

MEMORANDUM OF UNDERSTANDING

between

THE MINISTER FOR ARTS, CULTURE AND HERITAGE

and

**THE NEW ZEALAND ARCHIVE OF FILM, TELEVISION AND
SOUND NGĀ TAONGA WHITIAHUA ME NGĀ TAONGA
KŌRERO**

for the period

1 AUGUST 2014– 30 JUNE 2017

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

MEMORANDUM OF UNDERSTANDING

PURPOSE AND SCOPE

- 1.1 This Agreement sets out the responsibilities and accountabilities of the Minister for Arts, Culture and Heritage (the Minister) and the New Zealand Archive of Film, Television and Sound Ngā Taonga Whithiahua me Ngā Tonga Kōrero (the Archive) for the period 1 August 2014 to 30 June 2017 inclusive.
- 1.2 The Schedules 1 to 4 form part of this document.
- 1.3 The parties intend this Memorandum to be legally binding to the extent possible.

INTRODUCTION

The Archive:

- 2.1 is an independent charitable trust registered under the Charitable Trust Act 1957;
- 2.2 is subject to any obligation imposed by law.

The Crown:

- 3.1 is a major source of funding for the Archive;
- 3.2 expects the Minister to be accountable to Parliament for the use of public funds appropriated to the Archive through Vote Arts, Culture and Heritage;
- 3.3 recognises that the Archive must consider not only the Crown's interests in its outputs as stated in its Statement of Intent, but also the requirements and expectations of its other stakeholders, including audiences;
- 3.4 through the Minister, has appointed the Ministry for Culture and Heritage (the Ministry) to advise the Minister on the Archive's service and financial performance relating to the collection, preservation and archiving of New Zealand audiovisual material.

Outcomes and Outputs

- 4.1 The Archive will work to achieve the outcomes and deliver the outputs for archiving management services as set out in Schedules 3 to 4.

RESPONSIBILITIES

The Board of the Archive will:

- 5.1 be accountable to the Minister for the Archive's performance and provide the reports as agreed in Schedule 2 of this Memorandum;
- 5.2 ensure the Archive complies with the terms of this Memorandum, the provisions of the Charitable Trust Act 1957 and other relevant legislation;

- 5.3 consult with the Minister on necessary variations to the Memorandum where the Archive plans or anticipates significant changes in agreed outputs and related performance measures;
- 5.4 evaluate its performance as a Board and advise the Minister of its conclusions and plans for future development on an annual basis, by 30 June of each year.

The Archive will:

- 6.1 consult with the Ministry prior to the public release of information by the Archive;
- 6.2 work towards establishing a closer relationship with other agencies and iwi involved with archiving;
- 6.3 cooperate with the Ministry on work to improve arrangements for managing New Zealand's audiovisual archives, especially with respect to their accessibility;
- 6.4 be accountable to the Minister for the delivery of planned outputs and comply with all terms of the Agreement. If it becomes known to the Archive that outputs will not be delivered or that there is non-compliance with the terms of the Agreement, or that financial performance will be significantly different to the agreed work programme, the Archive will advise the Minister through the Ministry as soon as the Archive becomes aware of that possibility.
- 6.5 agree to apply funding allocated to the former Radio New Zealand Sound Archives Ngā Taonga Kōrero and the former TVNZ Archive to deliver the outputs and outcomes for sound and television archiving as set out in the Archive Statement of Intent. The Archive will provide a confirmed business plan for each year for the use of the baseline funding for sound and television archiving to the Ministry by 1 May of each year;
- 6.6 provide a plan for the use of funding provided for the Iwi Radio Archive to the Ministry by 31 July 2014 and by 1 May of each succeeding year and report regularly on progress against the agreed plan to the Ministry; and
- 6.7 manage the Television New Zealand Archive Collection in accordance with Schedule 4. The Archive will provide production library services to TVNZ, and will comply with its agreement with Television New Zealand to provide the production library services (as defined in its agreement with TVNZ, a copy of which is attached as Schedule 5);
- 6.8 handle, preserve and store the material it is being asked to archive from New Zealand broadcasting agencies in accordance with international best archiving practice for audiovisual archiving and any standards agreed between the Archive and MCH;
- 6.9 report on its archiving activities, including the above outputs, in its regular reporting as outlined in Schedule 2. This will include its use of funding provided for Digitisation and Access Projects.

The Minister will:

- 7.1 subject to the above provisions, recognise the independence of the Archive in managing its operations:

7.2 acknowledge that it may not be possible for the Archive to achieve some performance measures for its outputs covered in this Memorandum due to circumstances beyond its control. However, if there is significant or sustained failure to produce the outputs specified in Schedules 2, 3 and 4 or significant non-compliance with the terms of the Memorandum, the Minister will consider the most appropriate action, if any, that needs to be taken. Any breach of the Archive's agreement with TVNZ for production library services that significantly decreases the benefits or significantly increases the burden to TVNZ of obtaining the production library services will be deemed to be a significant failure for the purposes of this clause. These actions may include:

- amending the Memorandum to reflect the new situation, or
- withholding payment of a proportion of the Archive's appropriation until the terms of the Memorandum have been met.
- in the event that all funds have been paid to the Archive, requiring a repayment of the funds to the Crown.

7.3 not undertake such actions referred to in paragraph 7.2 without prior consultation with the Board of the Archive. Any changes will be recorded in writing and attached to the Memorandum.

7.4 consult the Archive before making a decision to provide funding to the Archive for a specific purpose or in a specific way ("tagged funds");

7.5 provide operating funding as follows, in accordance with the Estimates of Appropriations for 2014/15 (on behalf of the Crown):

	2014/15	2015/16	2016/17
General operating funding, including funding for the archiving of SANTK	\$3,020,000	\$3,020,000	\$3,020,000
Funding for the management, archiving and increased accessibility of the TVNZ Archive collection	\$1,590,000	\$2,000,000	\$2,000,000
Funding from Te Māngai Pāho for the archiving of Māori Television productions to the Archive	\$200,000	\$200,000	\$200,000
Funding from Te Māngai Pāho for the archiving of Iwi Radio material to the Archive	\$375,000	\$375,000	\$375,000
Total (GST exclusive)	\$5,185,000	\$5,595,000	\$5,595,000

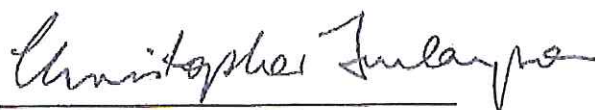
The Ministry will:

- 8.1 subject to government appropriations for the period of this agreement, pay the agreed funding to the Archive in quarterly instalments (see *Schedule 1 for 2014/15*)
- 8.2 provide the Archive with timely feedback on the reports provided under *Schedule 2*;
- 8.3 consult with the Archive, where appropriate, on the content of briefings to the Minister. The Archive's comments will be taken into account and, where agreement cannot be reached, these comments can be included (if the Archive wishes) along with the Ministry's advice to the Minister;
- 8.4 draft replies to Parliamentary Questions and Ministerial correspondence. The Archive and the Minister and/or Ministry will supply each other with any information required to carry out their work in a professional and timely manner, and to meet externally imposed deadlines. The Ministry (and/or the Minister) can withhold information from the Archive where it is appropriate to do so (for example, in accordance with the provisions of the Privacy Act 1993), or where they may be separately liable for any legal proceedings;
- 8.5 refer correspondence to the Archive for direct reply if this is considered appropriate (for example, where it concerns the operational responsibilities of the Archive);
- 8.6 use its best endeavours to inform the Archive of significant issues that could concern the Archive's operations, and maintain regular dialogue and co-operate on matters of mutual interest including reviews of the work and/or funding of the Archive. If any issue or dispute arises between the Ministry and the Archive both parties will work to resolve the dispute promptly;
- 8.7 use its best endeavours to advise the Archive of press statements that comment on the Archive prior to the release of any statement;
- 8.8 renegotiate this agreement if during its term the work or environment of the Archive is so altered that the Memorandum's contents are no longer appropriate.

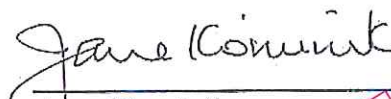
FORCE MAJEURE

- 9.1 In this Memorandum "force majeure" means an event which is beyond the reasonable control of any of the parties and which makes a party's performance of its obligations under this Memorandum impossible or so impracticable as reasonably to be considered impossible. It does not include industrial action where that action is within the power of the party invoking force majeure to prevent.
- 9.2 No party should be liable to the other party for any breach of its obligations under this ~~agreement~~ ^{Memorandum} where such breach or non-performance is caused by force majeure.

SIGNATURES



Hon Christopher Finlayson
Minister for Arts, Culture and Heritage



Jane Kominik
Chair
The New Zealand Archive of
Film, Television and Sound
Ngā Taonga Whitiāhua me
Ngā Taonga Kōrero

Date

Date 1.8.2014

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Schedule 1 – 2014/15 Crown Payments to the Archive

	Appropriation (\$ GST Exclusive)	GST (\$)	Disbursement (\$ GST Inclusive)
1 July 2014	755,000	113,250	868,250
1 October 2014	755,000	113,250	868,250
5 January 2015	755,000	113,250	868,250
1 April 2015	755,000	113,250	868,250
\$ Total	3,020,000	453,000	3,473,000

Māori Television and Iwi Radio Archiving Funding for 2014/15 (Te Māngai Pāho)

	Appropriation (\$ GST Exclusive)	GST (\$)	Disbursement (\$ GST Inclusive)
1 July 2014	287,500	43,125	330,625
3 January 2015	287,500	43,125	330,625
\$ Total	575,000	86,250	661,250

TVNZ Archive Management Funding for 2014/15

	Appropriation (\$ GST Exclusive)	GST (\$)	Disbursement (\$ GST Inclusive)
1 July 2014	397,500	59,625	457,125
1 October 2014	397,500	59,625	457,125
5 January 2015	397,500	59,625	457,125
1 April 2015	397,500	59,625	457,125
\$ Total	1,590,000	238,500	1,828,500

Schedule 2 – Key Reporting Dates 2014/15

Date	Reporting Activity
Monthly	The Archive provides MCH with monthly reports for the Minister on current key achievements, issues, and/or risks for the period.
29 August 2014	The Archive provides the Minister (via MCH) with a six-monthly report on its financial and operational activities to 30 June 2014.
By 3 November 2014	The Archive provides MCH with a copy of the most recent report provided to its Board (covering operational activities, financial position and performance, and year-end projections).
13 February 2015	The Archive provides MCH with a six-monthly report on its financial and operational activities to 31 December 2014.
By 1 May 2015	The Archive provides MCH with a copy of the most recent report provided to its Board (covering operational activities, financial position and performance, and year-end projections).
9 August 2014	The Archive provides MCH with its unaudited accounts and KPI results.
12 Sept 2014	MCH provides the Archive with feedback on its draft accounts and results.
Within 5 working days of receiving the Audit Report	The Archive provides MCH with the Audit Report and the final draft Annual Report.
Within 1 week of receiving final auditors' letter	The Archive provides the Minister (via the Ministry) with any further significant information arising from the work of its auditors.
Statement of Intent 2015-18	
By 10 October 2014	The Archive meets with MCH to discuss expectations and business planning.
30 March 2015	The Archive provides MCH with its first draft SOI.
10 April 2015	MCH provides comments to the Archive on the draft SOI.
17 April 2015	The Archive provides the draft SOI to Minister (via MCH).
1 May 2015	The Minister provides any comment to the Archive on the draft SOI (via MCH).
By 29 May 2015	The Archive provides its final SOI to the Minister.
By 29 June 2015	The Archive publishes the SOI after it has been presented to the Minister.
Memorandum of Understanding 2015/16	
By 8 May 2015	MCH provides the Archive with a draft Memorandum of Understanding.
By 26 June 2015	The Archive and the Minister sign the MOU.
Report on Governance	
By 30 June 2015	The Archive Board reports to the Minister (via MCH) on assessment of its own governance performance.

Schedule 3 – Archive Statement of Intent 2014-2017

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Schedule 4 – TVNZ ARCHIVE COLLECTION ARCHIVE MANAGER SERVICES

Background

- A. The TVNZ Archive Collection (the Archive Collection) has been transferred to the Crown by the agreement for the Transfer of the TVNZ Archive Collection and Employees dated 16 June 2014 (the Archive Collection Agreement). The Crown holds the Archive Collection and intends to make the Archive Collection publicly accessible in accordance with the terms and conditions of the Archive Collection Agreement.
- B. For the purpose of ensuring appropriate management of the archive Collection, the Crown has agreed to appoint the New Zealand Archive of Film, Television and Sound Ngā Taonga Whitiāhua me Ngā Taonga Kōrero (the Archive) as the Archive Manager and to take receipt of the Archive Collection.
- C. In order to comply with the Crown's obligations under the Public Records Act 2005, and in order for exemptions under the Copyright Act 1994 for archiving and providing public access to apply, the arrangement between the Crown and the Archive will involve the Ministry for Culture and Heritage (MCH) subcontracting day-to-day maintenance and operation of the Archive Collection to the Archive.
- D. Any new intellectual property arising from the management of the Archive Collection will be the property of the Crown.
- E. The receipt of the Archive Collection by the Archive and the other elements of the transaction between the parties will be undertaken in accordance with the terms and conditions of this agreement.
- F. The Crown hereby appoints the Archive as the Archive Manager of the Archive collection, for an initial period of 3 years and the Archive accepts such appointment. The Archive will take receipt of the Archive Collection on 1 August 2014
- G. The Crown will obtain the agreement in writing of the Chief Archivist under the Public Records Act 2005 to defer under section 22 of that Act, for a specified period to be agreed between the Crown and the Chief Archivist, the transfer of the Archive Collection that has been in existence for 25 years or more and that is otherwise required by section 21 of that Act, provided that the terms and conditions of any such agreement are reasonably acceptable to the Crown.

Description of Archive Manager Services

- 1 The services to be provided by the Archive Manager include the responsibilities of the Archive Manager referred to in the Archive Collection Agreement and other outputs as may be agreed with the Crown from time to time. The key responsibilities include:

- 1.1 Provision of certain public access to the Archive Collection by viewing
 - 1.2 Provision of access for re-use by third parties subject to the Crown's agreement with TVNZ
 - 1.3 Digitisation of the Collection
 - 1.4 Preservation of the Collection
 - 1.5 Provision of Production Library Services to TVNZ, as set out in the Archive's agreement with TVNZ (a copy of which is attached as Schedule 5)
- 2 To the fullest extent possible, the Archive Collection will remain subject to the terms and conditions of the agreements between TVNZ and third party donors, and the Archive will comply with those agreements.
- 3 The Crown will provide the Archive with reasonable access to all relevant information about the Archive Collection that has been provided to the Crown by TVNZ, including metadata and all relevant information relating to rights of third parties.
- 4 No legal title and copyright (including any new copyright, if any) in the Archive Collection is being transferred to the Archive as a result of the carrying out of these services.
- 5 If the Archive records communication works, as defined in the Copyright Act, into the Archive Collection in accordance with section 90 of the Copyright Act, it will do so as contractor for the maintenance of the Archive Collection for the Crown.
- 6 *Storage, presentation and operation of Archive Collection*
- 6.1 The Archive will store, preserve and operate the Archive Collection in accordance with international best archiving practice for audio-visual archiving and in accordance with (subject to any third party rights) any reasonable requirements of the Crown.
- 7 *Digitisation*
- 7.1 Prior to 1 May in each year following the date of this agreement the Archive and the Crown will meet to agree a policy and/or schedule for the copying of the Archive Collection over the following 12 months. The Archive will use its best endeavours to adhere to any agreed schedule.
 - 7.2 The Archive will progressively digitise the content of the TVNZ Archive for the purpose of making it available on the internet. Subject to expected levels of funding being confirmed, the following number of items will be digitised each year. The Archive will make these items available for approved users to stream and subject to funding, will stream them on its own website.

Subject to funding, a minimum of 2,000 items will be available on the internet by June 30, 2016.

	2014/15	2015/16	2016/17	2017/18
Items digitised	1,000	3,000	3,000	3,000
Items on internet	500	2,000	3,000	4,000

7.3 The Archive will copy the Archive Collection for preservation purposes in accordance with the provisions of the Copyright Act 1994 and as provided for in this MOU. Preserved Archive Collection Material will be stored and maintained by the Archive on behalf of the Crown and as contractor to the Crown for the maintenance of the Archive Collection.

7.4 On the expiry of this MOU, where requested by the Crown, the Archive Manager must transfer to the Crown copies made of the Archive Collection during the term of the MOU.

8. *Cataloguing of Archive collection*

8.1 The Archive will record descriptive information about the Archive Collection on to a database that is accessible to the public on the Internet.

9. *Significant Maori material*

9.1 The Archive is a bi-cultural organisation committed to ensuring appropriate use of the Archive Collection with significant Maori content and will provide relevant information regarding such material to whanau, hapu and iwi as part of its development of kaitiakitanga and access procedures.

9.2 In the case of significant Maori material, parties acknowledge that TVNZ has the right to decide access to TVNZ copyright material (subject to the provisions relating to viewing in clause 9 of the Archive Collection Agreement and other relevant provisions of that agreement). The Archive Manager will use best endeavours to ensure that the results of the clearance process are in keeping with the Archive Manager's best practice, including its policy for consulting with kaitiaki.

10. *Public access to the Collection*

10.1 The Archive will make the Archive Collection available for public viewing in accordance with clause 9 of the Archive Collection Agreement (see Schedule 6).

11. *Production Library Services*

- 11.1 The Archive will provide the Production Library Services to TVNZ, in accordance with its agreement with TVNZ dated 16 June 2014. Where an agreement relating to the provision of the production library services is not in existence between the Archive and TVNZ, the Archive will provide the services not relating to the production library services to the Crown.
- 11.2 The Archive will provide the production library services in accordance with the performance indicators set out in the Production Library Services Agreement.
- 11.3 Any breach by the Archive of its agreements with TVNZ for production library services that significantly decreases the benefits or significantly increases the burden to TVNZ of obtaining the production library series will be a breach of this agreement.

12. *Database Management*

- 12.1 In accordance with clause 2.3.2 of the Archive Collection Agreement, the Crown hereby grants the Archive a non-exclusive and non-transferable and royalty-free right to publish the contents of the database online in order to make it searchable by the general public provided that the Archive must not modify, delete or alter the Database in anyway. This does not permit publication of any part of the Archive Collection itself or the detailed shot logging information that supports the TVNZ production library function, but permits the inclusion of a precis of each title.
- 12.2 The Archive will copy the Database and copy content from the Database on to a database that is accessible to the public on the internet at regular intervals.
- 12.3 The Archive recognises TVNZ's right to handle, use and modify the contents of the Database in any manner TVNZ wishes, including to manage and administer all aspects of the Database.
- 12.4 The Database is expected to be obsolete in 2 – 3 years. TVNZ will maintain the Database until TVNZ's Digital Production Library (DPL) is operational, as notified by TVNZ to the Crown and the Archive. As soon as possible following notification by TVNZ the Crown will notify the Archive of TVNZ's intention to retire the Database to enable the Archive to make any final copies.

13 *Third party requests to re-use the Archive Collection*

- 13.1 The Archive will manage any third-party requests to re-use any of the Archive Collection in accordance with clause 10 of the Archive Collection Agreement (see schedule 6).

- 13.2 The Archive will work with TVNZ to refine the process for handling third-party requests.
- 13.3 Where a person requesting a copy of material from the Archive Collection does not provide the necessary permissions or licences from TVNZ or any other copyright holder of the material to re-use, the Archive Manager will refer the request to TVNZ.
- 13.4 95 per cent of all requests by the public or not for profit organisations for material from the Archive will be responded to within three working days of receipt and will be delivered within one week of receiving authorisation from TVNZ and/ or other rights-holders to release the material
- 13.5 The Archive will work with TVNZ to develop a pre-approval process for third party requests to reuse the materials in the Archive Collection in which TVNZ is the sole copyright holder, on such conditions as agreed between TVNZ and the Archive Manager from time to time.
- 13.6 In accordance with clause 9A of the Archive Collection Agreement, pursuant to clause 6 of the Agreement between the Crown and TVNZ dated 25 July 1991 relating to the transfer of assets to TVNZ, the Archive will, as the Archive Manager, allow access by Māori Television Broadcasters wishing to make programmes the dominant purpose of which is the promotion of Māori language and culture, for broadcast by Māori Television Broadcasters, to Māori Television Archival material held by it on a cost recovery basis.

14. *Streaming of Archive Collection*

- 14.1 The Archive will manage any requests to stream any of the Archive Collection in accordance with clause 11 of the Archive Collection Agreement (see schedule 6)
- 14.2 The Archive will collaborate with the Crown and TVNZ to review the watermark as provided for in clause 11.7 (see schedule 5) at agreed periods
- 14.3 In addition, as set out in clause 11.3 of the Archive Collection Agreement, the Archive may itself stream the Archive Collection subject to compliance with the provisions of clause 11.

15. *Compliance with the Public Records Act*

- 15.1 The Archive will comply with any requirements of the Crown, set out by the Crown in writing, for the Crown to meet its obligations under the Public Records Act.

16. *Compliance*

- 16.1 The Crown may at its own cost audit the Archive for the purpose of ascertaining compliance with this agreement.

17. *Governance*

- 17.1 The Archive agrees to fulfil the responsibilities of the Archive Manager in relation to clause 13 of the Archive Collection Agreement.

Schedule 5 – Agreement between TVNZ and the Archive for provision of
Production Library Services

Schedule 6 – Agreement between TVNZ, the Ministry and the Archive relating to
the transfer of the TVNZ Archive Collection and employees (Archive Collection
Agreement)

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