

DEED OF TRUST

WAIMA BIODIVERSITY TRUST

DRAFT



Simpson
Grierson

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DEED OF TRUST dated the _____ day of _____ 2019

EXECUTED BY

WATERCARE SERVICES LIMITED, a company incorporated under the Companies Act 1993, registration number 519049, and having its registered office in Auckland, as Settlor

[Full name, place of residence and occupation of each of the Initial Trustees, e.g. Jane Doe, Solicitor, Auckland, to be inserted here. The Initial Trustees will have a temporary role only, as per clause 5.2.], as Initial Trustees

BACKGROUND

- A.** The Settlor is undertaking a project to develop a replacement water treatment plant and reservoirs at Huia, Auckland, in an area of significant ecological vegetation.
- B.** As a condition of the Consent granted to the Settlor to proceed with that project, the Settlor is required to establish a charitable trust for resource management purposes, to be called the Waima Biodiversity Trust, to mitigate or compensate for the residual adverse ecological effects of the project.
- C.** In accordance with the Consent conditions, the Trust is being established by the Settlor, and is to be maintained by the Trust's Board, exclusively for the charitable purposes set out in clause 4.2 of this deed and in accordance with the further terms set out in this deed.
- C.** It is intended that:
- (i) the Trust will continue to operate for a minimum of 10 years following the grant of the Consent, and may continue to operate for any additional period or indefinitely;
 - (ii) the Initial Trustees will hold office on a temporary basis only and the Trust will be governed by its Board, which is intended to include representatives of various Stakeholders;
 - (iii) the Board will be incorporated under the Charitable Trust Act 1957; and
 - (iv) the Trust will be eligible for certain tax concessions benefitting charitable entities, and for this purpose registered as a charitable entity under the Charities Act 2005.
- D.** In order to establish the Trust, the Settlor holds, and will transfer to a bank account for the Trust as soon as reasonably practicable following the execution of this deed, \$100 which constitutes the initial Trust Fund settled on the terms of the Trust.
- E.** Following the Trust's establishment, the Board is to receive from the Settlor, in accordance with Consent conditions, a further settlement of [\$5,000,000] for the purposes of the Trust. It is also intended that the Board may receive and acquire further funds or other property from time to time from other sources for the purposes of the Trust.

TRUST TERMS

1. INTERPRETATION PROVISIONS

1.1 General: Clauses 1.2 to 1.8 shall apply to this deed unless the context requires otherwise.

1.2 Definitions:

"Annual Meeting" means an annual meeting of the Board held in accordance with clause 12.1.1;

"Annual Report" means a report regarding the activities of the Trust for a Financial Year and, as the context requires, the most recent annual report, as referred to in clause 13.3;

"Auckland Council" means the unitary authority for Auckland established under section 6 of the Local Government (Auckland Council) Act 2009;

"Balance Date" means 30 June or any other date adopted from time to time by the Board as the end of the Trust's Financial Year;

"Board" means the Trustees, collectively, acting as board, whether or not the Trustees are incorporated as a board under the Charitable Trusts Act 1957 and, if the context requires, the Trustees constituting the Board for the time being;

"Chair" means the Trustee appointed to that office for the time being by the Board in accordance with clause 10.5.1;

"Charitable Purpose" includes every purpose which is charitable in accordance with the law of New Zealand and falls within the "charitable purpose" definition in section 5 of the Charities Act 2005;

"CLG" means the Community Liaison Group referred to in, and established in accordance with, the Consent conditions;

"Consent" means the resource consent granted to the initial Settlor for the project referred to in paragraph A of the Background section of this deed;

"Deputy Chair" means the Trustee appointed to that office for the time being by the Board in accordance with clause 10.5.1;

"Financial Statements" means the financial statements of the Trust for a Financial Year prepared in accordance with clause 13.2.1;

"Financial Year" means any 12 month or other accounting period ending on the Balance Date;

"Initial Trustee" means an individual executing this deed as one of the first Trustees of the Trust, until such time as the individual first ceases to hold office as Trustee;

"Interested" has the meaning given to that term in clause 11.5;

"**Major Transaction**" has the meaning given to that term in clause 9.2;

"**Waima Biodiversity Catchment**" or "**Catchment**" means the area of approximately 990ha referred to in the Waima Biodiversity Management Plan and shown in the map included in Schedule 1 of this deed;

"**Waima Biodiversity Management Plan**" or "**Management Plan**" means the plan known by that name which sets out the biodiversity objectives, projects and targets for the Waima Biodiversity Catchment and is described in further detail in Schedule 2 of this deed;

"**Officer**" means a person for the time being holding an office to which that person has been appointed in accordance with clause 10.5.2;

"**person**" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having separate legal personality);

"**property**" means real or personal property of any kind and includes any right or interest in such property and any thing in action;

"**Settlor**" means:

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- 1.2.1 Initial Settlor:** Watercare Services Limited, being the company of that name incorporated under the Companies Act 1993 (registration number 519049) as at the date of execution of this deed; or
- 1.2.2 Successor/Appointee:** the person succeeding the initial Settlor as holder of the Consent, or a person who has been appointed by the initial Settlor or by any successor to the initial Settlor, by way of revocable or irrevocable appointment, to act as the Settlor under the terms set out in this deed;

"**Stakeholders**" means:

- 1.2.1 Settlor:** the Settlor;
- 1.2.2 Council:** Auckland Council and Auckland Council's Waitakere Ranges Local Board, and any successor local authority entity or entities responsible for all or any part of the Waima Biodiversity Catchment;
- 1.2.3 Community:** members of the Waima Biodiversity Catchment community, including the CLG, owners of property and residents in the Waima Biodiversity Catchment and community organisations connected with the Catchment; and
- 1.2.4 Mana Whenua:** any iwi or hapu exercising historical and continuing mana whenua in respect of all or any part of the Waima Biodiversity Catchment, including in particular Te Kawerau ā Maki.

"**Strategy**" means a three year strategy for the Trust, and, as the context requires, the most recent strategy, prepared in accordance with clause 13.1;

"**Tax Concession**" means any tax concession under New Zealand law directly or indirectly benefiting charitable entities, including (without limitation) exemption of a charitable entity's income from income tax and any tax concessions in respect of contributions to a charitable entity;

"**this deed**" means the deed executed by the Settlor and the Initial Trustees to establish the Trust (including the Schedules) setting out the initial terms of the Trust and, as the context requires, includes any variation to the terms of the Trust in accordance with clause 18;

"**Trust**" means the trust established and maintained in relation to the Trust Fund on the terms set out in this deed;

"**Trust Fund**" means:

1.2.1 Settlor Funding: the initial amount transferred by the Settlor to the Initial Trustees to establish the Trust and the additional funding provided by the Settlor to the Board as a condition of the Consent as referred to in paragraph E of the Background section of this deed; and

1.2.2 Other Property/Funds: all other property, including capital and income and from any source, that is paid to, held under the control of, vested in, or earned, derived or otherwise acquired (by way of gift, bequest, devise, purchase, exchange or otherwise) by the Board on the terms of the Trust on or after the date of this deed;

"**Trustee**" means any individual holding office as a trustee of the Trust for the time being in accordance with the terms of this deed, whether as an Initial Trustee or as an additional or replacement Trustee;

1.3 Clauses: a reference to any clause is a reference to a clause of this deed;

1.4 Headings: section, clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this deed;

1.5 Negative Obligations: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

1.6 Particular References: a reference to anything of a particular nature either before or after a general statement does not limit the general statement;

1.7 Plural and Singular: singular words include the plural and vice versa; and

1.8 Legislation: a reference to any legislation or to any provision of any legislation includes:

1.8.1 Legislative Amendments: that legislation or provision as from time to time amended or re-enacted and any corresponding replacement legislation or provision; and

1.8.2 Subordinate Legislation: any statutory instrument, regulation, rule or order issued under that legislation or provision (as from time to time amended or re-enacted) or under any corresponding replacement legislation or provision.

2. SETTLEMENT OF TRUST

The Settlor transfers the initial Trust Fund to the Initial Trustees, and the Initial Trustees accept that settlement, and the Settlor and the Initial Trustees declare that the Board will hold and administer the Trust Fund, on the terms set out in this deed.

3. NAME OF THE TRUST

3.1 Initial Name: The name of the Trust is **WAIMA BIODIVERSITY TRUST**.

3.2 Change of Name: The Board may, by deed, change the name of the Trust to any other name, as determined by the Board from time to time, provided that the new name must not be offensive or liable to mislead any member of the public and the name change will not be effective unless and until it is approved in writing by the Settlor.

3.3 Records and Notice: The Board must ensure that any change of name is recorded in the Trust's records and, if required by law, notified to any relevant authority (for example, under the Charitable Trusts Act 1957, under the Charities Act 2005 if the Trust is registered under that Act, and under any relevant tax legislation).

4. CHARITABLE PURPOSES OF THE TRUST

4.1 Trust Fund Held for Charitable Purposes: The Trust Fund, including both capital and income, is to be held and administered by the Board on trust upon the terms set out in this deed for exclusively Charitable Purposes in New Zealand as set out in clause 4.2, which are to be pursued for the benefit of the public and not for private profit.

4.2 Waima Biodiversity Purposes of the Trust: The Trust has been established, and is to be maintained, to facilitate environmental management and the protection, restoration and enhancement of native flora and fauna and ecosystems in the Waima Biodiversity Catchment, by:

4.2.1 Implementation of Management Plan: providing an accountable administrative structure committed to implementing the projects, and achieving the targets and objectives, set out in the Waima Biodiversity Management Plan;

4.2.2 Achievement of Management Plan Objectives: facilitating the achievement of the following objectives of the Management Plan (where appropriate by contributing funding to appropriate

organisations or engaging suitably qualified contractors, as determined by the Board):

- (a) **Pest/Weed Management:** to co-ordinate and increase conservation efforts to protect and restore viability to populations of native flora and fauna within the Waima Biodiversity Catchment, in particular by:
 - (i) **Vertebrate Pests:** undertaking multi-species vertebrate pest management throughout the Catchment to suppress pests below target thresholds;
 - (ii) **Weeds:** undertaking weed management throughout the Catchment, including land owned by the Consent holder, public reserve land and private properties (where landowner consent has been obtained); and
 - (iii) **Argentine Ants:** monitoring Argentine ants and effectively eradicating localised populations (where assessed as viable);
- (b) **Forest Regeneration:** to repair and strengthen connective linkages throughout the Catchment by promoting natural forest regeneration;
- (c) **Kauri Rescue:** to improve the health and resilience of remnant kauri forest in the Catchment through tree health assessments and site specific management, including on private properties;
- (d) **Community-wide Engagement:** to increase community-wide engagement in stewardship and sustainable environmental management of the Catchment, in particular by seeking acceptance of owners of property and residents in the Catchment area for the Trust's activities, including activities on their properties, to advance the Trust's Charitable Purposes set out in this clause 4.2; and
- (e) **Biodiversity Monitoring:** to undertake biodiversity monitoring within the Catchment using key indicator species/guilds;

4.2.3 Priority-setting and Funding: setting priorities and allocating funding for projects within the Catchment to achieve the objectives set out in clause 4.2.2; and

4.2.4 Measurable Targets: pursuing and meeting, and measuring the Trust's performance against, the targets set by the Management Plan, and any other targets that may be set by the Board, for implementing the Management Plan and for achieving the particular objectives set out in clause 4.2.2.

4.3 Geographical Limitation: The Board must ensure that the Trust Fund is distributed and/or applied to advance the Trust's Charitable Purposes set

out in clause 4.2 in New Zealand, focusing on the Waima Biodiversity Catchment. This does not preclude the Board from undertaking any activity or applying any part of the Trust Fund outside the Catchment or outside New Zealand, or in a manner that may benefit any community or communities outside the Catchment or New Zealand, if the Board considers that the activity or application of the Trust Fund is an appropriate means by which to advance the Trust's Charitable Purposes set out in clause 4.2.

4.4 Management of Trust Fund: The Board must ensure that the Trust Fund is managed to provide long-term funding for the implementation of the Waima Biodiversity Management Plan and the advancement of the other Charitable Purposes set out in clause 4.2. This includes investing the Settlor funding provided to the Trust (as referred to in clause 1.2.1 of the Trust Fund definition), to the extent that it is not used or required for use in advancing the Trust's Charitable purposes, in order to maintain and grow the Trust Fund and generate funds that can be used to advance the Trust's Charitable Purposes. Subject to this requirement and the further terms set out in this deed, the Board may distribute or apply from time to time so much of the capital and/or income constituting the Trust Fund as the Board thinks fit to advance the Trust's Charitable Purposes.

4.5 Specific Trusts: The Board may receive, acquire and hold any part of the Trust Fund on trust for any specific purpose falling within the Charitable Purposes of the Trust as set out in clause 4.2 or subject to specific terms consistent with the general terms of the Trust (referred to as a **Specific Trust**), and in relation to any such Specific Trust:

4.5.1 Identification/Administration: the Board must separately identify, administer and apply, that part of the Trust Fund in accordance with the terms of the Specific Trust on which it is held; and

4.5.2 Costs of Administration: costs relating to the administration of the Specific Trust, including a fair proportion of the general administration costs of the Trust, will be borne by that part of the Trust Fund held on Specific Trust, provided that the Board may apply any other part of the Trust Fund (but excluding any part of the Trust Fund held on another Specific Trust) to meet all or part of the costs relating to the administration of the Specific Trust.

5. ROLE AND POWERS OF THE BOARD/TRUSTEES

5.1 Role of the Board and Trustees: In accordance with the terms set out in this deed, the role of the Board, and each Trustee, is to act in the best interests of the Trust in relation to the advancement of the Trust's Charitable Purposes as set out in clause 4.2. The Board will have overall control of, and responsibility for, the Trust Fund and the administration of the Trust, and the affairs of the Trust will be managed by, or under the direction or supervision of, the Board.

5.2 Role of the Initial Trustees: Without derogating from, and at all times acting in accordance with, clause 5.1, the role of the Initial Trustees is temporary only and is limited to:

- 5.2.1 Replacement Trustees:** effecting, as soon as reasonably practicable, the appointment of replacement Trustees in accordance with clauses 10.1 and 10.2, and the Initial Trustees will immediately cease to hold office upon the appointment of six replacement Trustees in accordance with clause 10.2.2(a); and
- 5.2.2 Establishment Steps:** to the extent practicable and expedient prior to their replacement, taking steps to establish the Trust structure, including incorporating under the Charitable Trusts Act 1957 and applying for any registration or approval required to become eligible for the benefit of any Tax Concession in accordance with clause 8.
- 5.3 Powers of Board:** In order to carry out its role, and in particular to advance the Trust's Charitable Purposes as set out in clause 4.2, in addition to all other powers conferred by law but subject to the restrictions contained in this deed (and any other applicable law):
- 5.3.1 Widest Possible Powers:** the Board has the same powers as if it were the absolute owner of, and beneficially entitled to, the Trust Fund, including:
- (a) **Full Capacity:** full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
- (b) **Full Rights, Powers, Privileges:** for the purposes of clause 5.3.1(a), full rights, powers, and privileges; and
- 5.3.2 Powers Not Limited or Restricted:** the Board's powers will not be limited or restricted by any principle of construction or rule of law or any statutory power or provision except to the extent that it is obligatory.
- 5.4 Exercise of Powers:** The Board and each Trustee must exercise their powers and discretions (including the power to invest any part of the Trust Fund):
- 5.4.1 Advancement of Charitable Purposes:** to advance the Charitable Purposes of the Trust as set out in clause 4.2; and
- 5.4.2 Prudent Person Standard:** in a prudent manner, exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 5.5 Input from Settlor:** In exercising their powers and discretions, the Board and each Trustee must have regard to any advice, recommendations or other input received from the Settlor, whether or not any such advice and/or recommendation has been sought by the Board.
- 5.6 Delegation by the Board:** To the full extent permitted by law, the Board may delegate any of its powers or discretions, in writing and subject to such terms and/or directions as the Board thinks fit, to any subcommittee or subcommittees of the Board, or any officer, employee, manager, agent, attorney or other person or body nominated or appointed by the Board, provided that:

- 5.6.1 Exercise of Delegated Powers:** any delegated power or discretion must be exercised in accordance with the terms of this deed and any terms set or directions given by the Board;
- 5.6.2 Revocation of Delegation:** the Board may wholly or partly revoke or modify any such delegation at any time; and
- 5.6.3 Responsibility of Trustees:** no such delegation will release the Board and the Trustees from their responsibilities in relation to the Trust.
- 5.7 Engagement of Personnel:** Without limiting the general scope of the Board's powers and discretions:
- 5.7.1 Operations Manager/Project Coordinator:** so long as the Board considers that it has sufficient funding to do so, the Board must engage a person to hold the position of Operations Manager/Project Coordinator for implementation of the Waima Biodiversity Management Plan and the Trust's activities, to be responsible for:
- (a) **Planning:** strategic and operational planning;
 - (b) **Implementation:** implementation of project initiatives; and
 - (c) **Evaluation:** ongoing evaluation of the Trust's performance against the measurable targets referred to in clause 4.2.4; and
- 5.7.2 Other Personnel:** the Board may engage any other personnel, including employees or contractors, to advance the Trust's Charitable Purposes as set out in clause 4.2.

6. BOARD RELATIONSHIP WITH SETTLOR AND STAKEHOLDERS

- 6.1 Settlor Relationship:** It is intended that the Board will have an ongoing and co-operative relationship with the Settlor in relation to pursuing the Trust's Charitable Purposes set out in clause 4.2, and the Board must use all reasonable endeavours to ensure that this intention is met.
- 6.2 Settlor Rights/Powers:** Without limiting the scope of clause 6.1, the Settlor is entitled to:
- 6.2.1 Input:** provide advice, recommendations or other input to the Board on any matter relating to the Trust and the pursuit of its Charitable Purposes, which must be taken into account by the Board as set out in clause 5.5; and
 - 6.2.2 Approval:** exercise any other approval right or power reserved to the Settlor in respect of the Trust under this deed.
- 6.3 Stakeholder Relationships:** It is intended that the Trust will facilitate and coordinate Stakeholder engagement and involvement in the advancement of the Trust's Charitable Purposes set out in clause 4.2, including by way of representation on the Board for this purpose, and the

Board must use all reasonable endeavours to ensure that this intention is met.

7. RESTRICTIONS RELATING TO PRIVATE BENEFITS

7.1 General Restriction: Nothing expressed or implied in this deed will permit the activities of the Trust, or any business carried on by, or for, or for the benefit of the Trust, to be carried on for the private profit of any person so as to affect:

7.1.1 Charitable Purposes: the continued operation of the Trust for exclusively Charitable Purposes in New Zealand, for the benefit of the public and not for private profit; or

7.1.2 Tax Concessions: the Trust's eligibility for the benefit of any Tax Concession for which it would otherwise be eligible, unless in relation to any such concession the Board has determined that eligibility for the benefit of that concession is not required in the best interests of the Trust in relation to the advancement of its purposes.

7.2 Permitted Trust Expenditure: For the avoidance of doubt, the proscription of private profit under clause 7.1 does not preclude the application of the Trust Fund to or towards:

7.2.1 Public and Private Land: the advancement the Trust's Charitable Purposes set out in clause 4.2 across both publicly-owned and privately-owned land in the Waima Biodiversity Catchment;

7.2.2 Remuneration and Reimbursement: remuneration for services provided, and reimbursement of expenses properly incurred, by the Trustees, in accordance with clause 15; or

7.2.3 Consideration for Goods and Services: consideration for the supply of any goods or services acquired in the course of pursuing the Trust's Charitable Purposes set out in clause 4.2, provided that the consideration does not exceed fair market value for the supply.

7.3 Business Income Restriction: For the purpose of ensuring that income derived by the Board from any business carried on by, or for, or for the benefit of the Trust, is exempt from income tax (as at the date of this deed, under section CW 42 of the Income Tax Act 2007), if the Trust derives, or has derived, any such business income. no person holding any of the following positions is permitted to have, by virtue of that position, an ability, either directly or indirectly, to determine or materially influence the determination of the nature or extent of any benefit or advantage from the business or the circumstances in which a benefit or advantage from the business is or is to be given or received:

7.3.1 Settlor or Trustee: a settlor or trustee of the trust by which the business is carried on:

7.3.2 Shareholder or Director: a shareholder or director of the company by which the business is carried on:

7.3.3 Settlor or Trustee of Shareholder Trust: a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on:

7.3.4 Associates: a person associated with any person referred to in clauses 7.3.1 to 7.3.3 (as determined under the Income Tax Act 2007, for the purpose of section CW 42 of that Act).

For the avoidance of doubt, for the purposes of this clause 7.3 a relevant benefit or advantage does not include any benefit or advantage to a person for any Charitable Purpose of the Trust or any other benefit or advantage that may be disregarded under section CW 42(1)(c) in the Income Tax Act 2007, or under any other provision of section CW 42.

8. ELIGIBILITY FOR TAX CONCESSIONS

8.1 General Requirement: The Board must do all things practicable and expedient to ensure that the Trust is, and remains, eligible for the benefit of any Tax Concession, unless in relation to any such concession the Board has determined that eligibility for the benefit of that concession is not required in the best interests of the Trust in relation to the advancement of its purposes.

8.2 Specific Requirements: Without limiting the generality of clause 8.1, the things to be done under that clause may include:

8.2.1 Registration under the Charities Act: registering under the Charities Act 2005 and maintaining such registration; and

8.2.2 Compliance under Charities and Tax Legislation: complying with all relevant obligations under:

(a) **Charities Act:** the Charities Act 2005; and

(b) **Revenue Legislation:** the Income Tax Act 2007, Goods and Services Tax Act 1985, Tax Administration Act 1994 or any other relevant tax legislation.

9. APPROVAL OF MAJOR TRANSACTIONS

9.1 Approval of Major Transactions: The Board must not enter into any Major Transaction unless the transaction is:

9.1.1 Special Resolution: approved by resolution of the Board passed at a meeting of the Board by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being, or by a written resolution under clause 12.2.2; and

9.1.2 Settlor Approval: approved in writing by the Settlor, or contingent on approval in writing by the Settlor.

9.2 "Major Transaction": For the purpose of clause 9.1, Major Transaction means:

9.2.1 Acquisition of Assets: the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is

more than half the value of the Trust Fund before the acquisition; or

9.2.2 Disposal of Assets: the disposition of, or an agreement to dispose of, whether contingent or not, any part of the Trust Fund the value of which is more than half the value of the Trust Fund before the disposition; or

9.2.3 Other Transactions: a transaction that has, or is likely to have, the effect of the Board acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the Trust Fund before the transaction;

provided that:

9.2.4 Charge Over Assets: nothing in clause 9.2.2 or 9.2.3 applies by reason only of the Board giving, or entering into an agreement to give, a charge secured over all or any part of the Trust Fund the value of which is more than half the value of the Trust Fund for the purpose of securing the repayment of money or the performance of an obligation; and

9.2.5 Assessment of Contingent Liabilities: in assessing the value of any contingent liability for the purposes of clause 9.2.3, the Board:

(a) **Circumstances Affecting Value:** must have regard to all circumstances that the Board knows, or ought to know, affect, or may affect, the value of the contingent liability; and

(b) **Reasonable Estimates:** may rely on estimates of the contingent liability that are reasonable in the circumstances; and

(c) **Likelihood of Contingency and Claims:** may take account of the likelihood of the contingency occurring and any claim the Board is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

10. TRUSTEES AND OFFICERS OF THE TRUST

10.1 Number of Trustees: Except for the initial period during which the Initial Trustees hold office, the total number of Trustees constituting the Board must be not less than seven individuals and not more than nine individuals, provided that if at any time the total number of Trustees falls below seven:

10.1.1 Number to be Maintained: the remaining Trustee or Trustees must take any necessary or expedient steps to ensure that the number of Trustees is increased to at least seven, including notifying and liaising with the Settlor and/or any other relevant Stakeholder or other person under clause 10.2.2(a), as soon as reasonably practicable; and

10.1.2 Trustees Entitled to Act: subject to clause 10.1.1, the remaining Trustee or Trustees will be entitled to act in connection with the Trust until the number of Trustees is increased to at least seven.

10.2 Appointment/Removal of Trustees: Subject to clauses 10.1, 10.3 and 10.4, the following provisions apply in relation to the appointment and removal of Trustees:

10.2.1 Appointment by Board: The Board has the power to appoint an individual as an additional or replacement Trustee.

10.2.2 Board Exercise of Appointment Powers: In relation to the Board's exercise of its power to appoint Trustees under clause 10.2.1:

(a) **Stakeholder Representation:** The Board must at all times endeavour to ensure that the Board includes six Trustees who represent various Stakeholders (as set out in clauses 1.2.1 to 1.2.4 of the Stakeholders definition). For this purpose, the Board must, as soon as reasonably practicable in the event of any relevant vacancy or pending vacancy, invite nominations for these Trustee positions from the following Stakeholders:

(i) **Settlor:** the Settlor, who may nominate one individual for appointment as a Trustee (such nominee being the manager of the water treatment plant referred to in paragraph A of the Background or a similarly suitable nominee);

(ii) **Council:** Auckland Council, who may nominate one individual for appointment as a Trustee (such nominee being a manager within Auckland Council's biodiversity team or a similarly suitable nominee);

(iii) **CLG:** the CLG, who may nominate one individual for appointment as a Trustee;

(iv) **Community Conservation:** one or more entities or groups of persons involved in local community-led conservation projects (as determined by the Board), who may nominate two individuals for appointment as Trustees; and

(v) **Mana Whenua:** Te Kawerau ā Maki, who may nominate one individual for appointment as a Trustee.

In each case, subject to a nomination being received by the Board and the relevant nominee's written acceptance of appointment, the Board must appoint the nominee as a Trustee.

- (b) **Additional Trustees:** The Board:
 - (i) **Financial Oversight:** must appoint an additional, appropriately qualified, Trustee to be responsible for overseeing the Trust's financial reporting, including the Board's compliance with clause 13; and
 - (ii) **Other Appointments:** may appoint a Trustee or Trustees, either in addition to the seven Trustees contemplated under clause 10.2.2(a) and (b)(i) or, if any Stakeholder under clause 10.2.2(a) advises the Board that the Stakeholder is unable or unwilling to make any nomination, in lieu of appointing the relevant Stakeholder's nominee.
- (c) **Skills and Other Factors:** In relation to any appointment under 10.2.2(b)(ii), the Board must take into account the skills, knowledge, experience and diversity of the existing Board and a prospective appointee's skills, knowledge, experience and any other attributes relevant to the Trust's Charitable Purposes as set out in clause 4.2 and the Board's advancement of such purposes in accordance with the terms of this deed.
- (d) **Board Discretion:** In all other respects, the power of appointment is to be exercised at the discretion of the Board.

10.2.3 Removal by Board: The Board has the power to remove an individual from office as Trustee if the Board considers on reasonable grounds that such removal is in the best interests of the Trust, provided that any such removal must be:

- (a) **Special Resolution:** approved by resolution of the Board passed at a meeting of the Board by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being; and
- (b) **Settlor Approval:** approved in writing by the Settlor, or contingent on approval in writing by the Settlor.

10.3 Disqualifying Factors: An individual is not eligible to be appointed or to continue to hold office as a Trustee, or to be appointed or to continue to act as an Officer, if the individual is:

10.3.1 Bankruptcy: an undischarged bankrupt, or a discharged bankrupt who is prohibited by court order from engaging in any form of business activity;

10.3.2 Criminal Conviction: a person who has been:

- (a) **Crime Involving Dishonesty:** convicted of any crime involving dishonesty (within the meaning of section

2(1) of the Crimes Act 1961) or any offence under section 143B of the Tax Administration Act 1994, and sentenced for that crime or offence within the last seven years; or

- (b) **Other Offences:** convicted of any offence punishable by a term of imprisonment of two or more years, or sentenced to imprisonment for any offence, unless that person has obtained a pardon;

10.3.3 Disqualification from Company Positions: prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a company under any of the Companies Act 1993, the Financial Markets Conduct Act 2013 or the Takeovers Act 1993;

10.3.4 Incapacity: a person:

- (a) **Property Order:** who is subject to a property order made under the Protection of Personal and Property Rights Act 1988;
- (b) **Property Management:** whose property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or
- (c) **Mental Incapacity:** who is mentally incapable in relation to property or personal care and welfare, as defined in respect of a donor of an enduring power of attorney under section 94 of that Protection of Personal and Property Rights Act 1988; or

10.3.5 Charities Act Disqualification: disqualified from being an officer of a charitable entity under section 16 of the Charities Act 2005, if the Trust is registered, or required under clause 8 to be registered, under that Act.

10.4 Term of Office: The following provisions apply in relation to an individual's term of office as a Trustee:

10.4.1 Term of Appointment: Subject to clause 10.4.2:

- (a) **Initial Trustees:** an Initial Trustee will hold office until the appointment of replacement Trustees in accordance with clause 5.2.1; and
- (b) **Appointed Trustees:** any Trustee other than an Initial Trustee will hold office until the conclusion of the third Annual Meeting following the effective date of his or her appointment as a Trustee, or for a lesser period if so determined by the Board at the time of appointing the individual as a Trustee;

and unless reappointed as a Trustee, the individual will cease to hold office as a Trustee at the relevant time.

10.4.2 Cessation of Office: An individual holding office as a Trustee will immediately cease to hold such office, notwithstanding that his or her term of appointment has not expired, upon:

- (a) **Resignation:** the expiry of 28 days (or a shorter period if approved by the Board) following the Trustee giving written notice of his or her resignation to the Board;
- (b) **Ineligibility:** becoming ineligible to hold office as a Trustee under clause 10.3;
- (c) **Failure to Attend Meetings:** failing to attend a third consecutive meeting of the Board without leave granted by the Board;
- (d) **Death:** death; or
- (e) **Removal:** removal from office in accordance with clause 10.2.3.

10.5 Appointment/Removal of Officers: The following provisions apply in relation to the appointment of the Chair and Deputy Chair, and any other Officers:

10.5.1 Chair and Deputy Chair: The Board:

- (a) **Chair:** must appoint from time to time one Trustee to hold office as the Chair of the Trust; and
- (b) **Deputy Chair:** may appoint from time to time another Trustee to hold office as the Deputy Chair of the Trust;

provided that any individual appointed to hold office as Chair or Deputy Chair will only hold that office while they remain a Trustee.

10.5.2 Other Officers: The Board may appoint from time to time either one of the Trustees or some other person to hold any other designated office (for example, secretary or treasurer), as determined by the Board, and the Board may remove and replace any Trustee or other person appointed to hold any such office at any time, provided that any such appointee must not be ineligible, and will cease to hold such office if they become ineligible, to hold office as a Trustee under clause 10.3. Unless the Board determines otherwise, any Officer who is not a Trustee will be notified of, and entitled to attend and participate (but not vote) at, meetings of the Board, as if the Officer were a Trustee.

10.6 Records and Notice: On every appointment, reappointment, removal or cessation of office of any Trustee or Officer, the Board must cause an entry to that effect to be included in the minute book kept and maintained by the Board and, if required, notify the change to any relevant authority (for example, under the Charities Act 2005, if the Trust is registered under that Act).

11. MANAGING TRUSTEE/OFFICER CONFLICTS OF INTEREST

- 11.1 Entry into Transactions:** Subject to the provisions of this clause 11, the Board may enter into a transaction in respect of which a Trustee or Officer is Interested, if the Board considers that the transaction is in the best interests of the Trust in relation to the advancement of its purposes.
- 11.2 Disclosure and Records:** If a Trustee or Officer is Interested in any transaction entered into, or to be entered into, by the Board (other than any general remuneration or reimbursement of Trustees under clauses 15.1.1 and 15.3 or general Trustee indemnification or insurance under clause 17):
- 11.2.1 Disclosure:** the Trustee or Officer, immediately upon becoming aware that he or she is interested in the transaction, must disclose to the Board:
- (a) Disclosure of Interest:** the fact of his or her interest in the transaction; and
 - (b) Disclosure of Nature/Extent of Interest:** the nature of his or her interest and either the monetary value of the interest, if the monetary value of the interest is able to be quantified, or, if the monetary value of the interest is not able to be quantified, the extent of the interest; and
- 11.2.2 Record of Interests:** the Board must keep a record of the interest of the Trustee or Officer in relation to the transaction, in the Trust records kept and maintained by the Trust Board, such records to be made available to the Settlor upon request.
- 11.3 Involvement in Transaction:** A Trustee or Officer who is Interested in any transaction entered into, or to be entered into, by the Board (including remuneration or reimbursement of a particular Trustee under clause 15.1.1 or clause 15.3, remuneration for services provided by a particular Trustee or a particular Trustee's employee, partner or firm under clause 15.1.2, or indemnification or insurance for a particular Trustee under clause 17):
- 11.3.1 Deliberations and Voting:** must not be involved in deliberations, and in the case of a Trustee will not be counted for the purpose of establishing a quorum and will not be entitled to vote, on any matter relating to the transaction;
- 11.3.2 Attendance at Meetings:** subject to clause 11.3.1, may attend any meeting of the Board that is not limited to dealing with matters relating to the transaction and be included among the attendees at that meeting for the purpose of establishing a quorum to commence the meeting and to deal with other matters at the meeting; and
- 11.3.3 Other Matters:** may sign a written resolution of the Board dealing with any matter relating to the transaction and, acting in accordance with the Board's decisions in relation to the transaction, may sign any contract or other document, or do

anything else in relation to the transaction as Trustee or Officer of the Trust.

11.4 Board Change or Alternative Options: If, as a consequence of any Trustee or Trustees being Interested in a transaction, the Board would be unable to establish a quorum and/or decide on a resolution in respect of the transaction, for the Board to act in relation to the transaction:

11.4.1 Board Change: the composition of the Board must change (by way of the appointment and/or the removal or resignation of one or more Trustees); or

11.4.2 Alternative Options: by unanimous resolution of all Trustees including any Interested Trustee (being either a resolution at a meeting or a written resolution), the Board may:

(a) **Independent Trustee(s):** authorise the independent Trustee or Trustees on the Board, acting unanimously (by way of a resolution at a meeting or a written resolution), to determine the Board's position on the transaction; or

(b) **Independent Advice:** engage (as an advisory trustee, special trust advisor or otherwise), and determine to proceed in relation to the transaction in accordance with the advice and/or recommendations of, a suitably qualified independent person.

11.5 Meaning of "Interested": For the purpose of this clause 11, a Trustee or Officer will be interested in a transaction if the Trustee or Officer:

11.5.1 Direct Financial Interest: is a party to, or will or may derive a material financial benefit from, the transaction;

11.5.2 Indirect Financial Interest:

(a) **Through Another Interested Party:** has a material financial interest in another party to the transaction;

(b) **As Director, Officer or Trustee of another Interested Person:** is a director, officer, or trustee of another party to the transaction, or person who will or may derive a material financial benefit from, the transaction (unless the party or person is wholly owned or wholly controlled by the Board in connection with the Trust);

(c) **As a Relative of Another Interested Person:** is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, the transaction; or

11.5.3 Other Material Interest: otherwise has, directly or indirectly, any material personal interest in the transaction.

12. PROCEEDINGS OF THE BOARD

12.1 Board Meetings: Unless provided otherwise in this deed, the following provisions apply in relation to meetings of the Board:

12.1.1 Obligation to Meet: The Board must meet from time to time, as the Board considers necessary or expedient for the conduct of the affairs of the Trust, provided that:

- (a) **Convening Meetings:** the Chair, the Deputy Chair, or any two Trustees, may convene a meeting of the Board at any time by giving, or arranging for the any Officer or employee of the Trust to give, written notice of the meeting in accordance with clause 12.1.3; and
- (b) **Annual Meeting Requirement:** the Board must hold a meeting designated as the annual meeting of the Trust each year, within four months of the end of the Financial Year, to receive and approve the Annual Report for that year and to deal with any other business as determined by the Board.

12.1.2 Method of Meeting: A meeting of the Board may be held by Trustees assembling together and/or attending by means of audio, audio and visual, or any other form of communication suitable for conducting meetings (by which all Trustees can participate and simultaneously hear each other throughout the meeting), and references in this deed to Trustees attending a meeting are to be read accordingly.

12.1.3 Notice of Meetings: Unless the Board determines otherwise, meetings of the Board are to be convened by giving each Trustee (other than a Trustee who has waived the right) not less than five working days' written notice of any meeting of the Board and such notice must:

- (a) **Date/Time:** specify the date and time of the meeting;
- (b) **Method:** specify the place of the meeting at which the Trustees are to assemble and/or the manner in which each Trustee may participate in the meeting (if the meeting is to be held, exclusively or in part, by means of audio, audio and visual, or any other form of communication suitable for conducting meetings); and
- (c) **Agenda:** give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Trustee to appreciate the general import of those matters, unless this is already known to the Trustees or is impracticable in the particular circumstances;

provided that any irregularity in relation to giving such notice is waived by a Trustee if the Trustee attends the meeting without protest as to the irregularity or agrees to the waiver (whether before, after or during the meeting).

12.1.4 Quorum and Voting: Subject to clause 11.3:

- (a) **Quorum:** a quorum for a meeting of the Board will be established only if the number of Trustees in attendance exceeds 50% of the total number of Trustees for the time being, and no business will be transacted at a meeting at any time unless a quorum is present at that time; and
- (b) **Voting:** each Trustee in attendance at a meeting shall have one vote.

12.1.5 Resolutions at Meetings: Unless provided otherwise in this deed, for a resolution to be passed at a meeting of the Board on any matter it must be approved by a number of Trustees that exceeds 50% of the total number of Trustees for the time being. Any resolution passed in accordance with this clause will be binding on all Trustees.

12.1.6 Role of Chair: The Chair, or in the absence of the Chair the Deputy Chair, must chair any meeting of the Board. If no Trustee has been appointed Chair or Deputy Chair, or if neither the Chair nor Deputy Chair is present within 15 minutes after the time appointed for commencement of the meeting, the Trustees in attendance at that meeting may appoint one of their number to chair the meeting. Subject to the terms of this deed and any rules/regulations adopted by the Board prior to any meeting, the Trustee chairing the meeting will control the conduct of that meeting.

12.2 Board Resolutions: Unless provided otherwise in this deed, the following provisions apply in relation to resolutions to be passed by the Board:

12.2.1 Resolutions at Meetings: Any resolution at a meeting of the Board must be passed in accordance with clause 12.1.5

12.2.2 Written Resolutions: A written resolution signed or approved by notice in writing by all of the Trustees for the time being will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held, provided that the requisite majority of Trustees for passing the resolution at a meeting must not be Interested in any transaction to which the resolution relates. Any such resolution may consist of several documents in like form each signed or approved by notice in writing by one or more of the Trustees. An electronic scanned copy or other facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from its transmission.

12.2.3 Rescission/Variation: The Board may rescind or vary any resolution of the Board by way of a resolution passed at a meeting of the Board by at least the same majority as was necessary to pass the resolution that is to be rescinded or varied, or by way of a written resolution.

12.3 Board Rules/Regulations: Subject to the terms of this deed, the proceedings of the Board, including the manner in which meetings of the Board are to be convened and conducted (including holding meetings by means of audio, audio and visual, or any other suitable form of communication), will be regulated by the Board, for which purpose the Board may develop and adopt from time to time any rules and/or regulations relating to its proceedings as the Board thinks fit.

12.4 Validity of Proceedings: Any meeting of the Board and any resolution of the Board will be as valid and effectual as if:

12.4.1 Trustees Duly Appointed: the individuals acting as Trustees had been duly appointed;

12.4.2 Trustees Eligible: the individuals acting as Trustees were eligible to hold office as Trustee; and

12.4.3 Compliance With Rules/Regulations: the Board, and the individuals acting as Trustees, had complied with any applicable rule and/or regulation adopted by the Board relating to such matters;

even if it is later discovered that:

12.4.4 Defect in Appointment: there was some defect in the appointment of any individual acting as Trustee;

12.4.5 Trustee Ineligible: any individual acting as Trustee was for any reason ineligible to hold office as Trustee; or

12.4.6 Non-compliance with Rules/Regulations: there was accidental failure to comply with any applicable rule and/or regulation adopted by the Board.

12.5 Records of Meetings/Resolutions: The Board must ensure that a record of all meetings and resolutions of the Board is included in a minute book kept and maintained by the Board. Once any minutes are confirmed by the Board, the Chair (or, if confirmed at a meeting of the Board, the Trustee chairing the meeting) must sign the minutes as a true and correct record. The signed minutes will be *prima facie* evidence of the facts stated in those minutes.

13. REPORTING AND ACCOUNTABILITY REQUIREMENTS

13.1 Annual Strategy: At or before the start of each Financial Year (starting with the 2020/2021 year commencing 1 July 2020), the Board must prepare a Strategy for the Trust for that Financial Year and at least the two following Financial Years, including a statement of priorities for that Financial Year. Once the Strategy for the Trust is finalised by the Board, the Board must provide a copy for information to the Settlor, Auckland Council and the CLG and make a copy available to other Stakeholders.

13.2 Financial Information: Without limiting the financial and non-financial recordkeeping, reporting and assurance requirements that may apply to the Trust under clause 8.1 (or any other applicable law):

13.2.1 Financial Statements: The Board must ensure that financial statements of the Trust are prepared as soon as practicable after the end of each Financial Year (starting with the 2019/2020 year ending 30 June 2020), for presentation and approval at the next Annual Meeting after the end of that Financial Year. The Financial Statements must give a true and fair view of the financial position of the Trust Fund for that Financial Year and must include:

- (a) **Financial Position:** a statement of financial position;
- (b) **Financial Performance:** a statement of financial performance; and
- (c) **Notes:** notes to those statements.

13.2.2 Review or Audit: The Financial Statements must be independently reviewed, or if the Board so resolves or if required by law they must be independently audited, in either case by a chartered accountant or other appropriately qualified person appointed for that purpose by the Board; and

13.2.3 Records and Filing: the Financial Statements, and any review or audit of such statements, must be included in the Trust's records and, if required by law, filed with any relevant authority (for example, under the Charities Act 2005, if the Trust is registered under that Act).

13.3 Annual Report: As soon as practicable after the end of each Financial Year (starting with the 2019/2020 year ending 30 June 2020), for presentation and approval at the Annual Meeting, the Board must prepare an Annual Report that includes:

13.3.1 Report on Trust's Activities: a report on the Trust's activities during the relevant Financial Year, including details of the allocation/distribution of funds from the Trust Fund and evaluation of the Trust's performance against the measurable targets referred to in clause 4.2.4; and

13.3.2 Financial Statements: a copy of the Financial Statements (reviewed or audited, as applicable) for that Financial Year.

Once the Annual Report for the Financial Year is finalised and approved at the Annual Meeting, the Board must provide a copy for information to the Settlor, Auckland Council and the CLG and must make a copy available to other Stakeholders.

13.4 Making Documents Available: For the purpose of clauses 13.1 and 13.3, the Board may make copies of the Trust's Strategy and its Annual Report available to Stakeholders, and to the wider public if so determined by the Board, by:

13.4.1 Electronic Access: publishing an electronic version of any such document on a website for the Trust and/or on any public electronic register (for example, the charities register established under the Charities Act 2005); and/or

13.4.2 Hard Copy Access: making a hard copy of any such document available for inspection at the Trust's registered office or any other premises, as determined by the Board.

14. GENERAL ADMINISTRATIVE MATTERS

14.1 Record Keeping: The Board must ensure that full and accurate records are kept and maintained in respect of the Trust, in written form or in a form or in a manner that allows such records to be easily accessible and convertible into written form, including:

14.1.1 Financial Records: financial books, accounts, papers and other financial records of the Trust, including full and accurate records and accounts of all receipts, credits, payments, assets, liabilities, transactions and other matters necessary for giving a true and fair view of the financial position of the Trust and the Financial Statements for each Financial Year;

14.1.2 Minute Book: a minute book, which must include a full and accurate record of the appointment, removal and cessation of office of Trustees and Officers, disclosures of interest, Board meetings and resolutions, delegations, and any other matters appropriately included in a minute book relating to the Trust; and

14.1.3 Other Records: any other records that it may be necessary or appropriate to keep and maintain in respect of the Trust, including this deed, any rules and/or regulations adopted by the Board, written communications with the Trustees and the Settlor and other Stakeholders, and any other documents and information relating to the Trust and its activities,

and such records will be open to inspection by any of the Trustees and by the Settlor.

14.2 Financial Matters: The Board must ensure that:

14.2.1 Bank Account(s): the Trust has an account or accounts, at any bank or banks, for its funds, as determined by the Board from time to time, and in relation to any such accounts, cheques, withdrawals and authorities must be signed or endorsed, as the case may be, by one or more persons, any such person on being either a Trustee or another person acting on, and in accordance with, the written authority of the Board; and;

14.2.2 Administration of Funds: there are at all times appropriate procedures in place in relation to the Board's receipt, administration and expenditure of the Trust's funds.

14.3 Method of Contracting: Unless the law requires otherwise, and subject to clause 14.4:

14.3.1 Deeds: a deed to be executed by the Board may be signed on behalf of the Board by two or more Trustees;

14.3.2 Written Contracts: any contract or other obligation required by law to be in writing, and any other written contract or obligation to be entered into by the Board, may be signed on behalf of the Board by a Trustee or another person acting under the express or implied authority of the Board; and

14.3.3 Other Contracts: any other contract or obligation may be entered into on behalf of the Board in writing or orally by a Trustee or another person acting under the express authority of the Board.

14.4 Common Seal: If the Trustees are incorporated as a board under the Charitable Trusts Act 1957, the Trustees will have a common seal for the board and the common seal:

14.4.1 Custody of Seal: must be held by one of the Trustees, or an Officer, as determined by the Board;

14.4.2 Mandatory Use: must be affixed to any document required to be executed by the Board under common seal; and

14.4.3 Optional Use: may be affixed to any other document to be executed by the Board;

provided that the common seal must in all cases be affixed pursuant to prior authority given by the Board and in the presence, and accompanied by the signatures, of two or more Trustees.

14.5 Provision of Notices: Any notice required to be given by a person (**Sender**) to any other person (**Recipient**) under this deed, including notice of any written approval, resolution or other matter, may be:

14.5.1 Delivery: delivered to the Recipient directly or to an address given by the Recipient to the Sender for such purpose;

14.5.2 Electronic Means: sent by electronic means in accordance with any request made by the Recipient from time to time for notices to be sent by such means;

14.5.3 Post: posted to an address given by the Recipient to the Sender for such purpose; or

14.5.4 Facsimile: sent by facsimile transmission to a facsimile telephone number given by the Recipient to the Sender for such purpose.

14.6 Receipt of Notices: A notice given by a Sender to a Recipient pursuant to clause 14.5 is deemed to be given:

14.6.1 Delivery: in the case of delivery, when the notice is handed to the Recipient or delivered to the address of the Recipient;

14.6.2 Electronic Means: in the case of electronic means, at the time of transmission;

14.6.3 Post: in the case of posting, five days after it is posted; and

14.6.4 Facsimile: in the case of a facsimile transmission, when the Sender receives a transmission report produced by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Recipient to the Sender.

15. REMUNERATION AND REIMBURSEMENT OF TRUSTEES

15.1 Remuneration of Trustees: Subject to clause 15.2:

15.1.1 General Remuneration: a Trustee may be remunerated for services provided as a Trustee, provided that any such remuneration must be reasonable having regard to the Trustee's duties and responsibilities and the services provided by the Trustee; and

15.1.2 Professional Remuneration: any Trustee engaged in any profession, business or trade may be paid all usual professional, business and trade charges for services requested by the Board that are provided by that Trustee or by that Trustee's employee or partner, including acts which the Trustee, not being in any profession, business or trade, could have done personally.

15.2 Remuneration Restrictions: In relation to any remuneration to be paid under clause 15.1:

15.2.1 Fair Market Value: the amount of the remuneration must not exceed fair market value for the services provided;

15.2.2 Settlor Approval: the amount and/or the rate or rates of any such remuneration, and the circumstances in which the remuneration is to be provided, must be approved in writing by the Settlor; and

15.2.3 Business Income Restriction: if the remuneration is a benefit or advantage in respect of which clause 7.3 applies, neither the Trustee receiving the remuneration nor any person associated with the Trustee may determine or materially influence, directly or indirectly, the nature or amount of that remuneration or the circumstances in which it is to be provided.

15.3 Reimbursement of Expenses: A Trustee is entitled to be indemnified against and reimbursed for expenses properly incurred by the Trustee in connection with the Trust, including travel and other expenses.

16. LIABILITY OF TRUSTEES

16.1 Standard of Care: Despite the fact that the Board may from time to time include Trustees whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others:

16.1.1 Reasonable/Prudent Person Standard: the Trustees' general duty when administering the Trust is to exercise the care and skill that is reasonable in the circumstances, and the Trustees' duty in relation to investment is to exercise the care and skill

that a prudent person of business would exercise in managing the affairs of others; and

16.1.2 Higher Standard Excluded: the Trustees will not be subject to the duty to exercise special skill as set out in section 13C of the Trustee Act 1956, or to compliance with any equivalent or similar standard of care (higher than the standard set out in clause 16.1.1) under any other legislation.

16.2 Limited Liability: No Trustee (including any former Trustee) will be liable for any loss to the Trust Fund arising from any act or omission of the Trustee, the Board or any of the Trustees, except to the extent that the loss is attributable to:

16.2.1 Dishonesty: dishonesty on the part of the Trustee; or

16.2.2 Wilful Misconduct: wilful misconduct on the part of the Trustee, including any wilful act or omission of the Trustee known by the Trustee to be a breach of trust or a breach of any other obligation of the Trustee in connection with the Trust; or

16.2.3 Gross Negligence: gross negligence on the part of the Trustee;

and no Trustee (including any former Trustee) will be liable for any loss to the Trust Fund attributable to any negligence, dishonesty, misconduct or delay on the part of any agent, contractor or employee engaged by the Board in connection with the administration of the Trust.

16.3 Proceedings Against Trustees: Neither the Board nor any Trustee will be bound to take, or liable for failure to take, any proceedings against any other Trustee (including any former Trustee) for any breach or alleged breach of trust committed by that other Trustee.

16.4 Receipt of Money: Subject to this clause 16, a Trustee (including any former Trustee) will be chargeable only for any money which that Trustee has received. For the purposes of this clause, a Trustee is deemed to have received money even if not actually paid to that Trustee if that money has been credited in account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.

17. TRUSTEE INDEMNIFICATION AND INSURANCE

17.1 Indemnification: Subject to clause 17.2, each Trustee (including any former Trustee) is entitled to be indemnified out of the Trust Fund against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together called **Liabilities**) suffered or incurred by that Trustee in connection with the Trust.

17.2 Indemnification Restriction: The indemnification provided under clause 17.1 will not apply to any Trustee (including any former Trustee) to the extent that the Liabilities suffered or incurred by that Trustee are attributable to:

17.2.1 Dishonesty: dishonesty on the part of the Trustee; or

17.2.2 Wilful Misconduct: wilful misconduct on the part of the Trustee, including any wilful act or omission of the Trustee known by the Trustee to be a breach of trust or a breach of any other obligation of the Trustee in connection with the Trust; or

17.2.3 Gross Negligence: gross negligence on the part of the Trustee.

17.3 Insurance: The Board may obtain insurance for the benefit of the Trustees in relation to any Liabilities covered by the indemnification provided under this clause 17 and meet the cost of such insurance out of the Trust Fund.

18. VARIATION OF TRUST TERMS

18.1 Approval of Variation: Subject to clause 18.2, the Board may from time to time, by deed (which may be in the form of a revised deed of trust setting out all of the terms of the Trust, as varied), vary the terms of the Trust, by amending, deleting or replacing any term set out in this deed (including, for the avoidance of doubt, the details of the Charitable Purposes of the Trust set out in clause 4.2 and the details in Schedules 1 and 2), provided that any such variation must be:

18.1.1 Special Resolution: approved by resolution of the Board passed at a meeting of the Board by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being, or by a written resolution under clause 12.2.2; and

18.1.2 Settlor Approval: approved in writing by the Settlor, or contingent on approval in writing by the Settlor.

18.2 Variation Restrictions: No variation (or purported variation) of the terms set out in this deed will be valid or effective if it would:

18.2.1 Focus of the Trust: change, directly or indirectly, the Trust's focus on:

(a) **Particular Objectives:** the particular objectives set out in clause 4.2.2, provided that this restriction will only apply for the first 10 years following the grant of the Consent; or

(b) **General Purpose:** facilitating environmental management and the protection, restoration and enhancement of native flora and fauna and ecosystems; or

18.2.2 Charitable Purposes: permit the Trust to operate other than for exclusively Charitable Purposes in New Zealand, pursued for the benefit of the public and not for private profit; or

18.2.3 Tax Concessions: affect the Trust's eligibility for the benefit of any Tax Concession for which it would otherwise be eligible, unless in relation to any such concession the Board has determined that eligibility for the benefit of that concession is

not required in the best interests of the Trust in relation to the advancement of its purposes.

- 18.3 Records and Filing:** The Board must ensure that any variation of the terms set out in this deed is included in the Trust's records and, if required by law, filed with any relevant authority (for example, under the Charitable Trusts Act 1957, and under the Charities Act 2005 if the Trust is registered under that Act).

19. RESETTLEMENT OF TRUST FUND

- 19.1 Approval of Resettlement:** Subject to clause 19.2, the Board may, by deed, resettle all or any part of the Trust Fund on trust for any one or more Charitable Purposes in New Zealand, on terms determined by the Board, provided that any such resettlement must be:

19.1.1 Special Resolution: approved by resolution of the Board passed at a meeting of the Board by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being, or by a written resolution under clause 12.2.2; and

19.1.2 Settlor Approval: approved in writing by the Settlor, or contingent on approval in writing by the Settlor.

- 19.2 Resettlement Restrictions:** No resettlement will be valid or effective if it would:

19.2.1 Focus of the Trust: detract, directly or indirectly, from the Board's use of the Trust Fund for:

(a) **Particular Objectives:** the particular objectives set out in clause 4.2.2, provided that this restriction will only apply for the first 10 years following the grant of the Consent; or

(b) **General Purpose:** facilitating environmental management and the protection, restoration and enhancement of native flora and fauna and ecosystems; or

19.2.2 Charitable Purposes: permit any resettled part of the Trust Fund, or any income to be derived from any resettled part of the Trust Fund, to be distributed or applied other than for exclusively Charitable Purposes in New Zealand, pursued for public benefit and not for private profit; or

19.2.3 Tax Concessions: affect the Trust's eligibility for the benefit of any Tax Concession for which it would otherwise be eligible, unless in relation to any such concession the Board has determined that eligibility for the benefit of that concession is not required in the best interests of advancing the purposes of the Trust.

20. WINDING UP THE TRUST

- 20.1 Minimum Duration:** The Trust is intended to operate for a minimum of 10 years following the grant of the Consent, and may continue to operate

for any additional period or indefinitely, and the Board must not exercise the power to wind up the Trust under this clause 20 within that 10 year period.

20.2 Approval of Winding Up: Subject to clauses 20.3 and 20.4, the Board may, by resolution passed at a meeting of Trustees, determine to wind up the Trust and direct the distribution or application of the Trust Fund upon winding up for exclusively Charitable Purposes as required under clause 20.4, provided that such resolution must be:

20.2.1 Special Resolution: approved by a number of Trustees that equals or exceeds 75% of the total number of Trustees for the time being; and

20.2.2 Settlor Approval: approved in writing by the Settlor, or contingent on approval in writing by the Settlor.

20.3 Board Meeting Required: In relation to the Board's consideration of any resolution to wind up the Trust under clause 20.2:

20.3.1 Resolution at Meeting: the resolution must be passed at a meeting of the Board called for that purpose; and

20.3.2 Notice of Meeting: all of the Trustees for the time being must be given not less than 28 days' notice of the meeting and the purpose of the meeting (unless all of the Trustees agree in writing to waive or reduce that notice period).

20.4 Winding Up the Trust: In relation to winding up the Trust:

20.4.1 Satisfaction of Debts/Liabilities: the Board must first ensure that all debts and liabilities of the Trust, including the costs of winding up the Trust, have been or will be satisfied out of the Trust Fund or have been or will be assumed by another person; and

20.4.2 Distribution/Application of Surplus: the remainder of the Trust Fund must then be distributed or applied for exclusively Charitable Purposes in New Zealand, for the benefit of the public and not for private profit, and in particular for one or more Charitable Purposes that fall within, or are as close as possible to, or are otherwise consistent with the Trust's Charitable Purposes set out in this deed; and

20.4.3 Determination of Distribution/Application: the distribution or application of any surplus in accordance with clause 20.4.2 is to be determined:

(a) **Trustee Resolution:** by resolution of the Board, under clause 20.2 or otherwise; or

(b) **Court Direction:** otherwise, by a Judge of the High Court of New Zealand.

20.5 Notice Requirements: The Board must ensure that notice of winding up of the Trust is filed with any relevant authority (for example, under the

Charitable Trusts Act 1957, under the Charities Act 2005 if the Trust is registered under that Act, and under any relevant tax legislation).

21. GOVERNING LAW AND JURISDICTION

21.1 Governing Law: This deed is governed by New Zealand law.

21.2 Jurisdiction: In connection with the Trust, the Settlor, the Board and the Trustees submit to the non-exclusive jurisdiction of all courts having jurisdiction in New Zealand.

EXECUTED AND DELIVERED AS A DEED

SIGNED on behalf of **WATERCARE SERVICES LIMITED** as Settlor by:

Signature of director

Signature of director

Name of director/authorised signatory

Name of director/authorised signatory

Witness:*

Witness:*

Signature of witness

Signature of witness

Full name of witness

Full name of witness

Occupation of witness

Occupation of witness

Address of witness

Address of witness

**Signatures need not be witnessed if two directors sign. A witness must not be party to this deed.*

SIGNED by **[1st TRUSTEE'S NAME]** as
Trustee in the presence of:

[1st Trustee's Name]

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED by [2nd TRUSTEE'S NAME] as
Trustee in the presence of:

[2nd Trustee's Name]

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED by [3rd TRUSTEE'S NAME] as
Trustee in the presence of:

[3rd Trustee's Name]

Witness:

Signature of witness

Full name of witness

Occupation of witness

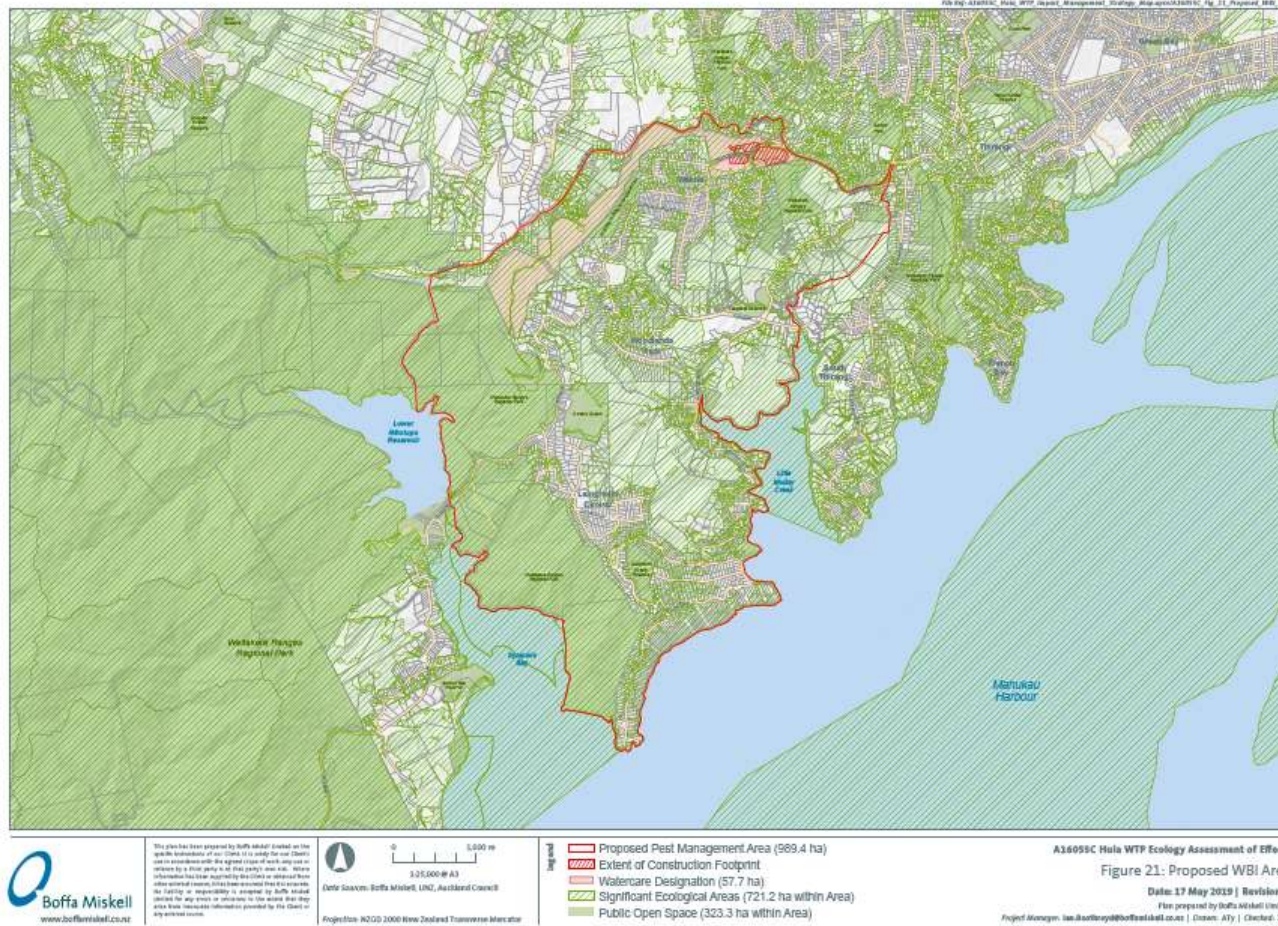
Address of witness

DRAFT

[SIGNATURE SECTION TO BE INCLUDED FOR EACH OF THE INITIAL TRUSTEES]

SCHEDULE 1 WAIMA BIODIVERSITY CATCHMENT

[The following map of the Catchment area is taken from the Boffa Miskell report *Huia Water Treatment Plant Replacement: Assessment of Ecological Effects Prepared for Watercare Services* dated 21 May 2019.]



SCHEDULE 2 WAIMA BIODIVERSITY MANAGEMENT PLAN

[The following description of the proposed Waima Biodiversity Management Plan is an extract from the Boffa Miskell report Huia Water Treatment Plant Replacement: Assessment of Ecological Effects Prepared for Watercare Services dated 21 May 2019, section 7.4.1. The terminology and other details have not been updated to align with the Consent condition relating to the Trust and this draft trust deed.]

Proposal for the management of significant residual effects

Our proposal for the management of residual ecological effects from the construction of the replacement WTP is to establish a Waima Biodiversity Management Plan (BMP). Details of the proposal are set out below.

Rationale

Forested parts of the Little Muddy Creek catchment are identified as SEA, with biodiversity values comparable to that present within the Project Site. The choice of the Little Muddy Creek catchment as the focus of proposed biodiversity management meets the AUP principle that offsetting/compensation to address adverse ecological effects “should be undertaken close to the location of development, where this will result in the best ecological outcome”.

In the context of the largely bush covered Little Muddy Creek catchment and wider Waitakere Ranges, we consider that management to protect and restore remaining indigenous ecosystems is a higher priority, and will provide greater biodiversity outcomes, than creation of new habitat through revegetation. This assessment aligns with Auckland Council’s Biodiversity Strategy, which prioritises protection of remnant existing ecosystems and habitats, and management of the region as a network of protected habitats which are buffered and linked, within a matrix of land use which supports their ecological function.

Auckland Council’s SEA maps convey that ecosystems span both public and private land, and the Auckland Biodiversity Strategy identifies effective partnerships between agencies, mana whenua and people as a key tenet of Auckland Council’s vision.

The rationale underpinning the proposed Waima BMP is that “landscape matrix” habitat quality is an important complement to intensive management of high value priority areas and is key to ensuring the viability of indigenous species conservation in human-modified landscapes (Franklin & Lindenmayer 2009). Meaningful biodiversity gains require appropriate (large) scale and defensible boundaries, with a mechanism to enable adequate, long-term resourcing of projects.

We arrived at the spatial extent of the proposed Waima Biodiversity Initiative management area and the level of investment proposed, on the basis of our professional judgement, taking into account the following assumptions:

- Natural ‘defensible boundaries’ in the landscape will assist with control operations and slow reinvasions;
- Biodiversity gains increase with the size and complexity of the management area, as a large area is more likely to contain a full, representative range of indigenous flora and fauna, including refuge populations of species that would benefit from pest management;
- Successful control of a large area offers ‘critical mass’, as an area with a large interior: edge ratio is more resistant to reinvasion, and is likely to have sufficient carrying capacity to support minimum viable populations of beneficiary fauna;
- The proposed management area encompasses the community-led Waima-Laingholm Pest Free Zone initiative, which will provide a foundation for positive collaboration with this group;
- Up-front funding of a large project will create economies of scale, and enable ongoing funding to be generated through investment of capital.

Proposed Management Area

A number of effects arising from the permanent loss of 3.5 ha of indigenous forest cover within the Project Site cannot be fully mitigated through on-site restoration and management, including:

- Reduction in extent of significant ecological area within the Little Muddy Creek catchment, including mature secondary forest and modified broadleaved scrub communities.
- Degraded ecosystem functions, including partial loss of connectivity within the forested corridor below Scenic Drive, on the northern boundary of Little Muddy Creek catchment; disruption of ecological sequences in the Project Site and immediate surrounds; and a potential reduction in the quality of forest habitat on the perimeter of the Project Site.

The Little Muddy Creek catchment is the focus of a biodiversity management project proposed to address adverse residual ecological effects.

The Waima BMP management area (Figure 21) encompasses the suburbs of Waima, Woodlands Park and Laingholm. Continuous forest within Waitakere Ranges Regional Parkland extends to the west, while Scenic Drive, Huia Road/ Little Muddy Creek define the northern catchment boundaries to the north, and to the east. The Waima BMP management area boundaries largely reflect those of the 2014 Muddy Creeks Plan (a Local Area Plan for Parau, Laingholm, Woodlands Park and Waimā prepared by the Waitakere Ranges Local Board), with the exclusion of Parau and regional parkland to the north and west of this settlement. The Waima BMP also encompasses all of the area within the Waima-Laingholm Pest Free Zone. The proposed management area encompasses 990 ha in total, approximately 720 ha of which is bush-covered and classified as SEA in the AUP. The vegetation is a mosaic of regenerating and mature kanuka forest, secondary podocarp forest and kauri forest, interspersed with roads, residential development, recreational open space and associated services and amenities. The most intensive suburban-density subdivision occurs amongst remnant old growth kauri forest on ridgelines.

Management is proposed for both public and private land including:

- 320 ha of regional parkland and Council reserves;
- 608 ha of private land (1,976 properties);
- 53 ha of forested land owned by Watercare.

Residential development is the dominant land use throughout the catchment, and most properties are 1 ha or smaller, though a few large properties are present (Table 30).

Table 30: Number and size range of private properties within the Muddy Creek Management Area

Size (ha)	Number of properties
<0.1	463
0.1 - 1	1437
1 - 2	43
2 - 5	24
5 - 10	6
>10	3

The SEA overlay in the AUP provides a measure of protection to bush cover in the Little Muddy Creek catchment, as rules constrain clearance of native vegetation. However, the remaining indigenous ecosystem faces significant pressures on biodiversity associated with invasive species and human activity. Predation by vertebrate pests is the major threat to wildlife (birds, lizards, invertebrates and potentially bats), while kauri dieback, browsing animals and competition from weeds all impact on the health, diversity and integrity of the plant community. Argentine ants are also an emerging biodiversity threat, and have been detected in localised sites in the catchment.

Council Funds and Existing Initiatives within the Little Muddy Creek Catchment

Auckland Council's pest management in parks and reserves within the catchment to date has been intermittent, and essentially focused on possum control. Council's proposed Regional Pest Management Plan (PRMP; 2018) includes a 10-year budget of \$142.44m, funded through a Natural Environment Targeted Rate (NETR), to cover region-wide biosecurity management on all parkland. Watercare's Project Ecologists met with Auckland Council's biodiversity and biosecurity team members to ascertain how and where Council will prioritise funds for biosecurity management. While the Council team is clear that SEAs are to be a key focus, including those on private land and in local reserves, specific information on resource allocations and how management is to be implemented are not available.

The PRMP currently identifies that comprehensive possum control will be implemented across the entirety of rural mainland Tāmaki Makaurau / Auckland, though Auckland Council's 10-year plan budget does not include the Waitākere Ranges as part of the rural control area. The PRMP indicates that the Waitākere Ranges will be prioritised for control of pigs, deer and goats.

Auckland Council's 10-year plan has allocated funds to construction of tracks and hygiene stations to reduce the spread of kauri dieback disease, but does not identify funding to manage kauri on private land.

Council's allocation of the NETR includes a region-wide budget of \$3.6m over the next 10 years to supporting local, community-led Pest Free Auckland initiatives, including a digital platform to coordinate initiatives and compile region-wide data, and a \$300,000 fund for a "Community Coordination and Facilitation Grant Programme"¹ to provide funding support for community coordinators or facilitators to "strategically increase collaboration, capacity and on the ground delivery of natural environment outcomes". However, it does not cover commercial contractors to do the on the ground work, or allow applications for multi-year grants.

The 2014 Muddy Creeks Local Area Plan includes ideas and visions for the future to provide a long-term direction for Council, iwi and community action in the area. It identifies features important to the community and proposes objectives and actions to achieve desired outcomes. Key ecology-related themes include recognition of the heritage value of the kauri forest that the community inhabits, and the kaitiakitanga shown through local initiatives (e.g., the Sustainable Neighbourhood groups or Waituna Action Group). The Muddy Creeks Plan includes an ecological objective of fostering healthy, safe and connected ecosystems through managing kauri dieback, restoration of ecological corridors and advocacy for pest management.

Existing community-led pest management activity (Waima-Laingholm Pest Free Zone, in operation since early 2017) includes active maintenance of ~142 possum traps, mainly located at 100 m intervals along Exhibition Drive and through Clarks Bush. Individual landowners operate a similar number of possum traps at unspecified locations throughout the catchment, and limited rat control is also undertaken. Consistent catch rates (M. Harvey pers. comm) indicate that the current level of control is not effective to suppress the possum population to the extent that significant biodiversity gains will be achieved. Other conservation-focused community groups in the catchment are listed on "citizen science/ conservation" websites including NatureSpace and the Gecko Trust, though in general these appear to be run fairly informally.

Project Goals and Objectives

Goals of the proposed Waima BMP are:

- Goal 1:** Community-wide engagement in stewardship and sustainable environmental management of the Little Muddy Creek catchment.
- Goal 2:** Coordinate and increase conservation efforts to protect and restore native flora and fauna within the Little Muddy Creek catchment.
- Goal 3:** Repair and strengthen connective linkages throughout the catchment through promoting natural forest regeneration and improve the health and resilience of remnant kauri forest.

¹ <https://www.aucklandcouncil.govt.nz/grants-community-support-housing/grants/regional-grants/Pages/default.aspx>

Key actions to achieve specified goals include:

1. Establishment of an accountable administrative structure that coordinates and implements conservation work on public and private land throughout the catchment to maximise ecological benefits and foster community engagement.

Measurable targets include:

- Establishment of a charitable trust before work commences, with representation of key stakeholders on the Trust funded by Watercare;
- Willing acceptance of landowners and residents in Waima Biodiversity Initiative activities on their properties;
- Delivery of annual report to stakeholder groups, setting out financial position, progress against targets and updates to strategic and annual plans.

2. Multi-species vertebrate pest management (possums, rats, mustelids, hedgehogs and pigs), throughout the Little Muddy Creek catchment. Configuration of trap / bait station locations will be developed following community liaison and catchment analysis by biosecurity experts and detailed in a Waima Biodiversity Initiative Management Plan. Specific thresholds and predator monitoring methods will be derived for the site as part of the management plan, with an implementation schedule set out in an Annual Plan.

Monitoring and management of some pest species (e.g., mice, feral cats, invertebrate pests) are not well developed at present, however detection and control technology is likely to improve for these species, and for target species identified in the Waima Biodiversity Initiative. We anticipate that the Trust will expand the suite of target pest species as detection and control methods become viable, while Board oversight will ensure appropriate business case analysis is undertaken and expanded activities are sustainable and meet the core objectives of the Trust.

Measurable targets include:

- Within 2 years of the Trust's establishment, recruitment of the owners of at least 400 private properties, appropriately dispersed across the whole of the catchment, to secure access for vertebrate pest control;
- Suppression of pests below threshold values derived from robust density-impact functions shown to deliver biodiversity gains (e.g., Norbury et al. 2015). Targets may be seasonal and will be set in accordance with biodiversity trends.

3. Weed management throughout Watercare-owned land (and public reserve land as required); and funding for contractors to undertake weed management on private land. Priority will be given to targeting invasive species of forest interior environments that pose the greatest threat to forest habitats and processes (e.g., climbing asparagus, wild ginger, etc.). Target species will be consistent with Auckland Council priorities, while weed presence and abundance would be monitored enabling target species to be reviewed annually. Target species and control methods would be documented in the Waima Biodiversity Initiative management plan.

Measurable targets include:

- Progressive recruitment of the owners of private properties containing native forest (e.g., at a minimum target rate of 20% per year) to secure access for weed control;
- Suppression of target species to the extent that infestations are controlled before they propagate / disperse.

4. "Kauri rescue", including (but not limited to) tree health assessment, installation of matting to protect kauri tree roots and phosphite treatment² of diseased kauri will be funded for private

² 20 ml injections of 4% phosphite solution every 40cms around the trunk above bleeds may suppress kauri dieback disease symptoms.

landowners throughout the Little Muddy Creek catchment, along with monitoring and reporting on the ongoing effectiveness of these initiatives.

Measurable targets include:

- Within 1 year of the Trust's establishment, identification and contact with all landowners/ residents in properties located among mature kauri stands to seek access for kauri tree health assessment and site-specific management;
- Identification, containment and surveillance of all symptomatic trees in the catchment where access is granted, including an assessment of the long-term effectiveness of symptom suppression treatments in controlling disease progression and infection risk;
- Development and implementation of site-specific management plans for all mature kauri stands on private property where access is granted, in collaboration with landowners.

5. Monitoring of Argentine ants with control implemented provided infestations are found to be localised and feasible to contain or eradicate. Specific monitoring methods, control targets and thresholds will be developed in consultation with DOC and Landcare-Manaaki Whenua experts and included in the detailed Waima Biodiversity Initiative management plan.

Measurable targets include:

- Implementation of a surveillance framework for Argentine ants throughout the catchment within two years of the Trust's establishment, to establish whether this species is absent, localised or widespread;
- Effective eradication of localised populations (where assessed as viable).

6. Biodiversity monitoring using key indicator species / guilds. Specific indicator species/guilds and monitoring methods will be selected following a catchment-wide habitat assessment and review of available literature and technology. Specific targets and biodiversity monitoring methods will be derived for the site as part of the detailed Waima Biodiversity Initiative management plan, with an implementation schedule set out in an Annual Plan.

Measurable targets include:

- Implementation of a monitoring plan and framework within 6 months of the Trust establishment that delivers quantitative data on trends in forest condition and observation frequency of indicator species;
- Delivery of baseline monitoring report of data from monitoring array within 1 year of the Trust's establishment, including review of outputs and recommended modifications to monitoring methods.

7. An annual (April-May) review and update of the Waima Biodiversity Initiative Management Plan and Annual Plan will be undertaken following compilation and analysis of monitoring data, to confirm pest management and biodiversity trends and adjust methodology as required.

Indicator species and monitoring methods and targets will be reviewed five-yearly, enabling incorporation of innovative technology (camera traps, remote detection systems, etc..) to supplement data derived from conventional methods (bird counts, browse indices, abundance of palatable species, ACO devices, tracking tunnels, acoustic monitors, etc..).

Measurable targets include:

- Annual reporting of results and trends, including recommendations of revisions to management actions or monitoring methods as required.

Funding and Administrative Framework

The proposed Waima BMP will be funded and coordinated through a charitable trust that will be established to hold and administer the project. We envisage the Trust Board will comprise representatives from local community-led conservation project leaders, residents, Watercare, Auckland Council and iwi. The board will also include an independent corporate trustee supervisor.

The Trust will employ an operations manager and project coordinator to undertake strategic and operational planning, facilitate implementation of project initiatives, and undertake ongoing evaluation against targets.

The proposed Waima Biodiversity Management Trust is intended to provide an administrative structure that coordinates and implements conservation work on public and private land throughout the catchment to maximise ecological benefits. Brown (2018) acknowledges the potential value of “catalyst agencies” that coordinate conservation initiatives, noting these have proven effective in the few cases where these are established (e.g., Wild for Taranaki).

The Waima BMP will involve a strong component of community leadership and advocacy and encompasses conservation management of private land. However, implementation work will not rely on volunteers, and should not be equated with “community conservation” (“conservation activities primarily planned, led and executed by volunteers” – Brown, 2018).

Funding will be provided by Watercare as a ‘lump sum’ payment at the inception of the Waima Biodiversity Management Trust. This funding approach will secure a minimum of ten years of funding for the project, while funds received at the outset of the project can be invested (e.g., a conservative index fund might yield 5% per annum). In this way, a portion of the work can be funded from dividend payments, as roll-out of project initiatives throughout the catchment will be staged over several years. Nevertheless, the emphasis is on utilising funds to implement the specified work, rather than establishing a sustainable Trust fund.

Risk management

While the outcome of the proposed strategy relies on a proportion of private landowners accepting weed and pest management on their properties, non-participant sites benefit from a ‘halo’ effect of management on surrounding properties. Glen et al. (2017) examined effects of varying levels of landholder participation in landscape-scale programs to control invasive predators using modelled scenarios and found non-participation by individual small properties had a negligible effect on the efficacy of predator control, while trap deployment could be adjusted to limit reinvasion from larger patches of non-participating properties. Predator control will thus be 92 Boffa Miskell Ltd | Huia Water Treatment Plant Replacement | Assessment of Ecological Effects | 21 May 2019 effective even if some landholders choose not to participate. While control methods on private land and local parks are likely to utilise kill traps rather than toxic baits, deployment of traps at appropriate densities is a viable means of pest suppression.

For example, ‘Predator Free Crofton Downs’ (130 hectares core area) is a community-led initiative in a suburb of Wellington that commenced in 2014 and is ongoing at a participation rate of approximately 140 of ~500 households (the target for effective participation was one in five properties). Suppression of pests below target levels was achieved in the first year of control, and a kaka nest within the suburb successfully fledged chicks, the first recorded in Wellington outside the Zealandia Sanctuary since they were reintroduced in 2002. The subsequent four years of pest management within Crofton Downs and other inner-city suburbs has seen a measurable increase in bird numbers, including threatened endemic species that have dispersed from predator free sanctuaries (McArthur et al. 2017).

We anticipate a high level of community engagement with this project as it is consistent with the aspirations expressed in the Muddy Creeks Local Area Plan, and strongly voiced by locals who attended public meetings and open days. Nevertheless, in the event that landowner recruitment is well below the target threshold of 20%, or ongoing engagement at this target level proves difficult to maintain, the Trust Deed can include a five-year review clause that enables funds to be directed to other biodiversity management initiatives (e.g., Pest-Free Zones in adjacent catchments) if expected progress is not achieved. Similarly, the Trust Deed will allow sufficient flexibility that the specified actions of the Waima BMP can be adapted to ensure these complement rather than duplicate or conflict with Auckland Council’s developing works programme.