

23. 6. 2011

6. APPOINTMENT OF TRUSTEES TO ROD DONALD BANKS PENINSULA TRUST

General Manager responsible:	General Manager Regulation and Democracy Services
Officer responsible:	Legal Services Manager
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PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council appoint seven people to serve as Trustees of the Rod Donald Banks Peninsula Trust from 1 July 2011.

EXECUTIVE SUMMARY

2. On 24 June 2010, following public consultation, the Council resolved to establish the Rod Donald Banks Peninsula Trust ("the Trust") as a Council Controlled Organisation. The Trust was settled on 12 July 2010. A copy of the Declaration of Trust ("the Trust Deed") **Attachment 1** is attached.
3. The Trust has been registered under the Charitable Trusts Act 1957 and the Charities Act 2005.
4. The Council appointed seven people to serve as the "Initial Trustees" of the Trust. These Initial Trustees are Claudia Reid, Stewart Miller, Garry Moore, Stuart Wright-Stow, Tutehounuku (Nuk) Korako, Nicola Shirlaw and Simon Mortlock.
5. Clause 3.2 of Schedule 3 of the Trust Deed sets out the role of the Initial Trustees, to:
 - (a) *develop a model for the operation of the Trust and the achievement of the Objects;*
 - (b) *investigate options for obtaining further contributions to the Trust Fund; and*
 - (c) *consider appropriate projects for the Trust to support."*
6. The earthquakes of 4 September 2010 and 22 February 2011 have interfered with the work of the Initial Trustees. However, the work undertaken to date includes:
 - Engaging a Masters student from the University of Canterbury to carry out a "Stocktake of Environmental and Recreational Activities on Banks Peninsula". The purpose of this "Stocktake" is to identify current environmental and recreational activities occurring on the Peninsula, the groups involved with these activities and their needs; and to identify potential opportunities for new projects.
 - Preparation of a draft Investment Policy and draft Communications Policy.
 - Investigating, in association with the Department of Conservation, the Josef Langer Charitable Trust and private property owners, options for establishing a coastal walkway on the Peninsula.
 - The appointment of a secretariat for the Trust.
7. Clause 3.1 of Schedule 3 of the Trust Deed states that the Initial Trustees are to hold office until 30 June 2011. The Council therefore needs to make new appointments of Trustees to hold office from 1 July 2011.
8. All Initial Trustees have indicated a desire to be re-appointed from 1 July 2011. The Initial Trustees were selected because of their knowledge of and commitment to the Banks Peninsula area. Their re-appointment would provide continuity in the projects that they have initiated and the contacts that the Trust has developed with related organisations.
9. The Initial Trustees have not received any remuneration for their work for the Trust.

FINANCIAL IMPLICATIONS

10. There are no financial implications associated with the recommendations in this report.

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

11. Not applicable

LEGAL CONSIDERATIONS

12. Clause 2.2 of Schedule 3 of the Trust Deed sets out the Council's authority to appoint Trustees to the Rod Donald Banks Peninsula Trust. The clause states that the Council has the right to:
- "(a) appoint up to 7 of the Trustees for such term of office (not exceeding three years, as provided for in Clause 4) as it sees fit;..."*
13. Part 4 of Schedule 3 states that:
- "4.1 The term of each Trustee is up to 3 years from the date of appointment. Trustees may serve more than one term. No person may hold office as Trustee for more than nine consecutive years.*
- 4.2 At the first meeting of the Trustees other than the Initial Trustees, every Trustee shall draw by ballot the length of his or her term of appointment, being either a 1, 2 or 3 year term, the intent being that after the ballot process has been completed the Trustees will be divided equally between 1, 2 and 3 year terms, with membership terms ending as at 30 June in each year. The term of appointment of the first Trustees (other than the Initial Trustees) will end on 30 June 2012, 2013 and 2014 respectively. Trustees whose terms have expired will be eligible for re-appointment".*
14. Under Clause 2.4 of Schedule 3 of the Trust Deed, the Trustees also have the power to co-opt other persons from the Banks Peninsula Region to serve as Trustees. However, there must be no more than 9 Trustees in total. No co-opted Trustees have been appointed to date.

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

15. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

16. Not applicable.

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

17. Not applicable.

ALIGNMENT WITH STRATEGIES

18. Not applicable.

Do the recommendations align with the Council's strategies?

19. Not applicable.

CONSULTATION FULFILMENT

20. There is no requirement for public consultation prior to the appointment of the Trustees.
21. Clause 2.3 of Schedule 3 of the Trust Deed does require that:

"In exercising its power to appoint and remove Trustees, the Settlor [the Council] will be mindful of the need to provide balanced representation in the Trust, including appropriate representation for relevant interest groups. In exercising such power the Settlor will comply with its policy on the appointment of trustees to a council controlled organisation and endeavour to ensure that the Trustees include persons possessing the generic and specific competencies identified by the Settlor from time to time as being desirable to be possessed by the Trustees."

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22. The Council's current Policy on Appointment and Remuneration of Directors ("the Policy") states that the Council will determine the required skills, knowledge and experience for each appointment to a Council Controlled Organisation and will make its appointments accordingly.
23. The Policy states that in general, the attributes required for directors of Council Controlled Trading Organisations will be applicable, but the weightings given to each attribute may vary according to the nature of the appointment.
24. The attributes required for directors of Council Controlled Trading Organisations are:
 - Intellectual ability.
 - Commercial experience.
 - Understanding of governance issues.
 - Sound judgement.
 - High standard of personal integrity.
 - Commitment to the principles of good corporate citizenship.
 - Understanding of the wider interests of the publicly-accountable shareholder.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Appoint Claudia Reid, Stewart Miller, Garry Moore, Stuart Wright-Stow, Tutehounuku (Nuk) Korako, Nicola Shirlaw and Simon Mortlock to continue to serve as Trustees of the Rod Donald Banks Peninsula Trust from 1 July 2011, for terms to be decided by ballot in accordance with Part 4 of Schedule 3 of the Declaration of Trust Relating to Rod Donald Banks Peninsula Trust, Te Pataka o Rakaihautu.