

UPPER CLUTHA HOSPICE TRUST BOARD

PROPOSALS TO MODIFY THE TRUST DEED

Section 3: Proposed Changes to the Trust Deed

The proposed changes to the Trust's original Trust Deed are as follows::

1. Delete clause 3 and replace with the following clause:

3. **WHÄINGA/ PURPOSE**

The principal purpose of the Trust is to provide and support the provision of palliative and respite care to terminally ill patients in the district of Upper Clutha. This shall include but not be limited to the following:

- a. To develop, fund, own and operate a public palliative and respite care facility located in the town of Wanaka including the provisioning of fixtures, fittings and equipment ("the care facility");
- b. To provide top up operational funding as required beyond funding provided by the Ministry of Health, District Hospital Board or other Government agency in relation to the provision of palliative and respite care;
- c. To expand, add to and/or relocate the care facility over time as necessary to meet the demands for the facility;
- d. To fund and provide end of life nursing and clinical support for terminal patients either using the care facility, or for those who choose to remain in and be cared for in the community;
- e. To financially support terminally ill patients, where appropriate. by the provision of support services, such as but not limited to:
 - i. The cost of travel out of the Upper Clutha District for medical appointments and/or treatment;
 - ii. The cost of ambulance transfers;
 - iii. The cost of night nursing care;
 - iv. Incidental general practitioner and other medical costs.
- f. To fund and/or own as appropriate, medical equipment for use both in the care facility and by health care professionals caring for terminal patients in the community.
- g. To support nursing and clinical palliative and respite care training and education by the provision of funding for training and education courses.
- h. To provide financial and other support to other parties providing services

for the terminally ill in the Upper Clutha District such as, by way of example, the Otago Community Hospice and Dunstan Hospital

- i. To generally do or perform all such acts, matters or things as may be incidental or conducive to the attainment of any of the foregoing purposes.

2. Delete clause 7 and replace with the following clause:

7. ADMINISTRATION

- 7.1 The Board must meet together for the conduct of the affairs of the Trust from time to time, and:
 - 7.1.1 must meet at least three (3) times each year. Meetings may be held in person or by other electronic means.
 - 7.1.2 may regulate and conduct their meetings as they think fit; and
 - 7.1.3 may make any rules and regulations which they consider desirable for the purpose of regulating their meetings, including meetings held by electronic means (for example: telephone or skype).
 - 7.1.4 In the absence of the Chairperson, the Board will elect a person to chair the meeting from among the Trustees present.
 - 7.1.5 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.
 - 7.1.6 The Secretary will ensure that all members of the Board are notified of the meeting, either verbally or in writing at least three (3) days prior to the meeting, unless the meeting is called for a matter determined by the Board to be urgent.
 - 7.1.7 The Secretary will ensure that a minute book is maintained which is available to any Trustee and which, for each meeting of the Board, records:
 - 7.1.7.1 the names of those present;
 - 7.1.7.2 all decisions made by the Board; and
 - 7.1.7.3 any other matters discussed at the meeting.
- 7.2 The Quorum of meetings of the Board will be comprised of one more than half of the current Trustees of the Board present for the duration of the meeting.
- 7.3 All acts done by any meeting of Trustees or by any person acting as Trustee will be as valid and effectual as if that Trustee or those Trustees:
 - 7.3.1 had been duly appointed;
 - 7.3.2 were qualified to hold office as Trustee; and
 - 7.3.3 had complied with the rules, even if it is later discovered that:
 - i. there was some defect in the appointment of any of the Trustees;
 - ii. any of the Trustees were for any reason disqualified from holding office as Trustee; or
 - iii. there was accidental failure to comply with the rules.

7.4 The Board must appoint:

7.4.1 a Chairperson of the Board from among their number who will hold office at the Board's discretion;

7.4.2 one of their number or some other person to be Secretary to hold office at the Board's discretion.

7.4.3 one of their number or some other suitably qualified and experienced person to be the Hon. Treasurer, to hold office at the Board's discretion.

The offices of Secretary and Hon. Treasurer may be held by the same person if the Board so desires

7.5 Unless otherwise provided for, all resolutions passed at a meeting of the Board must be passed by a majority of Board members present at that meeting and any such resolution will be binding on the Board. The Chairperson will have a casting as well as a deliberative vote if there is a tie and equality of votes.

7.6 A written resolution, signed by all the Board members, will be as valid and effectual as if it had been passed at a meeting of the Board. Any such resolution may be signed in counterpart documents.

7.7 The Board may from time to time rescind or vary any resolution of the Board by the same majority as was necessary to pass the resolution being rescinded or varied.

7.8 The Board must provide and keep a minute book. The Secretary must prepare and enter a record of all resolutions of the Board in the minute book. If confirmed by the Board, the Chairperson must sign those minutes as a true and accurate record. Every minute purporting to be so signed will be prima facie evidence of the facts stated in those minutes.

7.9 The Board must keep an account at a bank, which they may determine from time to time.

7.10 Any cheques must be drawn, signed and endorsed by the persons whom the Trustees have from time to time authorised in writing.

7.11 Electronic payments using on-line banking must be created and authorised by the persons whom the Trustees have from time to time authorised in writing.

7.12 All documents required to be executed by the Board will be deemed to be validly executed and binding if those documents have been signed by the Chairperson and one other Board member, or any other person whom the Board has from time to time authorised in writing.

7.13 If the Board become incorporated as a Board under the Charitable Trusts Act 1957 then:

7.13.1 The Board will provide a common seal for the Trust, which will be:

- i. Deposited with the Secretary; and
- ii. Affixed to any document requiring execution by the Board.

7.13.2 Every affixing of the common seal must be:

- i. Performed in the presence of and accompanied by two (2) Trustees' signatures, one of which will be the Chairperson (or Trustee acting as chairperson), which will be sufficient

evidence of authority to affix the seal.

- 7.14 Any notice to be given to the Secretary under this deed must be in writing signed by the person giving the notice and served at the office of the Trust. Any notice or document so served will be deemed to be duly given:
- 7.14.1 in the case of personal delivery, when so delivered;
 - 7.14.2 in the case of facsimile transmission, when sent to the facsimile number notified in writing by the Trust;
 - 7.14.3 in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the Trust; or
 - 7.14.4 in the case of email, when acknowledged by the recipient verbally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement.

3. Deleting Clause 8 and replacing with the following clause:

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 the Board will have the same powers as if they were the beneficial owner of the Trust Fund including, but not limited to:
 - 8.1.1 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;
 - 8.1.2 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;
 - 8.1.3 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;
 - 8.1.4 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 the Board's powers will not be limited or restricted by any principle of construction or role of law or statutory power or provision except to the extent that it is obligatory.
- 8.6 None of the powers or authorities conferred on the Trustees by this clause or otherwise will be deemed subsidiary or ancillary to any other power or authority. The Board may exercise any of those powers and authorities independently of any other power or authority, If there is any ambiguity, this provision will be construed so as to widen and not restrict the Board's powers.

8.7 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.

4. Vary clause 9 as follows:

(a) Amend clause 9.2 by deleting the phrase “or members of the Trust”

5. Vary clause 11 as follows:

(a) Vary clause 11.1 by changing the financial year of the Trust to now be “from 1 April to 31 March”.

(b) Delete clause 11.4 and replace with the following:

11.4 The Board must ensure that:

11.4.1 Full and correct records and accounts are kept of all their receipts, credits, payments, assets, liabilities, transactions and all other matters necessary for showing the true state and condition of the Trust Fund; and

11.4.2 The Board may arrange for the accounts of the Trust for that financial year to be either audited or reviewed by an accountant appointed for that purpose. If the Board so resolve, a chartered accountant appointed for the purpose by the Board will prepare financial statements which may include:

- i. a statement of financial position;
- ii. a statement of financial performance;
- iii. a statement of cash flows; and
- iv. notes to those statements.

(c) Add clause 11.5: “The Board must cause to be prepared or filed with any relevant person all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations, applications, forms and other information required to be prepared or filed so as to achieve or preserve the availability of any concession in relation to the Trust under any of the Concessionary Provisions”.

6. Delete clause 12 (as now contained in clause 7.13) and replace with:

12. MODIFICATION OF TRUST DEED

12.1 The Board may from time to time alter, rescind or add to any of the provisions of this Deed, by resolution approved by a two-thirds (2/3) majority of eligible members of the Board present at any Meeting of the Board convened for that purpose, provided that:

12.1.1 At least 14 days clear notice of the intention to move any amendment to this Deed is given to all Trustees;

12.1.2 No alteration may prejudice the charitable purposes or nature of the Trust, or that which would amend the objects or have the effect of causing the Trust to cease to be a Charitable Trust;

12.1.3 No amendment made be made under this clause to clauses 9, 12 and 15 of this Deed.

END OF AMMENDMENTS