

DEED OF AGREEMENT

AUCKLAND WAR MEMORIAL MUSEUM

PETER HILLARY AND SARAH HILLARY

1 INTRODUCTION

- 1.1 In his will, Sir Edmund Hillary gave materials relating to his life and adventures to the Auckland War Memorial Museum. This gift was expressed as being subject to a proviso that gave Peter Hillary and Sarah Hillary rights of ready access and publication and also stated that no other person nor any corporate body may publish any of the Archive without the Hillarys' agreement during a period of 20 years after Sir Edmund Hillary's death.
- 1.2 The parties established this Agreement as a way of resolving the disagreements that arose out of the meaning of clause 9 of Sir Edmund Hillary's will, and to allow them to work together going forward.

2 GUIDING PRINCIPLES

- 2.1 The way events have unfolded is regrettable and there is a strong desire to restore the good faith, mutual goodwill and respect that existed between the Museum and Sir Edmund Hillary and his family during their long-standing relationship. The special place that Sir Edmund Hillary holds in New Zealand's history, and the special link to his memory that the Hillarys represent is acknowledged. Because of this the parties acknowledge the importance of a good ongoing relationship.
- 2.2 The parties acknowledge that the Archive constitutes a unique resource of enormous historical and public importance and that decisions made with respect to it must have due regard to that fact. The parties agree to work together in the future, with mutual respect and goodwill, to protect and preserve Sir Edmund Hillary's special place in New Zealand's history and to respect the wishes set out in his will.
- 2.3 Although given to it by Sir Edmund Hillary the Museum acknowledges that the Archive includes material of the Hillarys' personal family history, and so their views are to be considered on an ongoing basis when any decisions relating to the Archive are made.
- 2.4 The Museum acknowledges that it was the intent of Sir Edmund Hillary, as expressed in his Will, to give the Hillarys special rights over the use of the materials contained in the Archive for a period of 20 years from Sir Edmund Hillary's death.



- 2.5 The parties acknowledge that in carrying out the terms of this Agreement they will act having regard to the principles of goodwill, mutual respect and consultation and will welcome the opportunity to work with each other on future projects relating to the Archive and its contents.
- 2.6 The Hillarys acknowledge that the Museum is bound to act in accordance with its statutory objectives as set out in s 12 of the Auckland War Memorial Museum Act 1996 including, inter alia:
- (a) The recording and presentation of the history and environment of the Auckland Region, New Zealand, the South Pacific and, in more general terms, the rest of the world.
 - (b) The advancement and promotion of cultural and scientific scholarship and research.
 - (c) Leadership through professionalism, innovation, and co-ordination of effort with relevant organisations.
 - (d) Greater financial self-sufficiency through the prudent operation of compatible revenue-producing and fund-raising activities which supplement public funding.

3 DEFINITIONS

- 3.1 The following definitions apply in this Agreement:
- (a) **Access** means any access to the Archive for the purposes of inspection or publishing but does not extend to include the removal of any of the Archive from the possession of the Museum.
 - (b) **Agreement** means this Deed of Agreement.
 - (c) **Archive** means the personal papers, diaries, maps, colour slides, photographs and other written and illustrative material relating to the life and adventures of Sir Edmund Hillary given to the Museum by clause 9 of Sir Edmund Hillary's Will.
 - (d) **Board** means the Auckland Museum Trust Board as provided for by s 3 of the Auckland War Memorial Museum Act 1996.
 - (e) **Document** means any document forming part of the Archive.

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- (f) **Guiding Principles** means the guiding principles set out in clauses 2.1 to 2.6 of this Agreement.
- (g) **Management Committee** means the group formed under Part 4 of this Agreement.
- (h) **Restricted Documents** means material within the Archive that are categorised under this Agreement as Restricted Documents for 20 years from Sir Edmund Hillary's death, or until earlier released by the Hillarys.
- (i) **the Museum** means the Auckland War Memorial Museum.
- (j) **the Hillarys** means Peter Hillary and/or Sarah Hillary.
- (k) **the parties** means the Museum and the Hillarys.
- (l) **the Proceedings** means CIV 2008-404-2784 and FAM 2009-004-549.
- (m) **Will** means the last will of Sir Edmund Percival Hillary dated 11 March 2005.
- (n) **Written notice** means any form of notice in writing, including by personal delivery, post, facsimile, email or other electronic means. Any requirement in this Agreement for the Museum to obtain permission from the Hillarys shall be satisfied by either one of Peter or Sarah Hillary giving permission by way of written notice.

4 TERMS

Ownership

- 4.1 The Hillarys acknowledge that the Museum owns the Archive and has all rights consistent with that status, including the right of possession but that the Hillarys also have rights as set out in this Agreement.

Assessment

- 4.2 There will be an assessment undertaken following the execution of this Agreement with the following steps:

- (a) The Museum will provide an inventory of the Archive to the Hillarys as soon as reasonably practicable following the execution of this Agreement.

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- (b) An independent qualified librarian or archivist will be appointed by the Board in consultation with the Hillarys, to review the inventory and provide a report that:
- (i) Identifies any Document that is reasonably considered not to have been intended by Sir Edmund Hillary to be part of the Archive as it does not come within the category of personal papers, diaries, maps, colour slides, photographs and other written and illustrative material relating to the life and adventures of Sir Edmund Hillary; and
 - (ii) Identifies any further Documents that may be categorised under this Agreement as Restricted Documents having regard to (in no particular order):
 - (A) The degree to which the Document concerns the life and adventures of Sir Edmund Hillary;
 - (B) The degree to which the Document concerns the personal or private family lives of the Hillarys;
 - (C) Whether the Document is already publicly available; and
 - (D) Whether public access to the Document actually prejudices the Hillarys.
- (c) Documents so identified by the report shall then be reviewed by the Hillarys with the Museum's Library Manager who will proceed as follows:
- (i) Where it is agreed that a Document was not intended by Sir Edmund Hillary to be part of the Archive, it will be recommended to the Board that the Document shall be returned to the Hillarys under the Museum's deaccession policy.
 - (ii) Where it is agreed that a Document should be categorised as a Restricted Document it will be recommended to the Board that the Document shall be restricted from research and general public view for the period of 20 years from Sir Edmund Hillary's death, or until earlier released under clause 4.7.
 - (iii) Where agreement cannot be reached in relation to any Document it shall be referred to the Management Committee.

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- (d) Subject only to the powers of the Management Committee, the Board will then finally approve or decline the recommendations made to it.

Post Assessment Steps

- 4.3 Any Restricted Document may be made available by the Museum for research purposes, on terms agreed by the Museum and the Hillarys.
- 4.4 In terms of all other Documents in the Archive, the public shall have the free and unrestricted ability to view through the Museum under standard Museum conditions.
- 4.5 The public's free and unrestricted ability to view will apply to all Restricted Documents upon the expiry of the period of 20 years from Sir Edmund Hillary's death, or at any earlier time if released under clauses 4.6 or 4.7.
- 4.6 Notwithstanding anything in clause 4.2 the Hillarys may give permission for any group, body or member of the public to view any Restricted Document within the Archive at any time during the period of 20 years from Sir Edmund Hillary's death.
- 4.7 The Hillarys may release into free and unrestricted viewing any Restricted Document at any time.
- 4.8 The Museum Board will consider application from the Hillarys on a case by case basis for any Restricted Document to remain a Restricted Document beyond the period of 20 years from Sir Edmund Hillary's death.

Access, digitisation, publication and display

Access

- 4.9 The Museum acknowledges that the Hillarys have been granted a right of ready access to the Archive.
- 4.10 The Museum will allow the Hillarys (or any third party authorised by either of the Hillarys) Access to the Archive upon at least two (2) working days prior notice being given to the Library Manager of the Museum.
- 4.11 If the Museum is in a position to do so it will provide the Hillarys or any authorised person with photocopies and digital files of Documents of appropriate quality at no cost. Any such request must be reasonable in terms of time and scope and cannot extend to the request for multiple copies of Documents. Once the Museum has provided one copy of a Document,

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whether to the Hillarys or an authorised person, the costs associated with providing further copies to the Hillarys will be met by them.

- 4.12 The Museum shall make available to the public all Documents that are not classified as Restricted Documents as soon as practicable after the assessment process has been completed.

Digitisation

- 4.13 The Museum may digitise Documents within the Archive, including Restricted Documents, at a pace convenient to it.

Publication and display

- 4.14 The Museum will not make any Documents publicly available until the assessment is completed and agreed by the parties.

- 4.15 The Museum acknowledges that the Hillarys, or any person authorised in writing by them, have the right to publish Documents in any format for the period of 20 years from Sir Edmund Hillary's death. The Museum will direct any requests by the public to publish material from the archive to the Hillarys, using a procedure determined by the Hillarys and the Museum.

- 4.16 The Museum will not publish Documents in any form for the period of 20 years from Sir Edmund's death without the permission of the Hillarys. The Museum may exhibit or display (including online) any Documents that are not classified as Restricted Documents. The Museum will notify the Hillarys of its intended use beforehand.

- 4.17 The Museum may exhibit or display (including online) any Restricted Documents if the written permission of the Hillarys is obtained in advance.

- 4.18 The Museum would welcome the opportunity to collaborate with the Hillarys around the publishing and displaying of Documents from within the Archive.

- 4.19 Subject only to any agreement that may be made between the Museum and the Hillarys, after 20 years from Sir Edmund Hillary's death there will be no restrictions on the Museum's rights of use and publication of the Archive in accordance with the intent of Sir Edmund Hillary as expressed in his Will.

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Management Committee

- 4.20 Having regard to the Guiding Principles, the parties agree to raise any concerns or issues that may arise concerning the operation of this Agreement first through private and direct discussions in good faith.
- 4.21 Where a matter arises between the parties relating to the Archive which cannot be resolved by agreement, it will be referred to the Management Committee appointed for the purpose of resolving the disagreement. The Management Committee need only meet annually, or when required to discuss a particular issue.
- 4.22 The Management Committee shall consist of:
- (a) A nominee of the Hillarys; and
 - (b) A nominee of the Board.
- 4.23 In the event of a significant dispute that cannot be resolved through the Management Committee by agreement a third person to be nominated by the Department of the Prime Minister and Cabinet would join the Management Committee to assist with a resolution.
- 4.24 The parties will act in good faith in relation to the provisions of this Agreement and will utilise its provisions in relation to issues of interpretation.

Public statement and events

- 4.25 The parties acknowledge the need to repair the damage done to the Museum's reputation as a result of the coverage by the media of the dispute following the issuing of the Proceedings.
- 4.26 In order to repair the reputational damage suffered by the Museum the parties agree to make a joint public statement through the Department of Prime Minister and Cabinet following the execution of this Agreement.
- 4.27 The parties agree not to make any further public statements relating to the matters touching upon this Agreement without first consulting with the other.
- 4.28 The parties undertake to look for ways to develop common uses of the Archive in order to promote the legacy of Sir Edmund Hillary.

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Discontinuance of proceedings

- 4.29 The Hillarys agree that in consideration of this Agreement, they will discontinue the Proceedings, and that the agreement recorded in this Agreement is in full and final settlement of the Proceedings.

Annual Review

- 4.30 The Museum shall invite the Hillarys to participate in an informal annual review of the management of the Archive. The annual review will provide an opportunity for the parties to discuss any issues relating to the Archive.

Assignment

- 4.31 The rights and obligations under this Agreement are transferable by will, but not otherwise.

No waiver

- 4.32 No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party in any way affects, limits or waives the right of such party thereafter to enforce and compel strict compliance with the provisions of this Agreement.

Further assurances

- 4.33 Each party shall do all acts and things necessary to implement and to carry out its obligations under this Agreement.

Entire agreement

- 4.34 This Agreement constitutes the whole agreement between the parties as to the settlement of matters between the parties in respect of the Archive.

Modification

- 4.35 No amendment or modification of any provision of this Agreement shall be valid unless it is in writing and signed by the parties.

Severance

- 4.36 Any unlawful provision in this Agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this Agreement.

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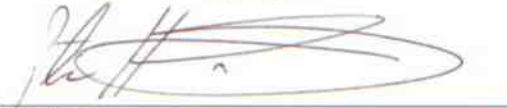
DATED this 19th day of July 2009

SIGNED by and on behalf of AUCKLAND WAR MEMORIAL MUSEUM


Chairman/authorised signatory


Trustee/authorised signatory

SIGNED by PETER HILLARY in the presence of:


P Hillary

Witness to signature:


Signature of witness

Jonice Somerville
Name of witness

Orthodontist
Occupation

Auckland
City/town of residence

SIGNED by SARAH HILLARY in the presence of:


S Hillary

Witness to signature:


Signature of witness

Jonice Somerville
Name of witness

Orthodontist
Occupation

Auckland
City/town of residence

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