

**Mayor and Councillors**  
COUNCIL

23 JUNE 2016

Meeting Status: **Public**

Purpose of Report: For Decision

**RENEWAL OF THE AGREEMENT FOR THE UPGRADE OF THE MAHARA GALLERY**

**PURPOSE OF REPORT**

- 1 This report seeks approval to renew the Agreement between the Council, the Mahara Gallery Trust and the Field Collection Trust for the upgrade of the Mahara Gallery.

**DELEGATION**

- 2 Council has the authority to make this decision.

**BACKGROUND**

- 3 Mahara Gallery is the District's Public Gallery, which has been located in a Council-owned building in Mahara Place since 1996. It is operated by the Mahara Gallery Trust, a charitable trust.

*Mahara Gallery/Waikanae Library Upgrade*

- 4 The Mahara Gallery Trust is seeking to provide a permanent home for the Field Collection in Waikanae. To achieve this, the Mahara Gallery needs additional space for exhibition, storage, workshops, administration etc. and needs to upgrade those spaces to museum standard to house the collection and to be able to attract and show significant touring exhibitions and collections from other galleries.
- 5 Separately, the Council had planned for the refurbishment and upgrade of the Waikanae Library. The close proximity of the buildings presented an opportunity for a joint project. In 2009 the Council agreed to support the Gallery project by advancing the timing of the upgrade of the Waikanae Library to meet the timing of the Gallery upgrade so that they could occur concurrently.
- 6 Since 2009 the Council, the Mahara Gallery Trust and the Field Collection Trust have been working together to achieve the upgrade of the Gallery. This has been formalised through the Agreement for the Mahara Gallery Upgrade which sets out the objectives and responsibilities of the three parties involved.
- 7 On 13 November 2014 the Agreement was renewed for a three year period, expiring on 30 June 2017.

## ISSUES AND OPTIONS

### Issues

#### *The Upgrade Proposal*

- 8 The joint project aims to deliver an integrated facility, a distinctive, iconic building, and an improved built environment at Mahara Place. The design concept is that this would be constructed at the same time as the proposed upgrade to the adjacent Waikanae Library.
- 9 Once the upgrade has been completed the Gallery will be able to provide a high-quality venue and experience consistent with its role as the District's Public Gallery. It will also be able to offer a secure home and museum-standard care for the Field Collection. This collection of artworks and artefacts associated with Frances Hodgkins and her family is of major significance to the Kāpiti Coast District. If the Gallery is not able to provide the appropriate environment for this, the Collection may be lost to the District.

#### *Existing Agreement for the Mahara Gallery Upgrade*

- 10 The existing Agreement for the Upgrade of the Mahara Gallery states that the Agreement will lapse if the Mahara Gallery Trust cannot confirm that committed funds for two-thirds of the estimated project cost have been secured by 30 June 2016.
- 11 The most recent indicative cost of the Gallery upgrade is \$5.205 million. This is the base amount included in the Upgrade Agreement and has been adjusted using the Local Government Cost Index (LGCI) and reflected in the draft 2016/17 Annual Plan. Using the base amount of \$5.205 million, the Mahara Gallery Trust's two-thirds equates to \$3.470 million. If one-third can be anticipated to be provided by the Ministry for Culture and Heritage (MCH), the Trust would need to raise one-third, or \$1.735 million.
- 12 At 30 June 2016, the Trust will have secured committed funding of approximately \$970k.
- 13 The Trust acknowledges that it was not nearing the fundraising target, and has therefore worked on developing more modest designs, with a high level cost in the order of \$3 - 3.5 million.
- 14 It should be noted that the uncertainty with regard to the Waikanae Town Centre project transformation project has not assisted the Trust in its fund-raising programme. As the vision for the town centre continues to unfold, the Gallery Upgrade is being reviewed to ensure that its timing remains aligned with the town centre programme.

#### *Project Funding*

- 15 What has since arisen is a proposal to consider a new, purpose-built library and gallery. This may become possible if other commercial developments in the area come to fruition. The Trust and the Council both see merit in this option, and are working together on further developing designs. The option has also been discussed with the Ministry for Culture and Heritage.
- 16 The Council continues to show its commitment to the upgrades of both the Mahara Gallery and the Waikanae Library, with both projects reflected in the 2015-35 LTP and the 2016/17 Annual Plan.

*Proposed Agreement for the Mahara Gallery Upgrade (refer to Appendix 1 of this report)*

- 17 The Agreement for the Mahara Gallery Upgrade has been revised to reflect the information in this report. The Scope, Objectives and roles of the parties within the updated Agreement have been slightly changed from the previous Upgrade Agreement to reflect the change in circumstances and approach.
- 18 The Upgrade Agreement, and the Partnership Agreement, are a critical part of the Trust's on-going fundraising campaign. Amongst many information requirements, the Agreements will help to demonstrate the Council's commitment and funding contribution to the upgrade.
- 19 The renewed Upgrade Agreement will be for three years and will include three annual review points to formally monitor progress.
- 20 An updated draft Agreement for the Mahara Gallery Upgrade is attached as Appendix 1.

*Re-set the timeframe for the Upgrade Agreement*

- 21 It is recommended that the Council and the Trust re-set the timeframes set out in the Upgrade Agreement. This recognises that the entirely new option needs time to be developed into a business case that, assuming it is feasible, can be used to re-commence the fundraising programme.
- 22 The Mahara Gallery Trust is preparing to lodge an expression of interest (EOI) with the MCH's Regional Culture and Heritage Fund (RCHF). The Trust will be seeking one-third of the total funding – once costs are understood – from a future funding round of the RCHF. EOIs are a valuable step in the application process as they enable the Ministry to give early feedback on projects suitable for RCHF funding and they signal an applicant's intent to apply for funding. Full applications are subsequently submitted once the project is well advanced and therefore clearly able to demonstrate that all the key criteria will be met.
- 23 The Ministry for Culture and Heritage has indicated that there is a reasonable prospect that the Trust's application will meet the criteria for this fund and qualify for a one-third contribution from the Ministry.

*Moving forward*

- 24 It is proposed that the Steering Group and Project Team should be re-established in the 2016/17 year. This will facilitate confirmation of the governance, operational and funding relationships required in the Upgrade Agreement and provide clarity over future governance arrangements which is critical to the success of the project.
- 25 It had previously been anticipated that the Trust would confirm that it had met its fundraising target before Council gave approval for the detailed design stage to start, with ensuing resource and building consent applications and tendering for construction. However, the terms of the RCHF are quite clear in that the project must be substantially advanced before a full application for funding is made, that is - *unencumbered resource consent(s) have been secured or the applicant can demonstrate a high likelihood that these will be secured without difficulty by the time that assessment has been completed.*
- 26 The updated Agreement therefore proposes that all parties to the agreement give approval to complete the design work and get an understanding of high level costs and use this information to re-initiate the fundraising campaign. If

Council gives approval to proceed, the next stage would be obtaining resource consents to enable the Trust to make a fully compliant application to the RCHF. If the Trust is successful in its RCHF application, the next decision point is to allow tendering for construction, after which Council approval would be required before the preferred tender could be accepted.

- 27 There are three decision points during this proposed course of action, at which Council can give approval to proceed to the next stage, or decline proceeding to the next stage, either indefinitely or until further requirements are met. The decision points are summarised below:

<b>Decision Point</b>	<b>Target Date</b>	<b>Status</b>	<b>Council approval required to:</b>
<b>1</b>	30 June 2017	Design agreed with high level costs identified	Proceed to detailed design and resource consent stage
<b>2</b>	30 June 2018	Trust has achieved its funding target of two-thirds of the upgrade cost	Proceed to tendering for construction
<b>3</b>	30 September 2018	Preferred tender for construction has been identified	Confirm preferred tender and for construction to commence

- 28 There needs to be some oversight of the Waikanae Town Centre project and the Mahara Gallery Upgrade to ensure that the interrelated components are appropriately considered and aligned where necessary.
- 29 The latest Waikanae Town Centre project update targets a construction start date of January 2017. The Town Centre project comprises a number of discrete elements. The first two items are the revocation of State Highway 1 and the connection to the railway crossing and improved pedestrian crossing. The subsequent items have a degree of flexibility in their sequencing and timing which will assist in aligning this work with the proposed Mahara Gallery Upgrade.

## **CONSIDERATIONS**

### **Policy considerations**

- 30 There are no policy considerations.

### **Legal considerations**

- 31 Council's Legal Counsel has reviewed the proposed Upgrade Agreement.

## Financial considerations

- 32 The Council has the following commitments in the draft 2016/17 Annual Plan, which reflect LGCI-adjusted base amounts:

	2016/17	2017/18	2018/19	Total
Gallery Upgrade – Trust funded	-	\$1,799,788	\$1,835,784	\$3,635,572
Gallery Upgrade – Council funded	\$254,500		\$1,709,021	\$1,963,521
Total Gallery Upgrade costs	\$254,500	\$1,799,788	\$3,407,046	\$5,461,334
Waikanae Library Upgrade	\$267,734	\$1,709,021	\$1,743,202	\$3,719,957
	\$522,234	\$3,508,809	\$5,150,248	\$9,181,291

## Tāngata whenua considerations

- 33 This report aligns with the tāngata whenua considerations in the Council's Strategy for Supporting the Arts (2012).

## SIGNIFICANCE AND ENGAGEMENT

### Degree of significance

- 34 This report refers to a revision of the Upgrade Agreement, which is essentially a partnership between the three parties. The updated agreement reflects a change of circumstances and a change in the timelines, as well as a possible change in the design of the project. There is also a reconsideration of the points at which Council approval for the project to proceed is required, but in all other respects the proposed agreement is substantially the same. Therefore it is not a significant decision.

### Consultation already undertaken

- 35 The Council will continue to work with the Mahara Gallery Trust and the Field Collection Trust to ensure that the three partners are in agreement as the project proceeds.
- 36 It is likely that a full engagement plan, including community consultation, will be developed once the design is finalised.

### Engagement planning

- 37 An engagement plan is not needed to implement this decision.

### Publicity

- 38 The Council and the Mahara Gallery Trust are working together to ensure that the community is informed.

## RECOMMENDATIONS

- 39 That the Council delegates to the Chief Executive the authority to approve minor editorial changes to the Agreement contained in Appendix 1 of Corp-16-1924 prior to it being signed.
- 40 That the Council approves the Agreement for the Mahara Gallery Upgrade attached in Appendix 1 of Corp-16-1924 and authorises the Mayor, one Councillor and the Chief Executive to sign on behalf of Council.

**Report prepared by**      **Approved for submission**      **Approved for submission**

**Ian Clements**  
**Corporate Advisor**

**Crispin Mylne**  
**Group Manager**  
**Community Services**

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**Group Manager**  
**Corporate Services**

## ATTACHMENT

Appendix 1      Agreement for the Mahara Gallery Upgrade 2016-19

**FOR THE  
MAHARA GALLERY UPGRADE  
DESIGN, BUILD AND OPERATIONAL REVIEW**

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_ 2016

*This Agreement replaces the previous Agreement for the Mahara Gallery Upgrade, Design, Build and Operational Review approved by the Council on 14 November 2014*

**Parties to the Agreement**

**Kāpiti Coast District Council  
Mahara Gallery Trust, a Charitable Trust  
Field Collection Trust, a Charitable Trust**

**Purpose**

- To record the commitment of the parties to the upgrade, design and build of Mahara Gallery.
- To clarify the roles and responsibilities of the parties to this agreement with respect to the development of the design and build for the upgrade to Mahara Gallery.
- To provide clarity around the design and costs to enable the Mahara Gallery Trust to raise funds to finance the development.
- To provide the Field Collection Trust confidence that the design can provide a permanent home for their collection.

**Scope**

- 1 The design and construction of the upgrade to the Mahara Gallery must take into account the needs of the Mahara Gallery Trust, the requirements of the Field Collection Trustees and the requirements of Council as the owner of the building and owner/operator of the Waikanae Public Library.

**Joint Objectives**

- 2 To enable Mahara Gallery to provide a high-quality gallery experience providing a professional venue for the arts that benefits the whole District consistent with the operation of a Public Gallery for the Kāpiti Coast District.
- 3 To enable Mahara Gallery to provide a permanent secure home and museum-standard professional care for the Field Collection of artworks and other artefacts associated with Frances Hodgkins and her family.
- 4 For Mahara Gallery to significantly develop its role as a draw card for visitors from outside the Kāpiti Coast District as well as international visitors.

**Project Costs**

- 5 The Mahara Gallery Trustees have advised Council that all major funders that they have approached (including the Ministry for Culture and Heritage) require the Council's commitment to the project, and to providing one-third of the funding of the project.
- 6 The Mahara Gallery Trust has until 30 June 2018 to raise its share of the project total, once agreed. Council has planned for both capital and operating expenditure for the expanded Mahara Gallery, provisional upon the Mahara Gallery Trust reaching its funding goals.

- 7 The Council's commitment to this project is based on the amount of \$5.205 million. The Waikanae Community Board's contribution of \$250,000 is included in this sum. The quantum and timing of this amount (\$5.205 million) will be adjusted in the current and future annual plans using the Local Government Cost Index (LGCI).
- 8 The Council has included a budget in the 2015-35 Long Term Plan for increased annual operational expenditure, LGCI indexed, following the Mahara Gallery expansion. The increase will be \$56,000 in 2018/19, rising to an additional \$117,000 in 2019/20.
- 9 The timing of these financial provisions and goals have been included in the draft 2016/17 Annual Plan and may be further reviewed as part of the Annual Plan processes in subsequent years, but the Council will maintain its commitment to provide one third of the Gallery's upgrade cost.

### **Joint Parties' Obligations**

- 10 The parties must reach agreement on the terms for the Mahara Gallery Trust adopting the permanent and professional custodianship of the Field Collection and this must be documented as formal agreement between the parties.
- 11 Take an integrated approach for the Mahara Gallery and the Waikanae Public Library. Seek the Waikanae Community Board's views regarding the external design appearance and impact on Mahara Place. Ensure the approach, designs, build plans and community views developed for and gathered by this project form an integrated part of the Town Centres and Connectors Transformation Project and, equally, ensure the project is informed by the Town Centres and Connectors Transformation Project.
- 12 Maximise any potential operational benefits between the Mahara Gallery and the Waikanae Public Library, to the extent practicable.
- 13 Inform the Kāpiti Coast District Council, the two Trusts, Waikanae Community Board and the community regarding project progress.

### **Kāpiti Coast District Council's Obligations**

- 14 Establish and professionally operate a Steering Group to provide project governance. This group will consist of one Elected Member, one representative from each of the Trusts and one senior staff member from Council. The Steering Group is to be re-established by 1 August 2016.
- 15 Establish and professionally operate a Council-led project team, which includes members from the Mahara Gallery Trust, to design the Mahara Gallery, Waikanae Library and northern entrance to Mahara Place. The project team is to be re-established by 1 August 2016. Reach agreement with the Mahara Gallery Trust on the design of the upgrade to the Mahara Gallery.
- 16 Reach agreement with the Mahara Gallery Trust on the construction plans for the upgrade of Mahara Gallery and any operational implications during construction, and after completion.
- 17 Negotiate and agree with Mahara Gallery Trust the preferred governance, operational and funding relationships between the Council, the Mahara Gallery Trust and the Gallery staff to enable the Gallery to operate as the District's Public Gallery and document this in a formal agreement between the Council and Mahara Gallery Trust.

### **Mahara Gallery Trust's obligations**

- 18 To lead discussions with the Field Collection Trustees regarding the requirements needed to ensure the permanent custodianship of the Field Collection by the Mahara Gallery Trust.
- 19 To provide representatives for the Steering Group and Project Team.
- 20 To provide significant input into the design requirements for the Mahara Gallery.
- 21 To review requirements and concept designs and ensure they match expectations regarding the design and the ability of the Mahara Gallery Trust to raise the necessary funds for the upgrade (enabling the designs to remain within the agreed funding envelope.)
- 22 Lead the fundraising for the Mahara Gallery building upgrade. The fundraising target should be kept to a realistic level and will, together with operational cost estimates, set design expectations for the Mahara Gallery upgrade. The parties recognise that this may be an iterative process until the design is complete.

### **Field Collection Trust's obligations**

- 23 To support Mahara Gallery staff in the development of the requirements for their custodianship of the Field Collection.
- 24 To provide a representative for the Steering Group.
- 25 To monitor project progress to ensure that they are comfortable with the direction being taken with the regard to the design for storing and exhibiting the Field Collection.
- 26 To enter into agreement about permanent custodianship of the Field Collection by the Mahara Gallery Trust.

### **Intellectual Property**

- 27 The Council will retain ownership of the intellectual property developed under this Agreement, including the designs for the upgraded Mahara Gallery building.

### **Governing Law**

- 28 This Agreement will be interpreted under and governed by the laws of New Zealand.

### **Resolution of disputes**

- 29 A party may, at any time while there is a genuine dispute relating in any way to this Agreement (**Dispute**), give written notice (**Notice**) to the other party specifying the subject matter of the Dispute and requiring that the parties meet within 10 Business Days after delivery of the Notice, to attempt to resolve the Dispute.
- 30 No party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any Dispute, unless that party has first taken all reasonable steps to comply with clause 37.

### **Confidentiality**

- 31 Except as required in the performance or enforcement of this Agreement or as required under the terms of the Local Government Official Information and Meetings Act 1987, no party will, without prior written consent of the other parties, disclose to any third party:
- a) any information disclosed by any party to another party on the express basis that such information is confidential; or
  - b) any information which might reasonably be expected by any party to be confidential in nature.

### **Force Majeure / Unforeseen Circumstances**

- 32 No party (First Party) will be liable for any act, omission or failure by it under this Agreement if that act, omission or failure results directly from an event or circumstances beyond the reasonable control of the First Party, provided that:
- a) whenever the First Party becomes aware that such a result has occurred or is likely to occur, the First Party will notify the other parties by written notice accordingly;
  - b) each party will continue to use its best endeavours to perform its obligations as required under this Agreement;
  - c) no party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other parties in complying with this clause or otherwise resulting from such act, omission or failure.

### **Partial Invalidity / Severance**

- 33 If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

### **Review of this Agreement / Amendments must be in writing**

- 34 Any party can request a review of this Agreement.
- 35 No amendment to this Agreement will be effective unless it is in writing and signed by each party.

### **Term of Agreement**

- 36 This Agreement commences on the date signing is completed by all three parties and will continue until 30 June 2019 unless terminated earlier by any of the parties giving three (3) months' notice in writing. In the case of an earlier termination, the remaining two parties may seek to reach a new agreement. The parties will seek ways to maintain the information and services available to the community after the termination of this Agreement.
- 37 The parties agree that the Trust is expected to confirm committed funding for the two thirds of the project cost by 30 June 2018. The Agreement will lapse at this time if the Trust has not achieved the target and there are no legitimate extenuating circumstances which have intervened to prevent the target being reached.

38 In the expectation that the project will be ready to proceed to construction during the term of this Agreement (30 June 2019) the Agreement will be renewed for a further term if necessary until the earlier of 30 June 2021 or completion of the project.

***Executed as an Agreement***

**SIGNED** on the \_\_\_\_\_ day of \_\_\_\_\_ 2016

The common seal of **MAHARA GALLERY** )  
TRUST BOARD was hereunto affixed in the presence of :)

\_\_\_\_\_  
John Mowbray  
**Chairman**

\_\_\_\_\_  
**Trust Member**

Signed on behalf of the **FIELD COLLECTION TRUST** by:

\_\_\_\_\_  
Name:  
Position:

The common seal of **KAPITI COAST DISTRICT** )  
**COUNCIL** was hereunto affixed in the presence of: )

\_\_\_\_\_  
Ross Church  
**Mayor of Kāpiti Coast District**

\_\_\_\_\_  
Pat Dougherty  
**Chief Executive**  
**Kāpiti Coast District Council**

\_\_\_\_\_  
Cr .....  
**Councillor of Kāpiti Coast District**