

DATED 11 FEBRUARY 2010

TRUST DEED

CANTERBURY EARTHQUAKE HERITAGE BUILDINGS FUND

HELMORE AYERS

BARRISTERS & SOLICITORS
CHRISTCHURCH

Established 1884

CONTENTS

<u>Part</u>	<u>Subject</u>	<u>Page</u>
1.0	Interpretation	1
2.0	Declaration of Trust.....	3
3.0	Criteria for Payment or Application of Trust Fund	4
4.0	Office	4
5.0	Trustees.....	4
6.0	Meetings of the Board	5
7.0	Proposals and Applications for Funding.....	6
8.0	Trust Fund Management.....	7
9.0	Income, Benefit or Advantage to be applied to the Trust Fund	7
10.0	Capital Trusts	8
11.0	Restrictions	8
12.0	Power to Delegate	8
13.0	Financial and Reporting Arrangements	8
14.0	Amendment of Trust Deed.....	9
15.0	Mediation	9
16.0	Liability of Trustees	10
17.0	Indemnity	10
18.0	Trust Administration Costs	10

TRUST DEED

THIS DEED made the 11th day of FEBRUARY 2019

BETWEEN:

- (1) THE NEW ZEALAND HISTORIC PLACES TRUST, CHRISTCHURCH CITY COUNCIL, WAIMAKARIRI DISTRICT COUNCIL and SELWYN DISTRICT COUNCIL (the "Settlers"); and
- (2) [NAME, ADDRESS, OCCUPATION of Trustees] (the " Trustees").

WHEREAS:

- (a) The parties to this document wish to establish the Trust for the purpose described in part 2.0; and
- (b) The parties have agreed to enter into this document specifying who can benefit from the Trust and providing for its control and administration; and
- (c) The Settlers have paid the other parties to this document (jointly) \$10.00 to hold on the Trust and subject to the powers referred to in this document; and

THIS DEED WITNESSES as follows:

1.0 Interpretation

1.1 In this document the following terms have the following meanings (unless the context requires otherwise):

- (a) "Appointor" means each of the New Zealand Historic Places Trust, Christchurch City Council, Waimakariri District Council and Selwyn District Council.
- (b) "Elected Trustee" means any Trustee elected as provided for at clause 5.2(c).
- (c) "Beneficiaries" means all Discretionary Beneficiaries and Final Beneficiaries.
- (d) "Date of Distribution" is the date of expiry of the Trust Period.
- (e) "Discretionary Beneficiaries" means the Owners of Qualifying Buildings.
- (f) "Final Beneficiary" means the New Zealand Historic Places Trust. .
- (g) "Qualifying Heritage Buildings" means buildings within the districts of the Canterbury Region that are:
 - Historic buildings listed in a City or District Plan or in New Zealand Historic Places Trust's Register of historic places, historic areas, wahi tapu or wahi tapu areas; or
 - Buildings and groups of buildings that make a significant contribution to the historic identity and visual character of communities; or
 - Marae buildings and other buildings of cultural significance to Maori.

- (h) "Financial Year" has the meaning given in clause 15.1;
- (i) "Owner" means any person who is seised or possessed of any estate, interest or right relating to land whether at law or in equity and whether in possession or in expectancy.
- (j) "Resolution" means a resolution approved by a bare majority of Trustees entitled to vote and voting on the matter, whether at a meeting of Trustees or by written resolution or as otherwise provided for under this document;
- (k) "Three Territorial Authorities" means together Christchurch City Council, Waimakariri District Council and Selwyn District Council;
- (l) "Trust" means the trust created by this document;
- (m) "Trust Board" means the Trustees acting together as such;
- (n) "Trust Period" means the period from the date of this document to the earlier of:
 - 30 June 2015;
 - full distribution of the Trust Fund.
- (o) "Trust Fund" includes:
 - (i) The sum of \$10.00 referred to in clause 2.1; and
 - (ii) All other property now or in the future held or received by the Trustees for the purposes of the Trust; and
 - (iii) All property substituted for or purchased from the Trust Fund; and
 - (iv) All accretions or additions to the Trust Fund; and
 - (v) All income of the Trust Fund; and
- (p) "Trustee" means any trustee or trustees of the trust referred to in this document for the time being whether original, additional or substituted.
- (q) "Year" means:
 - (i) The period beginning on the day the Trust Fund begins generating income and ending on the following 30 June; and after that
 - (ii) Each period beginning on 1 July and ending on the following 30 June.

1.2 In this document (unless the context requires otherwise):

- (a) The singular includes the plural and the plural includes the singular.
- (b) A reference to a gender includes the other gender.
- (c) A reference to a person includes a partnership or corporation.

- (d) A reference to a person includes (where applicable) its successors, personal representatives and permitted assigns.
- (e) A reference to a power includes a right, authority or discretion.
- (f) A reference to this document includes a written variation of it.
- (g) If a provision is found to:
 - (i) be illegal or void; or
 - (ii) make any other provision of this document illegal or void;
 the provision will be severable and it will not affect the validity of the other provisions of this document.

2.0 Declaration of Trust

- 2.1 The name of the Trust shall be "CANTERBURY EARTHQUAKE HERITAGE BUILDINGS FUND".
- 2.2 The purpose of the Trust is to provide assistance to owners of Qualifying Heritage Buildings to repair damage caused by the Canterbury earthquake of 4 September 2010 and associated aftershocks.
- 2.3 In consideration of the payment by the Settlers to them of \$10.00, the Trustees will hold the Trust Fund on:
 - (a) The powers expressed in this document; and
 - (b) The trust referred to in part 2.0; and
 - (c) The other powers and obligations resulting from this trust.
- 2.4 During the Trust Period, the Trustees may pay or apply so much of the net annual income of the Trust Fund as the Trustees think fit in payment of any liability accruing in relation to the Trust Fund regardless of whether the liability is then payable.
- 2.5 During the Trust Period the Trustees may:
 - (a) Pay or apply so much of the net annual income of the Trust Fund as the Trustees think fit to or for such of the Discretionary Beneficiaries as the Trustees appoint; and
 - (b) Pay, apply or transfer so much of the capital of the Trust Fund as the Trustees think fit to or for such of the Discretionary Beneficiaries as the Trustees appoint.
- 2.6 On the Date of Distribution the Trustees will hold any remainder of the Trust Fund on trust for the Final Beneficiary for the purpose of furthering the objects set out in this deed.

3.0 Criteria for Payment or Application of Trust Fund

- 3.1 No part of the Trust Fund may be paid or applied outside New Zealand.
- 3.2 Subject to clauses 2.6 and 3.1 the Trustees shall determine how to exercise the powers conferred on them by this document. In doing so they are to have regard to the criteria set out in paragraph 3.3.
- 3.3 The Trust Fund may be used:
- (a) to achieve maximum public benefit. Priority is to be given to places of the greatest heritage significance.
 - (b) To provide assistance to the owners of qualifying buildings should insurance cover and other sources of funding be insufficient to meet the actual cost of relevant repairs and associated works including conservation structural upgrading and building compliance.
 - (c) to secure the long-term future of Qualifying Buildings. Covenants registered against the relevant property or other appropriate legal instruments may be required by the Trustees as a condition of funding.

4.0 Office

- 4.1 The office of the Trust will be care of Christchurch City Council, 53 Hereford Street, Christchurch 8011 or such other place in New Zealand as the Trustees may from time to time determine.

5.0 Trustees

- 5.1 The business and affairs of the Trust shall be managed by the Trustees.
- 5.2 The parties to this document, other than the Settlers, shall be the first Trustees.
- (a) There shall thereafter be no less than seven Trustees.
 - (b) One Trustee shall be appointed in writing by each Appointor. That Appointor shall have the power to remove that Trustee at any time by notice in writing to that Trustee and to the Chairperson of the Board provided the Appointor then appoints a replacement Trustee.
 - (c) The Trustees appointed under clause 5.2(b) shall, by unanimous resolution, elect three further Trustees with appropriate skills, including heritage, financial and legal expertise. The Board may remove any Elected Trustees by unanimous resolution at any time provided it then appoints a further Elected Trustee as a replacement.
- 5.3 All secretarial treasury and other administrative services reasonably required by the Trustees will be provided by the Christchurch City Council. The cost of providing these services will be met in agreed proportions by the Territorial Authorities.
- 5.4 A person will immediately cease to be Trustee when she or he:
- (a) Resigns from office by giving written notice to the Trustees or the Secretary; or
 - (b) Dies; or
 - (c) Is declared bankrupt; or

- (d) Is found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (e) Becomes a protected person within the meaning of the Protection of Personal and Property Rights Act 1988; or
- (f) Is removed from office under clause 5.2; or
- (g) Is absent without leave from 3 consecutive ordinary meetings of the Trustees; or
- (h) Is convicted of any offence punishable by imprisonment.

5.5 Clauses 5.4(a) and (f) will not apply if the result would be to leave the Trust with no Trustees.

6.0 Meetings of the Board

6.1 The procedure for meetings of the Board shall be as follows:

- (a) a quorum will be a majority of the Trustees at the relevant time.
- (b) all decisions shall, if possible, be decided by consensus. In the event that a consensus cannot be reached then a decision shall be made by a majority vote by show of hands of the Trustees present (unless otherwise provided under this document).
- (c) the Chairperson shall be appointed from among the Trustees from time to time and will preside at the meeting.
- (d) if the Chairperson is to be absent from a proposed meeting, the Chairperson may, in writing or electronically, appoint a proxy to exercise the Chairperson's powers under this document at that meeting of the Trustees.

6.2 The Christchurch City Council shall ensure that a Secretary is available to:

- (a) attend the meetings of the Trustees;
- (b) notify each Trustee a reasonable time before a meeting, either verbally or in writing; and
- (c) maintain a minute book which is available to any Trustee and which, for each meeting of the Trustees, records:
 - (i) the names of those present; and
 - (ii) all decisions which are required by this document or by law to be made by the Trustees; and
 - (iii) any other matters discussed at the meeting of the Trustees.

6.3 A written resolution signed by 75% of the Trustees shall have the same effect as if the resolution was passed as an ordinary resolution at a meeting. A written resolution signed

by all Trustees shall have the same effect as if the resolution was passed unanimously at a meeting. Such resolutions may consist of several like documents each signed by one or more of the Trustees and may be sent by facsimile or email.

- 6.4 (a) Where a Trustee, whether directly or indirectly, has a material interest in any contract or proposed contract, arrangement, or dealing with the Trust (other than as a member of the public or as a member, officer, or employee of any firm, company or organisation that has an equivalent interest to a member of the public), such Trustee shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be duly recorded in the minutes of that meeting.
- (b) A Trustee required by clause 6.5(a) to disclose a material interest may be counted in a quorum present at a meeting of Trustees but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so vote such vote shall not be counted).
- (c) Notwithstanding clauses 6.5(a) and (b), where a Trustee is unable to disclose the nature of his or her interest due to confidentiality obligations or a need to protect commercially sensitive information, then that Trustee shall not be required to disclose the nature of that interest but shall be required to disclose the fact that he or she has an interest and is unable to disclose the nature of that interest for the reasons set out in this clause 6.5(c). Such a Trustee shall not be counted in a quorum present at a meeting of Trustees in respect of the matter in which the Trustee is interested, shall not be entitled to join in discussions on that matter and shall not vote in respect of that matter (and if the Trustee does vote such vote shall not be counted).
- (d) If any question shall arise at any meeting of Trustees as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote, and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and whose ruling on the matter shall be final and conclusive, except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.

6.5 Subject to this part 6.0, the Trustees may stipulate any other aspect of meeting procedure.

7.0 Proposals and Applications for Funding

7.1 The Christchurch City Council will be responsible for receiving and distributing all proposals and applications for funding from the Trust. This includes those proposals and applications lodged directly with the Trustees and the Territorial Authorities.

7.2 Staff at the Historic Places Trust and at each of the Territorial Authorities will deal with proposals and applications lodged in respect of qualifying buildings on the Trust's register or those situated in the relevant territorial authority's district. They will:

- (a) Act as the Trust's expert advisors in relation to possible distributions from the fund;
- (b) Analyse and consider all proposals and applications;
- (c) Recommend that an application or proposal be declined or accepted.

7.3 Proposals and applications in respect of qualifying buildings situated in districts other than the Territorial Authorities will be dealt with as if they had been lodged in accordance with the procedure set out in clause 7.2.

- 7.4 The Trustees shall decide whether or not to make a distribution after receiving a report on each proposal or application lodged.
- 7.5 The amount to be distributed and any terms and conditions recommended will be included in the advice provided to the Trustees.
- 7.6 Any distribution in respect of a proposal or application approved by the Trustees will be subject to the Trustees being satisfied that all other available sources of funding, including the proceeds of insurance are exhausted before the distribution is made.

8.0 Trust Fund Management

- 8.1 Subject to parts 2.0 and 10.0, the Trustees have the same powers in respect of the Trust Fund as the Trustees would have if they were the absolute owners of the Trust Fund but pending its distribution the Trust Fund must at all times comprise bank deposits (whether call or term).
- 8.2 Where a Trustee is engaged in any profession, employment or business, then that Trustee shall not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others. Rather, that Trustee or those Trustees (as the case may be) shall be required only to exercise the care, diligence and skill that an ordinary person of business would exercise in managing the affairs of others.
- 8.3 One of the functions of the Trustees will be to identify possible sources of funding and to support efforts by the New Zealand Historic Places Trust and districts in the Canterbury region, including the Territorial Authorities, to encourage public contributions to the Trust Fund.
- 8.4 In managing the fund the Trustees will have regard to the Canterbury Earthquake Heritage Building Fund Policy adopted by the Territorial Authorities.

9.0 Income, Benefit or Advantage to be applied to the Trust Fund

- 9.1 Any income, benefit or advantage will be applied to the Trust Fund.
- 9.2 Without limiting clause 8.1:
 - (a) The Trustees may pay, apply or appropriate, or decide to pay, apply or appropriate as much of the income arising from the Trust Fund in a Financial Year as they think fit towards the fulfilment of the purpose of the Trust.
 - (b) The Trustees, by written resolution, may appropriate any investments to fulfil the purpose of the Trust in anticipation of a payment or application under clause 8.1.
 - (c) In any Financial Year, the Trustees may appropriate all or part of the income derived or to be derived from the Trust Fund during that Financial Year even though, at the time of appropriation, they have not received the income being appropriated.
 - (d) The Trustees need not distribute all of the income arising from the Trust Fund in a Financial Year, but may retain or decide to retain all or part of that income to establish or augment any reserve fund, which may be used at any later time for any purpose for which income arising from the Trust Fund may be used.

10.0 Capital Trusts

- 10.1 At any time the Trustees may, or may decide to pay, apply or appropriate as much of the capital of the Trust Fund as they think fit. Any payment, application or appropriation of capital may be made either in addition to, or in place of, any payment, application or appropriation of income.

11.0 Restrictions

- 11.1 No Trustee shall derive any income or financial benefit or advantage from the Trust where they can materially influence the payment of the income or financial benefit or advantage except where that income or financial benefit or advantage is derived from usual professional, business or trade charges for services rendered to the Trust by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate, in connection with the affairs of the Trust charged at no greater rate than current market rates.
- 11.2 Each of the three further Trustees appointed under clause 5.2(c) shall be entitled to a refund of all monies which are reasonably expended by that Trustee in respect of their attendance at meetings of the Trustees or otherwise in transacting the affairs of the Trust as determined by the Trustees.

12.0 Power to Delegate

- 12.1 The Trustees may from time to time appoint any committee and may delegate any of their powers and duties to any such committee or to any person. The delegation must be in writing and set out the powers and duties delegated. The committee or person may without confirmation by the Trustees exercise or perform the delegated powers or duties in the same way and with the same effect as the Trustees could themselves have done.
- 12.2 It will not be necessary for any person who is appointed to be a member of any such committee, or to whom a delegation is made, to be a Trustee.
- 12.3 Any committee or person to whom the Board has delegated powers or duties shall be bound by the terms of the Trust and any terms or conditions of the delegation set by the Trustees.
- 12.4 The Trustees may revoke the delegation at will. No delegation shall prevent the exercise of any power or the performance of any duty by the Trustees.
- 12.5 An individual Trustee may delegate any of their powers to any person. The delegation must be in writing and set out the powers delegated. The delegate may, without confirmation by the Trustees, exercise or perform the delegated powers in the same way and with the same effect as the Trustee delegating the relevant powers could have done. Any such delegation must be communicated in writing to the Trustees when made.

13.0 Financial and Reporting Arrangements

- 13.1 The financial year of the Trust will be from 1 July to 30 June in the following year.
- 13.2 At the first meeting of the Trustees in each financial year, the Trustees will decide by resolution the following:
- (a) How money will be received by the Trust; and
 - (b) Who will be entitled to produce receipts; and

- (c) What bank accounts will be operated for the next year, including the purposes of and access to accounts; and
 - (d) Who will be allowed to authorise the production of cheques and the names of cheque signatories; and
 - (e) The policy concerning the investment of money by the Trust, including what type of investment will be permitted.
- 13.3 At the first meeting of the Trustees in each financial year (other than the first financial year) the Trustees shall present a statement of the Trust's income and expenditure during the previous financial year and a statement of its assets and liabilities at the end of that financial year.
- 13.4 The Corporate Finance Unit of the Christchurch City Council shall ensure that true and fair accounts are kept of all money received and expended by the Trust.
- 13.5 The Trustees will, as soon as practicable, and in any case within two months, after the end of the financial year of the Trust, arrange for the accounts of the Trust for that financial year to be audited.
- 13.6 The Trust is a Council Organisation as defined by the Local Government Act 2002 and will accordingly undertake the reporting which that Act requires.
- 13.7 The Trustees will report to the Minister for Arts, Culture and Heritage as and when required by the Minister.

14.0 Amendment of Trust Deed

- 14.1 Subject to any relevant legislation for the time being in force and only with the prior written consent of the settlors, the Trustees have the power by Deed:
- (a) to amend, revoke or add to any of the provisions of this Trust Deed unless to do so would amend, revoke or add to its purpose, or would enable a payment or application of any part of the Trust Fund in a manner that is inconsistent with its purpose; and
 - (b) Notwithstanding clause 14.1(a) to amend, revoke or add to this Trust Deed including for the purpose of and to the extent it is necessary to do so for the Trust to qualify for 'Donee' status under the Income Tax Act 2007.

15.0 Mediation

- 15.1 If a dispute arises out of or is related to this document the Trustees agree to try and resolve the dispute by mediation administered by an agreed party or if no party can be agreed upon by a party nominated by the President of the New Zealand Law Society.
- 15.2 If the Trustees are in doubt over any matter relating to the administration of the Trust Fund, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister of the High Court of New Zealand of at least seven years' standing. And they may act upon the barrister's opinion without being liable to any person who may claim to be beneficially interested in respect of anything done in accordance with

that opinion. This right to obtain and act upon a barrister's opinion, however, will not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

16.0 Liability of Trustees

- 16.1 A Trustee shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or be liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

17.0 Indemnity

- 17.1 A Trustee shall be entitled to exoneration and indemnity out of the assets of the Trust for any liability which that Trustee incurs in relation to the Trust and which is not attributable to that Trustee's dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust.

18.0 Trust Administration Costs

- 18.1 The Christchurch City Council, Waimakariri District Council and Selwyn District Council jointly and severally indemnify the Trustees in respect of the reasonable costs which the Trustees incur in administering the Trust Fund.

SIGNED by THE NEW ZEALAND HISTORIC PLACES TRUST by its authorised signatory as Settlor in the presence of:)



WITNESS:

Signature:

Occupation:

Address:

SIGNED by CHRISTCHURCH CITY COUNCIL by its authorised signatory as Settlor in the presence of:)

[Handwritten signature]

WITNESS:

Signature: *[Handwritten signature]*

Occupation:

Address:



SIGNED by WAIMAKARIRI DISTRICT)
COUNCIL by its authorised signatory as Settlor)
 in the presence of:)

[Signature]

WITNESS:

Signature: *I W Thomson*

Occupation: **I W Thomson**

Solicitor

Christchurch

Address:

SIGNED by SELWYN DISTRICT)
COUNCIL by its authorised signatory as Settlor)
 in the presence of:)

WITNESS:

Signature:

Occupation:

Address:



[Signature]
 CHIEF EXECUTIVE

SIGNED by [name] JOHN RICHARD MEYER)
 as Trustee in the presence of:)

WITNESS:

Signature: *I W Thomson*

Occupation:

Address:

I W Thomson

Solicitor

Christchurch

SIGNED by [name] HELEN CLAIRE BROUGHTON)
 as Trustee in the presence of:)

WITNESS:

Signature: *I W Thomson*

Occupation:

Address:

I. W. Thomson

Solicitor

Christchurch

SIGNED by ANNA LOUISA DE LAUNAY CRIGHTON
as Trustee in the presence of:)



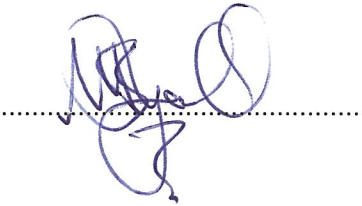
WITNESS:

Signature: G. Gaumann

Occupation: Solicitor

Address: Hellington

SIGNED by MAX COCH BRUCE LYALL
as Trustee in the presence of:)



WITNESS:

Signature: I W Thomson

Occupation: Solicitor

Address: Christchurch

SIGNED by [name])
as Trustee in the presence of:)

.....

WITNESS:

Signature:

Occupation:

Address:

SIGNED by [name])
as Trustee in the presence of:)

.....

WITNESS:

Signature:

Occupation:

Address:

SIGNED by [name])

as Trustee in the presence of:

)

.....

WITNESS:

Signature:

.....

Occupation:

.....

Address:

CONSULTATION FULFILMENT

30. Establishing the Canterbury Earthquake Heritage Building Fund has been an initiative developed in response to the 4 September 2010 earthquake and therefore covered by the provision of the Canterbury Earthquake Response and Recovery Act 2010. The Canterbury Earthquake (Local Government Act 2002) Order referred to earlier exempts the Council from decision-making requirements that might otherwise apply.
31. Discussions on the fund and development of the Trust Deed have been undertaken in partnership with the Ministry of Culture and Heritage, NZHPT, Selwyn District Council and Waimakariri District Council. Discussions have also been undertaken with other District Councils in Canterbury. Consultation with Ngāi Tahu is being undertaken by the Ministry of Arts and Culture and a verbal update will be provided at the Council meeting.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Endorse the attached Canterbury Earthquake Heritage Building Fund Policy.
- (b) Approves the Canterbury Earthquake Heritage Building Fund Trust Deed and authorise the affixing of the Council seal to the Trust Deed in respect of the Canterbury Earthquake Heritage Building Fund in the form attached to this report subject to such amendments as may be required for the fund to be granted "donee" status by the Inland Revenue Department;
- (c) Appoint a Christchurch City Councillor to the Canterbury Earthquake Heritage Building Fund trust board.
- (d) Commit \$383,000 from the current 2010/11 Heritage Incentive Grant funding to the Canterbury Earthquake Heritage Building Fund, and agree to commit 50 per cent of the Heritage Incentive Grant fund in 2011/12 to the Canterbury Earthquake Heritage Building Fund.
- (e) Consider ongoing support of the Canterbury Earthquake Heritage Building Fund from its Heritage Incentive Fund, as part of the 2012/22 LTCCP process.
- (f) Approve the Council acting as secretarial support for the Canterbury Earthquake Heritage Building Fund.