred to another registered charity with similar Christian educational objectives, as directed by the Presbyterian Church of Aotearoa New Zealand.