

DRAFT FOR CONSULTATION

McLean Institute (Trust Variation) Bill

Private Bill

Explanatory note

General policy statement

The McLean Institute (the **Institute**) is a charitable institute. It was established pursuant to the will of Allan McLean, who passed away in 1907. The assets of the Institute are applied so as to give effect to Allan McLean's wish to benefit destitute women and, in particular, women of refinement or education in straitened circumstances, along with their children.

The Board of the Institute has observed that the charitable purpose of the Institute has been eroded over the time that has passed since 1907. However, the Board considers that charitable causes remain that would benefit significantly from the Institute's assistance, and that would align as closely as possible with the original charitable purposes envisaged by Allan McLean. Thus, the Board desires to vary the purposes of the Institute so as to be able to address the needs of women and children currently in worthy and needy circumstances.

To achieve this aim, the bill updates and varies the terms of the Institute set out in its trust deed, notably the charitable objects of the Institute and the powers of the Board. The changes are made to enable the assets of the Institute to continue to be used to provide assistance to, and promote the welfare and well-being of, disadvantaged women residing or located in the specified region (and the children in the care of such women) who the Board considers are in need of care, support, and assistance due to poverty, ill health, or other circumstances, whether temporary or long-term.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill is to come into force on the day after the date on which it receives the Royal assent.

Clause 3 states the purpose of the Bill. The purpose is to vary the terms of the McLean Institute, including its charitable objects and the powers of the Trust Board. The Bill does this by varying the terms of the Trust that were contained in the will of the late Allan McLean in accordance with the trust deed set out in the *Schedule*. The McLean Institute is referred to in the Bill as the Trust or the Institute.

Clause 4 contains definitions of terms used in the Bill.

Clause 5 provides for the terms of the Trust as set out in the will of the late Allan McLean to be varied as set out in the trust deed.

Clause 6 provides for the continued application of the Charitable Trusts Act 1957 to the Trust and the Trust Board.

Clause 7 repeals the McLean Institute Act 1909, the McLean Institute Act 1930, and the McLean Institute Act 1934. Those Acts had amended the terms of the McLean Institute as contained in the will of Allan McLean.

The *Schedule* contains the Deed of Trust of the McLean Institute. The terms of the deed vary the terms of the Trust set out in the will of Allan McLean and previously amended by the McLean Institute Act 1909, the McLean Institute Act 1930, and the McLean Institute Act 1934.

Hon Dr Duncan Webb

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Preamble

- (1) The McLean Institute (the **Institute**) is a registered charitable trust, registration number CC36876:
- (2) The Institute was settled by the will of the late Allan McLean dated 20 July 1904 and codicil dated 28 November 1906:
- (3) The Institute was incorporated as a charitable trust board by the McLean Institute Act 1909. The terms of the Institute were amended by the McLean Institute Act 1930 and the McLean Institute Act 1934:
- (4) The Institute was intended to establish a public institution or benevolent asylum for the benefit of destitute women, known as Holly Lea. The Institute's charitable purposes were stated in clause 6 of the will of the late Allan McLean dated 20 July 1904 as follows:

- (a) “As to the Holly Lea property and furniture only to gentlewomen or women of refinement or education in reduced or straitened circumstances and the children not being over the age of ten years of any such gentlewomen or women my special intention being that the Holly Lea property shall be reserved exclusively for the use of gentlewomen or women (including their children as aforesaid) who either by their birth education previous life or manner may be able to live in harmony under the same roof.
- (b) “As to the rest of the Institution not represented by the Holly Lea property and furniture to persons of the female sex not being under the age of eighteen years and to the children not being over the age of ten years of any such persons but no person shall be admitted to the Institution but such as are poor and of good character and such as have been resident in the Colony for a period of three years at least prior to the application for admission and who are not and have not been in receipt of a pension under “The Old Age Pensions Act 1898” or any statutory amendment thereof at any time during the term of three years immediately before admission or in receipt of aid from the Charitable Aid Board or other public institution having the control of the distribution of charitable aid at any time during the term of three years immediately before admission.”:
- (5) The McLean Institute Act 1930 allowed the Institute to admit any person who had been in receipt of public or statutory aid, provided the person surrendered that aid upon admission, and empowered the Institute to make weekly payments to admitted persons:
- (6) The McLean Institute Act 1934 validated payments made to Mary Alexandra Thomson by the Institute and empowered future payments to Mrs Thomson and her children:
- (7) The Institute was to be managed by a Board of Governors consisting of the local leaders of the Anglican, Catholic, Presbyterian, and Wesleyan churches; the Mayor of Christchurch; the Senior Stipendiary Magistrate of Christchurch; the Chairman (now Mayor) of Selwyn County (now District) Council; the Chairman of the North Canterbury Hospital Board or other institution for the time being having control of the Christchurch Hospital; the Chairman of Canterbury College; two women to be appointed; and two named individuals to be replaced upon expiration of their term with two from the following classes: a solicitor, a bank manager carrying on business in Canterbury, and a merchant carrying on business in Canterbury:
- (8) The Board of the Institute (the **Board**) considers that the charitable purpose of the Institute has been eroded over time and will shortly fail completely. It was Allan McLean’s desire that Holly Lea should serve as a public institution for the benefit of women and, in particular, women of refinement or education in straitened circumstances. Since Allan McLean’s death in 1907, there have been

numerous circumstances that make it impossible or impracticable to carry out those charitable purposes:

- (9) The Board considers that there are worthy and needy charitable causes that would benefit significantly from the Institute's assistance, and that would align as closely as possible with the original charitable purposes envisaged by Allan McLean. For these reasons, the Board desires to vary the purposes of the Institute:
- (10) The High Court has determined that it does not have jurisdiction under Part 3 of the Charitable Trusts Act 1957 to make variations to the terms of the Institute:
- (11) The objects of this Act cannot be achieved without legislation:

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the McLean Institute (Trust Variation) Act **2023**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to provide for variation of the terms of the McLean Institute, including its charitable objects and the powers of the Trust Board, by varying the terms of the Trust contained in the will of the late Allan McLean (as amended by the McLean Institute Act 1909, the McLean Institute Act 1930, and the McLean Institute Act 1934) in accordance with the trust deed.

4 Interpretation

In this Act, unless the context otherwise requires,—

commencement date means the date on which this Act comes into force

Trust or **Institute** means the charitable trust established in respect of the McLean Institute in terms contained in the will of Allan McLean as amended by the McLean Institute Act 1909, the McLean Institute Act 1930, and the McLean Institute Act 1934, and as varied by the terms of the trust deed

Trust Board or **Board** means the McLean Institute Board, a board incorporated under the Charitable Trusts Act 1957

trust deed means the deed of trust set out in the **Schedule**

trust property means any real and personal property held by the Trust Board, being any property vested in the Trust Board at any time before or after the commencement date.

5 Terms of Trust varied

- (1) On and from the commencement date, the terms of the Trust as set out in the will of the late Allan McLean (as amended by the McLean Institute Act 1909, the McLean Institute Act 1930, and the McLean Institute Act 1934) are varied as set out in the trust deed.
- (2) The Trust Board must, as soon as is reasonably practicable after the commencement date, arrange for a copy of the trust deed to be lodged with the Registrar of Incorporated Societies.
- (3) If the objects of the Trust, or the Trust Board's powers, are subsequently amended, the Trust Board must, as soon as is reasonably practicable after the amendment is made, arrange for a record of the amendment to be lodged with the Registrar of Incorporated Societies in accordance with section 23 of the Charitable Trusts Act 1957.
- (4) To avoid doubt, **subsection (3)** does not limit **section 6**.

6 Application of Charitable Trusts Act 1957

Despite anything in this Act, the provisions of the Charitable Trusts Act 1957 continue to apply to the Trust and the Trust Board, as if the objects of the Trust, the powers of the Trust Board, and the constitution were set out in a deed and not in this Act.

7 Repeals

The following Acts are repealed:

- (a) McLean Institute Act 1909 (1909 No 8 (L));
- (b) McLean Institute Act 1930 (1930 No 5 (P));
- (c) McLean Institute Act 1934 (1934 No 4 (P)).

Schedule

Deed of Trust of the McLean Institute

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Background

- A The McLean Institute (the **Institute**) is a charitable Institute, established pursuant to the Will of Allan McLean (**Will**), who passed away in 1907. The Institute was incorporated as a corporate body by statute (the **McLean Institute Act**) in 1909. Since that time, the Institute has sought to realise the vision of Allan McLean by applying the assets of the Institute for the benefit of destitute women.
- B With the passing of time, the specific purposes of the Institute as set out in the Will have become difficult to satisfy. The Board of the Institute wishes to ensure that the assets of the Institute continue to be used to provide a benefit to the public, in a way that best reflects the original intention of Allan McLean in the changed circumstances.
- C By way of a private Act of Parliament, the terms of the Institute that are set out in clauses 1 to 41 of the Will are varied by replacing them with the provisions set out in this Deed.

Trust Deed

1 Definitions

- 1.1 In this Deed, unless the context otherwise requires:
- 1.1.1 **Anglican Diocese of Christchurch** means the Diocese of the Anglican Church in Aotearoa, New Zealand and Polynesia that serves the area that includes the Canterbury and Westland regions and the Chatham Islands, or any replacement or reconstituted Diocese of the Anglican Church that includes the Region;
- 1.1.2 **Annual Meeting** means a meeting of the Board held pursuant to clause 9.2;
- 1.1.3 **Bishop** means the person elected or appointed as bishop of a Diocese pursuant to the rules governing the relevant Diocese;
- 1.1.4 **Board** means the Trustees of the Institute acting together as a Board;
- 1.1.5 **Chairperson** means the chairperson of the Board appointed pursuant to clause 9.3;
- 1.1.6 **Christchurch City Council** means the local government territorial authority (as defined in and subject to the Local Government Act 2002) known as Christchurch City Council as constituted by the Local Government (Canterbury Region) Reorganisation Order 1989, *Gazette* 1989,

- p 2296, or any replacement or reconstituted territorial authority responsible for the territory that includes Christchurch City and Banks Peninsula;
- 1.1.7 **Committee** means a committee appointed by the Board pursuant to clause 12;
- 1.1.8 **Foster Care** includes permanent, transitional, emergency and respite care of children, arranged through a government organisation or non-government organisation;
- 1.1.9 **Mayor** means the mayor of the relevant territorial authority (as that role is defined in the Local Government Act 2002) elected pursuant to the Local Electoral Act 2001;
- 1.1.10 **Officer** means any person employed by the Board to assist in the work of the Institute (which does not include an independent contractor or professional adviser) or any person to whom the Board has delegated any of its powers and/or duties pursuant to clause 13.1;
- 1.1.11 **Region** means that part of the South Island of New Zealand that is bounded in the north by the Waimakariri River, in the south by the Rakaia River, in the west by the “Main Divide” of the Southern Alps, and in the east by the east coast of the South Island;
- 1.1.12 **Roman Catholic Diocese of Christchurch** means the Diocese of the Catholic Church in New Zealand that serves the area that includes Canterbury, the West Coast of the South Island, and the Chatham Islands, or any replacement or reconstituted Diocese of the Catholic Church that includes the Region;
- 1.1.13 **Selwyn District Council** means the local government territorial authority (as defined in and subject to the Local Government Act 2002) known as Selwyn District Council as constituted by the Local Government (Canterbury Region) Reorganisation Order 1989, *Gazette* 1989, p 2296 or any replacement or reconstituted territorial authority responsible for the same or similar territory that includes part of the Region;
- 1.1.14 **Special Meeting** means any meeting of the Board other than the Annual Meeting;
- 1.1.15 **TMI Fund** means all property which may be held, acquired or received by the Institute from any source whatsoever for the objects and purposes of this Deed, the income and gains from such property and the property from time to time representing the same;
- 1.1.16 **Trustees** means the Trustees of the Institute from time to time, as appointed pursuant to this Deed, and **Trustee** means any one of them;
- 1.1.17 A reference to “**children**” is a reference to children and young persons of any gender under the age of 18 years old, and is otherwise to be interpreted in its broadest possible sense.

2 Name and History

- 2.1 The name of the Institute is the McLean Institute.
- 2.2 The Institute shall retain a copy of the full text of the original Will of Allan McLean in its care during the life of the Institute, and will make such document (or copies thereof) available to any person who requests to view that document.

3 Structure of the Institute

- 3.1 The Institute will be administered by the Board comprised of the Trustees (**Board**).

4 Office

- 4.1 The office of the Institute will be in such place in Christchurch as the Board may determine.

5 Purposes

- 5.1 The purpose of the Institute is to provide assistance to and promote the welfare and well-being of disadvantaged women residing or located in the Region (and the children in the care of such women), who the Board considers are in need of care, support and assistance due to poverty, ill health or other circumstances, whether temporary or long-term.
- 5.2 The purpose may be satisfied by such means as the Trustees think fit, including (but not limited to) by:
 - 5.2.1 Providing, or facilitating the provision of temporary / emergency / transitory housing for women and their children who are in need of such housing;
 - 5.2.2 Assisting women with housing needs to locate, obtain, and/or retain suitable housing within their financial means;
 - 5.2.3 Providing accommodation at an affordable cost for women who require assistance to locate, obtain and/or retain suitable housing within their financial means;
 - 5.2.4 Providing accommodation and other support for young women transitioning out of Foster Care (and any children of such women);
 - 5.2.5 Providing support to women in distress due to mental health or addiction issues, disability, trauma, violence, homelessness, poverty, or dislocation;
 - 5.2.6 Providing support for women suffering from terminal illnesses or long-term/permanent disablement;
 - 5.2.7 Funding or providing other support for the provision of programmes, projects and other initiatives that:

- (a) Promote and support the empowerment of women, including enabling them to live independently;
 - (b) Support women to fully participate within the contexts of family, whanau and community;
 - (c) Promote public awareness of the problems of family violence and abuse;
 - (d) Work to change social norms that support violence against women;
 - (e) Promote and provide parenting support services;
 - (f) Promote motherhood as a valuable and positive force in our society;
- 5.2.8 Working with and assisting other charities that are focussed on providing benefit to women (and their children) and that otherwise have charitable purposes similar to those of the Institute;
- 5.2.9 All other acts or things which are charitable under the laws of New Zealand and which involve the care, support and protection of women and children;
- 5.2.10 Doing all such other acts and things as are incidental or conducive to the attainment of the above objects.
- 5.3 In providing (or facilitating the provision of) any form of accommodation to any person pursuant to clause 5.1 and 5.2, the Institute may apply its assets in the provision of accommodation outside of the Region (or the facilitation thereof), where:
- 5.3.1 the person receiving the benefit of the accommodation was previously residing in the Region; and
 - 5.3.2 it is considered reasonable to provide accommodation outside of the Region to best support that person in escaping family violence or otherwise transitioning or recovering from their disadvantaged circumstances.
- 5.4 In this Deed the reference to “women” is to be interpreted in its broadest possible sense, having regard to both biological sex and gender identity.
- 6 Incorporation and Registration**
- 6.1 The Board will, unless it resolves otherwise, take all steps as may be necessary from time to time to:
- 6.1.1 ensure the continuation of the Institute’s status as an incorporated body; and
 - 6.1.2 remain registered as a charitable entity under the Charities Act 2005.

7 Constitution of the Board

- 7.1 The Institute will be administered by a Board of Trustees consisting of at least four and up to eight members, to be known as Trustees.
- 7.2 The Board shall comprise the following:
- 7.2.1 The Bishop for the time being of the Anglican Diocese of Christchurch or, if they shall be unable or unwilling to act as a Trustee, such other person as may be nominated by the Bishop of the Anglican Diocese of Christchurch;
 - 7.2.2 The Bishop for the time being of the Roman Catholic Diocese of Christchurch or, if they shall be unable or unwilling to act as a Trustee, such other person as may be nominated by the Bishop of the Roman Catholic Diocese of Christchurch;
 - 7.2.3 The Mayor for the time being of the City of Christchurch or, if the Mayor shall be unable or unwilling to act as a Trustee, then such other person as may be nominated by the Mayor;
 - 7.2.4 The Mayor for the time being of the Selwyn District Council or, if the Mayor shall be unable or unwilling to act as a Trustee, then such other person as may be nominated by the Mayor;
 - 7.2.5 Up to four additional Trustees appointed by the Board for the purposes of ensuring diversity among the Board members, including (without limitation) diversity of gender, race, ethnicity, professional qualifications, skills, expertise, and religious and political beliefs. For the avoidance of any doubt, any Trustee already appointed to the Board pursuant to this clause 7.2.5 is, while they are a Trustee, part of the Board for the purposes of determining any subsequent appointments made pursuant to this clause.
- 7.3 Where any person is nominated as a substitute pursuant to clauses 7.2.1 to 7.2.4:
- 7.3.1 a written notice to the Board from the person for whom they are nominated as substitute, confirming their appointment, shall be conclusive evidence that the new Trustee has been duly appointed; and
 - 7.3.2 their appointment as Trustee may be revoked at any time by the person(s) holding the power of nomination, and a written notice to the Board from the person for whom they are nominated as substitute, confirming the revocation of their appointment, shall be conclusive evidence that the Trustee's appointment has been revoked; and
 - 7.3.3 they shall otherwise hold office until the end of the term of office of the person for whom they are nominated as substitute.
- 7.4 The Trustees appointed pursuant to clause 7.2.5 shall hold office for a period of five years, at which time they must retire from office. Any Trustee so retiring will be eligible for re-appointment, provided that if they have already served

two consecutive terms, they may only be re-appointed with the unanimous approval of the remaining Trustees.

7.5 As at the date that this Deed is submitted to Parliament by way of its annexure to a private bill, it is recorded that the Trustees of the Institute are:

7.5.1 Bishop Peter Carrell, Bishop Michael Gielen, David Cartwright, and Samuel Broughton, who hold their positions pursuant to clauses 7.2.1, 7.2.2, 7.2.3, and 7.2.4 (in that order) based on the roles held by them as at the date of this Deed;

7.5.2 Andrew Nuttall, Rosemary Blythe Cracroft Aitken, Natalie Thain, and Colin William Hair, who are deemed to have been appointed pursuant to clause 7.2.5.

7.6 The Trustees named in clause 7.5.1 will hold the office of Trustees until they retire or vacate office as provided in this Deed.

7.7 The Trustees named in clause 7.5.2 will hold the office of Trustees for the following terms:

(a) Andrew Nuttall shall be deemed to have completed his first five-year term contemporaneous with the dissolution or adjournment of the 2022 Annual Meeting;

(b) Rosemary Blythe Cracroft Aitken shall be deemed to complete her first five-year term contemporaneous with the dissolution or adjournment of the 2023 Annual Meeting;

(c) Natalie Thain shall be deemed to complete her first five-year term contemporaneous with the dissolution or adjournment of the 2024 Annual Meeting;

(d) Colin William Hair shall be deemed to complete his first five-year term at the close of 26 April 2027.

7.8 The Board shall accept such evidence as it thinks fit showing that the respective members of the Board fill the positions or offices indicated in clause 7.2, and the Board shall be deemed to be effectively constituted notwithstanding that any office or position indicated in this Deed may for the time being be vacant or not filled up or cease to exist or that any person for the time being holding any such office or position shall decline or be unable to act.

8 Resignation and Vacancies on the Board

8.1 A Trustee appointed pursuant to clause 7.2.5 may resign from office by giving written notice of their resignation to the Board or the Chairperson.

8.2 The office of any Trustee shall be vacated if the Trustee:

8.2.1 Is a Trustee appointed pursuant to clause 7.2.1 to 7.2.4 and they cease to hold the relevant position; or

8.2.2 Dies; or

- 8.2.3 Resigns their office by notice in writing to the Board or the Chairperson pursuant to clause 8.1; or
 - 8.2.4 Becomes of unsound mind or a protected person under the Protection of Personal and Property Rights Act 1988; or
 - 8.2.5 Becomes bankrupt; or
 - 8.2.6 Is convicted of an indictable offence; or
 - 8.2.7 Is absent without leave for three consecutive meetings of the Board; or
 - 8.2.8 In the opinion of all Trustees (other than the Trustee in question) expressed in the form of a resolution that the Trustee is for any reason unfit to carry out their duties as a Board member.
- 8.3 The Board at the meeting at which a Trustee retires (or at the next meeting following a Trustee's retirement), or by resolution pursuant to clause 9.11, may fill the vacated office by appointing a person to that position.
- 8.4 Trustees for the time being may exercise the power conferred by clause 8.3 notwithstanding that the number of Trustees may be less than four.

9 Proceedings of the Board

- 9.1 The Board shall hold no less than two general meetings per year (including the Annual Meeting) for transacting the business of the Institute which are to be held either at the offices of the Institute or at such other convenient place as the Board shall determine, and on such day and at such time as the Board shall determine. Board meetings may take place in person or by telephone conference, video conference or similar telecommunications or internet-based device.
- 9.2 Within six months of the end of each financial year of the Institute there will be a meeting of the Board (Annual Meeting) to review the audited accounts and activities of the Institute for the preceding year and to appoint Trustees to the Board to any fill vacancies as set out in this Deed.
- 9.3 The Board shall elect a Chairperson from amongst its members at each Annual Meeting. The Chairperson shall be elected for a one-year, renewable, term. The Chairperson shall preside at all meetings of the Board but in their absence the Board shall before proceeding to the business of the meeting elect a Chairperson from amongst the Trustees present.
- 9.4 At every Annual Meeting and Special Meeting of the Board, a majority of the Trustees shall form a quorum. No business shall be transacted unless a quorum is present and any decision made by a majority of the Board at any meeting with a valid quorum shall be binding on the whole of the Board.
- 9.5 Notwithstanding clause 9.4, at any Annual Meeting or Special Meeting of the Board where a quorum is present, the Board shall have power to alter, vary or rescind any resolution or direction which may have been passed or approved at any previous meeting, provided such resolution or direction has not yet been given effect.

- 9.6 All questions before the Board shall be decided by consensus. However, where a consensus decision cannot be reached on a question it shall, unless otherwise specified in this Deed, be put as a motion to be decided by a majority of votes. In the event of an equality of votes the Chairperson shall have a second or casting vote.
- 9.7 At any Annual Meeting and Special Meeting of the Board where:
- 9.7.1 after fifteen minutes of the time appointed for the meeting, there is not a sufficient number of Trustees to form a quorum; or
- 9.7.2 the business of any meeting shall remain undisposed of as at the time for conclusion of the meeting
- the Trustees present may adjourn the same to some subsequent day and notice in writing of the adjourned meeting, including the day, time and place, shall be given to the Trustees by the Secretary.
- 9.8 A Special Meeting of the Board may at any time be called by any two or more Trustees. The Secretary shall on the application by two or more Trustees for such purpose give not less than three clear days' notice of such of the time and place and object of such meeting (unless waived by all Trustees) and no business other than that specified in the notice shall be transacted at any such Special Meeting.
- 9.9 The Board may by ordinary resolution make, alter and revoke rules for regulating their own proceedings and the general conduct of business, for calling Annual or Special Meetings of the Board and of any Committee appointed by the Board.
- 9.10 Minutes shall be kept of all Board meetings which shall be available for inspection by the Trustees at reasonable times. The minutes shall record the names of the Trustees attending, all resolutions and proceedings of the Board at their meetings, all orders given for the disposal of any of the funds and income of the Institute, the reports of the Committees and all other matters relating to the Institute properly transacted by the Board, its Committees or Officers.
- 9.11 A resolution in writing signed by all of the Trustees for the time being shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Trustees. A facsimile or scanned copy of such signed resolution transmitted via electronic message shall be as valid and effectual as the original document with effect from completion of the transmission.
- 10 Proceedings of the Board not affected by irregularities**
- 10.1 No act or proceeding of the Board or of any Committee thereof or any person acting as a Trustee shall be invalidated in consequence of there being a vacancy in the membership at the time of that act or proceeding or of the subsequent discovery that there was some defect in the entitlement of any person so acting

to be a Trustee or that they were incapable of being or had ceased to be a Trustee.

11 Powers

- 11.1 In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956 and the Trusts Act 2019 or any replacement legislation and in achieving the Institute's charitable purposes and without in any way limiting or modifying any of the powers and discretions contained in this Deed, the Board shall have all the powers of a natural person to do all things required in pursuance of the Institute's objects, including but not limited to the following powers and discretions:
- 11.1.1 To use the funds of the Institute as the Board thinks necessary or proper in payment of the costs and expenses of the Institute;
 - 11.1.2 To appoint, employ or engage such professional advisers, agents, Officers and contractors as appears necessary or expedient to assist in the work of the Institute or to assist the Board as they shall think fit;
 - 11.1.3 To appoint one or more auditor(s) for the purposes of the Institute and to remove or replace said auditor(s);
 - 11.1.4 To lease or rent any lands or other property comprising the TMI Fund (and any part thereof) to a third party, on such terms including as to length of term and rental as the Board thinks fit;
 - 11.1.5 To enter into agreements, joint ventures, partnerships or other arrangements with third parties, including holding shares or other interests in companies or other entities that are jointly owned with such third parties;
 - 11.1.6 To pay for any Trustees' and Officers' insurance cover taken out by the Board from time to time;
 - 11.1.7 To invest surplus funds in any way permitted by law for the investment of trust funds and upon such terms as the Board thinks fit, including (without limitation) Government securities, debt securities, equity securities, the purchase of land and buildings, and bank deposits;
 - 11.1.8 To borrow or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Board thinks fit;
 - 11.1.9 To purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of attaining the objects of the Institute, and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid;
 - 11.1.10 To sell all or any part of the real or personal property comprising the Institute's assets either by public auction or private contract or in such manner and subject to such terms and conditions as the Board in its absolute discretion thinks fit, with power to allow the whole or any part

of the purchase money to remain on mortgage of the property sold and with power to buy in or rescind and vary contracts for sale and resell without responsibility for loss, and with further power should the purchaser be a limited liability company or a trustee for the same to accept either in full or part satisfaction of the purchase money such preferred or ordinary shares whether wholly or partially paid up or wholly contributory debentures, debenture stock, bonds or other securities of such company as the Board shall think fit;

- 11.1.11 To erect, maintain, pull down, repair and improve, add to or alter, any house or other building (and associated services) on any land comprising the TMI Fund;
 - 11.1.12 To lay out any part of any land comprising the TMI Fund for such services and/or amenities as shall be suitable or necessary for the more spacious use, occupation and employment of the relevant land;
 - 11.1.13 To determine whether any money shall for the purposes of these presents be considered as capital or income and out of what part of the Institute and whether out of income or capital any expenses or outgoings shall be borne, and to determine all questions and matters of doubt arising in the execution of the trusts hereof;
 - 11.1.14 To apportion as the Board may think fit any of the TMI Funds which shall have become blended so as to render it impossible or difficult to distinguish what parts thereof are held under different trusts or subject to different destinations or modes of distribution;
 - 11.1.15 To apportion as the Board may think fit among the TMI Funds any charges, deductions or outgoings whatsoever;
 - 11.1.16 To mediate, compromise or refer to arbitration any actions, proceedings, disputes, claims or demands and to settle accounts and to execute releases without responsibility for loss;
 - 11.1.17 Where the Institute is providing accommodation to third parties, to make rules relating to the use of any land, buildings or other property owned by the Institute by those third parties, including (without limitation) rules as to the admission or removal of persons, or for the maintenance of order, discipline and cleanliness, and to prevent trespass on lands held by the Institute;
 - 11.1.18 To do all things as may from time to time appear desirable to enable the Board to give effect to and to attain the charitable purposes of the Institute.
- 11.2 Pursuant to clause 11.1.2 the Board may employ as advisers, agents, Officers, or contractors persons who are also Trustees.

12 Committees

- 12.1 The Board may from time to time appoint a committee comprising two or more Trustees, for such purpose as may be determined by the Board, provided that the acts or proceedings of such Committee shall (subject to clause 9.9) be submitted to the Board for approval.

13 Delegation

- 13.1 The Board may from time to time delegate any of its powers and duties to any other person, and that person may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them.
- 13.2 Any person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the Institute.
- 13.3 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

14 Advisory Board

- 14.1 The Board may from time to time make provision for the appointment, term, retirement and replacement of such members of an Advisory Board as the Board may determine to provide non-binding, informal strategic advice to the Board either in relation to a specific project or issue, or more broadly to assist the Board and the Institute at a strategic level.
- 14.2 No powers or duties of the Board may be delegated to the Advisory Board, and the Board shall retain absolute discretion to accept or disregard any recommendations of the Advisory Board.
- 14.3 No Advisory Board member shall form part of the Board or be authorised to exercise any of the powers or functions of a Trustee.

15 Secretary

- 15.1 A Secretary may be appointed by the Board from time to time and on such terms as the Board may decide, and shall keep full and correct minutes of all Board meetings and shall produce them at all meetings, and carry out such other duties as the Board may define. Unless the Secretary is appointed from among the Trustees, the Secretary shall not be one of the numbers required to form a quorum and shall not be entitled to vote on any matter.

16 Income

- 16.1 The annual income of the Institute shall be expended by or under the direction of the Board in and towards payment of the costs and expenses of the Institute and in and towards the purposes of the Institute, including but not limited to:
- 16.1.1 The repair and upkeep of the assets comprising the TMI Fund;

- 16.1.2 Insuring the assets comprising the TMI Fund against loss or damage by fire and such other risks as the Board considers necessary;
 - 16.1.3 The repair or replacement of any assets comprising the TMI Fund or the purchase of new real or personal property for the purposes of the Institute;
 - 16.1.4 Capitalising such amount of the income as the Board shall think fit from time to time;
 - 16.1.5 Payment of funds to any other charitable entity having purposes or providing services that are in line with the Institute's purposes;
 - 16.1.6 The payment of expenses incurred for the maintenance, care and attendance of persons using any accommodation provided by the Institute or any other charitable entity in line with the Institute's purposes;
 - 16.1.7 The settlement of the expenditure for the various establishments under the control of the Board or under the control of any other charitable entity having purposes or providing services that are in line with the Institute's purposes.
- 16.2 No Trustee or person associated with a Trustee shall derive any income, benefit or advantage from the Institute where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
- 16.2.1 Professional services to the Institute rendered in the course of business charged at no greater rate than current market rates; or
 - 16.2.2 Interest on money lent to the Institute by the Trustees at no greater rate than current market rates.

17 Accounts

- 17.1 Any payment of money by the Institute must be authorised by any two of the following:
- 17.1.1 the Chairman for the time being;
 - 17.1.2 any other Trustee; and
 - 17.1.3 the Secretary for the time being (if any),
- and any payment so authorised shall be binding on the Board.
- 17.2 The Board shall cause to be kept true and fair accounts of all money received and expended by the Institute, and the purposes for which any funds have been received and paid. The books of account shall be open to the inspection of the Trustees without cost at all reasonable times, and the Trustees may take copies of the account books.
- 17.3 The Board shall, as soon as practicable after the end of every financial year of the Board, cause the accounts of the Institute for that financial year to be prepared and audited by a chartered accountant appointed by the Board for that

purpose. The Board shall provide the auditor with all information reasonably requested by the auditor for the purposes of completing the audit.

- 17.4 Following approval of the audited accounts by the Board at the next Annual Meeting following the end of the relevant financial year, the accounts shall be certified by the Chairperson of that Annual Meeting.

18 Financial Year

- 18.1 Unless the Board shall determine otherwise, the financial year for the Institute shall run from 1 June in any year to 31 May in the following year.

19 Common Seal

- 19.1 The Board shall have a Common Seal for so long as the Institute is incorporated as a body corporate, which shall be used only as directed by the Board. The Common Seal will be affixed to documents only in the presence of and accompanied by the signatures of the Chairperson and at least one other Trustee.

20 Service

- 20.1 Subject to clause 20.2, notice of any meeting or any other matters affecting the Institute may be given (and shall be deemed to be duly given) by delivering or posting the same to the address of the person that it is intended to affect at their last known place of residence.
- 20.2 The Trustees may elect to receive notices of meeting and other communications relating to their role as Trustee electronically, by providing the Board with an address for receipt of such notices and communications via electronic messaging.

21 Investment and management

- 21.1 The investment and management of the assets and funds of the Institute will be at the sole discretion of the Board limited only by the terms hereof, provided that no benefit or advantage of the kind referred to in section CW 42(1)(c) and (3) to (8) of the Income Tax Act 2007 will be derived by or paid to any person referred to in those provisions except as therein exempted from the application of that section.

22 Professional Trustees

- 22.1 Subject to clause 21.1, any person who may be a Trustee hereof shall be entitled to make and receive all such professional and other charges for work done in relation to the administration or execution of the Institute as they would have been entitled to make or receive if they had not been a Board member.

23 Dissolution

- 23.1 The Institute may be wound up if the Board decides that its objectives have been or can no longer practically be achieved or that dissolution is for any other reason desirable. Should the Institute be dissolved in accordance with this clause, then any moneys and property remaining after the due settlement of the affairs of the Institute and the payment of all debts and claims shall be paid over or distributed to one or more organisations approved by the Board as having charitable objects similar to those set out herein, or, if the Board is unable to make such decision, shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957.

24 Variation

- 24.1 The Board may at any time resolve to alter, modify, vary or add to this Deed if in the opinion of the Board the alteration, modification, variation or addition (**Alteration**) is:
- 24.1.1 made to correct a manifest error;
 - 24.1.2 of a formal or technical nature;
 - 24.1.3 necessary to reflect a change in the positions or bodies referred to in clauses 7.2.1 to 7.2.4 following a change in legislation or a reconstitution or reorganisation of any of those positions or bodies;
 - 24.1.4 necessary to give the Board any further powers or discretions consistent with the terms of this Deed;
 - 24.1.5 to allow the Institute to continue to be approved or to be approved by any relevant fiscal or regulatory authority;
 - 24.1.6 necessary to allow the Institute to receive the benefit of any gift, grant or other funding, provided that no such Alteration shall be made to the purposes of the Institute and no Alteration shall be made if its nature or effect would be such as to derogate from the exclusive charitable nature of these presents.
- 24.2 The Board may exercise the powers and discretions contained in the Charitable Trusts Act 1957.

25 Trustees and Officers not personally liable

- 25.1 No Trustee or Officer shall be personally liable for any act or default done or made by the Board or by any Trustee or Officer in good faith in the course of the operation of the Board or Institute.

26 Indemnity of Trustees and Officers

- 26.1 Without prejudice to the right of indemnity by law given to Trustees, the Trustees are entitled to be indemnified out of the funds of the Institute:
- 26.1.1 In respect of all liabilities and expenses incurred by them:
 - (a) In the execution or purported execution of the trusts hereof; or

- (b) In the exercise of any powers, authorities or discretions vested in them pursuant to this Deed;
- 26.1.2 against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted or in any way relating to the Institute, other than a claim arising out of:
 - (a) A wilful, fraudulent or dishonest default; or
 - (b) A wilful, fraudulent or dishonest breach of trust.
- 26.2 The Board may indemnify any Officer out of the funds of the Institute:
 - 26.2.1 in respect of all liabilities and expenses incurred by them in the exercise of any duties, powers, or authorities vested in them by the Board; or
 - 26.2.2 against all or any actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted or in any way relating to the Institute, other than a claim arising out of a wilful, fraudulent or dishonest default.
- 26.3 The Board may retain and pay out of the funds belonging to the Institute all sums necessary to effect this indemnity.
- 26.4 The Trustees will have a charge on the funds belonging to the Institute for all moneys payable to them under this clause or otherwise howsoever arising out of and in connection with the Institute.

27 Interpretation

- 27.1 In this Deed, unless the context otherwise requires:
 - 27.1.1 Section, clause and other headings are for convenience only and will not affect the interpretation of this Deed;
 - 27.1.2 Singular will include plural and vice versa;
 - 27.1.3 Where any term defined in this Deed takes a different form for reasons of grammar, the different form has a corresponding meaning;
 - 27.1.4 Reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
 - 27.1.5 The words **written** and **in writing** include any means of reproducing words, figures or symbols in a tangible and visible form.