

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Re The Orewa Rotary Trust Board Incorporated [2021] NZHC 2377

High Court of New Zealand, Wylie J, 10 September 2021

Court refuses scheme to transfer charitable trust assets to another trust varying the way in which the assets can be administered.

Key words: Charitable Trust, New Zealand, Scheme

1. Mrs Lloyd and her husband (now deceased) were charter members of the Orewa Rotary Club. In 1988, Mrs Lloyd settled the Orewa Rotary Trust, a charitable trust. The purpose was:

... provision for the social wellbeing, relief of suffering, education and public benefit of the residents of the Rodney County (with particular emphasis and reference to the Hibiscus Coast area of the Rodney County) including those suffering from sickness or a need of educational support or maintenance (in cases where there is insufficient financial resources for the potential beneficiary) and for any community purpose.
2. She appointed the New Zealand Guardian Trust Company Ltd as trustee of the Trust and the Rotary Club of Orewa as the Trust's administrator.
3. Donations from Mrs Lloyd and fundraising grew the assets to \$49,000.
4. In 1994 the Trust purchased a property known as Orewa Rotary House for about \$165,000 with a mortgage of \$70,000 and debentures from Rotary members. The property became debt free in 2007, and much of the money secured by way of debenture was, on maturity, gifted to the Trust.
5. On 1 June 2020, another charitable trust – the Rotary Club of Orewa Incorporated Charitable Trust – was settled by the Rotary Club of Orewa.
6. It was proposed to resettle the assets of the Orewa Rotary Trust on the Rotary Club of Orewa Incorporated Charitable Trust and thus adopt its trust deed. It was argued that the establishment deed needed to be replaced because the stated purposes set out in that deed were “overly broad”, there was conflict and confusion between

the roles of the administrator and the trustee, and because the establishment deed lacked basic administrative provisions.

7. An application was made to the Court for approval of a scheme Part 3 of the Charitable Trusts Act 1957 (the Act). There were no notices of opposition from the Attorney General or the public to the Scheme.

8. The object and purpose of the Rotary Club of Orewa Incorporated Charitable Trust are:

The Objects and Purposes of the Trust shall be every charitable purpose, whether it relates to the relief of poverty, the advancement of education, or any other matter beneficial to the community.

9. The charitable trust deed goes on to provide that (at [25]):

4.1 The objects of the trust are:

4.1.1 To promote the improvement of literacy and numeracy on the Hibiscus Coast through:

- (a) The provision of resources to kindergartens, schools and other educational institutions
- (b) The provision of scholarships and prizes for academic achievement
- (c) Providing assistance to other organisations working to improve literacy and numeracy

4.1.2 To improve the Hibiscus Coast community through services and fundraising projects to meet:

- (a) Needs of the aged, ill or infirm
- (b) Needs of those affected by poverty
- (c) Public health needs

4.1.3 To promote continued education and the development of vocational skills in the Hibiscus Coast community through:

- (a) The provision of further education courses and or support to higher or alternative learning institutions.
- (b) The provision of vocational skills training and or support to vocational training institutions

4.1.4 To improve any of the following in the Hibiscus Coast community:

- (a) Amenities used by the public including public halls, libraries, museums, parks and gardens, sporting and pool facilities
- (b) Social rehabilitation resources

4.1.5 To promote and support community purposes and social wellbeing in the Hibiscus Coast community through:

- (a) The provision of assistance to the community in times of disaster
- (b) The encouragement of participation and inclusion in the community on a non-partisan basis

4.1.6 To provide assistance to other charitable organisations in the area with similar objects.

4.2 The Trust's objects will only be carried out in and for the benefit of charitable purposes in New Zealand.

10. The Court observed that Rodney County mentioned in the original trust no longer existed and the Hibiscus Coast was now in the Albany ward of Auckland Council. The new deed limited the area to the Hibiscus Coast, which was

smaller than the old Rodney County, and the Court did not have evidence before it that this was a reflection of Mrs Lloyd's intention.

11. Further the Court did not agree that the charitable purposes set out in the establishment deed were overly broad or that they were unworkable, nor that there was any impossibility, impracticality or inexpediency which precluded simply repeating the charitable purposes set out in the establishment deed in a new trust deed, if a new deed was thought to be necessary.
12. As the Court only had power to approve or reject the scheme as submitted, not to amend it, the Scheme was declined.

IMPLICATIONS



Rarely does a Court disagree with the Attorney General in such cases, but in this instance the Court found that the charitable purpose of the transferred assets would not be the same. The Courts seek to honour the original charitable purposes unless there is express legislative authority to alter them.

VIEW THE CASE



This case may be viewed at <http://www.nzlii.org/nz/cases/NZHC/2021/2377.html>

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