

## New Zealand.



### ANALYSIS

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### 1942, No. 2—*Private*

AN ACT to incorporate the Trustees of the Homewood Trust, and for other Purposes. [26th October, 1942] Title.

WHEREAS George Alley, of Tauranga, farmer, by the deed of trust a copy of which is set out in the Schedule hereto, made provision for the vesting in the trustees therein named of the land, stock, chattels, and other assets described in the said deed of trust upon the trusts set out therein: And whereas it is desirable that the trustees should be constituted a body corporate with perpetual succession and a common seal, and that Preamble.

provision should be made for the vesting, management, and control of the trust estate and for certain other matters:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Homewood Trust Act, 1942.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“ Board ” means the Homewood Trust Board established under this Act:

“ Deed of trust ” means the deed of trust a copy of which is set out in the Schedule hereto:

“ The trustees ” means the trustees referred to as such in the deed of trust.

Incorporation of Homewood Trust Board.

3. (1) There is hereby established for the purposes of this Act a Board, to be called the Homewood Trust Board.

(2) The Board shall be a body corporate, with perpetual succession and a common seal, and shall be capable of holding real and personal property and of doing and suffering all that bodies corporate may do and suffer.

(3) All references to the trustees under the deed of trust or to the trustees of the Homewood Trust in any Act or in any agreement, deed, will, instrument, or other document whatsoever (whether dated before or after the passing of this Act) shall, unless inconsistent with the context or with the provisions of this Act, be deemed to be references to the Board.

First members of Board.

4. The trustees shall be the first members of the Board.

Vacancies in membership of Board.

5. (1) The office of any member of the Board shall be vacated if the member—

(a) Becomes bankrupt within the meaning of the laws relating to bankruptcy; or

(b) Is convicted of any crime punishable by imprisonment for a term of one year or upwards; or

(c) Becomes mentally defective and is received or detained in any mental hospital or other place as a mentally defective person under any Act for the time being in force relating to mental defectives; or

- (d) Becomes a protected person under the Aged and Infirm Persons Protection Act, 1912; or
- (e) Resigns his office by notice in writing to the Board; or
- (f) Is absent without leave from four consecutive meetings of the Board; or
- (g) Dies.

See Reprint  
of Statutes,  
Vol. II, p. 887

(2) On the occurrence from any cause of a vacancy in the office of a member of the Board, the Board shall, by resolution duly passed at a meeting of the Board held as soon thereafter as may be, appoint another person to be a member of the Board in the place of the member whose office is so vacated.

(3) The Board may act notwithstanding any vacancy in its membership, and the validity of any act of the Board shall not be affected or called in question by reason of any defect or informality in the appointment of any member of the Board.

6. (1) Meetings of the Board shall be held at such times and places as the Board or the Chairman from time to time determines. Meetings  
of Board.

(2) At any meeting of the Board a majority of the members of the Board shall form a quorum.

(3) All questions before the Board shall be decided by a majority of the valid votes recorded thereon.

7. (1) The Board shall from time to time appoint from among its members a Chairman and a Deputy Chairman of the Board. During any vacancy in the office of Chairman or whenever the Chairman is unable to act, whether by reason of absence or otherwise, the Deputy Chairman may exercise and perform all the powers and duties of the Chairman. Chairman  
and Deputy  
Chairman  
of Board.

(2) The Chairman shall preside at every meeting of the Board at which he is present. In the absence of the Chairman and the Deputy Chairman from any meeting of the Board the members present shall select one of their number to be the Chairman for the purposes of that meeting.

(3) At any meeting of the Board the Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

8. Subject to the provisions of this Act, the Board may regulate its procedure in such manner as it thinks fit. Procedure  
of Board.

Contracts  
of Board.

9. (1) Any contract which if made between private persons must be by deed shall, if made by the Board, be in writing under the seal of the Board.

(2) Any contract which if made between private persons must be in writing signed by the parties to be charged therewith shall, if made by the Board, be either in writing under the seal of the Board or in writing signed by any member of the Board on behalf of and by direction of the Board.

(3) Any contract which if made between private persons may be made orally may be similarly made by or on behalf of the Board by any member acting by direction of the Board, but no oral contract shall be made involving the payment by the Board of a sum exceeding ten pounds.

(4) Notwithstanding anything in the foregoing provisions of this section, no contract made by or on behalf of the Board shall be invalid by reason only that it is not made in the manner prescribed by this section if it is made pursuant to a resolution of the Board or to give effect to a resolution of the Board.

Powers of  
Trustees  
vested in  
Board.

10. Subject to the provisions of this Act,—

(a) The Board shall have all the powers, authorities, and discretions conferred upon the trustees by the deed of trust:

(b) All the provisions of the deed of trust shall, unless the context otherwise requires, enure and take effect as fully in all respects as if they were expressly hereby enacted, and as if references therein to the deed of trust and to the trustees were references to this Act and to the Board respectively:

Provided that the first reference to the trustees in clause fifteen of the deed of trust shall be deemed to be a reference to the members of the Board.

Vesting  
of trust  
property  
in Board.

11. On the passing of this Act, all property, whether real or personal, then belonging to the trustees as such shall be deemed to be vested in the Board upon and subject to all trusts, powers, contracts, and equities then affecting the same.

Registration  
of title.  
See Reprint  
of Statutes,  
Vol. VII, p. 1162

12. Where any estate or interest in any land subject to the Land Transfer Act, 1915, is vested in the Board by virtue of this Act the District Land Registrar for the land registration district in which the land is

situated shall, on receiving a written application under the seal of the Board, register the Board, without fee, as proprietor of that estate or interest.

**13.** All contracts made by the trustees before the passing of this Act in the exercise of their powers under the deed of trust shall on the passing of this Act be deemed to have been made by the Board.

Contracts made by trustees to be contracts of Board.

**14.** All debts and liabilities incurred by the trustees before the passing of this Act in the exercise of their powers under the deed of trust shall on the passing of this Act become the debts and liabilities of the Board.

Liabilities of trustees to be liabilities of Board.

**15.** (1) Notwithstanding anything to the contrary in the Death Duties Act, 1921,—

Exemption from death duties and gift duty. See Reprint of Statutes, Vol. VII, p. 354

(a) No gift duty shall be payable in respect of any gift made to the trustees or to the Board for any of the purposes of the deed of trust or of this Act:

(b) The property comprised in any gift that is exempted from gift duty by this section shall not be included in the dutiable estate of the donor, notwithstanding that the donor may die within three years after having made the gift.

(2) This section shall apply with respect to gifts made by the said George Alley or by any other person at any time before or after the passing of this Act and with respect to the estates of persons dying at any time before or after the passing of this Act.

(3) Notwithstanding anything to the contrary in the Death Duties Act, 1921, any amount paid by the Board under paragraph (a) of clause two of the deed of trust in respect of estate and succession duties shall not be included in the dutiable estate of the said George Alley.

**16.** No stamp duty shall be payable or be deemed heretofore to have been payable—

Exemption from stamp duty.

(a) On the deed of trust:

(b) On any transfer, assignment, or other assurance to the trustees or to the Board of any property for any of the purposes of the deed of trust or of this Act:

(c) On any transfer, assignment, or other assurance of any property to the said George Alley if that property has been forthwith transferred or assigned by him to the trustees or to the Board for any of the purposes of the deed of trust or of this Act:

- (d) On any transfer, assignment, or other assurance of any property to Alley Body Limited, being the company referred to in the deed of trust, if that property has been forthwith transferred or assigned by the company to the trustees or to the Board for any of the purposes of the deed of trust or of this Act, or has been forthwith transferred or assigned by the company to the said George Alley, and by him to the trustees or to the Board, for any such purpose.

Exemption from land-tax, income-tax, and other charges.

17. The Board and the trustees shall be, and shall be deemed heretofore to have been, exempt from payment of land-tax in respect of any land for the time being forming part of the trust estate, and exempt from payment of income-tax, social security charge, and national security tax in respect of income derived from the trust estate or any part thereof.

Part XIII of the Land Act, 1924, and Part XII of the Native Land Act, 1931, not to apply.

See Reprint of Statutes, Vol. IV, p. 796; Vol. VI, p. 189

18. Nothing in Part XIII of the Land Act, 1924, or in Part XII of the Native Land Act, 1931, shall apply with respect to—

- (a) The acquisition by the trustees before the passing of this Act or by the Board after the passing of this Act of any interest in land for any of the purposes of the deed of trust or of this Act:
- (b) The acquisition by the said George Alley of any interest in land if that interest has been forthwith transferred by him to the trustees or to the Board for any of the purposes of the deed of trust or of this Act:
- (c) The acquisition by the said Alley Body Limited of any interest in land if that interest has been forthwith transferred by the company to the trustees or to the Board for any of the purposes of the deed of trust or of this Act, or has been forthwith transferred by the company to the said George Alley, and by him to the trustees or to the Board, for any such purpose.

Payment of travelling-expenses.

19. The members of the Board shall be entitled to receive from the funds of the Board a refund of all moneys reasonably expended by them in respect of their attendance at meetings of the Board or otherwise in transacting the business of the Board.

- 20.** The Board shall cause proper books of account to be kept for all matters relating to the trust estate. Accounts of Board.
- 21.** (1) At the end of each financial year the Board shall cause to be prepared a report of the operations of the Board for the year. Annual report, including statement of accounts.
- (2) The report shall contain a statement of the total assets and liabilities as at the end of the year, together with an account of receipts and payments and of income and expenditure showing the financial transactions for the year.
- (3) A copy of the report, with the accounts duly audited by an auditor appointed for the purpose by the Board, shall be furnished to the Minister for the time being charged with the administration of Part I of the Rehabilitation Act, 1941. 1941, No. 25
- (4) No person shall be qualified for appointment as auditor of the Board who would not be qualified for appointment as auditor of a company under the Companies Act, 1933. 1933, No. 29
- 22.** No member of the Board shall be personally liable for any act done or omitted by the Board or by any member thereof in good faith in the course of the operations of the Board. Members of Board not personally liable.
- 23.** This Act is hereby declared to be a private Act. Private Act.

## SCHEDULE.

Schedule.

### COPY OF DEED OF TRUST.

THIS deed made the 26th day of May 1942 between George Alley of Tauranga Farmer (hereinafter termed "the Donor") of the one part and the Honourable James Gillispie Barclay of Wellington Farmer, Basil Longmuir Orr of Auckland Company Manager, Eugene Augustus Urquhart of Papakura Farmer, John Dickin of Tauranga Property Supervisor, Michael William Watt of Tauranga Inspector of Stock and Helen Aitken Alley of Tauranga Spinster (hereinafter termed "the Trustees") of the other part: Whereas the Donor is the principal shareholder in Alley Body Limited a duly incorporated company having its registered office at Tauranga which company is the proprietor of certain land stock and chattels and assets more particularly described in the First Schedule hereto subject to the liabilities affecting the same set forth in the said Schedule: And whereas the Donor is the

proprietor of the land and other assets more particularly described in the Second Schedule hereto: And whereas the Donor desires to create a trust for the purposes hereinafter specified, and has made such arrangements as are necessary to enable the vesting in the Trustees of the assets referred to in the First and Second Schedules hereto subject to the conditions terms and stipulations hereinafter set forth: Now this deed witnesseth and it is hereby declared covenanted and agreed as follows:—

1. The Donor shall forthwith execute and procure the execution of such transfers and assignments as shall be necessary to vest in the Trustees all the land stock chattels and assets more particularly described in the First and Second Schedules hereto subject to the liabilities specified in the First Schedule.

2. The Trustees shall hold all the real and personal property mentioned in the preceding paragraph of this deed together with all real and personal property at any time hereafter held or acquired by the Trustees (hereinafter referred to as "the Trust Estate") upon the following trusts that is to say:—

(a) To pay thereout all estate and succession duties which may be assessed and payable on that part of the estate of the Donor which he may bequeath to his daughters or any of them not exceeding the proceeds of the life policies referred to in the Second Schedule hereto and to hold the remainder of the Trust Estate upon the trusts following:—

(b) For or towards the rehabilitation of any serviceman (which term has the meaning assigned to it by section 2 of the Rehabilitation Act, 1941) and for or towards the benefit of any serviceman's widow (which term has the meaning assigned to it by the said section 2) or serviceman's child, or the widowed mother of a serviceman (which phrase has the meaning assigned to it by the said section 2).

Serviceman, serviceman's widow, serviceman's child and the widowed mother of a serviceman are hereinafter comprehended in the term "authorized beneficiary".

(c) The training of authorized beneficiaries preferably such as shall have been selected by the Rehabilitation Board or Lands Department and shall be acceptable to the Trustees, to qualify them for any one or more branches of the farming business with power to the Trustees to include any other business, trade, profession or industry.

(d) To form, establish and maintain, or assist in the formation, establishment and maintenance of any association, club, establishment, convalescent home, or hospital which in the opinion of the Trustees may benefit any authorized beneficiaries.



(e) To pay and distribute in cash or in specie at such time or times as the Trustees in their absolute discretion may determine all or any part of the capital or the income of the Trust Estate for the purposes aforesaid and in particular but without limiting the generality of this clause to pay transfer or give all or any part of the same to the Rehabilitation Board constituted under the Rehabilitation Act, 1941.

3. The name of the Trust shall be "Homewood Trust".

4. The Trust shall commence on the day of the date hereof and immediately on the execution of this deed the Trustees shall assume their duties, and may exercise all the powers hereby conferred upon them.

5. The said George Alley is hereby appointed Advisory Trustee and shall receive notice of all formal meetings of the Trust and may attend and speak thereat, but shall have no vote at any such meeting.

6. The Trustees shall have the absolute management and entire control of the Trust Estate, and may consult the Advisory Trustee on any matter relating to the trusts or the estate, and the Advisory Trustee may advise the Trustees on any such matter. Where any advice is tendered by the Advisory Trustee the Trustees may follow the same and act thereon and shall not be liable for anything done or omitted by them by reason of their following such advice.

7. Unless circumstances arise which in the opinion of the Trustees may render it expedient so to do, the Trustees shall not for a period of five years from the commencement of the Trust carry out the trust for distribution contained in clause 2 (e) of this Deed.

8. The Trustees may carry on the business of farming heretofore carried on by the Donor or any other business, trade, or occupation, so long as they consider necessary or desirable and in so doing may employ the whole or any part of the Trust Estate with power from time to time to increase or diminish the part of the Trust Estate so employed.

9. The Trustees may sell any part of the real or personal property comprised in the Trust Estate, may purchase any other real or personal property and may from time to time let lease bail or hire any real or personal property comprised in the Trust Estate and take on lease or on hire or bailment any real or personal property upon such terms and conditions as to the Trustees shall seem fit and any real and personal property so acquired and the proceeds of any such sale letting leasing or hiring shall be held upon the trusts herein declared.

10. The Trustees may from time to time apply any of the funds of the Trust Estate in erecting and maintaining buildings or other improvements upon the lands belonging to the said estate.

11. The Trustees may obtain money on overdraft from the bankers of the Trustees or otherwise may borrow or raise money or secure the payment of money owing or the satisfaction or performance of any obligation or liability incurred or undertaken by the Trustees upon the security of any of the real or personal property comprised in the Trust Estate or otherwise as the Trustees may think fit.

12. The Trustees may dedicate as roads such parts of the Trust Estate as they think necessary for the proper subdivision sale and leasing of any part of the Trust Estate.

13. The Trustees may at their discretion invest any moneys at any time subject to the trusts of this deed and requiring investment in any of the investments for the time being permitted by law for the investment of trust funds, with power for the Trustees at their discretion from time to time to vary any such investments for others of a like nature.

14. The Trustees may at their discretion employ and dismiss such managers, servants, employees and agents as they may think fit, and may employ a secretary at such salary as the Trustees may think fit notwithstanding that he or she may be one of the Trustees.

15. The Trustees shall from time to time be entitled to receive out of the income of the Trust Estate by way of remuneration for their services such amount, not exceeding in the aggregate in any year the sum of two hundred and fifty pounds, as the Trustees in their discretion shall determine.

16. The Trustees may out of the funds of the Trust Estate pay the premiums on the life insurance policies referred to in the Second Schedule hereto, provided that all sums so paid shall operate to reduce the amount which the Trustees shall be required to pay as estate and succession duties under the provisions of clause 2 (a) hereof, and that clause shall be read subject to the provisions of this clause.

17. The Trustees may promote any private or local Act of Parliament in connection with the trusts under this deed which the Trustees may deem desirable and may pay the costs of the promotion and passing of such Act out of any moneys coming to the Trustees under this deed.

18. The Trustees may accept and receive any gift bequest or devise of any property in trust for any of the purposes aforesaid and may execute and administer any such trust and exercise with reference to such trust all the powers and authorities given to or vested in the Trustees by this deed so far as the same are or can be made applicable to the administration of this Trust.

19. All or any of the trusts and powers vested in or exercisable by the Trustees under this deed shall so long as there shall be not less than five trustees hereof be capable of being performed or exercised by a majority of the Trustees hereof for the time being and any action or decision of such majority shall be as valid and effectual as it would have been if done or made by all the Trustees for the time being.

20. The Trustees may at any time and from time to time appoint additional trustees as they may think fit.

In witness whereof these presents have been executed.

*The First Schedule.*

The following farm properties free from encumbrance:—

1. *Mangatoi Farm*:—

- (a) 19 acres 1 rood 10 perches more or less being Section 26 Block IX Maketu Survey District and being all the land in certificate of title Volume 221 folio 269:
- (b) 13 acres more or less being Section 25 Block IX Maketu Survey District and being all the land in certificate of title Volume 222 folio 88:
- (c) 399 acres 3 roods 3·5 perches more or less being Section 27 Block IX Maketu Survey District, certificate of title 253/183.

2. *Te Matai Farm*.—391 acres more or less being Lot Number 12 on plan deposited in the Land Registry Office at Auckland under Number 1950 which said piece of land is part of the block of land situated in the Maketu Survey District called Rangiuuru Number 3 being all the land in certificate of title Volume 91 folio 256 subject to the provision regarding fencing contained in the said certificate of title.

3. *Manoekā Farm*:—

- (a) 500 acres 1 rood 37 perches being part Section No. 18 Block I Maketu Survey District being the residue of the land in certificate of title Volume 224 folio 36 subject to the restrictions imposed by Part XIII of the Land Act, 1908:
- (b) 43 acres 2 roods 3 perches being Section 31 Block I Maketu Survey District and being all the land in certificate of title Volume 604 folio 182.

4. *Wairiri Farm*:—

- (a) 15 acres 2 roods 35 perches being the block situated in the Maketu Survey District called Rangiuuru Number 2B No. 1 being the whole of the land in certificate of title Volume 294 folio 167 subject to the restrictions imposed by Part XIII of the Land Act 1908 and section 74 of the Native Land Amendment Act 1913:
- (b) 26 acres 1 rood 1 perch being the block situated in the Maketu Survey District called Rangiuuru Number 2B No. 3A and being all the land in certificate of title Volume 327 folio 241 subject to the restrictions imposed by Part XIII of the Land Act 1908 and section 74 of the Native Land Amendment Act 1913:

(c) 42 acres 2 roods 9 perches being the block of land situated in the Maketu Survey District called Rangiuru Number 2B No. 3B and being all the land in certificate of title Volume 343 folio 177 subject to the restrictions imposed by Part XIII of the Land Act 1908 and section 74 of the Native Land Amendment Act 1913.

5. *No. 2 Road Farm*.—248 acres 3 roods 32 perches more or less being portion of Section 12 Block VI of the Maketu Survey District and being all the land in certificate of title Volume 747 folio 105.

6. *Jackson's*.—15 acres 2 roods 20·3 perches situated in the Te Puke Town District being the whole of the land in certificate of title Volume 649 folio 120.

7. *Allport's*.—5 acres 3 roods 39 perches Lot 1 Deposited Plan 14291 all the land in certificate of title 337/63.

8. *Township Sections* being together 5 acres 2 roods 13 perches:—

(a) 4 acres 3 roods 17·5 perches being Lots 1, 2, 3, 4, 5, 6 and 7 on Deposited Plan 12802 and being the whole of the land in certificates of title 301/83, 301/82, 723/138 and

(b) 2 roods 35·5 perches being Lot 1 on Deposited Plan 30250 and the whole of the land in certificate of title 784/142 subject to fencing covenant in Transfer No. 342414.

9. *Railway Lease* L.O. 15162, No. 24562.

*Railway Grant* L.O. 15350, No. 24561.

The Donor agrees to release the debt of fifteen thousand pounds (£15,000) owing by Alley Body Limited to the Donor, to enable the above properties to be transferred to the Trustees free from encumbrance.

The lands following in this Schedule and the Second Schedule subject to encumbrances to be adjusted when accounts are available but not exceeding eighteen thousand two hundred pounds (£18,200) in all.

10. *Purchase from Mends*:—

(a) 60 acres 1 rood 30 perches being the whole of the land in certificate of title Volume 308 folio 338:

(b) 87 acres and 9 perches being the residue of the land in certificate of title Volume 365 folio 239.

11. *Purchase from Montgomery*.—4 acres being part of Lot 2 Block II Maketu Survey District and part of the land in certificate of title Volume 490 folio 4.

12. *Purchase from Brown*.—323 acres being the whole of the land in certificate of title Volume 91 folio 178 subject to provision as to fencing in favour of the Assets Realization Board.

13. All stock, plant and implements, farm stores and sundries on in or about the above-mentioned properties numbered 1 to 12 inclusive owned by Alley Body Limited.

*The Second Schedule.*14. *Purchase from Luke:—*

- (a) 44 acres 1 rood 32·9 perches being the whole of the land in certificate of title Volume 628 folio 258 subject to Sections 74, 75 and 76 of the Native Land Amendment Act 1913:
- (b) 94 acres 2 roods 33·5 perches being the whole of the land in certificate of title Volume 314 folio 239 subject to Part XIII of the Land Act 1924:
- (c) 4 acres 3 roods being the whole of the land in certificate of title 364/202 subject to Section 74 Native Land Amendment Act 1913.

15. Three life policies of the Australian Mutual Provident Society, Table A, Numbered respectively 410309 (£300), 494846 (£6,000) and 1413381 (£2,000).

Signed by the said George Alley in the presence of—C. N. O'Neill, Solicitor, Paeroa.	}	G. ALLEY.
Signed by the said the Honourable James Gillispie Barclay in the presence of—J. Stanhope Reid, Solicitor, Wellington.		
Signed by the said Basil Longmuir Orr in the presence of—C. N. O'Neill, Solicitor, Paeroa.	}	B. L. ORR.
Signed by the said Eugene Augustus Urquhart in the presence of—C. N. O'Neill, Solicitor, Paeroa.		
Signed by the said John Dickin in the presence of—C. N. O'Neill, Solicitor, Paeroa.	}	JOHN DICKIN.
Signed by the said Michael William Watt in the presence of—C. N. O'Neill, Solicitor, Paeroa.		
Signed by the said Helen Aitken Alley in the presence of—C. N. O'Neill, Solicitor, Paeroa.	}	H. A. ALLEY.