

## **STAFF REPORT**

**TO:** Mayor and Councillors  
**FROM:** Chief Executive  
**DATE:** 30 March 2011  
**SUBJECT:** **Tasman Bays Heritage Trust – RCN11-04-01**

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### **EXECUTIVE SUMMARY**

At the recent Joint Shareholder Committee meeting, representatives of the Tasman Bays Heritage Trust requested that the Council consider some form of 'capitalisation' of the present interest free loan due for repayment by 30-06-2012, and that the Council provide additional funding to pay half of the cost of employing an additional collections staff member. Similar requests were made to the Nelson City Council.

The \$1.2 million load from the Tasman District Council has been in place for six years. No interest is charged to the Trust. The Trust has indicated that it will not be able to repay the loan principal at the due date.

The Trust is solvent and in receipt of guaranteed inflation-proofed funding from the Tasman District Council valued at \$939,900 in the 2011/2012 Draft Annual Plan.

This report recommends that the Trust request to 'capitalise' the loan be declined. Instead the report recommends that the term of the loan be extended for a further 20 years, interest free, provided the Trust agrees to repay principal at the rate of \$60,000 per annum.

The report recommends that the request for an additional \$67,000 to fund a half share of an additional collections staff member be declined on the basis that the request has no special merit in comparison to the numerous other requests made by other organisations and individuals for council support.

The report also notes that the Trust is responsible for its own affairs and can reprioritise its expenditure if it so desires, and that it has the ability to earn extra income.

### **1. PURPOSE**

- 1.1 To report on the outcomes of the recent Joint Shareholders Committee meeting as it relates to the Statement of Intent for the 2011/2012 year for the Tasman Bays Heritage Trust (the Trust).
- 1.2 The report seeks a direction from Council as to the treatment of a \$1.2 million loan from the Council to the Trust and also provides additional

information relating to the Trust's application to the two Councils for additional funding to allow for the employment of a further research assistant. **See Attachments A and B.**

## **2. BACKGROUND**

2.1 The Tasman Bays Heritage Trust (TBHT) came into being in the year 2000. At that time the Tasman District Council entered into a Memorandum of Understanding (MOU) guaranteeing funding for ten years. The initial annual grant was for \$221,900. This grant was then adjusted annually by the CPI percentage to allow for inflation.

2.2 In 2004 the Tasman District Council held a special meeting and approved the following.

- An additional grant of \$600,000 for 2004/2005
- Interest-free loan of \$1.2 million for three years
- Additional operating funding \$50,000 for 2004/2005
- Additional operating funding of \$100,000 for 2005/2006 onwards

2.3 In a 2006 submission to the Tasman District Council Long Term Plan the Trust requested that the term of the loan be extended to 20 years.

2.4 In 2006 both councils agreed to extend the loan, interest free, until 2012.

2.5 In September 2010 the Tasman District Council and Nelson City Council signed a new MOU regarding funding. Included in that MOU was the following paragraph in respect of the loans from each council.

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

2.6 In November 2010 the Trust wrote to both Tasman District Council and Nelson City Council stating that it would not be able to repay the loans when they fell due at the 30 June 2012. The Trust requested that the Councils consider the best course of action. This same request (that the councils consider an appropriate course of action) was repeated during the recent Joint Shareholders Committee meeting.

2.7 Subsequently there has been some recently newspaper publicity in which the Trust Chairperson has been quoted as saying that if the matter was not resolved by the end of the current financial year then the Trust would have to declare that it was no longer a going concern.

2.8 During the term of the funding MOU which expired at the end of 2009, the Trust failed to meet the two council's expectation and its own budgets. As a

result it required significant additional funding from the two councils to remain solvent.

- 2.9 The additional funding required to correct the Trust's repeated past failures has led to a cumulative build-up in overall funding. The Tasman District Council Draft Annual Plan for the 2011/2012 year records that the Tasman District Council will provide a cash grant of \$787,900 and the interest free loan, effectively worth a further \$86,400 per annum, while at the same time the Council would pay \$65,690 to provide rent-free storage required by the Trust. Collectively, this ratepayer funded assistance now totals \$939,990 per annum. That is a funding increase of 424% over the last twelve years.
- 2.10 On the 16 September 2010 the Trust wrote to both councils requesting that each council fund half of the cost of an additional collections staff member. At that time, the additional cost to the Tasman District Council was \$67,060. The Tasman District Council did not accept the need for the additional funding and the Draft Annual Plan 2011/2012 does not include the additional funding requested.

### **3 PRESENT SITUATION**

- 3.1 The present situation is that the Joint Shareholders Committee has agreed to discuss the Council loan situation. Such discussions are entirely consistent with the MOU paragraphs 3.2.3 mentioned in paragraph 2.5 of this report.
- 3.2 Orally, the Trust has suggested that the loans be 'capitalised'. No details have been provided by the Trust as to how this would be achieved.
- 3.3 In respect of the request for additional funding for a new collections staff member, the Tasman District Council has advised the Joint Shareholders Committee that this request was discussed during the preparation of the Tasman District Council 2011/2012 Draft Annual Plan and that it was not supported.
- 3.4 However, the Nelson City Council Draft Annual Plan does include the additional funding for the half share of the cost of a new collections staff member provided the Tasman District Council makes a similar provision.

### **4 FINANCIAL IMPLICATIONS**

- 4.1 Continuation of the interest free loan effectively costs the Tasman District Council \$86,400 per annum as the Council's borrowings will not be reduced until the Trust repays the Council.
- 4.2 The Tasman District Council Draft Annual Plan 2011/2012 assumes that the loans will continue to be interest free but that repayment does occur as at 30 June 2012. The 2009/2019 Tasman District Council Long Term Plan

makes the same assumption regarding the interest free loan and repayment as at 30 June 2012.

- 4.3 The Tasman District Council Draft Annual Plan 2011/2012 makes no allowance for additional funding beyond the obligations on the current MOU in respect of funding. No other budgets are available to fund the additional \$67,080 requested as the Tasman District Council's half share for the additional collections staff member.
- 4.4 The Tasman Bays Heritage Trust is not insolvent. The half year report for the 2010/2011 year shows a closing cash balance of \$196,965 and an ongoing positive operating cash flow.

## **5 OPTIONS**

- 5.1 The options regarding the Council loans appear to be:
- (a) 'capitalisation';
  - (b) extension of the term on the present interest free conditions;
  - (c) extension of the term on new conditions; and
  - (d) repayment.
- 5.2 The options for the additional funding for the additional collections staff member appear to be:
- (a) decline the request and suggest that the Trust should instead reprioritise its other expenditure and/or raise additional revenue from third party sources to fund the additional collections staff member; or
  - (b) agree to include the \$67,080 in the final plan for 2011/2012. This would result in an increase of \$3.12 (plus GST) to the museum rate.

## **6 PROS AND CONS OF OPTIONS**

- 6.1 'Capitalisation'
- (a) A request from the Trust to 'capitalise' the loan appears to rest on a misunderstanding. Capitalisation of a loan into a limited liability company's share capital is a relatively simple possibility. However, the same cannot be said in the case of a not-for-profit charitable trust such as the Tasman Bays Heritage Trust. Such a trust only has an equity based on the excess of its assets over its liabilities plus any retained earnings.

- (b) Essentially the request for 'capitalisation' is a request that the councils forgive the loans. Effectively, the repayable loan would be offset by an equivalent non repayable gift at the termination date.
- (c) In the councils' books such an action would have exactly the same status as a one-off grant for the amount of the loan. As such it would probably have to be funded by the ratepayers from rates in the same year as the loan is forgiven.

## 6.2 Extension of term on present interest free conditions

- (a) Currently the loan has no operational cost to the Trust as it is interest free.
- (b) The simple extension of the term moves any threat of default and audit qualification with regard to 'ongoing concerns' requirements for the Trust.
- (c) This option effectively postpones the problem but it does not address the question of eventual repayment or forgiveness of the loan principal.
- (d) In the meantime, Council ratepayers will effectively fund the equivalent interest cost as they would each have to carry additional borrowings in the absence of repayments by the Trust.

## 6.3 Extension of term on new conditions

- (a) The Trust has a positive cash flow with the current guaranteed MOU funding from each of the councils. It follows that this could be applied to either interest or principal repayment.
- (b) The Tasman District Council interest value is currently assessed at \$86,400 per annum. If both councils were to start receiving interest, the cost to the Trust would therefore be \$172,800 per annum. This would be less than the current positive cash flow.
- (c) If the principal repayment was required over 20 years on a straight line basis, the annual repayment per Council would be \$60,000 each or \$120,000 total funding cost to the Trust.
- (d) If desired, there could be further variations on these themes either by way of using a lower concessionary interest rate or even use of a suspensory loan approach to the loans. If the suspensory loan approach was taken, it would mean that there would be progressive forgiveness subject to the Trust performing satisfactorily under whatever conditions the Councils chose to set. However, whatever forgiveness granted would still be the equivalent of a Council grant of the same value. Again such grants would probably need to be funded from rates in each year of forgiveness.

## 6.4 Repayment of the loans

- (a) Repayment of the loans is not just a theoretical possibility, but it would be difficult. To be achieved by 30 June 2012 the Trust would be required to find an alternative funder who would be prepared to take over the loans.
- (b) To agree to this such a lender would almost certainly require two things from the councils. Probably the councils would have to agree to continue to pay the interest and the councils would be required to fully guarantee both the interest and any principal repayments. Subject to those conditions, it is probable that a loan could be arranged. However, it would almost certainly be at a higher interest rate.
- (c) It is difficult to see how the ratepayer would gain any real benefit out of such an approach.

6.5 Little supporting evidence has been provided to allow an evaluation of the pros and cons of the case for an additional staff member.

Some mention has to be made of the additional staff member allowing for better management of collections, and, in view of impending retirements, ultimate replacement of some staff.

6.6 Obviously additional funding would allow for more services in some form or another. However there are no suggestions of any offsetting cost reductions elsewhere.

## **7 EVALUATION OF OPTIONS**

- 7.1 It is clear that the financial management and operational control of the Trust has improved significantly over recent years. The out of control situations which gave rise to such concern some years ago, seem to be well in the past. However, the new-found financial stability has come as a significantly increased cost to the councils. The real value of assistance from the Tasman District Council is now 424% of that agreed only twelve years ago. At the same time, the Trust has still had relatively little success developing third party revenue streams outside of seeking applications for grants from other bodies.
- 7.2 The suggestion regarding 'capitalisation' completely absolves the Trust from any form of responsibility for the loans and would almost certainly require a significant one off additional cost to ratepayer funded in the year of forgiveness which would be the 2011/2012 year. This option is not seen as appropriate.
- 7.3 Extension of the term on the existing conditions is extremely simple but fails to address the core problems of ongoing cost to the ratepayer and no repayment responsibility by the Trust. This could be seen as procrastination or indecision by the councils. It is not seen as an appropriate measure.

- 7.4 Extension of the loan term with a change in the conditions could provide some relief to ratepayers but would have to be undertaken in a fashion that is not unduly onerous for the Trust. The interest free status has now been in place for six years and is incorporated into the current funding MOU, at least up until the present time.
- 7.5 Continuation of the interest free status could be considered appropriate if at the same time it is coupled with a requirement for the Trust to begin a repayment programme. Again, any such repayment programme would have to be structured in a manner which is not unduly onerous to the Trust. Most of the Council projects within the Tasman District Council are funded on the basis of a 20 year principal repayment programme and ratepayers are rated to create the funds necessary to repay the principal over the 20 year term. The same approach could be taken to this loan.
- 7.6 If such an approach was taken by both councils, the Trust would be required to find \$120,000 each year for the next 20 years to repay each Councils \$1.2 million loan. This approach provides a financial advantage to the Councils in that the amount of interest free subsidy component would progressively reduce in both quantity and real terms over the next 20 years. There is also financial advantage to the Trust in that the fixed annual payment would provide a progressive advantage in real terms due to the effects of inflation.

(In this connection it should be noted that the Trust plans to repay its NBS loan by over a similar long term, completing repayment in 2030.) It is felt that this approach has some merit.

- 7.7 The request for even more funding, for an additional collections staff member is backed by a threat that other museum services will suffer unless the request is agreed to by the councils.
- 7.8 As already pointed out in this report, the Tasman District Council has already increased its funding by 424% over the last twelve years. In the current difficult financial times, the Council has been forced to defer or cancel many important projects, previously included in the Ten Year Plan. In addition, there is a long list of other requests that did not make it into the 2011/2012 Draft Annual Plan.
- 7.9 The Trust's request for additional funding has no more merit than those other deferred, cancelled or declined matters.
- 7.10 The Trust is in charge of its own operational affairs and can reset its priorities to live within its guaranteed council funding. It can also more actively seek to expand the commercial opportunities available to generate its own revenue. It can also continue to seek other third party funding.

## **8 RECOMMENDATION**

- 8.1 It is therefore recommended that the Tasman District Council agree to an extension of the loan by way of a new 20 year term conditional on the Trust's agreement to annual principal repayments of \$60,000 per annum. The loan would remain interest free provided the repayment schedule was maintained. While there is no absolute requirement for the two councils to take an identical approach, it is suggested that this recommendation be recommended to Nelson City Council with a request that it consider equivalent action.
- 8.2 The request for additional funding for a half share of an additional collections staff member has little merit in comparison to other demands for Council funds. The request should be declined

## **9 SUGGESTED RESOLUTIONS**

- 9.1 **THAT the Tasman District Council offers to extend the term of the present \$1.2 million loan by 20 years commencing 1 July 2012, subject to the Tasman Bays Heritage Trust agreeing to repay loan principal at the rate of \$60,000 per annum, and that provided that this repayment schedule is maintained no interest be charged; and**
- 9.2 **That the Tasman Bays Heritage Trust request for additional funding of \$67,080 to cover half the cost of employing an additional collections staff member be declined.**

Paul Wylie  
Chief Executive