

Report to Annual General Meeting

Establishment of Charitable Trust

1. Purpose

- 1.1 The purpose of this report is for the Members to consider approving the Executive Committee's decision to change the legal status of Dementia Canterbury from an Incorporated Society to a Charitable Trust.

2. Summary

- 2.1 Dementia Canterbury Inc. Sought advice from P W Mitchell Law Ltd in late 2018 regarding a proposal to establish a charitable trust board and transfer its assets and staff to that Board by Deed of Gift. The advice from Mr Peter Mitchell is attached as Attachment 1.

2.2 Current arrangements:

- Dementia Canterbury is currently an incorporated society which is based on the law of contract between the Society and its Members. The Members have the right to attend general meetings and to choose the committee members of the organisation.

2.3 The Proposal:

- To establish Dementia Canterbury as a Charitable Trust. Dementia Canterbury would then be based on the law of trusts. Members would no longer have the same rights they currently have with the incorporated society – that is, it will not be a democratic organisation in the same way that an incorporated society is.

3 Recommendation/s

That the Members of Dementia Canterbury Incorporated:

3.1 Receive the information.

3.2 Resolves: That

- A charitable trust board be established as a new legal entity and it be registered as a Board under the Charitable Trusts Act 1957;
- That Dementia Canterbury Incorporated funds and assets (including Dementia Canterbury's shareholding in Dementia New Zealand Ltd and the Canterbury Brain Collective Ltd), by Deed of Gift, and staff, be transferred to the Dementia Canterbury Charitable Trust Board;
- The funds and assets are to continue to be used for the same or similar objects as Dementia Canterbury Incorporated;
- The transfer of the funds and assets is in the best interests of Dementia Canterbury;

- There is no prejudice to the community by transferring Dementia Canterbury's funds and assets to the Trust;
- The establishment of a trust aligns Dementia Canterbury with the trust model established by the Dementia New Zealand Charitable Trust (of which Dementia Canterbury Inc. is a Regional Dementia Body as defined the Trust Deed);
- The establishment of the trust is a solution to the legitimate concern of Dementia Canterbury Inc. about the decline in membership and the governance need to operate Dementia Canterbury effectively (such as having quorums and general meetings);
- The name of the trust be the Dementia Canterbury Charitable Trust;
- Following the establishment of the Dementia Canterbury Charitable Trust Board, a further General Meeting of Members of the Society is held to wind up Dementia Canterbury Incorporated Society.

4 Background

4.1 Why change:

- Dementia Canterbury's membership is ageing and is shrinking as less people consider 'belonging' and paying a subscription;
- Dementia Canterbury has the view that its services should be available to all people living with or affected by all forms of dementia and there should not be a requirement to be members of the Society to gain access to those services;
- Dementia Canterbury is finding it increasingly difficult, with its ageing membership, to ensure it complies with the quorum requirements for general meetings;
- The formation of a trust will enable alignment with the Dementia New Zealand Charitable Trust of which Dementia Canterbury Inc. is a Regional Dementia Body as defined the Trust Deed;
- The trust formed will have the same or similar objects as the Society currently has;
- All Dementia Canterbury Inc. assets will be transferred to the new charitable trust board by way of a Deed of Gift;
- All Dementia Canterbury Inc. staff will be transferred to the charitable trust board.

4.2 Should the members agree that a charitable trust board be formed the incorporated society will be wound up.

4.3 It is proposed that a trust deed be prepared (draft attached as Attachment 2) with the following named persons, currently the members of the Incorporated Society's Executive Committee, to act as trustees: Jane Parfitt, Katrina Aitken, Michal Aitken, Carolyn Gallagher, Darryl Griffin, Diane Keenan, Terry Reid, Lindsey Rhodes and Ingrid Thomas.

4.4 A tax lawyer acting for the Society has confirmed that no gift duty will be payable on the gift of Dementia Canterbury Incorporated's assets and funds to the new charitable trust and that there will be no tax implications arising from the transfer of the funds and assets from the Incorporated Society to the new charitable trust, provided the new charitable trust is registered with Charities Services as a charitable entity before the transfer takes place.

- 4.5 All members have been advised in writing of the proposed change in legal status and copies of this report including the attachments are posted on the Dementia Canterbury web site, will be made available in hard copy on request and will be available at the Annual Meeting.
- 4.6 All staff members will be advised in writing including being sent a copy of this report including the attachments.
- 4.7 The head lessee and the landlord of the premises at 3/49 Sir William Pickering Drive will be requested to consent to the lease being assigned to a charitable trust board.
- 4.8 A letter has been drafted to be sent to the Society's bankers and to other interested parties making them aware of the proposed change to a charitable trust board.
- 4.9 The notice of the annual general meeting will include a stated purpose of the meeting is to authorise the establishment of a charitable trust board and to authorise the transfer of funds and assets of the Society to the Trust.

5 Attachments

Attachment 1. Mr Peter Mitchell's legal advice

Attachment 2. Draft Trust Deed

Author Darryl Griffin, Executive Member

Authoriser Jane Parfitt, Executive Committee Chair