

UPPER CLUTHA HOSPICE TRUST BOARD

PROPOSALS TO MODIFY THE TRUST DEED

Section 4: Trust Deed Incorporating the Proposed Changes

UPPER CLUTHA HOSPICE TRUST DEED

THIS DEED was made originally on the third day of April 2013, and it is proposed to be modified as marked up below.

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. MÄTÄPONO/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. WHÄINGA/ 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.~~

3. **WHĀINGA/ 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.

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-trustee 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 (2/3rd) 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 [Board](#).

~~**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.~~

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; or
- 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.

~~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.~~

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.

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

- (a) 11.1 The financial year of the Trust will be ~~from 1 January to 31 December.~~
from 1 April to 31 March.

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 transitions 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.~~

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.

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".

~~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.~~

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.

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 14.2.2, 14.2.3 or 14.2.4 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:

Signatures of the Current Trustees