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# MEMORANDUM OF UNDERSTANDING IN RESPECT OF THE OPERATION AND FUNDING OF THE TASMAN BAYS HERITAGE TRUST

## Parties

1. Nelson City Council (NCC)
2. Tasman District Council (TDC)
3. Tasman Bays Heritage Trust (the Trust)

## Parties to Act in Good Faith

The Parties will at all times act in a spirit of good faith, mutual trust and co-operation.

## 1. BACKGROUND

- 1.1. In June 2000 the NCC and TDC established a charitable trust called the Tasman Bays Heritage Trust to manage and operate the Nelson Provincial Museum (the Museum) and any other assets that are acquired or operated by the Trust, and entered into a Memorandum of Understanding to define their respective obligations to each other in respect of the establishment, transfer of assets and collections, and operation of the Trust as from 1 July 2000.
- 1.2. That Memorandum of Understanding was for a period of 9 years to 30 June 2009, and expired on that date.
- 1.3. The parties now wish to enter into a new Memorandum of Understanding (MOU) to provide for the operation and funding of the Trust in accordance with the terms of the Trust Deed and this MOU, and to provide for the long term storage of the collections of the Nelson Provincial Museum

## **2. OPERATIVE PART**

### **2.1. Trustee's Responsibilities**

Subject to the terms of this MOU and the Deed of Trust, the Trustees will be responsible for the management, administration and the day-to-day operations required to achieve the aims and objectives of the Trust deed and the Trust as detailed in the three yearly Strategic Plans, and the annual Statements of Intent (SOI) agreed to by the parties.

2.2. The Trustees shall use their best endeavours to devote adequate and sufficient time, attention and resources to carry out their obligations under this MOU to ensure the Trust carries out the requirements of its Strategic Plan as may be amended from time to time in consultation with the two Councils, and the annual SOI in respect of which funding will be provided on an annual basis in accordance with the provisions of this MOU.

## **3. FUNDING AND CONTRIBUTIONS**

### **3.1. Ongoing Funding and Financial Contributions to the Trust.**

3.1.1 The annual funding and financial contributions to the Trust by the two Councils shall be made on the basis of the funding requirements detailed in the budgets annexed to the three yearly Strategic Plan and Annual SOI and agreed to by the Trust with NCC and TDC.

3.1.2 The budgets annexed to the three yearly Strategic Plan and Annual SOI's subject to clause 3.2.4 shall align with the LTCCP of each Council.

### **3.2. 2009 - 2010 Financial Year**

For the period from 1 July 2009 to 30 June 2012, payments shall be made in accordance with the budgets agreed to and annexed to the Strategic Plan 2009 – 2012 and the SOI 2009 – 2010 as follows:

3.2.1. By the NCC

- a. \$762,450 towards the costs of running the museum , including Trustees fees and expenses; and
- b. An interest free loan of \$1,200,000.due to be repaid by June 30 2012, subject to Clause 3.2.3.

3.2.2. By the TDC

- a. \$762,450 towards the costs of running the museum including Trustees fees and expenses; and
- b. An interest free loan of \$1,200,000 due to be repaid by June 30 2012, subject to Clause 3.2.3.

3.2.3 It is acknowledged by both Councils that the Trust may be unable to repay the interest free loans by 2012, without an unacceptable reduction in the services provided by the museum or the disposal of assets. Notwithstanding the terms of clause 3.1 it is agreed that the terms of the interest free loans will be reviewed by the Councils prior to the due date for repayment in discussion with the Trust with a view to agreement being reached in respect of an extension of the term of the loans for such further period and subject to such conditions as the two Councils and the Trust may agree to in writing.

3.2.4 The annual amounts provided for by each Council shall be reviewed by each Council following completion of the SOI for each year, and the Funding provided for in 3.2.1 and 3.2.2, shall be adjusted each year by the amount of the Reserve Bank's Consumer Price Index for the quarter ending 31<sup>st</sup> December in each year, to provide for the funding requirements stated in the budgets agreed to as part of the SOI process.

3.3. The NCC and the TDC shall pay 25% of their annual contribution quarterly, on or before 20 July, 20 October, 20 January and 20 April in each year.

3.4. The two Councils may withhold payments due, if the Trustees fail to carry out the obligations and responsibilities defined in the annual SOI, or act contrary to the terms of this MOU or the Deed of Trust, until such time as the Councils are satisfied that their concerns are being properly addressed.

#### **4. TERM**

4.1. The term of this MOU shall commence on 1 July 2009, and subject to anything else herein contained, shall expire on the date ten years from 1 July 2009, unless terminated earlier under clause 10.

#### **5. COMPLIANCE WITH STRATEGIC PLAN AND ALL CONTRACTS AND AGREEMENTS**

5.1. The Trustees shall manage and operate the business of the Trust in each financial year within the terms of the Strategic Plan adopted by the Trustees and the SOI agreed to with the NCC and TDC for that year, and shall not expend any monies, incur any liabilities or otherwise act outside the terms of the approved or adopted Strategic Plan, or agreed SOI to any material extent without the prior written approval of each Council.

5.2. The Trustees will also ensure that the Trust will meet and comply with all its obligations under any banking arrangements, agreements, contracts and the like entered into by the Trust, including, but without limitation the terms of any loan agreements, leases, sub-leases or other agreements that might be entered into with either NCC or TDC.

#### **6. ACCOUNTS AND REPORTS TO THE COUNCILS**

6.1. The Trustees will, at the end of each financial year, prepare annual accounts and financial statements in a manner and form approved by the Trust auditor, fairly showing the operating and financial position of the

Trust for the financial year, which shall include a statement of financial performance, a statement of financial position, a statement of cash flows, and supporting notes. A copy of these accounts and financial statements shall be given to each Council within three months of the end of the financial year.

6.2. The Trustees will, within 60 days of the end of the first six monthly period in each financial year, prepare and submit a report to each council setting out progress made by the Trustees in achieving the objectives and outcomes, and other proposals contained in the Strategic Plan and the SOI for that year

6.3. A copy of the six monthly accounts shall be given to each Council within two months after the end of the first half of each financial year.

6.4. The Trustees shall, within three months of the end of each financial year, provide to each Council a report on how the Trustees achieved the outcomes and objectives set out in the Strategic Plan and SOI, and whether outcomes and objectives set out in the Strategic Plan and SOI are being achieved or exceeded.

## **7. APPOINTMENT OF FINANCIAL ADVISER**

7.1. The Trust acknowledges that the Trust Deed makes provision for the two Councils, by agreement, to appoint at any time and at the cost of the Councils a Financial Adviser for the purpose of overseeing the financial management of the operations of the Trust and with whom the Trustees shall consult and whose views the Trustees shall have regard to.

## **8. NO PARTNERSHIP**

8.1. Nothing in this MOU, or in the relationship of the parties under this MOU, shall in any way be construed as creating a partnership, or as conferring upon the parties or any of them any of the rights or subjecting them or any of them to any of the liabilities of a partner.

## 9. NO ASSIGNMENT

9.1. Neither the Councils nor the Trust shall assign, charge or sublicence any of the rights granted herein.

## 10. TERMINATION

10.1 The two Councils, by agreement between them, have the right to terminate this MOU at any time after the happening of any of the following events:

- a. Failure by the Trustees to pay the Trust's debts when due and owing.
- b. If an encumbrancer takes possession or a receiver or manager is appointed to any of the property or assets of the Trust.
- c. The Trustees proposing to make any arrangement or composition with creditors or ceasing or threatening to cease to carry on business.
- d. The winding up of the Trust.
- e. The Trust losing its charitable status for any reason, under either the Charitable Trusts Act 1957, or for the purposes of the Income Tax Act, 1994.
- f. If without the prior consent in writing of either Council the Trustees alter or attempt to alter the Deed of Trust.
- g. Breach of the Memorandum of Understanding.
- h. Breach of the Trust Deed.
- i. Failure to observe the requirements of the Strategic Plan or SOI, or changing those requirements without the written consent of both Councils.

## 11. NOTICES

11.1 All notices and other communications required or permitted to be made hereunder shall be sent by registered mail, hand delivered or by email and facsimile transmission to:

- a. The Nelson City Council at Civic House, Trafalgar Street, Nelson, Attention the Chief Executive
- b. The Tasman District Council, 189 Queen Street, Richmond, Attention the Chief Executive
- c. The Tasman Bays Heritage Trust at Town Acre 445, Corner Hardy and Trafalgar Street, Nelson Attention the Chief Executive..

or such other address within New Zealand as any of the parties may specify by notice to the others. All such notices or communications shall be deemed to have been duly given or made:

- a. Three business days after being deposited in the mail with mail postage pre-paid.
- b. When delivered by hand.
- c. If by email or facsimile, on the next business day following receipt by or on behalf of the intended recipient, unless a verifiable query as to material eligibility is promptly raised.

## 12. WAIVER

12.1 The failure of the parties at any time or times to require performance of any provision of this Memorandum shall in no manner affect its right to enforce such provision at a later time.

12.2 No waiver by any party of any condition nor the breach of any term, covenant, representation, warranty, or undertaking contained in this MOU, whether by conduct or otherwise in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or deemed to

be or be construed as the breach of any other term, covenant, representation, warranty, in undertaking in this deed.

- 12.3 Such of the conditions inserted by the councils or the Trust for their respective benefits may be waived by the party having the benefit of the condition in question.

### 13. MODIFICATIONS

- 13.1 This MOU may be amended only by a further Memorandum in writing, signed pursuant to a resolution of both Councils and the Trust.

### 14. INTERPRETATION

- 14.1 The following words and expressions shall (except where the context otherwise requires) have the following meanings:

- **“Business day”** means a day other than a Saturday, Sunday or public holiday, on which registered banks are open for general banking business in Nelson.
- **“Commencement date”** means 1 July 2009.
- **“Deed” or “Deed of Trust” or “Trust Deed”** means the Deed of Trust setting up the Tasman Bays Heritage Trust, and as such expression includes all amendments from time to time made in respect of such Deed.
- **“Financial Year”** means during the currency of this MOU each year ending on the 30th day of June or ending on such other date that the two councils and the Trustees shall agree upon.
- **“LTCCP”** means a Long Term Council Community Plan adopted under Section 93 of the Local Government Act, 2002
- **“MOU”** means this Memorandum of Understanding
- **“Statement of Intent” and “SOI”** means the statement of intent provided for in S.64 of the Local Government Act, 2002.



- **“Strategic Plan”** means the strategic plan referred to in clause 29 of the Deed of Trust.
- **“Trustees”** mean the Trustees of the Tasman Bays Heritage Trust.
- **“The Term”** means the term of this Deed in accordance with clause 4.
- **“Year”** means calendar year.

14.2 Any reference to:

- a. Any provision of any act shall include any modification, re-enactment or extension thereof for the time being in force and also any corresponding provision in repealed enactments.
- b. The singular includes a reference to the plural and vice versa.
- c. Any agenda includes a reference to all other agendas.
- d. Any recital clause, subclause or schedule is, except where the context otherwise requires, a reference to a recital, clause, subclause or schedule as the case may be, of or to this Memorandum.
- e. Clause headings are inserted for reference only and shall not affect the interpretation of this agreement.
- f. Words and expressions defined are indicated by capital letters for convenience. The absence of a capital letter shall not alone imply that the word or expression has a different meaning from that given by its definition.

**15. TRUST DEED TO PREVAIL**

15.1 Where there is any conflict between this Memorandum and the Deed of Trust, then the terms of the Deed of Trust shall prevail.

**16. ENTIRE AGREEMENT**

16.1 This Memorandum of Understanding records the entire understanding and agreement between NCC, TDC and the Trust in respect of the funding of

the Trust and the operations of the Trust as provided for in the SOI and Strategic Plan agreed to each year by the NCC, TDC and the Trust.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2010.

The common seal of **THE NELSON CITY COUNCIL** was hereunto affixed in the presence of

\_\_\_\_\_ Chief Executive

\_\_\_\_\_ Mayor

The common seal of the **TASMAN DISTRICT COUNCIL** was hereunto affixed in the presence of

\_\_\_\_\_ Chief Executive

\_\_\_\_\_ Mayor

The common seal of the **TASMAN BAYS HERITAGE TRUST** was hereunto affixed in the presence of

\_\_\_\_\_ Trustee

\_\_\_\_\_ Trustee