

Laura Fergusson Trust Incorporated

9 November 2020



Laura Fergusson Trust Incorporated

1. We write to you as Chairman and Deputy Chairman of the Board of Laura Fergusson Trust Incorporated (**LFT Auckland**).
2. We are aware there has been some negative publicity around our recent activities and decisions. We are keen to ensure that you have all the relevant facts. We also want to assure you that every action taken by the Board has been in the best interests of LFT Auckland and is directed to assisting current and future generations of disabled people on a sustainable basis.
3. LFT Auckland's commitment to provide assistance to disabled people in accordance with its Constitution and Rules, and the principles of its Founders is unchanged. It will simply provide that assistance in a different way.

Background

4. LFT Auckland's current position is the culmination of a more than decade-long battle to maintain LFT Auckland's historic service offerings in the face of a deficient Crown funding model, increased costs and regulatory burdens, and a changing landscape for disability services. Despite years of intensive and skilled effort, the decision to cease provision of historic services was not a choice – it was an unavoidable necessity.
5. Under the Crown funding model:
 - (a) LFT Auckland was only paid for actual clients but was required to maintain capacity to deliver complex and highly specialised services to anyone who might be referred to it by a Crown agency (and had no control over when and how that might occur).
 - (b) Crown payments were based solely on a needs assessment that was conducted in advance of treatment by the Crown Needs Assessment and Service Coordination Service. The services that were actually required by clients often turned out to be greater than assessed and it was extremely difficult for LFT Auckland to change or update the contract of services (and funding) to reflect the actual needs of clients.
 - (c) Crown payments also did not cover the cost of maintaining / replacing buildings, new equipment or new technology – the normal costs of running a sustainable organisation.
6. This funding has been inadequate for a number of years. We had made this clear to our direct contacts at the District Health Boards, Needs Assessment Service Centres and other Crown Agencies. We had also communicated this to officials within the Ministry of Health. We have extensive records of emails and meeting notes demonstrating regular communication over the inadequacy of funding.
7. We tried to address these funding deficiencies by improving our approach to costs. Assisted by PwC (working at materially reduced charges), we established a model – understood to be a first in the industry – that gave management a clearer idea of the cost of providing care and additional

information on which to base improved operating efficiency. As a result, we were able to complete an exhaustive analysis of our operations and reduce more than \$1 million in operational costs over a 12 month period. No further cost savings were possible because they would have compromised health and safety standards.

8. Despite industry leading management practices and wholeheartedly dedicated staff, LFT Auckland struggled to break even before increasing costs overtook revenues. These cost increases did not relate to efficiency. They concerned core operational matters which were material in their own right and overwhelming in aggregate. In particular:
 - (a) No provision could be made for the maintenance of aging buildings which were not fit for purpose. By mid-2019, LFT Auckland was on notice that its buildings would not meet the audit standards required of a service provider to Crown Agencies at the next Certification audit in August 2020.
 - (b) No provision could be made for buildings which were beyond maintenance and repair, and required replacement.
 - (c) A national shortage of skilled staff placed pressure on the cost of temporary staff.
 - (d) Changed immigration rules created difficulties in recruiting staff and also resulted in some longstanding staff members having their visa renewals declined.
 - (e) The impact of the Pay Equity Settlement Act 2017 (which led to significant increases in staff costs) was only partially reimbursed under the Crown funding model.

The decision to cease services

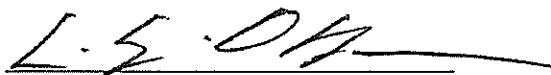
9. By 2019, the Board faced the situation that despite exceptional effort, management dedication and improvements in operational efficiency, LFT Auckland's existing operations were not sustainable. Moreover, the prospect of raising the many millions of dollars required for building replacement and refurbishment was neither feasible nor justifiable for an operation which would continue to post losses.
10. However, in the spirit of the Founders, we sought an independent analysis of, and challenge to, our preliminary conclusions. That independent analysis was undertaken by the acknowledged industry experts in New Zealand and was, we were told, the most comprehensive assessment and search for possible solutions ever undertaken in our sector. The conclusions from the independent analysis were impossible to ignore – there was no scenario or possible combination of new and / or existing services that could be maintained on a sustainable basis.
11. In communicating the decision to cease services, we were conscious of our obligations to our clients, staff and various Crown Agencies. Communications took place virtually simultaneously across Auckland, Waikato and Whanganui, so all relevant stakeholders were informed at the same time. When we informed the Ministry of Health that we were stopping the provision of existing services, they said that they had no record of our advising them about underfunding. This is simply incorrect. As indicated earlier, we have communicated the inadequacy of funding over an extended period.
12. Upon recognising that cessation of existing services was unavoidable, our focus was on ensuring clients were settled with new service providers. We did not want to be distracted or compromised in this important task by engaging in public comment or press debate. As a result, all clients and most staff have relocated to new service providers certified to provide the same services as were previously available from LFT Auckland. This was achieved despite the significant disruption of

COVID-19. Our CEO, Heather McLeish and her team, have worked with officials from Crown Agency funders. Their performance has been outstanding.

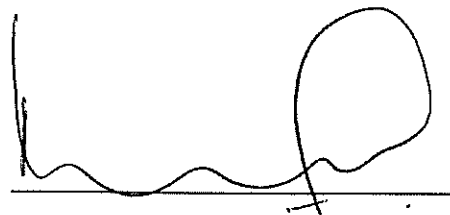
The future of Laura Fergusson Trust Incorporated

13. As noted earlier LFT Auckland's commitment to provide assistance to disabled people in accordance with its Constitution and Rules, and the principles of its Founders is unchanged. It will simply provide that assistance in a different way. Analysis is well under way to determine how that may happen in the future. Any method of future assistance must be sustainable. That is, LFT Auckland must be able to continue to follow the values of the Founders for the long term. It will not enter into financially unsustainable contractual obligations.
14. We appreciate that you may have questions about this letter and our activities more generally. The Board has taken the liberty of addressing some of those questions in the following pages. Please note that the Chairman has not been involved in the explanation of his appointment as an advisor to the Board. We trust that this letter and the Q&A assist in giving you an accurate picture of what has been happening.
15. Despite the difficult decisions we have made and the isolated position in which we have found ourselves at times, we have found strength in the support we have received from the founding families, the Women's Committee and long term supporters of LFT Auckland.
16. LFT Auckland is now embarking on a further chapter in its very proud history. It will together with your goodwill, again succeed with the dignity, grace and determination that were Founder hallmarks and which are deeply embedded in the DNA of LFT Auckland today. We thank you sincerely for your unwavering support of LFT Auckland and the community it has served for more than 50 years.

Kind regards,



Chris O'Brien
Chairman



Simon Barclay
Deputy Chairman

QUESTIONS AND ANSWERS

1. What is LFT Auckland?

- 1.1 LFT Auckland is an incorporated society. It was incorporated under the Incorporated Societies Act 1908 on 26 August 1969.
- 1.2 LFT Auckland is governed by the Constitution and Rules of Laura Fergusson Trust Incorporated. Under the Constitution, the Board has overall control of the management and administration of LFT Auckland and has a number of powers and duties.
- 1.3 The Constitution and Rules set out our permitted objects. There are 13 separate objects describing different ways of supporting Disabled People and a 14th which empowers LFT Auckland to do whatever may be necessary to implement actions under the first 13 objects. These define what we, as an organisation, may seek to achieve and we may pursue any or all of these objects. They are broad and include not only our historic activities but many alternative ways of supporting Disabled People.
- 1.4 As a Board, we are bound by our Constitution and Rules. Within those parameters, we conduct ourselves according to the values of our Founders. We know these values well through personal association with various Founders; with their descendants; with members of the Women's Committee from time to time; and with our longstanding supporters and donors.

2. Is LFT Auckland a trust?

- 2.1 We are not a trust or trustee. LFT Auckland is an incorporated society and all of our activities are conducted in accordance with our Constitution and Rules.

3. What does LFT Auckland have to do with LFT Wellington and LFT Canterbury?

- 3.1 Lady Mary Caughey was the driving force for the establishment of a trust to assist disabled people and attracted support from a core group of predominantly Auckland-based friends. Lady Laura Fergusson was approached to lend her name to a founding trust and agreed to do so. Lady Fergusson also expressed the wish that over time, regional entities would be established to pursue support for the disabled throughout New Zealand. By a deed of trust dated 25 May 1967, the "Laura Fergusson Trust for Disabled Persons" (the **National Trust**) was established. There was at this time no wider regional initiative and the initial trustees were six prominent Aucklanders. They organised themselves as a trust board under the Charitable Trusts Act 1957 and became the Laura Fergusson Trust Board Incorporated (the **National Trust Board**). This established a communication entity for the future.
- 3.2 Lady Caughey and the Auckland supporters had then to determine how to implement their objectives under an ongoing structure. Two years later, in 1969, LFT Auckland was established as an Incorporated Society, supported by the Women's Committee.
- 3.3 True to her word, Lady Caughey sought families in other regional areas who would establish and support disabled persons under the Laura Fergusson name. As a result, in September 1972 Wellington supporters established LFT Wellington, and in 1974 LFT Canterbury was established.
- 3.4 LFT Auckland, LFT Wellington and LFT Canterbury all carry the Laura Fergusson name but are separate entities. LFT Auckland is an incorporated society. LFT Wellington and LFT Canterbury are not. Each entity has separate and independent management and governance which determines the services the entity will provide. Each entity undertakes its own fundraising. Each entity is entitled to

appoint two representatives to the management board of the National Trust Board (see above), thereby enabling communication at Board level between the different entities.

4. What has LFT Auckland done for disabled people?

- 4.1 LFT Auckland, led initially by Lady Mary Caughey (assisted by Lady Laura Fergusson) and the LFT Auckland Women's Committee, has always undertaken its own fundraising activities and benefited from the generosity of its supporters. As our first 50 years comes to an end and the second commences, we want to acknowledge and thank all of LFT Auckland's supporters for their extraordinary and continued commitment. **Appendix 1** sets out LFT Auckland Founders, Supporting Founders and Founding Trustees and **Appendix 2** sets out Presidents of the Women's Committee, Presidents of Laura's Angels, Chairmen of the Board and Honorary Life Members.
- 4.2 That has enabled LFT Auckland to provide inpatient and outpatient services to the community and facilitate research into rehabilitation as per our objects. Many of these services have been provided at LFT Auckland's property at 224 Great South and Omaha Roads, Remuera (the **Great South Road Property**). Services have also been provided from other locations in Auckland, Waikato and Whanganui.
- 4.3 Shortly after purchase, LFT Auckland constructed independent units and shared recreational spaces on the Great South Road Property. These facilities enabled young disabled people to move from their current homes and learn to live as independently as possible (in the context of their disability), at a time when rest homes were their only other option. That historical gap in care for the disabled has long since been filled by multiple professional providers. For many years, Ministry of Health policy has prohibited the placement of young disabled people in rest homes.
- 4.4 In the mid-1980s, LFT Auckland began entering into contractual arrangements with the Ministry of Health, Disability Support Services and then ACC rehabilitation services. Under these contracts, LFT Auckland provided inpatient and outpatient services to members of the community in exchange for payments from the relevant agency. In 1995, after further fundraising efforts, led by Sir Robert and Lady Ximena Owens, LFT Auckland built a therapeutic pool and an adaptive gymnasium.
- 4.5 In 2004, LFT Auckland established the Joyce Fisher bequest and endowment fund (the **Joyce Fisher Endowment Fund**). This bequest and fund was made possible due to the generosity of Lady Joyce Fisher. The Joyce Fisher Endowment Fund is managed separately to LFT Auckland, and has independent board members.
- 4.6 In 2007, LFT Auckland extended its services to stroke victims (the number one cause of adult disability in New Zealand) by establishing the first dedicated stroke rehabilitation pilot in New Zealand. This was made possible by the generosity of two benefactors who provided LFT Auckland with the initial funding. (In 2010, the stroke rehabilitation pilot was described by the Auckland University Department of Medicine, Neurology Research Unit, Jonathan Baskett and Professor Alan Barber, as "one of the best long-term programs for people with stroke in the world".)
- 4.7 In 2009, LFT Auckland began offering inpatient and outpatient services in the Waikato and Whanganui which in 2010 extended an ACC programme into all regions in the Lower North Island.
- 4.8 Alongside our provision of residential and outpatient care, LFT Auckland has also supported research into rehabilitation. In 2002, LFT Auckland entered into an alliance with the Auckland University of Technology (AUT). This involved the establishment of the "Chair of Rehabilitation" at AUT (a first in New Zealand). The first occupant of this position completed a PhD in "Functional recovery after brain injury rehabilitation". Funding for this initiative was provided by the Joyce Fisher Endowment Fund which also provided funding and support for students to complete PhD level research into stroke rehabilitation.

4.9 At all times, the Board and LFT Auckland have behaved lawfully and faithfully advanced the objects of LFT Auckland. We have complied with all provisions of our Constitution and Rules. Our activities have served and will continue to serve the stated objects of LFT Auckland. We continue to pay particular regard to the values of our Founders.

5. Why did LFT Auckland stop providing services?

5.1 There was no realistic alternative to stopping the provision of services. A dysfunctional Crown funding model, ongoing operating losses, extreme difficulty in obtaining staff (a national issue exacerbated by changes to immigration rules) and an inability to source the vast sum of new capital required to replace our buildings meant that closure was unavoidable. Continuation would have led to the complete collapse of LFT Auckland.

5.2 Under the Crown funding model, hospitals are funded according to the number of beds they are required to have on hand and a budgeted assessment of the cost of running the hospital. In other words, they are funded to have capacity available, whether it is fully utilised or not. However, that same funding methodology did not apply to LFT Auckland and other “non-hospital” service providers. Instead, Crown payments were limited to actual clients for whom LFT Auckland had to wait passively to be referred by a Crown Agency – no client, no payment.

5.3 In addition, the amount of each payment was based solely on the services to be supplied to the client as assessed by the Crown Needs Assessment and Service Coordination Service. This assessment occurred prior to treatment. As a result, it was often not reflective of the required level of actual care subsequently observed by LFT Auckland therapists through weeks or months of treatment. In practice, it was extremely difficult for LFT Auckland to change or update the contract of services (and funding) to reflect the actual needs of clients.

5.4 Further, Crown payments do not cover the cost of maintaining or replacing buildings, new equipment or new technology – the normal costs of running a sustainable organisation. This funding has been inadequate for a number of years. We had made this clear to our direct counterparties at the District Health Boards, Needs Assessment Service Centres and other Crown Agencies. We had also communicated this to a senior official within the Ministry of Health at a meeting of the National Trust Board in Wellington and were told by the senior official that we just needed to run our operations more efficiently. The suggestion that the Ministry of Health was unaware of our financial difficulties is entirely incorrect. We have extensive records of emails and meeting notes demonstrating regular communication over the inadequacy of funding.

5.5 Although LFT Auckland was only paid for the actual clients it had, it was still required to maintain a minimum level of capacity. LFT Auckland was not allowed to solicit publicly-funded clients to fill this capacity – we had to sit and wait for whatever might be referred. In practice, LFT Auckland management regularly had to accommodate random client referrals from Crown funding agencies. As a result, management had to manage a changing list of clients with varying and highly specialised medical requirements and a changing list of staff with varying skill levels to meet client need. This was an extraordinarily complex exercise (noting of course that LFT Auckland had to independently fund the usual fixed costs of running an organisation).

5.6 In order to better manage this volatile environment, LFT Auckland developed an actuarially based management information system. Assisted by PwC (working at materially reduced charges), LFT Auckland established a management tool utilising purpose-built mathematical formulae (referred to as a “cost of care model”) which gave LFT Auckland Management a clearer idea of the breakdown of the components of the cost of providing care and additional information on which to base improved operating efficiency. We understand this model was a first in the industry.

- 5.7 With improved knowledge of the breakdown of the components of the cost of care, LFT Auckland Management was able to undertake an intensive analysis of LFT Auckland's operations. This enabled them to reduce more than \$1million in operational costs over a 12 month period. No further cost savings were possible because they would have compromised health and safety standards.
- 5.8 Despite industry leading management practices and incredibly committed staff, LFT Auckland barely managed to break even for two years before increasing costs again overtook revenues. These cost increases did not relate to efficiency. They concerned core operational matters which were material in their own right and overwhelming in aggregate. For example:
- (a) changes in the nature and regulation of the rehabilitation sector;
 - (b) difficulties in recruiting and retaining the necessary trained staff (particularly with changes to and increasing complexity in immigration rules and procedures);
 - (c) the cost of replacing or maintaining buildings which were no longer fit for purpose; and
 - (d) very significant capital investment which would be required to bring all of our facilities up to the appropriate standards of safety, health and efficiency to pass a regular Ministry of Health audit; which in our case was scheduled for August 2020.

6. What analysis did the Board do?

- 6.1 As a Board, our decisions have always been made after careful deliberation, on the basis of a complete understanding of all of the relevant facts, and with the assistance of expert external advice where necessary and/or appropriate. The decision to cease services was not taken lightly and evolved over a period of several years.
- 6.2 By 2019, LFT Auckland's existing operations were not sustainable. Moreover, the prospect of raising the many millions of dollars required for building replacement and refurbishment was neither feasible nor justifiable for an operation which would continue to post losses.
- 6.3 The decision to cease providing existing services was underpinned by extraordinary levels of independent, expert analysis, including the largest study into disabled and rehabilitative services ever undertaken in New Zealand. That analysis considered every aspect of the environment in which LFT Auckland was operating. It involved a granular examination of each of LFT Auckland's services together with stakeholder interviews, market research and complex financial modelling.
- 6.4 In initiating this analysis, we wanted an independent expert view on whether there was any combination of new or existing services that would substantially improve LFT Auckland's negative cash flow performance. As a Board, ceasing the provision of existing services was an option of absolute last resort.
- 6.5 A number of different scenarios were therefore constructed in which LFT Auckland's existing services continued in one form or another. The financial performance of each scenario was then modelled and projected into the future. The experts then incorporated combinations of new services (for which they had accurate data from other sources) with selected current services and modelled those scenarios into the future. The various analyses identified no scenario in which LFT Auckland was projected to be operating sustainably in the future. That is, neither continuation of then current services nor combinations of selected services with other possible new services, demonstrated a sustainable basis of future operations.

7. What has happened to LFT Auckland's clients?

- 7.1 We have always acknowledged that the closure of services would be received with nothing short of heartbreak for many long term clients, families and staff who have called LFT Auckland their home.
- 7.2 Over the last nine to twelve months, a considerable amount of work has been undertaken to find suitable arrangements for service users and ensure the transition process dealt with client, family and staff disruption in the most sympathetic and constructive way possible. This process involved:
- (a) Identifying suitable alternative service providers who were willing and able to take on LFT Auckland's existing services – as a result of this work, two providers have taken over LFT Auckland services in Whanganui, Auckland and Hamilton. These are not 'temporary arrangements'. Our contracts were transferred to the new service provider for the entire balance of whatever contractual period remained.
 - (b) Transitioning services to the alternative providers – this was managed by a team of LFT Auckland clinical staff, three Needs Assessment and Service Coordination (NASC) organisations in Auckland, Waikato and Whanganui, and LFT Auckland's relationship managers at ACC and the Ministry of Health. For each client, an individualised care and transition plan was prepared and executed. This was an extraordinarily collaborative team effort, requiring extensive time and expertise.
- 7.3 Throughout this entire process, we have been fortunate to have Heather McLeish as our Chief Executive, one of the most experienced disabled care providers in New Zealand. She was fully involved in the analysis of our services and decision-making as to whether existing services could continue. Heather threw herself into the task of providing alternatives for our clients and their families. She worked long hours for months on end and engaged her network of contacts – accumulated during a lifetime of caring for the disabled – to deliver the best outcomes for all clients.
- 7.4 Thanks to the efforts of Heather and her team, we have been able to transition all of our clients to new facilities that are suitable for their individual needs.

8. What has happened to LFT Auckland's staff?

- 8.1 We acknowledge the very difficult role that staff had in the transition process. LFT Auckland is committed to the values of being a good employer and exiting staff were told in late 2019 that we were ceasing services in the middle of 2020.
- 8.2 Exiting staff were paid an extra one month's pay to help cushion their search for new employment. LFT Auckland offered employee assistance counselling via EAP and ran workshops on updating CVs and interview techniques. Employment training data was updated and readily available to staff. Contacts and employment opportunities at other healthcare providers were advertised on the LFT Auckland intranet site. Management also took steps to ensure that, as far as possible, LFT Auckland staff were afforded priority in the recruitment processes of the providers who were taking over LFT Auckland services.
- 8.3 The success of the project was reliant on retaining the level of experience, professionalism and dedication of its key personnel. Therefore, a small number of critical staff were offered a retention payment to incentivise them to provide services and support throughout the full transition period. This is common practice and ensured that critical staff were committed to providing the best possible care to our clients throughout the transition.

9. Why have we heard about LFT Auckland in the media and why has the Board not responded in a public forum?

9.1 Our team participated in media interviews at the beginning of this year.

9.2 Since then our priority has been on ensuring all clients were successfully settled with new service providers. We were unwilling to let anything (including public comment) disrupt our negotiations with alternative service providers as this could have jeopardised future welfare and care arrangements for our clients. We did not want to be distracted or compromised in this important task by engaging with speculative media.

9.3 As a result, we have listened as a number of individuals have circulated considerable misinformation in the media about LFT Auckland. We have offered to meet (and have met) with a number of our critics to understand and address their concerns. Rather than engaging directly and constructively with us in order to ascertain the facts, some have sought media attention and continued to make incorrect claims.

9.4 We have also received letters that have threatened legal action against the Board and/or LFT Auckland. We have responded to each letter in full and without delay. We have set out LFT Auckland's position on the matters raised. We have sought clarification as to how we are alleged to have behaved unlawfully and then received no response which has clearly articulated the basis of any claim. Responding to these threats has cost, and continues to cost, money in legal fees that we would rather be using for the benefit of disabled people. We will continue to meet legal threats with factual responses.

10. Why didn't you notify the Ministry of Health of your position?

10.1 We did. We have extensive records to confirm our communication with the Ministry of Health and several other agencies.

11. Who decided to engage the Chairman to provide consultancy services and why?

11.1 With LFT Auckland's operations unsustainable and a new way of assisting Disabled People to be adopted, the Board had to know the value of its assets, most particularly the Great South Road Property, to understand what capital it would have as the foundation for its future activities. The Board recognised that:

- (a) Its first and primary focus had to be the transition of clients to alternative service providers, which would take up to 12 months;
- (b) Obtaining a proper understanding of the value of the Great South Road Property would involve what is known as a 'due diligence' project, taking many months and involving multiple experts, to identify the key factors that determine the value of the Great South Road Property;
- (c) The Chairman is one of Auckland's foremost property experts, particularly in this type of extensive due diligence project, having acted in that capacity for major publicly listed companies; and
- (d) Against his wishes, the Board persuaded the Chairman to be engaged by the Board as a consultant to assess the value of the site and identify any limitations on its future use. The Chairman reluctantly accepted the role as he recognised he was uniquely qualified to conduct the analysis, given his expertise and the need to maintain confidentiality.

11.2 The Chairman's interest as consultant was noted in the Board's conflict register. He was not involved in the decision-making process, did not vote and did not participate in property discussions except where his technical advice was sought. The Board, without the Chairman's involvement, also approved the Chairman's fee. The fee was clearly set out in the accounts which were approved by members at last year's AGM.

12. What is the future direction of LFT Auckland?

12.1 LFT Auckland has not been wound up. Nor has it altered its commitment to assist the disabled community. Rather, we are changing to meet changing circumstances and refocussing our activities to ensure that we can continue to support disabled people long into the future. The alternative was the premature failure of LFT Auckland, an inability to assist disabled people and the dissipation of money that we have been entrusted by our supporters to administer.

12.2 LFT Auckland is now moving in a direction where it can restructure its assets to continue to deliver support to disabled people on a sustainable, long-term basis. We have recently completed a review into sustainable delivery models for disabled and rehabilitative services and are continuing work to determine how LFT Auckland can best deploy its resources for the long term benefit of disabled people.

12.3 This is not a straight forward exercise and will unfold over a period of months. However, we now have a renewed opportunity to make another meaningful, long lasting and possibly visionary contribution to the disabled community (just as the Founders did in 1967). With your support we will navigate a path which will be consistent with the values of the Founders and the requirements of our constitution. We will continue to provide you with updates on our progress.