

Date

Parties

**NELSON CITY COUNCIL
TASMAN DISTRICT COUNCIL
JOSEPH MARTIN RUDHALL
ROBERT GORDON DICKINSON**

**TASMAN BAYS HERITAGE
TRUST**

DEED OF TRUST

This DEED is made the day of **JUNE** **2000**.

Between **THE NELSON CITY COUNCIL** and **THE TASMAN DISTRICT COUNCIL**, local authorities constituted pursuant to the Local Government Act 1974, as settlors ("the Councils")

And **JOSEPH MARTIN RUDHALL** of Nelson, Chief Executive and **ROBERT GORDON DICKINSON** of Richmond, Chief Executive "the Trustees".

BACKGROUND

- a. The Councils wish to establish a Trust for charitable purposes to be registered under the Charitable Trusts Act 1957 and to be known as "The Tasman Bays Heritage Trust" ("the Trust").
- b. It is intended that the Trust manage and operate the Nelson Provincial Museum ("the Museum") and any other assets or collections that are acquired or operated by the Trust, or which by agreement with the Councils the Trust agrees to manage or operate on behalf of the Councils.
- c. The Trustees have agreed to act as Trustees of the Trust.
- d. This Deed is being completed by the Councils and the Trustees for the purpose of constituting the Trust, specifying its objects and providing for its control, governance and regulation.
- e. It is intended that the Trust serves the community and its development by providing vision, leadership and support for the acquisition, care, research, communication, and exhibition of the material evidence and related information of the people of Nelson and Tasman for the purpose of study, education and enjoyment.

1. ACKNOWLEDGEMENT OF TRUST AND INITIAL SETTLEMENT

- 1.1 The Councils hereby settle a sum of \$10 on the Trustees as an initial settlement on the Trust.
- 1.2 The Trustees acknowledge that the Trustees will hold the Trust assets and collections on trust for the purposes and with the powers set out in this Deed.

2. NAME OF TRUST

The charitable trust established by this deed will be known as the **Tasman Bays Heritage Trust**.

3. AIMS OF THE TRUST

The aim of the Trust shall be to foster, promote and celebrate a sense of history and awareness of the importance of the region's heritage and identity and the relationship of the Tangata Whenua to their taonga.

4. ESTABLISHMENT OF THE TRUST

- 4.1 The Trust shall comprise all Trust assets and collections from time to time acquired or held by the Trustees under this Deed including the income arising therefrom, and all monies bequeathed or donated to the Trust.
- 4.2 The Trust assets and collections shall be held on trust by the Trustees and shall be managed and administered on the terms contained in this Deed and any funding deed or document entered into with the Councils.
- 4.3 The Trust shall commence on the date of this Deed and shall continue until wound up in accordance with Clause 35.

5. TREATY OF WAITANGI

The Trust and the Trustees will abide by the Preamble and Articles of the Treaty of Waitangi and be guided by the recommendations of the Waitangi Tribunal in any negotiations or discussions between the Trust and Tangata Whenua.

6. OBJECT OF THE TRUST

- 6.1 The objects for which the Trust is established shall be:
- (a) to manage and operate the Museum in accordance with the Strategic Plan as set from time to time in accordance with clause 29, to manage the Trust assets and facilities, and acquire and manage the collections and to operate them for the benefit of the residents of the region and the public generally, in accordance with that Strategic Plan;
 - (b) To recognise the special nature of the history of the region and the role of Tangata whenua as kaitiaki of taonga Maori and their special contribution to the heritage and identity of the region;
 - (c) to foster effective participation with the community on heritage matters;
 - (d) to collaborate with other museums and facilities within the region to maximise community input to heritage issues;
 - (e) to provide services which relate to the education of the residents of the Nelson and Tasman regions and the wider community generally, relating to the region's past history and heritage issues relating to the present time;
 - (f) to consult with and seek input from the community generally by whatever manner the Trustees deem appropriate to enable the services provided by the Trust and the Museum to be in accordance with the wishes of the community;
 - (g) to support the strategic directions and policies of the Councils in relation to heritage issues and to enhance the special character of the region by protecting and celebrating its heritage and the vision of the regions as a destination for cultural tourism.
 - (h) to establish exhibition programmes and education policies for the Trust facilities Museum programmes and services and to determine charges for viewing or using any of the Trust facilities, the

collections, or the Trust assets with a view to maximising public utilisation of the Trust facilities and services;

- (i) to develop Acquisition, Deaccession and Collection Development policies for the Trust;
- (j) to provide all financial, administration, marketing, technology and other services required for the Trust facilities;
- (k) to acquire land and other assets where such land or other assets can be used in conjunction with the Trust facilities or to promote the aims and objectives of the Trust;
- (l) to ensure that all facilities are managed effectively and in particular to be a good employer;
- (m) to comply with all relevant legislation and regulations and, where practicable, observe and support all international conventions and treaties as they relate to museums and items held by museums;
- (n) to develop and maintain partnership programmes with other Museums;
- (o) to protect and manage for the benefit of the Museum all intellectual property, including trademarks, copyright and any reproduction rights;
- (p) generally to do all acts, matters and things that the Trustees consider necessary or conducive to further or attain the object and aims of the Trust set out above.

7. POWERS OF THE TRUST

Subject to the provisions of this Deed and in particular Clauses 8 and 10 and any provisions as to specific resolutions required, the Trustees shall have all powers over and in respect of the Trust, the Trust assets and collections which they could exercise if they were the absolute and beneficial owners of the Trust assets subject to the limitations provided for in this Deed with regard to collections. In particular, the Trustees shall have full and absolute power to do the following:

- (a) to retain any property forming part of the Trust assets for so long as they think fit;
- (b) subject in the case of real or personal property to sub-clause (x) to sell, call-in and convert into money or other property the whole or any part of the Trust assets at such time in such manner and upon such terms as they think fit;
- (c) to accumulate the income and receipts of the Trust or the resulting income from the Trust or both from time to time;
- (d) exchange any property forming part of the Trust assets for other property authorised by this Deed or otherwise by law;
- (e) to set apart any portion of the Trust assets or collections as a sub-trust, a special endowment or for a special purpose or under any special or distinguishing name for such a term and upon such conditions as may by law

be allowed and to apply each such portion together with any accretions to it for the endowment or other purpose for which the same was set aside or for any other purpose authorised by this Deed;

- (f) to pay the premiums on any policies of insurance or assurance or on any indemnities or commitments taken out or acquired by the Trustees out of either income or capital, and to surrender any such policy or policies, convert the same into fully paid up policies and to accept a new policy or policies in lieu of any policy and to agree with the insurer on any variation of the terms of any policy;
- (g) to pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any assets subject to the Trusts of this Deed and to manage those assets and effect such repairs to such assets as the Trustees may consider necessary, desirable or advisable and where the Trustees are unable to charge such expenditure against income the Trustees may resort to capital;
- (h) to apply any monies for the time being forming part of the Trust in improving or developing or subdividing any property for the time subject to the Trusts of this Deed;
- (i) without in any way limiting the generality of paragraph (h) of this clause to add to any building or erections and to do any act in connection with any property which the Trustees consider will increase the value of it, whether or not the Trustees would apart from this Deed be empowered to do such act, including, but not by way of limitation, the power to enter into leases, tenancy agreements, party wall agreements, easements or profits a prendre, on such terms as the Trustees think fit;
- (j) to grant leases or licences for all or any part of any property for the time being subject to the Trusts of this Deed for any period upon such terms and conditions and for such rent as the Trustees think fit and make allowances to and with tenants and others and accept surrenders and waive breaches of covenants and determine tenancies and licences and raise out of the capital or income of the Assets any sum from time to time required for the exercise of any of the powers and discretions contained in this Deed, and generally to deal with the property in a proper manner and in due course of management as if the Trustees were beneficially entitled to it;
- (k) to exercise any voting powers attaching to any shares, stock, debentures, debenture stock, bonds, notes, options or other securities (“securities”) at any time forming part of the Trust assets and to appoint directors in any company in which the Trustees hold securities forming part of the Trust assets;
- (l) to consent to any reorganisation or reconstruction of any company the securities of which form part of the Trust assets and to consent to any increase or reduction of capital or other dealing with such securities;
- (m) to employ and remunerate any financial adviser, lawyer, accountant, valuer, surveyor, auctioneer, kaumatua or cultural adviser, or other expert or professional person or other personnel or entity to advise on or carry out all or any of the trusts and powers contained in this Deed and to act upon any opinion or advice or information obtained from such person AND the Trustees shall, except in the case of the Trustees’ dishonesty or wilful and knowing breach of trust, not be responsible for any loss caused by acting or not acting in accordance with such opinion or advice or information;

- (n) to set aside out of the capital or income of the Trust assets from time to time any sum of money to meet any debt or obligation due or accruing due;
- (o) to raise or borrow money either bearing or free of interest from any person and to secure the repayment of money so borrowed and any interest on it by mortgage or charge over all or any of the Trust assets and to apply such money for any of the purposes for which either the income, receipts or the capital of the Trust assets are for the time being applicable under this Deed including the investment of money in any manner, and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;
- (p) Subject to Clause 8.1, to enter into any contract of indemnity or act as surety or give any guarantee and to give any security in support, provided that any such contract, guarantee or security given must relate to the Trust's objects;
- (q) to enter (either directly or through an intermediary) into any arrangement with any person, organisation, or government (referred to in this paragraph as "the other party") whereby the Trustees undertake to make payments to, or to the account of, the Trustees in the same or any other currency, including where beneficial to the Trust entering into forward rate arrangements, to give certainty in respect of any future payments to be made in foreign currency and provided that all such arrangements promote and further or carry out the objects of the Trust;
- (r) to open and maintain bank accounts and to decide who shall be the signatories to such accounts;
- (s) to apply the whole or any part of the Trust assets in and towards the payment of any liabilities incurred by the Trustees under this Deed or in and towards the repayment of any monies owing as unpaid purchase money or on mortgage of any of the assets of the Trust or otherwise owing or in the payment of interest or other charges properly payable in respect of such liabilities, unpaid purchase monies, mortgages or monies otherwise owing;
- (t) to advertise the existence and objects of the Trust;
- (u) to purchase, lease take as gift or otherwise howsoever acquire and hold land and buildings.
- (v) to purchase, take as gift or on loan or otherwise howsoever to acquire chattels of any kind.
- (w) to lease, let or grant the use of land and/or buildings or parts thereof held by the Trust for any lawful purpose in furtherance of the aims and objects of the Trust and apply the rents commission or other payment whatsoever accruing to the objects of the Trust.
- (x) with the written approval of the Councils, to sell, demolish or otherwise dispose of any real or personal property vested in the Trust but only in furtherance of the objects of the Trusts;
- (y) to enter into any arrangement with Tangata Whenua, any government body or local authority that may seem conducive to the Trust's objects or any of them and to obtain from Tangata Whenua or any such government body or

authority any rights, privileges and concessions which the Trustees may think it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;

- (z) to acquire, hire, operate and maintain any means of transportation whether of persons or of goods or both that the Trustees may deem necessary or desirable for the carrying out of the objects of the Trust or any of them and to make such charges for the use thereof as the Trustees shall deem reasonable;
- (aa) to lend money to any person, body or society whether incorporated or not on such terms as the Trustees may think fit and to guarantee the performance of contracts by any such persons, but only in furtherance of the objects of the Trust and in respect of any loan made to effect a charitable purpose the Trustees may lend money interest free or at a nominal rate of interest or at a rate that is less than at market rate;
- (bb) to enter into any agreement or lease with any local authority or company or enterprise owned by or controlled by a local authority regarding the use or occupation of any equipment or land owned or under the control of the Trust;
- (cc) generally to do all such other lawful acts and things incidental or conducive to the attainment of the objects or purposes of the Trust and to pay any expenses incurred as a result from the Trust assets.

8. RESTRICTION ON EXERCISE OF TRUSTEES' POWERS

8.1 The Trustees shall obtain the written consent of the Councils prior to their exercise of any power to:

- (a) sell, acquire or lease any land, buildings or to terminate any lease of any land or buildings;
- (b) borrow any money or give any guarantee;
- (c) give any security over any of the Trust assets;
- (d) enter into any contract of indemnity or act as surety;
- (e) undertake any expenditure on any property owned or leased by the Trust where the total projected cost exceeds 20% of the capital value of the Trust.

8.2 Trustees may not enter into a major transaction unless the major transaction is:

- (a) authorised by a Special Resolution; or
- (b) contingent upon the passing of a special resolution.

8.3 Trustees may not in any way deal with any collection or part of any collection contrary to any policy established in accordance with clause 11.

9. POWER TO EMPLOY

The Trust shall have power to employ any person and to enter into contracts of employment or service with any persons, body or society whether incorporated or not, and to pay remuneration for services rendered as the Trustees may think fit.

10. PROHIBITION ON BENEFIT OR ADVANTAGE

- 10.1 No trustee or person associated with a trustee of the trust shall derive any income, benefit or advantage from the trust except where that income, benefit or advantage is derived from:
- (a) professional services to the trust rendered in the course of normal or usual business; or
 - (b) interest on money lent by such person to the trust at no greater rate than current market rates.
- 10.2 The provision and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

11. COLLECTIONS

- 11.1 The collections and assets of the Museum shall be vested in the Trust, subject to any special provision or conditions attaching to collections and stated at the time of acquisition of any collection.
- 11.2 All collections, assets or acquisitions of any kind which are acquired by the Trust after the date of the signing of this Deed shall be held by the Trust, in accordance with any terms and conditions stated by grantees or donors at the time of acquisition as applying to those collections.
- 11.3 The Trustees shall as far as is practical clearly identify the origin of all collections held by it, or transferred to it, and where any item or collection has been loaned to the Trust, shall keep a clear record of ownership of that collection and record in writing the terms and conditions upon which the collection is to be either held by the Trust or displayed.
- 11.4 The Trustees shall, in consultation with the Councils and Tangata Whenua, formulate acquisition, deaccession and collection development policies in respect of all the collections held by the Trust such policies to be approved by special resolution.
- 11.5 Where such policies already exist as policies of the Museum they are to be ratified, or amended or discontinued by special resolution.
- 11.6 The disposal of any item or part of any collection shall only be in accordance with the approved acquisition, deaccession and collection development policies.
- 11.7 Where appropriate taking into account the value of any item or collection, and the cost of insurance and/or replacement of any collection, the Trustees shall use their reasonable endeavours (but shall not be obligated) to insure all or any collection, and shall advise Councils and Tangata Whenua in respect of any collection or item forming part of any collection that they will not or cannot insure.

12. BOARD OF TRUSTEES/POARI MATUA

- 12.1 There shall be established a Board of Trustees/Poari Matua (“the Trustees”) to manage the Trust.

- 12.2 Subject to the provisions of clauses 13.1 to 13.3 inclusive except for the period during which the Initial Trustees hold office as Trustees, there shall be no more than 7 nor fewer than 5 Trustees. The initial Trustees shall be the signatories to this Deed.
- 12.3 If at any time the number of Trustees falls below the minimum number provided for in this clause, the Appointments Committee will procure the number of Trustees to be increased to such minimum number as soon as reasonably practical.
- 12.4 Notwithstanding anything to the contrary in this Deed, all acts and decisions of the remaining Trustees or Trustee in relation to the Trust pending the increase in the number of the Trustees will be valid and binding on all persons.

13. INITIAL TRUSTEES

- 13.1 The Chief Executive Officers of the Councils, namely Joseph Martin Rudhall and Robert Gordon Dickinson, shall be the initial trustees and signatories to this Trust Deed.
- 13.2 The initial Trustees shall immediately upon the signing of this Deed of Trust take the necessary steps to establish the Appointments Committee to be established pursuant to clause 14.1(a), and once the Appointments Committee has been established shall provide such administrative and other support as that Committee may require to enable the appointment of Trustees pursuant to clause 14.
- 13.3 Once all the Trustees have been appointed pursuant to clause 14 the initial Trustees shall cease to hold office.

14. APPOINTMENT OF TRUSTEES/KAIWHAKAHAERE

- 14.1 Trustees shall be appointed as follows:
- (a) An Appointments Committee comprising two representatives appointed by the Nelson City Council, two representatives appointed by the Tasman District Council and two representatives appointed by the Tangata Whenua, each of whom shall be appointed to the Appointments Committee by resolution of the respective Council or the Tangata Whenua, shall be established,
 - (b) The Appointments Committee shall seek nominations of persons for consideration as Trustees of the Tasman Bays Heritage Trust from the public and shall prior to the election process taking place, advertise within the local newspapers calling for nominations for Trustees of the Tasman Bay Heritage Trust.
 - (c) The Appointments Committee shall appoint Trustees from the list of persons nominated and in making any appointment shall take into account the following criteria:
 - 1. Trustees should be interested in and able to promote the objectives of the Tasman Bay Heritage Trust.
 - 2. Trustees should be persons known in the communities for their respective business acumen, competence in financial

stewardship, or expertise and knowledge in heritage matters and issues.

3. Trustees should be familiar with and have or be willing and able to gain an appreciation of heritage issues, education, tourism and regional development issues, promotional interests and iwi perspective and a cultural awareness especially of issues relating to Maori taonga.

14.2 All persons appointed as Trustees shall hold office in accordance with Clause 16 until the Annual Meeting which takes place on the expiry of any Trustee's term of office or immediately after the expiry of that term.

15. PROCEEDINGS AND FUNCTIONS OF APPOINTMENTS COMMITTEE

15.1 The functions of the Appointments Committee are:

- (i) the appointment of Trustees (clauses 14.1 and 18)
- (ii) the filling of vacancies in Trustees (clause 17)
- (iii) the removal of Trustees (clause 18)

15.2 The Appointments Committee shall meet as and when necessary for the purpose of carrying out its functions.

15.3 A meeting of the Appointments Committee may be called by any member of the Committee on 7 days written notice to the other members of the Committee.

15.4 At each meeting of the Appointments Committee those present shall elect a Chairperson who, in the case of an equality of votes, shall have a casting vote as well as a deliberative vote.

15.5 Other than as provided in this Deed the Appointments Committee shall determine its own procedures.

15.6 At any meeting of the Appointments Committee 4 members shall form a quorum.

15.7 Every question before the Appointments Committee shall be decided by a majority of votes but the Councils express hope that all matters will be decided by consensus of the members.

16. ROTATION OF TRUSTEES

16.1 At the conclusion of each Annual Meeting of the Trust one third of the Trustees for the time being (or if their number is not a multiple of three then the number nearest to one third) shall retire from office. A retiring Trustee shall be eligible for reappointment as a Trustee. The Trustees who so retire shall be those Trustees who have been longest in office since their last appointment or reappointment. As between persons who became Trustees on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.

16.2 Trustees to fill the vacancies arising pursuant to clause 16 shall be appointed in accordance with clause 14.

17. TERMINATION OF APPOINTMENT OF TRUSTEES

Notwithstanding anything to the contrary contained in this Deed a Trustee will cease to hold office if:

- (a) the Trustee resigns from office;
- (b) the Trustee becomes bankrupt or insolvent;
- (c) the Trustee is convicted of any indictable offence;
- (d) the Trustee becomes of unsound mind;
- (e) the Trustee dies;
- (f) the Trustee is removed in accordance with clause 18;
- (g) the Trustee is removed from office by a court of competent jurisdiction.
- (h) the Trustee fails to attend 3 consecutive meetings unless the failure to attend those meetings is excused (whether before the meeting or after) at a meeting of the Trustees.

18. REMOVAL OF TRUSTEES

The Appointments Committee shall have power:

- (a) at any time to remove by notice in writing any Trustee and to appoint a Trustee in his or her place;
- (b) subject to Clause 12.2 to appoint at any time an additional Trustee;

provided that the Appointments Committee shall not act to remove any Trustee or to appoint a replacement Trustee or appoint any additional Trustee without first consulting with the remaining Trustees.

19. PROCEEDINGS OF TRUSTEES

19.1 Election of Chairperson

The Trustees shall at their first meeting, and thereafter at each Annual Meeting of the Trust elect from one of their number a Chairperson, and if they so desire a Deputy Chairperson.

19.2 Chairperson to Preside

The Chairperson or in his/her absence the Deputy Chairperson (if there is one) will preside over meetings of the Trustees, but if at any meeting the Chairperson or Deputy Chairperson is not present within five minutes after the time appointed for holding the meeting, the Trustees present may choose one of their number to be Chairperson of the meeting.

19.3 Rules of Proceedings

Subject to any provisions in this Deed to the contrary, the Trustees will dispatch business and regulate their decision making as they think fit but shall observe the following rules of proceedings:

(a) Majority Vote

Questions arising at any meeting of the Trustees will be decided by a majority decision provided that in the event of an equality of votes, the Chairperson shall have a casting vote.

(b) Notice of Meetings

Trustees shall be given notice of all meetings by phone, fax or letter, provided that it will not be necessary to give notice of a meeting of the Trustees to any Trustee for the time being absent from New Zealand.

(c) Quorum

The quorum necessary for the transaction of the business of the Trustees will be a majority of the Trustees. If at any meeting no quorum is present the meeting shall be adjourned for one week and the Trustees attending the adjourned meeting shall constitute a quorum.

(d) Frequency of Meetings

The Trustees shall meet as necessary to conduct the business of the Trust but shall meet not less than once every three months. One of such meetings, to be held not more than one month after the end of each Financial Year, shall be designated as the Annual Meeting of the Trust. Meetings of Trustees shall be convened by the Chairperson at such place or time as the Chairperson or in his/her absence the Deputy Chairperson may determine.

(e) Written Resolutions

A resolution in writing signed by all of the Trustees entitled to receive notice of a meeting of the Trustees will be as valid and effectual 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.

(f) Copies of all resolutions of Trustees passed without notice to a Trustee who is overseas shall as soon as practicable after the passing of the resolutions be sent to the last known address of such absent Trustee.

(g) Meetings to be Open to the Public

Trustees shall conduct their meetings and deliberations in public, but may exclude the public for the reasons permitting the exclusion of the public under the Local Government Official Information and Meetings Act, 1987.

(h) Minutes

The Trustees will cause to be kept full and proper minutes of their decision making process and resolutions.

20. APPOINTMENT OF ADVISORY COMMITTEES

- 20.1 An Advisory Committee may be established as the Trustees see fit for the Trust or for any specific part of the Trust, properties, or collections or programmes. Any such Committee may be disestablished by the Trustees at any time.
- 20.2 Trustees will negotiate with Tangata Whenua, the relationship with any such committee advising on Tangata Whenua issues.
- 20.3 Each Advisory Committee shall comprise such persons including any Trustees as the Trustees may appoint, and shall provide recommendations and information to the Trustees in respect of the matter for which the Advisory Committee was established.
- 20.4 The Trustees shall carefully consider any advice or recommendations submitted by the Advisory Committee, and whether that advice or those recommendations should be incorporated into any decision made by the Trust, provided that the Trustees shall not be bound to accept any advice or recommendations made.
- 20.5 Time spent by any Trustees serving on an Advisory Committee shall not be deemed as service to the Trust for remuneration purposes.

21. MEETINGS BY WAY OF ELECTRONIC COMMUNICATION

- 21.1 The contemporaneous linking together by telephone or other means of communication of a number of Trustees being not less than the quorum (whether or not any one or more of the Trustees is out of New Zealand) shall be deemed to constitute a meeting of Trustees and all the provisions of this Deed in respect of such meetings shall apply, so long as the following conditions are met:
 - (a) All the Trustees for the time being entitled to receive notice of a meeting of the Trustees shall be entitled to notice of the meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting and shall have received two working days notice prior to such meeting.
 - (b) Each Trustee taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear each of the Trustees taking part in the meeting.
 - (c) At the commencement of the meeting each Trustee must identify himself/herself to each other Trustees and must acknowledge the Trustees presence for the purpose of the meeting to all other Trustees taking part.

22. FINANCIAL ADVISER

- 22.1 The Councils may at any time and from time to time appoint a person of their choice as a Financial Adviser to the Trust ("The Financial Adviser").
- 22.2 The Financial Adviser shall be given access to all accounts, record and information as he or she may require to oversee the financial management of the Trust.

- 22.3 The Financial Adviser may from time to time:
- a. inquire into the financial management of the Trust
 - b. report to the Trustees and/or the Councils (with or without recommendations) on any matter which he or she thinks appropriate in relation to the financial management of the Trust.
- 22.4 The Trustees shall consult with the Financial Adviser in respect of any report made to the Trust and shall have regard to the contents of any such report including any recommendations made in such report.
- 22.5 The costs and expenses of the Financial Adviser shall be borne by the Councils.
- 22.6 The Financial Adviser shall be entitled to attend any meeting of the Trustees and to participate in any meeting but shall not be entitled to vote on any matter arising at the meeting. For that purpose the Financial Adviser shall be given all information, material and notices as if he or she were a trustee.

23. ALTERNATE TRUSTEES

- 23.1 Where the Appointments Committee has appointed any person as a Trustee, the Appointments Committee may appoint (but shall not be obliged to appoint) a person to act as an alternate Trustee for any Trustee so appointed during any period when that Trustee is absent from New Zealand or is otherwise unable to attend any meeting of Trustees.
- 23.2 Each person appointed as an alternate Trustee shall:
- (a) Have all the rights, power and obligations of the Trustee for whom the alternate Trustee is acting.
 - (b) Automatically be entitled to act as an alternate Trustee for any Trustee or Trustees from time to time during any periods of absence until such time as the alternate Trustees appointment is cancelled.
- 23.3 The Appointments Committee may from time to time revoke the appointment of any person appointed to act as alternate Trustee by notice in writing to the Chairperson and may appoint any other person as an alternate Trustee.
- 23.4 Each alternate Trustee shall be entitled to receive copies of all notices of meetings, Trustees minutes and other written information forwarded to Trustees.

24. INTEREST OF TRUSTEES

- 24.1 Any Trustee of the Trust may contract and have dealings with the Trust in respect of the Trust assets, whether as purchaser, vendor, lessor, lessee, licensor, licensee, manager, employee or otherwise howsoever, provided that if any Trustee of the Trust or any other person (whether that person and the Trustee are associated persons as defined in the Income Tax Act 1976), either personally or by virtue of being a director or shareholder of any company or as Trustee of any other Trust:

- (a) is in any way interested in any contract or dealing with the Trust; or
- (b) shall have an interest or duty in any particular matter or matters which shall conflict with the duty of the Trustee or the terms of the Trust herein;

then such Trustee must prior to any relevant discussion declare his or her interest in the matter and he or she shall not be entitled to participate or vote in any consideration of it by the Trustees.

- 24.2 Where any matter in which a Trustee or Trustees have a personal interest is being considered then that Trustee or Trustees shall declare that interest prior to any discussions or decision being made.

25. EXECUTION OF DOCUMENTS

- 25.1 All documents shall be executed in accordance with Section 19 of the Charitable Trusts Act 1957.

26. TRUSTEES' REMUNERATION AND EXPENSES

- 26.1 The Trustees may with the prior approval of the Councils resolve to pay themselves or any of them an annual remuneration for their services as Trustees provided that such remuneration shall not exceed reasonable reimbursement for services actually rendered or out of pocket expenses incurred by the Trustees in relation to their obligations under this Deed.

27. ACCOUNTS AND AUDIT

- 27.1 The Trustees will cause true and full records to be kept in accordance with proper accounting practices of all their receipts, credits, payments and liabilities and all other matters necessary for showing the true state and condition of the Trust and its assets.
- 27.2 The annual accounts of the Trust will be prepared by a Chartered Accountant appointed by the Trustees and will be audited at least once a year by an auditor appointed by the Trustees.
- 27.3 The books of account will be kept at the Trustees' office or at such other place as the Trustees think fit and will always be open to the inspection of the Trustees.

28. ANNUAL MEETING AND REPORTING

- 28.1 Once each year the Trustees shall call a meeting of the Trustees with the Councils and Tangata Whenua at which the Trustees shall provide and report in respect of the following:
- (a) The annual accounts and the audit.
 - (b) Compliance with the Strategic Plan and the Aims and Objectives of the Trust.
 - (c) Compliance with the terms and conditions upon which any collection is held.

- (d) Compliance with any accessioning policy.
 - (e) The disposal of any item or part of any collection in accordance with the approved Deaccessioning Policy.
- 28.2 The Trustees shall prepare and submit to the Council such accounting and other information concerning the Trust as the Councils may require to fulfil their own obligations under the Local Government Act 1974.
- 28.3 The Councils and Tangata Whenua may ask the Trustees to report to them at any time but only in respect of such other matters as may reasonably be required by the Councils or Tangata Whenua to fulfill or comply with any statutory obligation..

29. STRATEGIC PLAN

- 29.1 The Trustees shall within the first 12 months from the date of this Deed develop and complete a Strategic Plan to give effect to the Aims and Objectives of the Trust Deed and the acquisition, deaccession and collection development policies. That Strategic Plan shall be submitted to the Councils and Tangata Whenua in draft form not less than three months prior to the end of the financial year and the Councils and Tangata Whenua shall be invited to submit comments in respect of that Strategic Plan which shall be had regard to by the Trustees in finalising that Plan.
- 29.2 The Strategic Plan shall be reviewed once each year no later than the end of the financial year and the Councils and Tangata Whenua shall be given the opportunity to comment each year in respect of the Trust's Strategic Plan.

30. TRUSTEES INDEMNITY AND LIABILITY

- 30.1 The Trustees shall not be liable for:
- (a) any losses or liabilities except losses or liabilities arising from their own dishonesty, wilful default or wilful breach of trust; or
 - (b) any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in them by this Deed; or
 - (c) any omission or omissions or non-exercise in respect of any trust, power or discretion of the Trustees under this Deed.
- 30.2 The Trustees and every other person acting on behalf of the Trustees shall be indemnified out of the Trust Assets against all liabilities and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees pursuant to this Deed and in respect of any matter or thing done or omitted to be done in any way relating to this Deed and the Trust. This indemnity shall extend to any payments made to any Person whom the Trustees bona fide believe to be entitled thereto though it may be subsequently found that the person was not in fact so entitled. The Trustee shall have a lien or charge on the Trust Assets and may retain and pay out of any moneys in the Trust all sums and amounts necessary to give effect to this indemnity.
- 30.3 The liability of the Trustees in connection with this Deed or at law shall at all times be limited to the Trust Assets.

- 30.4 No Trustee shall be subject to any greater standard of care, diligence and skill in executing the trusts of this Deed by virtue of that Trustee's professional employment or business. In particular, although the Trustees will from time to time include persons whose professions, employment or business is, or includes acting as a trustee or investing money on behalf of others, the care, diligence and skill to be exercised by the Trustees shall be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 30.5 Each Trustee is indemnified by the Councils for any loss, liability or expense suffered or incurred by a Trustee where:
- (a) the loss liability or expense is properly suffered or incurred by the Trustee in carrying out the Trusts of the Deed, and is not due to any breach by the Trustee of their obligations under this Deed, or otherwise as Trustee (and shall include a liability or expense suffered or incurred by the Trustee in defending an action against the Trustee in good faith, other than an action for breach of trust under Clause 8.1 and 8.2 of this Deed, which is unsuccessfully defended); and
 - (b) the Trust Assets are insufficient to cover the liability or expense; and
 - (c) any Trustees' insurance effected by the Trustees is insufficient to cover the liability or expense (and in that case to the extent of the insufficiency of cover); and
 - (d) the Councils are satisfied on reasonable grounds that the Trustees (or any of them) have made reasonable efforts to minimise that liability or expense.
- 30.6 The Trustees will notify the Councils immediately they become aware of any contingent liability or expense or loss for which indemnity may be sought under Clause 30.5 and act in accordance with any reasonable directions of the Councils.

31. DELEGATION BY TRUSTEES

- 31.1 The Trustees shall have, to the extent permitted by law, full power to delegate to any officers or employees of the Trustees or to any attorney, agent or other person nominated or appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this Deed, but without in any way releasing the Trustees from their obligations under this Deed. Without in any way affecting the generality of the foregoing the Trustees may in exercising this power of delegation:
- (a) by power of attorney appoint any person to be the attorney or agent of the Trustees for such purposes and with such powers, authorities or discretions as the Trustees think fit with power for the attorney or agent to subdelegate any such powers, authorities or discretions;
 - (b) appoint by writing or otherwise any person to be agent or sub-agent of the Trustees as the Trustees may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Trustees) as they think fit and to supersede or suspend any such agent or sub-agent for any reason as the Trustees think sufficient.

32. INCORPORATION UNDER THE CHARITABLE TRUST ACT 1957

32.1 The Trustees shall forthwith after the execution of this Deed apply for incorporation under the Charitable Trusts Act 1957 and the Trustees are authorised to make such application on behalf of the Trust.

33. COMMON SEAL

33.1 Upon incorporation of this Trust in accordance with Clause 32.1 the Trustees shall procure a common seal for the Trust and shall provide for its custody. Any documents required to be signed under the Common Seal shall be attested by any two Trustees.

34. ALTERATION TO THE DEED

34.1 The Trustees may from time to time by special resolution alter, or add to any of the provisions of this Deed provided that:

- (a) any alteration or addition to this Deed made to correct a manifest error or which is of a formal, technical or administrative nature only, other than an alteration or addition shall not be made without the prior consent in writing of the Councils and Tangata Whenua.
- (b) at least 14 days notice of intention to move any amendment to this Deed has been given to all Trustees.

34.2 No alteration, or addition may be made to this Deed which detracts from the exclusively charitable nature of the Trust.

35. WINDING UP OF THE TRUST

35.1 On the winding up of the Trust or on its dissolution by the Registrar of incorporated Societies, all surplus assets after the payment of costs, debts and liabilities shall be disposed of in accordance with the directions of the High Court pursuant to Section 27 of the Charitable Trusts Act 1957.

35.2 Neither the Trustees nor any individual Trustee shall make an application under Section 25 of the Charitable Trusts Act 1957 to the High Court to put the Trust into liquidation without first obtaining the written consent of the Councils. Before the Councils give any such consent they shall consult with Tangata Whenua.

35.3 The Councils may make application to the High Court under the said Section 25 but before doing so shall consult with the Trustees and Tangata Whenua.

35.4 On any winding up of the Trust, Collections are to be retained by the Councils as an entity within the region and used for Charitable Purposes similar to those specified in this deed.

36. INTERPRETATION DEFINITIONS

36.1 In this Deed unless the context otherwise requires,

"Advisory Committee" means a committee established under clause 20.

"Assets" or **"Trust Assets"** means all money, material, information, investments, property and leases of property and anything from time to time owned or beneficially held by the Trust, but excludes:

- (a) all collections
- (b) the Trust facilities.

"Charitable Purpose" means every purpose which under the law of New Zealand is charitable, and without limiting its generality includes a purpose which is for the education or benefit or enjoyment and advancement of the people of the Nelson and Tasman districts and other people of New Zealand with particular regard to heritage issues, history, aesthetics and culture.

The **"Collection"** and **"Collections"** means all material evidence and associated information, also referred to as specimens or artefacts and taonga that are registered as belonging to or in the care of the Museum or Trust for the purpose of preservation, research, documentation, exhibition or interpretation.

"Deed" means this Deed including any schedules and any amendments.

"Financial Year" means the same period adopted by the Councils as their financial year or with the consent of the Councils any other period.

"Major Transaction" means a transaction, undertaking agreement or arrangement that has or is likely to have the effect of the Trustees acquiring rights or interests or incurring obligations or liabilities as the value of which is more than 25% of the value of the Trust Assets at that time.

"The Museum" means Nelson Provincial Museum and **"Museum"** means primarily "The Museum" a place in which the material history of an area and its people resides, and where it is preserved for the use and enrichment of future generations of that community.

"Property" means real property.

"Region" means within the boundaries of the Nelson City Council and Tasman District Council.

"Special Resolution" means a resolution passed at a meeting of Trustees at which not less than three quarters of the Trustees present vote in favour of the resolution.

"Strategic Plan" means the Strategic Plan for the Trust, completed in accordance with Clause 29.

"Tangata whenua" means those people of Maori descent whose ancestral tribal roots are of the Nelson-Tasman region,

"Trust " means the Trust established by Deed and known as the Tasman Bay Heritage Trust.

"Trust facilities" means the facilities known as the Nelson Provincial Museum and any other facilities for the provision of Museum and the gallery services acquired or managed by the Trust, and includes any digital or electronic site, entity or mechanism.

"Trustees" means the Trustees of the Trust from time to time, and can also be referred to as Nga kaiwhakahaere or in the singular as kaiwhakahaere.

36.2 A person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of state (in each case whether or not having separate legal personality).

36.3 This Deed is binding upon the parties and their respective successes and permitted assigns, where the context permits words describing the singular include the plural and vice versa and words importing masculine, feminine or neuter gender include all genders.

The Common Seal of the)
Tasman District Council was)
hereto affixed in the presence of:)

Mayor

Chief Executive

The Common Seal of the)
Nelson City Council was)
hereto affixed in the presence of:)

Mayor

Chief Executive

Signed by **Joseph Martin Rudhall**)
as Trustee in the)
presence of:)

Signature:

Name:

Address:

Occupation

Signed by **Robert Gordon Dickinson**)
as Trustee in the)
presence of:)

Signature:

Name:

Address:

Occupation