

# UPPER CLUTHA HOSPICE TRUST BOARD

## PROPOSALS TO MODIFY THE TRUST DEED

### Section 1: Background

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The Trustees of Upper Clutha Hospice Trust Board (“The Trust”) are of the opinion that the Trust’s current Trust Deed is inadequate in terms of its objectives and administrative procedures for the future operations of the Trust.

The Trustees are accordingly proposing to amend its Trust Deed as follows:

- To extend the Purpose of the Trust to better reflect the activities and services that the Trust is providing for the terminally ill in the Upper Clutha District
- To strengthen the Administrative Procedures under which the Trust operates

The Trustees believe that the proposed changes are fully consistent with the original objectives and purpose of the Trust, and only involve being more specific as to the Trust’s purpose and to providing flexibility to respond to future needs in the Upper Clutha community relative to the care and support of those with terminal illness.

The Trustees have taken legal advice from Aspiring Law on the procedures to be followed, for which Part 4 of the Charitable Trusts Act 1957 (the Act) is applicable. The Trust’s Proposals and consultation procedures involved in making trust deed modifications under Part 4 of the Act, have been submitted the Crown Law office for approval in preparation for the consultation. The Proposals as finalised following the consultation, will be submitted to the Solicitor General for formal approval under the Act.

Under the Charitable Trust Act 1957, the Trustees are required to consult on our proposals with Contributors to the Trust, and this document has been prepared to inform Contributors and other stakeholders on the Trust’s Proposals and the procedures to be followed for the consultation.

### **1. BACKGROUND**

In 2012 a group of Wanaka residents, (the Establishment Group) many of whom have had direct experience with cancer or other forms of life-threatening illnesses, met to explore their perception that there was a need for a palliative and respite care facility (the facility) in the Upper Clutha.

It was recognised that the Otago Community Hospice (OCH) and others provide support services for the terminally ill in their own homes in the community, but that there was no facility in the district for more comprehensive in-facility residential care. The OCH had indicated that it was not their intention to provide a residential care facility in the Upper Clutha. Consequently, the only options for patients needing residential care were to use the OCH residential facility in Dunedin or the palliative bed at Dunstan Hospital at Clyde. Use of these facilities involves patients being remote from their homes and significant travel for patients' families.

In exploring the feasibility of providing a palliative and respite care suite in Wanaka, the Establishment Group faced several unknowns:

- Was a palliative and respite care facility needed in Wanaka, given the developing trend for those with terminal illnesses wanting to be cared for in their own homes?
- Would the relatively small Upper Clutha community support the capital costs of such a facility?
- Would a Hospice Shop and other fundraising efforts provide an adequate and continuing income stream to fund the operational expenses of the Trust, given the Upper Clutha's relatively small population?

Following conversations with the local GPs, aged care providers and others, it appeared that there was a need for, and support for the proposed facility. However, the funding issues noted above remained unresolved.

The Establishment Group decided that the only way to demonstrate the financial viability of their proposals was to commence fundraising against the proposals. To this end it was decided to open a small Hospice Shop and to begin fundraising activities. A brochure was prepared to inform the community of the Establishment Group's proposals (see Attachment 1 to this section), and to provide a responsible legal entity, the Upper Clutha Hospice Trust was formed in mid 2013.

At the commencement of these fundraising activities, the Establishment Group had no funds for the project, and relied on goodwill support from the community. In particular, through one of the Establishment Group, a Deed establishing the Upper Clutha Trust was developed on a voluntary basis. Understandably, this Deed was focused on the immediate activities of establishing the proposed palliative & respite care suite and the associated fundraising activities for capital and operating funds. It lacked a longer-term view of the Trust's likely activities in the event that the proposals were found to be feasible and sustainable.

The Deed developed (see Attachment 2 to this section) is still the Trust's Deed. It was adequate to both register the Trust with the Companies Office and to achieve a charitable entity status with the Charities Commission. It is this Deed that the Trustees are now proposing to amend through a Part (4) Scheme under the Charitable Trusts Act 1957, to provide a more appropriate Deed for the long-term operation of the Trust.

### **1.1. Realisation of the Trust's Palliative & Respite Care Suite**

The Trust's fundraising activities in 2013-14, soon demonstrated that the Upper Clutha community was very supportive of the Trust's proposals.

The original Hospice Shop in an old villa quickly developed strong trading patterns and a 50 strong team of volunteers to staff it. Within six months the Shop's activities required the appointment of a paid manager. Similarly, the Trust's other fundraising activities demonstrated the Upper Clutha community's overwhelming support for the Trustees' proposals. Clubs and societies in the Upper Clutha selected the Trust to be the beneficiary of their activities and the Trust's own fundraising activities produced results beyond the Trustees' most optimistic estimates.

In 2015, the Trustees concluded that there was both a need for the proposed palliative & respite care facility and that there was community financial support for both the capital and operating costs of the facility.

Miss Stina Mooyman, a former resident of Wanaka, greatly assisted by making a substantial donation that largely covered the cost of establishing a palliative & respite care suite. The Trustees accordingly completed negotiations with the Aspiring Enliven Care Centre joint venture (JV) to secure a *license to occupy* a purpose-built palliative & respite care suite in the new Aspiring Enliven Care Centre that the JV was planning to build in Wanaka.

The Trust's Suite was opened debt free in September 2016 by the Hon Jacqui Dean, and has had high occupancy levels since it was opened. Families of users of the Suite have been very complementary of the facility and the support provided by the Trust.

## **1.2. Current Trust Activities**

The Trust has continued to develop strongly and its current activities include:

- Ownership on behalf of the community of the Stina Mooyman Palliative and Respite Care Suite at the Aspiring Enliven Care Centre in Wanaka

The Suite consists of a fully equipped Patient Suite with an interconnected Family Room which includes kitchen facilities. Families can overnight in the Family Room to be with their loved ones. The facility is staffed and operated on the Trust's behalf by the Wanaka Aspiring Enliven Care Centre.

- Operation of a Hospice Shop in the Wanaka CBD trading 6 days a week
- Operation of a Warehouse/Shop to support the Hospice Shop trading 5 days per week
- Employment of a paid fulltime Retail Manager, and four paid part-time Warehouse and Shop Supervisors
- Fundraising for top-up operational funding required beyond funding available from the Southern District Health Board for terminal or respite patients using the Suite.

- Providing additional personal palliative care nursing support to terminal patients in the Suite, if required in the last days of their life.
- Assisting terminal patients in the community or the Suite, with their GP costs in the last weeks of life if required, as a consequence of their having exhausted the government funding available to terminal patients.
- Assisting local health professionals to up-skill in palliative care with funding for training courses.
- Providing medical equipment to support those with terminal illnesses in the Upper Clutha, who wish to remain in their own homes rather than be admitted to a palliative care facility.
- With adequate financial reserves developed by the Trust, the Trustees have recently been able to provide additional funding support for the terminally ill in the region as follows:
  - Donations to the Otago Community Hospice to help cover their costs in providing services to the terminally ill in the Upper Clutha Community (donations of \$30,000 and \$35,000 were made in the 2018 and 2019 financial years respectively)
  - Fully fund an additional half-time District Nurse with palliative care skills in Dunstan Hospital's Wanaka District Nurse team to provide palliative care to terminal patients in the community. This District Nurse is available for general district nursing duties when not required for palliative care work. The Trust's funding includes provision of the DN's vehicle, laptop, mobile phone, uniforms etc. This sponsorship amounts to some \$60,000 pa

## 2. TRUSTS NET ASSETS

Since its formation in mid 2013, the Trust has built up Total Accumulated Funds of \$1.47 million as at March 31, 2020, per the Trust's 2019-20 financial statements (reviewed by Deloitte). The said funds are represented by:

• Suite at Aspiring Enliven Care Centre	\$ 399,730
• Property, plant & equipment (Suite, Shop & Warehouse)	\$ 56,728
• Bank accounts less Current Liabilities	\$ 172,616
• Bank investments	<u>\$ 841,445</u>
• <b>Total Accumulated Funds at 31, March 2020</b>	<b>\$1,470,519</b>

The Trust's Financial Statements and reports for each of the financial years since its formation are available on the Trust's Website at [www.uppercluthahospicetrust.org](http://www.uppercluthahospicetrust.org)

## 3. MONETARY DONATIONS TO THE TRUST

The monetary donations received by the Trust since its formation can be summarised as follows (excluding casual donations such as deposited into collection boxes):

<b>Donation</b>	<b>Number</b>	<b>% of Total Monetary Donations</b>
a. Up to \$100	42	0.4%
b. Up to \$500	137	4.1%
c. Up to \$1,000	198	10.9%
d. All donors	249	100.0%
e. \$500 and over	124	96.8%
f. \$1,000 and over	69	91.6%
g. \$5,000 and over	24	81.3%
h. \$ 25,000 and over	5	57.4%

The ten (10) largest donors to the Trust have donated 82% of the total monetary donations received by the Trust, and the total of individual donors donations are as follows, as at August 2020:

1. \$382,734	6. \$ 18,845
2. \$ 50,000	7. \$ 16,620
3. \$ 36,500	8. \$ 15,000
4. \$ 32,019	9. \$ 10,000
5. \$ 19,500	10. \$ 8,174

#### **4. ACKNOWLEDGEMENT**

The Trustees wish to acknowledge the legal assistance to the Trust provided by Mr Tony Horder of Wanaka, prior to his retirement in 2019. Mr Horder started and significantly advanced the current process to amend the Trust's Trust Deed. His wise counsel was much appreciated.

# ATTACHMENT 1

## INITIAL TRUST BROCHURE



# UPPER CLUTHA HOSPICE TRUST

## **BACKGROUND**

A group of Wanaka residents, most of whom have had direct experience with cancer or other life threatening illnesses, think that there is a need for a palliative and respite care facility in the Upper Clutha.

The growing numbers of people aged over 65yrs in the district (over twice the national density) and our remoteness from existing facilities at Dunstan Hospital or in Dunedin are drivers of this need.

Further, because the Upper Clutha is drawing retirees to become residents living out their retirement years in the area, we have significant numbers of older people with no supporting younger family groups in the area who can provide support when life threatening illnesses strike. This increases the need for locally provided palliative and respite care.

The Upper Clutha Hospice Trust was formed in early 2013 to progress this perceived need for a palliative and respite care facility in the Upper Clutha. The Trust is an Upper Clutha organisation and is not a part of organisations such as the Otago Community Hospice or the Cancer Society.

The Trustees have been encouraged by the very strong support received for their initiative from the Upper Clutha community, GPs practising in the area and the developers of the Aspiring Lifestyle Retirement Village.

## **THE WANAKA HOSPICE CONCEPT**

The Trustees have developed a concept for a palliative and respite care facility in Wanaka, based on the following guiding principles:

- The Upper Clutha has a relatively small population to support such a facility, so every effort must be made to avoid duplication and use existing local facilities and services
- The Trust should work with existing organisations operating in the area such as the Otago Community Hospice, the Cancer Society of NZ, Dunstan Hospital etc)
- The facility should be available for other local use when not required for hospice palliative or respite care patients
- Use of the facility will be free of charge to hospice palliative and respite care users
- The Trust does not plan to build or own its own building, or to directly employ clinical staff

### **The Trust's concept is as follows:**

- To secure space in the Aged Care Complex that the developers of the Aspiring Lifestyle Retirement Village plan to build at the Village in 2014-15. This could be through the Trust making a capital contribution or through a lease arrangement.
- This space will initially comprise a single palliative bedroom with an adjoining family room equipped for family to stay with the patient. We are seeking the option to add a second palliative bedroom in the future as needed.
- The nursing, catering, laundry, cleaning support of the Trust's rooms are to be provided by the operator of the Aged Care Complex under contract to the Trust
- Patient's medical care is to continue to be provided by their own GP, but with support as necessary from clinicians at Dunstan Hospital and at the Otago Community Hospice

### **The facility would be available for the following uses:**

- 1st Priority: For patients requiring palliative care where care at home is no longer an option  
2<sup>nd</sup> Priority: For patients primarily being cared for at home, but when short term respite care is needed  
3<sup>rd</sup> Priority: For short-term use by the Aged Care Facility for their patients, when not required for the hospice palliative or respite care patients

The above concept is a model that has worked very satisfactorily in other centres, such as at Eastern Bays Hospice in Auckland.

The Trustees are currently in discussions with the Aspiring Lifestyle Retirement Village developers and with the organisation likely to operate the Aged Care Complex at the Village, on the commercial arrangements for the above concept. Both these organisations are supportive of the concept.

The Trustees hope that the proposed facility can be operational in late 2015.

## **COST ESTIMATES & FUNDING**

The Trustees currently estimate the likely costs of securing the facility as discussed above, and its annual operating costs to be as follows:

- |   |           |
|---|-----------|
| a. Capital contribution to secure the space:  | \$350,000 |
| b. Fit-out of palliative room and family room | \$ 50,000 |

- c. Annual operating costs of the order of \$150,000

The above estimates are preliminary estimates, to be refined in further discussions as more robust cost figures for the Aged Care Complex become available, and are in 2013 dollars.

For item a. the Trustees will seek support from funding trusts operating in the region, supplemented by community donations and fund raising. The capital contribution will be a Trust investment asset. A potential donor for the fit-out of item b. has come forward.

The Trustees anticipate funding the annual operating costs from the proceeds of the operation of the Wanaka Hospice Shop supplemented by donations and bequests from the community and users of the facility.

#### ***WANAKA HOSPICE SHOP***

The Trustees established the Wanaka Hospice Shop in July 2013, to commence generating funds for the Trust as soon as possible. It is expected that the Shop will trade for some 18 months before the palliative unit commences operation, and this should provide the Trust with significant foundation funds.

The owners of Wanaka Self Storage made premises available for the Shop at a nominal rental, and other local organisations have supported its establishment with donations of paint, carpet and tradesmens' time. The Upper Clutha community is supporting the Shop through ongoing very generous donations of good stock to sell in the Shop. The staffing of the Shop is currently all by volunteers and is underpinned by a cohort of some 50 volunteers.

The income from the Shop's trading is supplemented by special events such as yard "garage" sales, and events such as "Collectible Evenings" for high quality items.

The Shop is trading very satisfactorily, and the Trustees anticipate that the proceeds of the Shop's trading together with some community sponsorship and fund raising, will cover the annual operating costs of the proposed facility.

#### ***COMMUNITY SUPPORT***

The Upper Clutha community has quickly become very involved with the Trust's project and the support we are receiving is beyond our expectations.

In addition to the magnificent support of the Shop, organisations and groups in the community have initiated their own fund raising activities for the Trust or have selected the Trust to be the beneficiary of funds raised from their events. Space limitations preclude us from naming all who have assisted us but please accept our sincere thanks both for your efforts and for the confidence your support gives to the Trust in advancing this major local project.

**Thank you, the Trustees**

## **UPPER CLUTHA HOSPICE TRUST**

### **Committee**

Russell McGeorge	Chairman & Trustee	443 9176
Margaret Hay	Secretary & Trustee	443 9210
Barb Bayliss		
Neville Dippie	Trustee	443 5202
Debi Lawry		
Ray Rudkin	Trustee	443 5861
Penny Wilson		

**Postal Address:** Margaret Hay

Secretary, Upper Clutha Hospice Trust  
125 Warren St  
WANAKA 9305  
[maharhhay@xtra.co.nz](mailto:maharhhay@xtra.co.nz)

### **Wanaka Hospice Shop**

72 Ballantyne Road  
Wanaka

#### **Manager**

Bev Rudkin                      443 5861

#### **To join the Volunteer team**

Contact the Shop Manager, Bev Rudkin

#### **To make a donation to the Trust:**

- Contact the Chairman or Secretary, OR
- Send a cheque to the Secretary, OR
- Direct credit to Bank Account  
06-0943-0113633-00

The Trust is a registered charity so donations are tax deductible.

# ATTACHMENT 2

## THE CURRENT TRUST DEED

### UPPER CLUTHA HOSPICE TRUST DEED

THIS DEED is made the third day of April 2013

#### BETWEEN

Name		Address	Occupation
Ray Rudkin	of	20 Little Oak Common, Wanaka	Retired
Russell McGeorge	of	134 Hunter Crescent, Wanaka	Chairman
Neville Dippie	of	89 Meadowstone Drive, Wanaka	Retired
Margaret Hay	of	125 Warren Street, Wanaka	Retired

#### WHEREAS:

- A. The parties to this Deed wish to establish a charitable trust (in this Deed referred to as "the Trust") for the purposes described in Clause 3 of this Deed, and
- B. The parties to this deed have agreed to contribute the sum of one dollar each to establish the Trust; and
- C. They have agreed to enter into this Deed specifying the purposes of the Trust and providing for its control and government.

#### 1. TE INGOA/ NAME:

The name of the Trust is Upper Clutha Hospice Trust, hereafter called 'the Trust'.

#### 2. MĀTĀPONO/PRINCIPLES

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

- 2.1 respecting and implementing the dual heritage of the partners of Te Tiriti o Waitangi (the Treaty of Waitangi);
- 2.2 respecting the cultural diversity of people and encourage people from all nationalities to utilize the Trust's facilities and services;
- 2.3 maintaining the highest standards of professionalism and integrity.

#### 3. WHĀINGA/ PURPOSE

The purpose of the Trust will be the public face of the Wanaka Hospice/Respite Care facility to the Upper Clutha community. In particular the Trust will:

- 3.1 fundraise for the capital expenses involved in the fit-out of the Hospice/Respite Care facility premises, and own the fixtures, fitting and equipment on behalf of the Upper Clutha community;
- 3.2 fundraise annually for the top-up of operational funding likely to be required for the facility beyond funding available from the Southern District Hospital Board, Ministry of Health etc.;
- 3.3 sponsor local General Practitioners to up-skill in palliative care;
- 3.4 regular monitoring of the operation of the Hospice/Respite Care facility.

3.5 the Hospice/Respite Care facility will be incorporated within the building(s) planned for respite and palliative care.

#### **4. NGA MAHI KI AOTEAROA ANAKE/ ACTIVITIES LIMITED TO AOTEAROA/NEW ZEALAND**

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

#### **5. TARI/OFFICE**

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

#### **6. TE RUNANGA WHAKAHAERE/ THE BOARD OF TRUSTEES**

6.1 The Board will comprise of no less than four (4) Trustees and no more than six (6) Trustees.

6.2 The signatories to this Deed will be the first Board. The Trustees will elect from among themselves a Chairperson. 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.

6.3 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.

6.4 The Board will have the power to fill any vacancy that arises in the Board or to appoint any additional trustees subject to clause 6.1.

6.5 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.

6.6 The Board may, by a motion decided by a two-thirds (2/3<sup>rd</sup>) 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.

6.7 The name of the Board will be Upper Clutha Hospice Trust.

#### **7. NGA HUI O TE RUNANGA WHAKAHAERE/ MEETINGS OF THE BOARD**

7.1. The procedure for Board meetings will be as follows:

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

7.1.2 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.

7.1.3 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.

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

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

7.2 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.

7.3 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

7.3.1 the names of those present;

7.3.2 all decisions made by the Board; and

7.3.3 any other matters discussed at the meeting.

## **8. 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:

8.1 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;

8.2 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;

8.3 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;

8.4 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

8.5 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.

## **9. KO NGA RAWA HEI PAINGA MO TE IWI/ INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES**

9.1 Any income, benefit or advantage will be applied to the charitable purposes of the Trust.

9.2 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).

9.3 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.

## **10. TURU TAKETAKE/ POWER TO DELEGATE**

10.1 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.

10.2 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.

10.3 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.

10.4 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.

## **11. PŪTEA/ FINANCIAL ARRANGEMENTS**

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

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

11.2.1 how money will be received by the Trust;

11.2.2 who will be entitled to produce receipts;

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

11.2.4 who will be allowed to authorise the production of cheques, internet banking transactions and the names of cheque signatories; and

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

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

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

## **12. TE TOHE TAKETAKE/ COMMON SEAL**

12.1 The Common Seal of the Board, following its incorporation, will be kept in the custody and control of the Secretary, or such other officer appointed by the Board.

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

## **13. TAKAWAENGA/ MEDIATION & ARBITRATION**

13.1 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.

13.2 The mediation shall be terminated by-

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

13.2.2 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

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

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

13.3 If the mediation should be terminated as provided in 13.2.2, 13.2.3 or 13.2.4 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.

#### **14. TAUNAHA/ TRUSTEE LIABILITY**

It is declared that:

14.1 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

14.2 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;

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

14.4 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:

14.4.1 To his or her own dishonesty; or

14.4.2 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.

14.5 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.

14.6 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.

14.7 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.

#### **15. 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 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.

IN WITNESS OF WHICH this Deed has been executed:

The original Trust Deed was signed by the four foundation Trustees, being:

Neville Dippie, Company Director of Wanaka  
Margaret Hay, retired, of Wanaka  
Russell McGeorge, Company Director of Wanaka  
Raymond Rudkin, retired, of Wanaka