

16. REPORT FROM THE BANKS PENINSULA CHARITABLE TRUST SUBCOMMITTEE ON THE PROPOSED ROD DONALD BANKS PENINSULA TRUST

General Manager responsible:	General Manager Regulation & Democracy Services, DDI 941-8462
Officer responsible:	Legal Services Manager
Author:	Banks Peninsula Charitable Trust Subcommittee

PURPOSE OF REPORT

1. The purpose of this report is to:
 - (a) Provide to the Council the results of consultation with the Akaroa/Wairewa and Lyttelton/Mt Herbert Community Boards in respect to the proposed Rod Donald Banks Peninsula Trust; and
 - (b) Provide a Draft Trust Deed and Draft Statement of Intent for the proposed Rod Donald Banks Peninsula Trust to the Council for its approval.

EXECUTIVE SUMMARY

2. The Council has previously approved the establishment of a charitable trust to administer the funds received from the sale of endowment properties owned by the former Banks Peninsula District Council.
3. By a resolution dated 11 October 2007, the Council established the Banks Peninsula Charitable Trust Subcommittee. The Council requested that the Subcommittee undertake further consultation with communities with an interest in the proposed objects of the Trust, draft a Statement of Intent and Trust Deed for the Trust, report to the Banks Peninsula Community Boards in respect to the draft documents and consider the potential to increase the Trust funds. The Council also requested that the Subcommittee report back to it in respect to these matters.
4. At its meeting on 9 March 2009, the Banks Peninsula Charitable Trust Subcommittee selected seven people with interests in the Banks Peninsula area to develop a framework for the operation of the proposed Rod Donald Banks Peninsula Trust. These people, the "Initial Trustees", have now prepared a draft Trust Deed (**Attachment 1**) and draft Statement of Intent for the Trust. (**Attachment 2**).
5. The Akaroa/Wairewa and Lyttelton/Mt Herbert Community Boards have been consulted in respect to the documents. A summary of the comments made by the Community Boards, and the staff response to these comments, is attached to this Report.
6. The draft documents are now submitted to the Banks Peninsula Charitable Trust Subcommittee for approval and for recommendation to the Council.

FINANCIAL IMPLICATIONS

7. As noted in previous Council reports in respect to the proposed Rod Donald Banks Peninsula Trust, the proceeds of sale of the Banks Peninsula District Council endowment properties have been held un-dispersed in a special fund to date. The sale proceeds and accumulated interest of approximately \$3,400,000 will be settled on the Trust when the Trust is established.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

8. The use of the proceeds of sale of the endowment properties was indicated in the 2004-14 LTCCP adopted by the Banks Peninsula District Council.
9. The funds have been held un-dispersed in a special fund by the Christchurch City Council and are therefore available to be used for purposes consistent with the original endowments.

LEGAL CONSIDERATIONS

10. The Council has previously received legal advice that establishing a charitable trust to administer the funds for the benefit of the Banks Peninsula and Christchurch City communities is an acceptable use that is consistent with the purposes of the original endowments.

Have you considered the legal implications of the issue under consideration?

11. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

12. Not applicable.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

13. Not applicable.

CONSULTATION FULFILMENT

14. A special consultative procedure in respect to the establishment of the Rod Donald Banks Peninsula Trust was conducted in September and October 2007. The Hearings Panel reported back to the Council on 11 October 2007 and the Council adopted the Hearings Panel recommendations. The recommendations are discussed in further detail in the Background section of this Report.
15. The Akaroa/Wairewa and Lyttelton/Mt Herbert Community Boards were also consulted in respect to the proposed draft Trust Deed and draft Statement of Intent for the Trust, at their respective meetings of 7 and 13 April 2010. A summary of the comments made by the Community Boards, and the staff response to the comments, is attached to this Report.

SUBCOMMITTEE RECOMMENDATION

That the Council resolve:

- (a) The draft Trust Deed and draft Statement of Intent, as amended, for the proposed Rod Donald Banks Peninsula Trust be adopted in the forms attached to this Report, subject to such amendments as may be required by the Registrar of Charitable Trusts or the Charities Commission; and
- (b) The Trust be registered under the Charitable Trusts Act 1957 and the Charities Act 2005.

BACKGROUND (THE ISSUES)

17. On 30 August 2007, the Council passed a resolution approving in principle the establishment of a charitable trust to administer funds obtained from the sale of endowment properties owned by the former Banks Peninsula District Council. The Council resolved that the purpose of the Trust should be to aid the maintenance and development of the natural and built heritage in the Banks Peninsula area, and to aid the maintenance and development of environmental and community based projects in the area. The Trust is dedicated to the memory of Rod Donald, to recognise his commitment to the Banks Peninsula area.
18. Consultation was carried out in respect to the proposal in September and October 2007, as summarised in the Consultation Fulfilment section of this report.
19. The Hearings Panel recommended that the Council -
 - (i) Establish a charitable trust as a council-controlled organisation, for the purpose of administering the funds obtained from the sale of endowment properties owned by the former Banks Peninsula District Council;
 - (ii) Appoint a subcommittee comprising Garry Moore, Bob Parker and Sue Wells to attend to the formation of the Trust (the Banks Peninsula Charitable Trust Subcommittee).
20. The Banks Peninsula Charitable Trust Subcommittee was asked to:
 - (i) Undertake further consultation with the communities affected by or with an interest in the proposed objects of the Trust;
 - (ii) Draft a Statement of Intent to be available for consideration by the Council in due course;
 - (iii) Consider the potential for increasing the level of Trust funds from sources other than (and in addition to) the funds obtained from the sale of the endowment properties;
 - (iv) Prepare a report for consideration by the Banks Peninsula Community Boards and the Council containing the Subcommittee's recommendations in respect to the Deed of Trust and the Statement of Intent.

The Council adopted the recommendations of the Hearings Panel on 11 October 2007.

21. At its meeting of 9 March 2009 the Subcommittee elected seven people with interests in the Banks Peninsula area to be "Initial Trustees" for the Trust. The "Initial Trustees" were invited to conduct the groundwork required to establish the Trust and to represent the various communities with an interest in the proposed objects of the Trust. The "Initial Trustees" are Nuk Korako, Nicola Shirlaw, Simon Mortlock, Stuart Wright-Stow, Garry Moore, Claudia Reid and Stewart Miller. The "Initial Trustees" will be formally appointed as trustees when the Trust is settled.
22. The "Initial Trustees" met on several occasions in 2009. They have now developed recommended objectives for the Trust and a framework for its operation in the future. The objectives and operational framework are set out in the draft Trust Deed and draft Statement of Intent that have been prepared for the Trust.
23. The views of the Akaroa/Wairewa and Lyttelton/Mt Herbert Community Boards were sought on the Initial Trustees' proposals. A summary of the comments made by the Community Boards, and the staff response to the comments, is attached to this Report.
24. The Draft Trust Deed and Draft Statement of Intent, amended as noted for the Community Boards' comments, are attached to this Report.

SUMMARY OF COMMUNITY BOARD COMMENTS AND STAFF RESPONSE

Community Board Comment	Staff Response
<p>The Lyttelton/Mt Herbert Community Board questioned the definition of Region in the Trust Deed. It was considered inappropriate to use obsolete political boundaries, it was suggested that the wider Banks Peninsula area should be included.</p>	<p>Careful consideration has been given to whether an alternative boundary could be adopted for the definition of Region in the Trust Deed. However, the Deed must include a legally defensible and precise boundary and it is considered that the former Banks Peninsula District Council boundary provides the most certainty in this respect. The Local Government (Canterbury Region) Reorganisation Order 1989 states that the District comprises the area delineated on SO Plan No. 18084 deposited with the Chief Surveyor of the Canterbury Land District (page 2312 New Zealand Gazette 13 June 1989 – Issue No. 99). SO Plan No. 18084 is attached to the Statement of Intent.</p> <p>Consideration was given to whether the definition could refer to the Banks Peninsula Ecological District. However, the boundaries of the Ecological District are not clearly or precisely defined, but rather relate to the geological characteristics of the Peninsula (for example, where the volcanic rock meets the Canterbury Plains). This is not sufficiently precise for the purposes of the Trust Deed.</p> <p>It is also noted that the use of the former Banks Peninsula District Council boundary is more consistent with the purposes of the original endowments of land.</p> <p>Recommend that no change be made to the Trust Deed.</p>
<p>Recommended inclusion of a map into the documents to show the areas focussed on/designated areas and where the boundaries are.</p>	<p>A map can be included to show the boundary of the Region. However, the particular areas to be focussed on/designated areas will not be determined until the Trustees have identified the particular projects that they wish to be involved with. Therefore, it is not possible to provide a map to show these details at this stage.</p> <p>A map has been attached to the Statement of Intent to show the boundary of the Region to which the Trust will apply.</p>
<p>Clause 4.1(a) of the Trust Deed refers to sustainable management and conservation “...(consistent with the purposes and principles of the Resource Management Act 1991 and the Conservation Act 1987 and any replacement legislation)...”.</p> <p>Suggested that the words in brackets could be removed.</p>	<p>The Trustees must act in accordance with the principles of the Resource Management Act 1991 and the Conservation Act 1987 when carrying out the Objects of the Trust, whether this is included in Clause 4.1(a) or not. By including references to this legislation in the Trust Deed, focus is drawn to the importance of the principles established by the Acts.</p> <p>Recommend that no change be made to the Trust Deed.</p>
<p>Clause 4.1(a) of the Trust Deed states that an Object of the Trust is “to promote sustainable management and conservation...of the natural environment in the Region”. Questioned whether the word “natural” is necessary, is this to distinguish from the built environment?</p>	<p>The word “natural” is necessary, it is used to distinguish from the built environment. Clause 4.1(a) relates to sustainable management and conservation, these are terms that commonly relate to the natural rather than the built environment. Historical and community based projects, including the built environment, are referred to in later parts of Clause 4.</p> <p>Recommend that no change be made to the Trust Deed.</p>

<p>Clause 4.1(b) of the Trust Deed states that one of the Trust's Objects is to "establish, support or facilitate environmental based projects that are focussed on..." various matters. Suggested that to keep options open the words "are focussed on" could be replaced by "can include".</p>	<p>The use of the words "are focussed on" is intentionally narrow, so the particular projects mentioned receive support, rather than all environmental based projects which may be only partly related to these matters.</p> <p>Recommend that no change be made to the Trust Deed.</p>
<p>Clause 4.1(b)(iii) of the Trust Deed includes as an object of the Trust to "establish, support, or facilitate environmental based projects that are focussed on the reinstatement and preservation of native bush in the Region".</p> <p>It was considered that this Object should encompass more than just native "bush". A suggestion was made to refer to indigenous ecosystems and habitats.</p>	<p>The use of the word "bush" was intended to encompass all forms of vegetation, therefore it is considered that for clarity the words "native vegetation" should be used.</p> <p>In respect to the addition of "indigenous ecosystems and habitats" it is considered that this is encompassed by Clause 4.1(b)(iv) (the enhancement of the natural biodiversity of the Region), Clause 4.1(b)(v) (the restoration of the Region's waterways to their natural state) and by amending the word "bush" in Clause 4.1(b)(iii) to refer to "vegetation".</p> <p>Amend Clause 4.1(b)(iii) to refer to "native vegetation" in the Region, rather than native bush.</p>
<p>Clause 4.1(b)(vi) of the Trust Deed includes as an Object of the Trust "to establish, support or facilitate environmental based projects that are focussed on the protection of endangered species present in the Region".</p> <p>Recommended adding the word "indigenous" before endangered species.</p>	<p>Agree that the Trust should focus on species that occur naturally in the Banks Peninsula area. However, the word indigenous is more commonly used in respect to people rather than animals. Suggest the word "native" is more appropriate, and is consistent with Clause 4.1(b)(iii).</p> <p>Amend Clause 4.1(b)(vi) to refer to "native endangered species present in the Region".</p>
<p>The Trust Deed and Statement of Intent refer to preserving and restoring the Region's built heritage, suggested that the focus should be on the natural environment only.</p> <p>The Lyttelton/Mt Herbert Community Board commented that projects involving the built environment can consume a significant amount of financial resources.</p>	<p>When the option of forming a charitable trust was first proposed to the Banks Peninsula District Council, Mayor Parker suggested as example projects for the trust stone/beach front wall restoration and the preservation of historic structures such as community halls.</p> <p>The 30 August 2007 resolution of the Council that approved the establishment of the Trust states that its purpose is to aid the maintenance and development of the natural and built heritage of the Banks Peninsula area.</p> <p>This theme was continued in the Statement of Proposal for the trust, which referred to the establishment of a charitable trust to have as its objectives "<i>historical, environmental and community based projects in the Banks Peninsula area</i>" [emphasis added].</p> <p>A number of submissions in respect to the Statement of Proposal supported the inclusion of projects relating to the built heritage.</p> <p>Given that preservation and enhancement of the built heritage has been included as one of the objects of the trust since it was first proposed, and that this has been the subject of public consultation and support, it is considered that it would be inappropriate to remove these references from the Trust Deed and Statement of Intent at this stage.</p> <p>The Trustees have a duty to consider the merits of particular projects when making decisions about how the Trust funds will be used. This</p>

	<p>would include consideration of whether it would be appropriate to support a particular project relating to the built environment if the project would have a significant associated cost.</p> <p>Recommend that no change is made to the Trust Deed or the Statement of Intent.</p>
<p>A member of the public has noted that the winding up clause in the Trust Deed (Clause 19) allows the trust funds to be distributed for charitable purposes, but there is no restriction to require consistency with the original endowment (except that the charitable purposes must be similar to those of the Trust).</p>	<p>Clause 19 allows the Trustees to apply the net assets of the Trust to matters that are similar to the Trust's objects because it may be difficult for the Trustees, on winding up, to find other organisations or projects that have objects that are identical to those of the Trust. However, the Council could require that before the Trustees apply the net assets to objects similar to the Trust's, they assure themselves that it is not possible to apply the net assets to organisations or projects that have objects identical to those of the Trust.</p> <p>Clause 19 of the Trust Deed has been amended to require the Trustees on winding up to first use their best endeavours to vest the net assets exclusively for charitable purposes that are identical to the Objects of the Trust.</p>
<p>Clause 2.1(g)(iv) of Schedule 2 of the Trust Deed allows the Trustees to appoint people to act as employees of the Trust, including the appointment of the Trustees themselves. The Lyttelton/Mt Herbert Community Board was opposed to Trustees acting as both Trustees and employees, as this could result in a conflict of interest.</p>	<p>This is a standard Clause included in many Trust Deeds. The Clause recognises that the Trustees may have special skills that would be useful to the Trust, but exercising those skills would be outside their role as a Trustee.</p> <p>Any person acting in both the capacity of Trustee and employee would need to be aware of their differing duties in these respective roles.</p> <p>Clause 13 of the Trust Deed deals with conflicts of interest. Clause 13 requires any Trustee who has a conflict of interest to disclose the nature of that interest at a trust meeting and to record it in the minutes of the meeting. The Trustee will not be able to vote on the matter in which the Trustee is interested, unless all of the Trustees unanimously permit the interested Trustee to vote. It is considered that Clause 13 deals adequately with any conflict of interest that may arise as a result of a person acting in the capacity of both an employee and a trustee.</p> <p>Clause 13 deals adequately with this issue, no change is required.</p>
<p>The Trust Deed should require the Council to appoint at least some of the Trustees from specific interest groups (such as from each Community Board and from the local Runanga).</p>	<p>The Council has the right to appoint up to 7 of the Trustees to the Trust (Clause 2.2(a) of Schedule 3 of the Trust Deed). In exercising the power of appointment the Council is required to be mindful of the need to provide balanced representation in the Trust, including appropriate representation for relevant interest groups (Clause 2.3 of Schedule 3 of the Trust Deed).</p> <p>The wording of Clause 2.3 allows the Council the flexibility to appoint people with relevant skills and a passion for the Banks Peninsula area to be Trustees on the Trust, but still requires the Council to consider the need for relevant groups to be represented. If the Council is confined to appointing some Trustees from particular groups this could mean that some people with relevant skills and experience miss out on the role.</p> <p>It is recommended that no change is made to the Trust Deed, but the requirements of Clause 2.3 of Schedule 3 of the Trust Deed should be drawn to the Council's attention when new</p>

	Trustees are appointed.
<p>Clauses 4.1 and 4.2 of Schedule 3 of the Trust Deed set out the Term of Appointment of Trustees. The Clauses do not limit the number of terms that a Trustee can serve. A maximum consecutive term of, for example, 9 years, should be stipulated.</p>	<p>The Council's Policy on the Appointment and Remuneration of Directors does not address the length of tenure of trustees of a Council Controlled Organisation. The Policy does however state that for directors of Council Controlled Trading Organisations, the length of tenure will generally be between 6 and 9 years, with a maximum of 12 years in special circumstances.</p> <p>There are two alternative views on whether the tenure of trustees should be limited to a finite number of consecutive years. One view is that a person's contribution to a board may diminish as the person's length of tenure increases. Over time a trustee may become more entrenched and less responsive to new and innovative ideas.</p> <p>An alternative view is that a longer tenure period is essential to confer on a trustee a deeper understanding of a trust's objects and how to achieve them.</p> <p>In the present case, several of the "Initial Trustees" have indicated that they would like to be involved with the Trust on a long term basis, so that they can implement some significant projects.</p> <p>Taking into account the two alternative views above, it is considered that a limit on tenure of 9 consecutive years would be appropriate. This allows a trustee time to see significant projects implemented, but the finite period should assist to prevent issues of non performance.</p> <p>Clause 4.1 of Schedule 3 of the Trust Deed has been amended to provide a maximum tenure of nine consecutive years.</p>
<p>The Trust Deed does not indicate whether both public and private land can be included. The Deed should be clarified to state that both public and private land is relevant, with the consent of private land owners if private land is concerned.</p>	<p>The Trust Deed does not limit projects to public land only, private land could be included where appropriate. It is considered that no change is required to the Trust Deed to allow this.</p> <p>Recommend that no change be made to the Trust Deed.</p>
<p>A request was made that the Trust's Annual Reports be made available to the two Banks Peninsula Community Boards as a matter of course for their information.</p>	<p>The Annual Reports of the Trust are required to be publicly available, and they can be made available to the Community Boards.</p> <p>The Statement of Intent has been updated to include a requirement that the Trust's Annual Reports be provided to the Akaroa/Wairewa and Lyttelton/Mt Herbert Community Boards for information purposes.</p>