



**CENTRAL
HAWKE'S BAY**
DISTRICT COUNCIL

Council Meeting

Late Agenda

Thursday, 31 October 2024

9.00am

Council Chambers,
28-32 Ruataniwha Street, Waipawa

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Order Of Business

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7 REPORT SECTION

7.8 ESTABLISHMENT OF HAWKE'S BAY COMMUNITY WATER TRUST

File Number:

Author: Doug Tate, Chief Executive

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Attachments:

1. **Appointment of Council Representation Policy** [↓](#)
2. **Draft Hawke's Bay Community Water Trust - Charitable Trust Deed - October 2024** [↓](#)

PURPOSE

The purpose of this report is to seek Councils endorsement of its role in the Hawke's Bay Community Water Trust, including additional information requested on the proposed Trust Deed. Should Council agree, the report also seeks approval of the process, criteria and selection panel to select an inaugural Trustee.

RECOMMENDATION

That Council:

1. **Endorses the Hawke's Bay Community Water Trust Deed.**
2. **Notes that its responsibilities in the Trust only extend to the appointment of a Trustee.**
3. **Approves the process for the appointment of an inaugural Trustee on behalf of community, as per the Trust Deed.**
4. **Appoints Mayor Alex Walker, Councillor _____, and Councillor to the selection Committee, to make recommendations on an appointment to Council.**

EXECUTIVE SUMMARY

At Council's Strategy, Growth and Wellbeing Committee meeting on 17 October 2024 available [here](#), a report on the establishment of the proposed Hawke's Bay Community Water Trust (Trust) was presented.

This was the first time Council had received advice on the proposed Trust.

The proposed Trust was developed in response to achieving Council's strategic water security outcomes and initiatives.

As part of the 17 October meeting, the Committee resolved to provide a forum to seek general feedback from the community. This was launched 24 hours after the meeting. This forum was not a formal consultation process.

The forum has received 149 contributions from 120 contributors. The feedback forum closed on Tuesday, 29 November, and is available [here](#).

A key theme in the feedback has been the misrepresented information shared publicly by organisations and others relating to Council's decision to establish the Trust. This feedback related predominantly to matters relating to the previous Ruataniwha Water Storage project.

Matters relating to the project would be further assessed as future due diligence, on the basis a Trust is established. The constructive feedback on the Trust that was provided has been noted and is for a future Trust to progress.

At the meeting of 17 October, further feedback from Councillors was sought on specific matters. The information has been provided in this report.

Consistent with the report of 17 October, this report sets out the options for Council to consider or determine alternative options.

This report recommends that Council endorses the Trust Deed and moves forward with a process to establish the Trust. If the Trust is successful, it will provide a visible community structure and a process to share their views and interact more widely on water security initiatives.

BACKGROUND

The Strategy, Growth and Community Committee (Committee) was provided a report, at its 17 October 2024 meeting. This provided the first update to Council on the development of the Hawke's Bay Community Water Trust (Trust) and sought endorsement and direction on next steps.

This was the first opportunity Council had to receive this information on the proposed Trust.

It sought to fulfil Council's Elected Member priority on water security. This includes the strategic intention to work with Water Holdings Hawkes' Bay (WHHB) and Tamatea Pokai Whenua Trust, as the legal post settlement entity for Tamatea - Central Hawke's Bay, on water security initiatives.

The key resolutions sought in the 17 October 2024 report, aligned with Council's previously stated strategies, policies, and work priorities. The decisions associated with the Trust did not trigger Council's Significance and Engagement Policy requiring full public consultation. Neither did the proposed decisions trigger the requirements of the Special Consultative Procedure under the Local Government Act 2002 (LGA). Although public interest may be high, Officers determined that the other policy criteria for assessing this significance was low. Council appoints members to trusts without the need for further public consultation and this aligns with a low determination.

At the meeting, the Committee resolved to provide a forum to allow for community feedback and clarifications. Following the meeting a page was launched on Council's engagement page LetstalkCHB – Korero Mai! This was not a formal consultation process, instead was a process initiated by Elected Members to ensure they could collect the voices of those who clearly made their interest known at the Committee meeting. It also provided a process of engagement reflecting the assessment made against Council's Significance and Engagement Policy.

Consistent with Officers analysis, the matter has been of high public interest. The meeting of 17 October was well attended, with over 50 community members in attendance. A lobby group has also developed local collateral in various forms on this matter, boosting the high public profile of the proposed Trust. Misrepresentations in this collateral has been suggested, which has also been building public interest.

The key decision ahead for Council remains on whether to endorse the proposed Trust Deed or not, and secondly whether to make an appointment to the Trust or not.

There appears, however, to be a view that this decision will lead to community liabilities and risks – such as rating increases and risks to life and property. There is also a view that this decision extends to Council giving its unencumbered support to the Tukituki Water Security Project (Ruataniwha Water Storage Scheme). While this decision does align with previous Council direction and strategy, which states support for water storage as a tool for a secure water situation for the future, it is not unencumbered support.

This report now seeks Council's endorsement of the Trust Deed, noting its specific role to make an appointment to the Trust. Alternatively, Council may choose not to proceed.

DISCUSSION

This section of the report outlines the key decision for Council and information requested:

Approval of Trust Deed

Council needs to decide whether to endorse the proposed Trust Deed, noting its role to appoint an Inaugural Trustee.

Council's Strategy, Growth and Wellbeing Committee report of 17 October 2024 sets the key information out relating to this decision. That report can be found [here](#).

Should Council endorse the Trust Deed it then needs to consider an inaugural appointment to the Trust.

Additional Independent Appointments to the Trust

Council sought information on making additional independent appointments to the Trust. For clarity, if changes are proposed this would also need to be approved by Tamatea Pokai Whenua Trust and Water Holdings Hawke's Bay. Council is not the only decision-maker.

Normally a Trust of this nature has 3 – 5 Trustees. The proposed Trust Deed proposes four inaugural trustees, with the ability to appoint a fifth Trustee.

An independent Trustee was suggested at the 17 October meeting to provide accountability and transparency. Appointing a community representative is Council's proposed primary role in the Trust. When seeking an appointee Council should see attributes of independence and accountability when making its appointment.

It is recommended that no change to the proposed make up of Trust be made.

Example Water Trusts in New Zealand

Further information was sought on similar Trusts from across New Zealand.

Research showed that few trusts consider the wider implications for water security initiatives or demonstrate direct partnership as Settlers from the beginning with Mana whenua.

Examples include:

Waimea Dam

This project has been mentioned as a comparison to the proposed Trust. There is no comparison to the Trust structure with the Waimea Dam's structure. The Dam has been created as a Council-Controlled-Organisation under the LGA. It has not been established as a trust.

Te Tai Tokerau Water Trust

[The Te Tai Tokerau Water Trust](#) was established to manage major funding for storage development. The Trustees are the Crown's appointed representatives charged with delivering on the transformational promise of a water storage and use scheme in Northland.

Its objective is to create the infrastructure needed to promote sustainable land-use change to lift the prosperity of local communities funded by the Provincial Growth Fund.

The Trust is a charitable Trust and its Trust Deed can be found [here](#).

The board is made up of three trustees, all of whom are from, and live in Northland. Ho. Murray McCully (Chair) and Hon Dover Samuels were appointed by the Crown when the Trust was established in mid-2020. Since then, Kathryn de Bruin has joined the Trust.

This Trust is involved in planning, funding and delivery.

The project was one of 17 Projects listed under the COVID-19 Recovery (Fast Track Consenting) Act.

Unlike the proposed Hawke's Bay Community Water Trust, the key purpose is solely focusing on implementing storage and infrastructure based on Crown Funding to accelerate the project. Mana whenua representation is also not outlined in the Trust Deed.

This Trust is not the same as the proposed Hawke's Bay Community Water Trust, which has a wider mandate.

Central Plains Water Trust

The Central Plains Water Trust is the most similar. However, in a different form to that proposed for the Hawke's Bay Community Water Trust.

The Central Plains Water Trust was constituted in March 2003 by Christchurch City and Selwyn District Councils to facilitate sustainable development of Central Canterbury's water resource.

The Central Plains Water Enhancement Steering Committee investigated the feasibility of a water enhancement scheme in Central Canterbury, reporting back to the Christchurch City and Selwyn District Councils in February 2002. These were Council-led and funded projects.

In November 2002, Christchurch City and Selwyn District Councils decided that the most appropriate way forward for the project was through a trust. The formation of the Central Plains Water Trust was to enable consents to take and use water to be retained in public ownership. This provides flexibility to raise the funding required to complete preparation for a scheme independent of Council involvement and ratepayer risk.

Both Councils are required to report under the Local Government Act on the Trust and review a statement of intent each year.

Central Plains Water Limited was formed by the Trust in 2004 to raise funding, primarily from those that directly gain the most economic benefit from the irrigation component of the proposed water enhancement scheme. Central Plains Water Limited successfully completed a capital raising exercise in December 2004, ensuring that the project proposals proceeded to the resource consenting phase.

This Trust has the most similarity to the proposed Hawke's Bay Community Water Trust, ie having separation from the Trust and the commercial entity. It also recognises the role of Mana whenua as Governors, rather than as foundation members.

The Trusts [Sustainability Report 2023](#) shares a broad-overview of the net-positive outcomes achieved. The Trust objectives appear to have been successful, with infrastructure now in place, despite challenges along the way. However, contention and opposition against the project still remains.

Why is Council working with Tamatea Pōkai Whenua Trust?

Tamatea Pōkai Whenua Trust is the legal Post Settlement Group Entity for Tamatea – Central Hawke's Bay. They are represented by the Marae of Tamatea – Central Hawke's Bay and other Marae of Heretaunga, who form part of the settlement entity.

The Trust is involved as a primary treaty partner, who understands the importance of water in all its forms and the main river systems in Central Hawke's Bay appear in the Statutory Acknowledgements in the Heretaunga Tamatea Settlement Act 2018.

This Trust have endorsed the Trust Deed. Like Council, approving the Trust Deed does not mean that it has been approved or given support to the Tuktituki Water Security Project or business case for water storage.

Could Council get its costs back, including previously paid science charges?

Potentially, Officers are working through where costs will fall on the current legal costs involved in the Trusts establishment to date.

Separately, Council could ask Water Holdings Hawke's Bay to include Councils paid science charges as part of any future reimbursement they may receive, in the result the use of the IP and Consents resulted in revenue.

A further question was raised as to whether legal costs to date could be funded through Rural Ward Funds. This is not specifically related to the decision being considered today, and Officers will provide a further update in the future.

External Appointment to select Inaugural Appointee

Additional information was sought on the opportunity for an external appointment to be part of a selection team. This noted Councils existing external appointments to its Risk and Assurance Committee or other parties.

Councils Appointment of Council Representation Policy (**attached**) identifies that a subcommittee of Council be established to consider applications and make appropriate recommendations for Council to consider. This process is consistent with the approach taken by Council for other appointments.

Should Council agree to an external appointment to the selection subcommittee, it is recommended a similar process to that outlined in Council's representation policy be followed. This would still rely on Councillors deciding on who the External Appointment would be.

Analysis of Community Feedback

Following the Committee meeting Officers launched the LetstalkCHB – Korero Mai page. This provided a question and answer feature and a platform for people to provide their views along to gain an understanding of the Trust proposal being considering.

For clarity, this was an opportunity for thoughts and views to be shared. This did not constitute formal engagement nor consultation in accordance with Councils Significance and Engagement Policy.

Analysis of the feedback shows that 149 contributions both in questions and feedback to the LetstalkCHB page were made. These 149 contributions were from 120 contributors.

1,522 visitors came to the site, viewing the page a total of 2,170 times.

Of the total percentage of visits to the page, 5.66% of visits made a contribution.

33.93% of visits lasted at least one minute, meaning that two thirds of people stayed on the page less than a minute.

The documents on the page, including the Trust Deed were downloaded only 12 times. Potentially this may be as a result of people accessing the Committee agenda through the Council website.

Considerable feedback focussed on the Ruataniwha Dam Project. This included:

- Ratepayers will carry the costs and liabilities.
- Council cannot afford to build the dam.

- The Dam Plan went through a process and was declined.
- That the Dam will increase dairy farming.
- The Dam is proposed to be built on a seismic fault line.
- Environmental Damage and impact on wildlife.
- Limited benefit other than to farmers.
- The Dam is a get rich quick scheme.
- There is no need for a dam.
- Courts found the dam was illegal.
- Dams are not the solution.
- Improve the Council not to get permission to build the dam.
- Misallocation of resources.
- Water temperature downstream.
- Erosion on the coastline.
- Council should be preparing the district for a future of climate change, not building a dam.
- Protect Conservation Land.
- Clever PR distracts from massive overallocation of water.
- Undemocratic Fast Track Legislation.
- Nitrates will increase.
- Seismic and earthquake risk on the dam site.
- Stop the dam.

Key feedback on the Trust included:

- Council is promoting the dam, using the veneer of a community trust to progress it.
- A view Council are attempting to distance itself from accountability with the project.
- There is no community in the Trust.
- Why have a Trust at all – why even get involved? Suggestions that Water Holdings should form their own community trust.
- The Dam is the only option being explored with the Trust.
- Council supporting the Trust means the Dam will go ahead.
- Why is Council rushing to establish the Trust.
- Has Council explored all of the options before looking at the dam?
- Stop working with Water Holdings and the Tukituki Water Security Project.
- The terms of the proposed Deed of Transfer should be confirmed first, before even considering a Trust.
- Does Council think it can overturn the Supreme Court's decision.

Other general matters relating to the Trust included:

- Where will the funding come from to buy the liabilities, set up and run the Trust?
- What if the IP and Consents turn out to be worthless?
- Explore alternative models of water governance that prioritise sustainability and equitable access. Community-led water management, transparent governance structures, or public-private partnerships.
- How will accountability for the Trust work moving forward? Will there be defined roles for environmental professionals monitoring compliance and guiding best practices?

Consideration of Feedback

Analysis of the feedback includes:

- **Council's role in making an appointment**

Council making an appointment to the Trust is not central to the Trusts success. It provides a partnership approach with the Treaty Partner Tamatea Pōkai Whenua.

If Council chooses to withdraw making an appointment (which is contemplated in Option 3 of the options analysis), it would fall to Tamatea Pōkai Whenua and Water Holdings Hawke's Bay to progress the Trust. This approach is unlikely to ensure any future community involvement long term.

- **Rushing the Process**

There was commentary the process has been rushed.

This project has been a long-stated priority of Council. As previously stated, 17 October Committee report, it has been included in multiple strategic work programmes, noting the importance of water security for the district. The Committee meeting was the first time it was presented to councillors for their consideration. Officers have been working on preparing its advice and advancing this initiative since February 2024.

- **Council's role in overturning decisions, costs and liabilities**

As previously outlined, incorrect information has been reported and a number of assumptions asserted about Councils role in the Trust and any future project, its establishment and where the future or potential costs and liabilities fall between parties.

Many of these points have not been discussed, noting that without a Trust there is no basis to consider these points in detail. The costs and liabilities based on the proposed Trust Deed do not fall to Council.

Should Council choose to fund a future Trust, this would be required to go through either a Long-Term-Plan or Annual Plan process. This would include community consultation.

- **General Feedback on Trust Structure**

There was constructive feedback from some respondents to consider and explore other models of water governance that promote sustainability, equitable access and overall accountability.

These are matters for consideration if the Trust proceeds. Council also engages in other areas for water governance including the Climate Action Joint Committee.

Summary

As stated earlier, the feedback supports that the public interest in the Ruataniwha Water Storage Scheme remains high.

A considerable amount of the feedback sought answers relating to proposed water storage infrastructure. This is outside of the scope of the decisions that Council needs to make relating to the proposed Trust.

This does not mean that these points are not valid within the scope of any future water security infrastructure or initiatives. However, at this point there is no Trust and no project to progress.

Several assumptions have also been made publicly on matters that have not even been discussed or developed. This is due to the establishment of the proposed Trust being so early.

Most of the points raised are matters to be considered by the Trust itself. This includes the liabilities associated with the transfer of the IP and Consents, through to wider due diligence matters associated with any project. The Trust is to consider and assess whether to proceed (or not) and to deliver on the purposes of the Trust. The Trust will need to demonstrate a duty of care for any decisions it makes.

Regardless of Council's role, this feedback collected could be directly passed onto the Trust for their consideration. This could assist with delivering on the proposed Trust's purpose, in the event the Trust proceeds.

Trustee Appointment

This section of the report is duplicated from the 17 October 2024 Committee Report. This section outlines the proposed process for appointing the inaugural Trustee to the Trust as a Settlor.

Council has an existing Appointment of Council Representation Policy, which is again **attached** to this report. This has provided the baseline for the proposed selection process and criteria. Officers propose the following selection process:

- **Call for Expression of Interest:** Expressions of Interest will be called for publicly through various channels, including Seek and Council's local networks.
- **Administration:** The Council's People and Capability Team will manage the process of seeking expressions of interest, as has been done for previous appointments.
- **Selection Team:** It is proposed that a Selection Team consist of two Councillors and the Mayor to be confirmed by resolution.
- **Confidentiality:** The selection process will remain publicly excluded until the public announcements are made, in accordance with the Policy, to protect the privacy of candidates.

In addition to the key criteria outlined in the Policy, the following key attributes will be sought of an appointee:

- A strong understanding of the strategic context of Central Hawke's Bay (economic, social, environmental and cultural) along with a connection to Central Hawke's Bay and/or the wider Hawke's Bay Region.
- A well-respected individual who can confidently lead with mana in the community.
- The ability to advance the aims and purposes of the Trust impartially and objectively.
- Capability to work alongside partners in a Te Ao Māori worldview.

Following the consideration of expressions of interest, the selection team will meet with suitable candidates and make appropriate recommendations for Council to consider. There is no timeframe for this.

RISK ASSESSMENT AND MITIGATION

There are risks associated with decision due to the high public interest and misinformation circulating in the community. Council undertook a public forum on LetstalkCHB – Korero Mai! seeking the views of the community.

While there are multiple risks identified from the feedback relating to the proposed project, this paper is related to the endorsement of the Trust Deed, not decisions associated with the project.

As outlined in the report of 17 October, other potential risks from a matter of high public interest that may not be apparent, will continue to emerge on issue as it develops. Particularly, the risk for ultra vires legal challenges.

STRATEGIC ALIGNMENT

Establishing the Trust is one option to support the exploration of water security initiatives in Central Hawke's Bay. Wai (water) is recognised as the Mauri (lifeforce) essential for all life and serves as the foundation of Te Mana o te Wai, which previously underpinned the rescoped Tukituki Water Security initiative.

Initiatives that enhance water security will positively contribute to community and ultimately support the seven goals aimed at fostering a Thriving Central Hawke's Bay.

The establishment of the Trust represents a small but important step in addressing the challenges and opportunities that Central Hawke's Bay and the wider region face regarding water security.

DELEGATIONS OR AUTHORITY

Council has the authority to make this decision.

SIGNIFICANCE AND ENGAGEMENT

In accordance with the Council's Significance and Engagement Policy, this matter has been assessed as having medium significance.

This has again been assessed in accordance with the policy, and while public interest may be high, Officers have determined that the other criteria for assessing significance remains low. To this end, the feedback process completed, satisfies the criteria of the Significance and Engagement Policy.

It is important recognise as noted earlier in this report, that this assessment is made in relation to the decision that Council is making relating to endorsing the Trust Deed or not, and whether to make an appointment of the Trust or not. This does not trigger significance and the requirement for full public consultation. However, as outlined above the Committee sought further views from the community which has been undertaken via the public forum on LetstalkCHB – Korero Mai!.

OPTIONS ANALYSIS

Council can consider the options, but are not limited to those outlined below:

Option 1: Endorse the Trust Deed

Council endorses the Trust Deed, allowing for its finalisation and enabling Officers to prepare for the appointment process.

Option 2: Endorse the Trust Deed with Changes

Council endorses the Trust Deed with changes. Subject to the extent of the changes, this may require substantial rework and will require agreement from the other parties.

Option 3: Reject the Trust Deed and provide further direction

Council rejects the Trust Deed and instructs Officers on the next steps or an alternative direction they wish to take. Council could also direct Officers to explore other options.

	Option 1 Endorse the Trust Deed	Option 2 Endorse the Trust Deed with Changes	Option 3 Reject the Trust Deed and provide further direction
Financial and Operational Implications	<p>There are no new financial and operational implications other than those already outlined in the report.</p> <p>Council’s role is limited to that outlined in the report. Any wider role that Council wishes to play in water security is outside of the scope of this decision.</p>	<p>Depending on the future instruction provided, there could be further substantial work required to rework the Trust Deed and reach agreement between the parties involved.</p> <p>These would be relative to the direction provided by the Committee.</p> <p>Dependent on the changes sought, further legal advice might be required.</p>	<p>Depending on what the Council instructs there could be further financial implications, including further engagement with the other parties.</p> <p>There are likely further financial implications with officers exploring other options.</p> <p>If Council chose not to proceed any further there are likely no further financial implications from this decision.</p>
Long Term Plan and Annual Plan Implications	<p>There are no LTP or Annual Plan implications.</p>	<p>There are no LTP or Annual Plan implications, relative to the change.</p>	<p>There are no LTP or Annual Plan implications. However, this is dependent on what further instruction Council provides.</p>
Promotion or Achievement of Community Outcomes	<p>Supports Project Thrive and the delivery of the seven strategic goals of Project Thrive.</p>	<p>Relative to the change it supports Project Thrive and the delivery of the seven strategic goals of Project Thrive.</p>	<p>This would need to be reassessed based on the direction provided by the Council.</p>
Statutory Requirements	<p>Meets the LGA requirements for making this decision.</p> <p>Legal advice has been sought throughout the process to ensure adherence with the LGA.</p>	<p>Subject to the proposed changes, the LGA will need to be met.</p> <p>Again, subject to the proposed changes further legal advice might be required.</p>	<p>Subject to the proposed direction, the LGA is required to be met.</p>
Consistency with Policies and Plans	<p>Consistent with:</p> <ul style="list-style-type: none"> • Significance and Engagement Policy. • Economic Development Action Plan 2019. • Project Thrive. 	<p>Relative to the changes is consistent with:</p> <ul style="list-style-type: none"> • Significance and Engagement Policy. • Economic Development Action Plan 2019. • Project Thrive. 	<p>This would need to be reassessed based on the direction provided by the Council.</p>

Recommended Option

This report recommends **Option One – Endorse the Trust Deed** for addressing the matter. It ensures is meeting its strategic direction for water.

NEXT STEPS

The proposed next steps are relative to the direction that Council chooses to take.

Should Council choose to endorse the Trust, Officers will start progressing with the Trust appointment processes.



Appointment of Council Representation Policy

Adopted: 13/11/2019
Review: 13/11/2022



Together we thrive! E ora ngātahi ana!

Introduction

In instances where an Elected Member is unable to represent Council on a Council-Community Organisation, the Council will endeavour to where practically possible call for public expressions of interest from suitably experienced candidates to be Council's representatives on those organisations identified and listed in the Council Committee and Community representation policy.

The Council will ensure that any person that it appoints a director of a Council-community organisation will have the knowledge, skills and experience relevant to the activities of the organisation and be familiar with the Council policy, programmes and activities relevant to the organisation.

Timeframe

The Council will generally make appointments at the beginning of the triennium although vacancies and new Council-Council-community organisations may be considered during the triennium.

Remuneration

The Council does not remunerate the directors it appoints to Council-community organisations and the remuneration of the directors by the Council-community organisation is a matter for the organisation concerned.

Selection and Criteria

Council will seek to appoint representatives that have:

1. An understanding of governance issues
2. Either business experience or other experience that is relevant to the activities of the organisation
3. Sound judgement
4. A high standard of personal integrity
5. Ability to work as a member of a team.
6. Experience or knowledge directly relevant to the diverse range of functions required of the specific organisation they would be representing Council on.
7. Business acumen backed up by enthusiasm, energy and new ideas
8. A demonstrated commitment to the Central Hawke's Bay District.

Expressions of Interest would be called for publicly, via usual Communications Channels. A subcommittee of Council (to be appointed on a need-by-need basis) would then consider the Expressions of Interest, meet with suitable candidates and make appropriate recommendations to Council for consideration.

The selection process will remain public excluded until the public announcement of the appointment, to ensure the protection and confidentiality of candidates is maintained.

Any future appointments made by the Council will have regard to the criteria specified in this policy.

DEED OF TRUST

Hawke's Bay Community Water Trust

DRAFT

DEED OF TRUST**HAWKE'S BAY COMMUNITY WATER TRUST****CONTENTS**

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DEED OF TRUST dated the _____ day of _____ 2024

EXECUTED BY

[Insert full name, place of residence and occupation of each of the Initial Trustees (e.g. Jane Doe, Solicitor, Auckland), who will establish the Trust by executing this deed. As per the Background, it is proposed that the Initial Trustees will be 2 individuals chosen by TPWT, 1 by CHBDC, and 1 by WHHBL.], as trustees

BACKGROUND

- A.** The establishment of this charitable trust is an outcome of work undertaken by Water Holdings Hawkes Bay Limited (**WHHBL**), Tamatea Pōkai Whenua Trust (**TPWT**), and Central Hawke’s Bay District Council (**CHBDC**) on water security initiatives including the Tukituki Water Security Project (**Project**).
- B.** Recognising that water security constitutes a critical local and regional priority, the Project has involved a community-led rescoping of the proposed Ruataniwha Water Storage Scheme in Tamatea – Central Hawke’s Bay (**Scheme**) as a purpose-driven initiative designed to further the broader community objective of long-term, intergenerational water security and resilience in connection with the Tukituki River and its associated tributaries. The Project endeavours to progress water security initiatives within and for the benefit of the community, ensuring sustainable water management and availability.
- C.** In order to further those objectives, WHHBL, TPWT and CHBDC have agreed that it would be appropriate to establish a community and mana whenua-led charitable trust, to be called the Hawke’s Bay Community Water Trust (**Trust**), on the terms set out in this deed.
- D.** The Trust’s charitable purposes recognise and focus on the importance of long-term, intergenerational water security and resilience for Tamatea – Central Hawke’s Bay and the wider Hawke’s Bay region, for the benefit of its present and future communities.
- E.** The Initial Trustees have been selected by TPWT (two Initial Trustees) and CHBDC (one Initial Trustee) and, following consultation with TPWT and CHBDC, by WHHBL (one Initial Trustee), and the selected individuals are willing to act as the first trustees of the Trust.
- F.** In order to establish the Trust, as at the date of execution of this deed the Initial Trustees hold an initial amount of \$100 for the Trust, and it is intended that immediately following the establishment of the Trust (upon the execution of this deed) the Initial Trustees will:
- (i) incorporate as a board under the Charitable Trust Act 1957; and
 - (ii) apply for registration under the Charities Act 2005, so that the Trust will be eligible for certain tax concessions benefitting charitable entities.
- G.** Once the Trust is established and its board (**Board**) is incorporated, WHHBL intends to transfer intellectual property and consents associated with the Scheme (**Scheme IP**) to the Trust to enable the Board to pursue the Trust’s charitable purposes as set out in this deed.

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- H. The Scheme IP will be transferred under a separate transfer deed or agreement between WHHBL and the Board and the transfer will be subject to any deliverables, conditions or other terms specified in that deed or agreement.

TRUST TERMS

1. INTERPRETATION PROVISIONS

- 1.1 **General:** Clauses 1.2 to 1.11 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 10.1.1;

“**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 11.3;

“**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 in accordance with this deed, 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;

“**CHBDC**” means Central Hawke’s Bay District Council, a territorial authority under the Local Government Act 2022, or its successor as the principal local, territorial authority for Tamatea – Central Hawke’s Bay;

“**CHBDC Trustee**” means a Trustee appointed by CHBDC, and includes *[insert name of Initial Trustee selected by CHBDC]*;

“**Chair**” means the Trustee appointed to act as chair of the Trust for the time being by the Board in accordance with clause 8.5.1;

“**Charitable Purpose**” means a purpose which is charitable in accordance with the law of Aotearoa New Zealand and in particular falls within the “charitable purpose” definitions in the Charities Act 2005 and the Income Tax Act 2007;

“**Deputy Chair**” means the Trustee appointed to act as chair of the Trust for the time being by the Board in accordance with clause 8.5.1;

“**Financial Statements**” means the financial statements of the Trust for a Financial Year prepared in accordance with clause 11.2.1;

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

“**Initial Trustee**” means any person executing this deed as one of the first Trustees of the Trust, but only until such time as the person first ceases to hold office as a Trustee;

“**Interested**” has the meaning given to that term in clause 9.5;

“**Major Transaction**” has the meaning given to that term in clause 7.2;

“**Officer**” means a person for the time being holding an office to which that person has been appointed in accordance with clause 8.5.2;

“**Project**” means the water security project advanced by WHHBL, TPWT and CHBDC and known as the Tukituki Water Security Project;

“**Scheme**” means the proposed water storage scheme known as the Ruataniwha Water Storage Scheme, in Tamatea – Central Hawke’s Bay;

“**Scheme IP**” means the intellectual property and consents associated with the Scheme owned by the WHHBL as at the date of this deed and transferred to the Trust following the date of this deed;

“**Strategy**” means the strategy, and, as the context requires, the most recent strategy, prepared and reviewed in accordance with clause 11.1;

“**Tax Concession**” means any tax concession under the law of Aotearoa New Zealand directly or indirectly benefiting charitable entities, including exemption of a charitable entity’s income from income tax and any tax concessions in respect of contributions to a charitable entity;

“**TPWT**” means the trustee or trustees for the time being of the trust known as Tamatea Pōkai Whenua Trust, acting in that trustee capacity;

“**TPWT Trustee**” means a Trustee appointed by TPWT, and includes *[insert names of two Initial Trustees selected by TPWT]*;

“**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 Initial Trust Fund: the initial amount held by the Initial Trustees to establish the Trust, as referred to in the Background section of this deed;

1.2.2 Scheme IP: the Scheme IP, once it has been transferred to the Trust as contemplated in the Background section of this deed;

1.2.3 Other Property: all other property, including capital and income, paid to or held under the control of or vested in or acquired by the Board on the terms of the Trust from any source on or after the date of this deed, whether by way of gift, bequest, devise, purchase, exchange or otherwise; and

“**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.

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“**WHHBL Trustee**” means a Trustee appointed by WHHBL, and includes *[insert name of Initial Trustee selected by WHHBL]*;

- 1.3 Deed and Clauses:** a reference to "**this deed**" is a reference to this deed executed by the Initial Trustees setting out the initial terms of the Trust (including the Background and Trust Terms sections of the deed) and also includes, as the context requires, any subsequent variation to the terms of the Trust effected in accordance with this deed, and 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 Inclusive Expressions:** the terms "**includes**" and "**including**" (or any similar expression) are deemed to be followed by the words "**without limitation**";
- 1.6 Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.7 Particular References:** a reference to anything of a particular nature either before or after a general statement does not limit the general statement;
- 1.8 Persons:** a reference to a "**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);
- 1.9 Plural and Singular:** singular words include the plural and vice versa;
- 1.10 Property:** a reference to "**property**" means real or personal property of any kind, any right or interest in such property, any chose in action, and any other right, interest or thing capable of being held on trust; and
- 1.11 Legislation:** a reference to any legislation or to any provision of any legislation includes:
- 1.11.1 Legislative Amendments:** that legislation or provision as from time to time amended or re-enacted and any corresponding replacement legislation or provision; and
- 1.11.2 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. NAME OF THE TRUST

- 2.1 Initial Name:** The name of the Trust is **HAWKE'S BAY COMMUNITY WATER TRUST**.
- 2.2 Change of Name:** The Board may, by deed, change the name of the Trust to another name, as determined by the Board, provided that the new name must not be offensive or liable to mislead any member of the public.

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- 2.3 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, the Charities Act 2005, and any relevant tax legislation).

3. CHARITABLE PURPOSES OF THE TRUST

- 3.1 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 for Charitable Purposes, and in particular the purposes set out in clause 3.2, which are to be pursued for public benefit and not for private profit (and clause 3.2 is to be interpreted accordingly). Subject to the terms set out in this deed, the Board may use, apply and distribute from time to time so much of the capital and income constituting the Trust Fund as the Board thinks fit in order to advance the Trust's Charitable Purposes or any one or more of those purposes.
- 3.2 Charitable Purposes of the Trust:** The Trust has been established and is to be maintained to advance and achieve the objective of long-term, intergenerational water security and resilience for Tamatea – Central Hawke's Bay and the wider Hawke's Bay region, for the benefit of its present and future communities, through the development and delivery of appropriate water resource infrastructure. In furtherance of that general purpose, the specific purposes of the Trust include the following:
- 3.2.1 Community-led Approach:** To facilitate a community-led approach to advancing and achieving the general purpose of the Trust, including taking forward water security initiatives, the Project, and the Scheme, while considering cultural, environmental, social, and economic factors.
- 3.2.2 Development of Strategy:** To develop and pursue, in accordance with the approach set out in clause 3.2.1, a Strategy for advancing and achieving the general purpose of the Trust including taking forward the Project and the Scheme.
- 3.2.3 Custodianship of Assets:** To be the custodian of key assets for advancing and achieving the general purpose of the Trust, including the Scheme IP and any other such property that becomes part of the Trust Fund.
- 3.2.4 Use of Assets:** To use, or make available for use, the Scheme IP and any other such property that becomes part of the Trust Fund, by way of commercial arrangements or otherwise, to enable the development and delivery of water resource infrastructure including taking forward the Project and the Scheme.
- 3.2.5 Community Interest:** To represent and advance the interests of Tamatea – Central Hawke's Bay and the wider Hawke's Bay region and its communities in working and dealing with other stakeholders, investors and others in relation to activities that further the general and specific purposes of the Trust.

- 3.2.6 Other Purposes:** To advance any other purpose that is connected with and related, incidental or ancillary to the general and specific purposes of the Trust, provided that it is not inconsistent with the charitable status of the Trust.
- 3.3 Limitation on Scope of the Trust's Role:** Despite the breadth and flexibility of the Trust's Charitable Purposes as set out in clause 3.2, the Trust's role and activities shall not extend to undertaking or otherwise being directly involved in the development, delivery or operation of water resource infrastructure.
- 3.4 Permitted Activities of the Trust:** Subject to clause 3.3 and the further terms set out in this deed, the Board may undertake any activity, as the Board thinks fit, in order to advance and achieve the Trust's Charitable Purposes as set out in clause 3.2, provided that the activities of the Trust must at all times be consistent with those purposes and with:
- 3.4.1 Charitable Purposes:** the continued operation of the Trust for exclusively Charitable Purposes in Aotearoa New Zealand, for the benefit of the public and not for private profit; and
- 3.4.2 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 continued eligibility for the benefit of that concession is not required in the best interests of advancing and achieving the Trust's Charitable Purposes as set out in clause 3.2.
- 3.5 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 3.2 or subject to specific terms consistent with the general terms of the Trust (referred to as a **Specific Trust**). In relation to any such Specific Trust:
- 3.5.1 Identification/Administration:** the Board must separately identify, hold, administer and apply, that part of the Trust Fund in accordance with the terms of the Specific Trust; and
- 3.5.2 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.
- 4. ROLE, POWERS AND DUTIES OF THE BOARD/TRUSTEES**
- 4.1 Role and Powers of Board and Trustees:** In accordance with the terms set out in this deed, the role of the Board, and each Trustee, is to focus on, and act in the best interests of, the Trust in terms of advancing and achieving the Trust's Charitable Purposes as set out in clause 3.2. For that purpose:
- 4.1.1 Board Control/Responsibility:** the Board will have overall control of, and responsibility for, the Trust Fund and the administration of

the Trust, and the affairs and activities of the Trust will be managed by, or under the direction or supervision of, the Board;

4.1.2 Powers of the Board: the Board has the same powers as if it were the absolute owner of, and beneficially entitled to, the Trust Fund, including:

(a) **General Powers:** all powers necessary to manage the Trust Fund, and all powers necessary to carry out the Trust;

(b) **Full Capacity:** full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and

(c) **Full Rights, Powers, Privileges:** for the purposes of clause 4.1.2(b), full rights, powers, and privileges; and

4.1.3 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 statutory power or provision except to the extent that it is obligatory.

4.2 Role of Initial Trustees: Without derogating from their general role and duties under clause 4.1, the role of the Initial Trustees includes doing all things practicable and expedient to incorporate the Board under the Charitable Trusts Act 1957 and to ensure that the Trust secures any registration or approval required to become eligible for the benefit of any Tax Concession, in accordance with clause 6.

4.3 Trusts Act Duties: The Board must comply, and each Board Member must comply and enable and assist the Board to comply, with all applicable trustee duties under the Trusts Act 2019, and all such duties must be performed having regard to the context and the objectives of the Trust, and in particular the Trust's Charitable Purposes as set out in clause 3.2.

4.4 Mandatory Duties: The applicable mandatory trustee duties under the Trusts Act 2019 are:

4.4.1 Knowledge of Terms: To know the terms of the Trust as set out in this deed.

4.4.2 Compliance with Terms: To act in accordance with the Trust's terms.

4.4.3 Honesty/Good Faith: To act honestly and in good faith.

4.4.4 Focus on Charitable Purposes: To hold and deal with the Trust Fund, and otherwise act, to further the Trust's Charitable Purposes as set out in clause 3.2 in accordance with Trust's terms.

4.4.5 Proper Use of Powers: To exercise all trustee powers for a proper purpose.

- 4.5 Default Duties:** The applicable default trustee duties under the Trusts Act 2019, taking into account the charitable status of the Trust and the modification of such duties under this deed, are:
- 4.5.1 Proper Consideration of Powers:** To consider actively and regularly whether to exercise trustee powers.
 - 4.5.2 No Fettering of Discretion:** Not to bind or commit oneself to any future exercise or non-exercise of any discretion.
 - 4.5.3 General Duty of Care:** When administering the Trust in furtherance of its Charitable Purposes, to exercise care and skill that is reasonable in the circumstances.
 - 4.5.4 Prudent Investment:** When exercising any power to invest any part of the Trust Fund (which must only be done in furtherance of, and in a manner consistent with, the Trust's Charitable Purposes), to exercise the care and skill that a prudent person of business would exercise in managing the affairs of others.
 - 4.5.5 No Private Benefit, Profit or Reward:** Not to exercise any trustee power directly or indirectly for their own benefit, or to make a profit from their trusteeship, or to take any reward for acting as Trustees, except as provided for under the terms set out in this deed or permitted under the Trusts Act 2019.
- 4.6 Input from Stakeholders:** In undertaking their role and exercising their powers and duties, the Board and the Trustees must have regard to any advice, recommendations or other input received, solicited or otherwise, from TPWT and CHBDC and, as the Board thinks fit, may have regard to any such input received from any other person.
- 4.7 Delegation of Powers:** Subject to sections 67 and 68 of the Trusts Act 2019 (reflected in clause 4.8) and any other applicable law, 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:
- 4.7.1 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;
 - 4.7.2 Review of Delegation:** the Board must keep any such delegation under review and, if the circumstances make it appropriate to do so, consider whether to intervene in any way (whether by way of giving directions, amending or revoking the delegation or any of its terms/directions, or otherwise);
 - 4.7.3 Amendment/Revocation:** the Board may amend or revoke the delegation or any of its terms/directions at any time; and

- 4.7.4 Board/Trustee Responsibility:** no such delegation will release the Board and the Trustees from their responsibilities in relation to the Trust.
- 4.8 Non-delegable Powers:** In accordance with, and without limiting the application of, sections 67 and 68 of the Trusts Act 2019, the Board must not delegate:
- 4.8.1 Use of Trust Fund:** any power or function that is, or relates to, the final determination of whether, when or in what way any of the Trust Fund should be distributed, applied or otherwise used;
- 4.8.2 Trustee Appointment/Removal:** the power to appoint or remove any Trustee (if at any time the Board has such power);
- 4.8.3 Resettlement/Variation/Winding Up:** the power to resettle all or any part of the Trust Fund, to vary the terms of the Trust, and to wind up the Trust; and
- 4.8.4 Court Applications:** any right of the Board to make any application to the Court in connection with the Trust.
- 5. RESTRICTIONS RELATING TO PRIVATE BENEFITS**
- 5.1 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:
- 5.1.1 Charitable Purposes:** the continued operation of the Trust for exclusively Charitable Purposes in Aotearoa New Zealand, pursued for public/community benefit and not for private profit; or
- 5.1.2 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 advancing and achieving the Trust's Charitable Purposes as set out in clause 3.2.
- 5.2 Permitted Expenditure:** For the avoidance of doubt, the proscription of private profit under clause 5.1 does not preclude the application of the Trust Fund to or towards:
- 5.2.1 Remuneration and Reimbursement:** any remuneration for services provided, and reimbursement of expenses properly incurred, by the Trustees, in accordance with clause 13; or
- 5.2.2 Consideration for Goods and Services:** consideration for the supply of any other goods or services acquired in the course of pursuing the Trust's Charitable Purposes and carrying out the Trust's activities as set out in clause 3, provided that the consideration does not exceed fair market value for the supply.

- 5.3 Business Income Restriction:** For the purpose of ensuring that any 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), no person holding any of the following positions will 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:
- 5.3.1 Settlor or Trustee:** a settlor or trustee of the trust by which the business is carried on:
 - 5.3.2 Shareholder or Director:** a shareholder or director of the company by which the business is carried on:
 - 5.3.3 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:
 - 5.3.4 Associates:** a person associated with any person referred to in clauses 5.3.1 to 5.3.3 (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 5.3 a relevant benefit or advantage from the business 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) of the Income Tax Act 2007 or any other provision of section CW 42.

6. ELIGIBILITY FOR TAX CONCESSIONS

- 6.1 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 the relevant concession is not required in the best interests of advancing and achieving the Trust's Charitable Purposes as set out in clause 3.2.
- 6.2 Specific Requirements:** Without limiting the generality of clause 6.1, the things to be done under that clause may include:
- 6.2.1 Registration under the Charities Act:** registering under the Charities Act 2005 and maintaining such registration; and
 - 6.2.2 Compliance under Charities and Tax Legislation:** complying with all relevant obligations under:
 - (a) Charities Act:** the Charities Act 2005, including all reporting, filing and other such obligations and the requirement to review the governance procedures of the Trust at least once every three (3) years; and
 - (b) Revenue Legislation:** the Income Tax Act 2007, the GST Act 1985, and the Tax Administration Act 1994.

7. APPROVAL OF MAJOR TRANSACTIONS

7.1 Approval of Major Transactions: Without limiting or affecting any other requirements that might apply to any Major Transaction (under this deed or otherwise), the Board must not enter into any Major Transaction unless the transaction is approved by a 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 10.2.

7.2 "Major Transaction": For the purpose of clause 7.1, a Major Transaction may arise only if the value of the Trust Fund exceeds \$10,000 at the relevant time and the term Major Transaction means:

7.2.1 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

7.2.2 Disposal of Assets: the disposition of, or an agreement to dispose of, whether contingent or not, all or any part of the Scheme IP, or any part of the Trust Fund the value of which is more than half the Trust Fund's value before the disposition; or

7.2.3 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 Trust Fund's value before the transaction;

provided that:

7.2.4 Charge Over Assets: nothing in clause 7.2.2 or 7.2.3 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

7.2.5 Assessment of Contingent Liabilities: in assessing the value of a contingent liability for the purpose of clause 7.2.3, 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 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

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expect to be met to reduce or extinguish the contingent liability.

8. BOARD OF TRUSTEES AND OFFICERS OF THE TRUST

8.1 Number of Trustees: The total number of Trustees constituting the Board must be not less than three (3) and not more than four (4) individuals. If at any time the total number of Trustees falls below three (3):

8.1.1 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 three (3) as soon as reasonably practicable; and

8.1.2 Trustees Entitled to Act: subject to clause 8.1.1 and provided that the remaining Trustee or Trustees is not or does not include a CHBDC Trustee, 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 three (3).

8.2 Appointment/Removal of Trustees: Subject to clauses 8.1, 8.3 and 8.4, the following provisions apply in relation to the appointment and removal of Trustees:

8.2.1 Two TPWT Trustees: TWPT has the power to appoint two (2) Trustees, and to remove and replace any TWPT Trustee, at any time, by notice in writing to the Board.

8.2.2 One CHBDC Trustee: CHBDC has the power to appoint one (1) Trustee, and to remove and replace any CHBDC Trustee, at any time, by notice in writing to the Board.

8.2.3 One WHHBL Trustee: Until the conclusion of the third Annual Meeting following the date of establishment of the Trust (or earlier, if agreed in writing by WHHBL), WHHBL has the power to appoint one (1) Trustee, and to remove and replace any WHHBL Trustee, at any time, by notice in writing to the Board.

8.2.4 Board Appointments: The Board:

(a) **One Board Appointee:** has, upon and in anticipation of the expiry of WHHBL's power of appointment and removal under clause 8.2.3, the power to appoint, and to replace, one (1) Trustee whom the Board considers capable of bringing to the Board the perspective of water users in Tamatea – Central Hawke's Bay and the wider Hawke's Bay region; and

(b) **Exercise of TPWT/CHBDC Appointment Powers:** in the event that TWPT or CHBDC is unable or unwilling to exercise their power of appointment under this clause 8.2, may exercise the relevant power of appointment in place of TPWT or CHBDC (as applicable).

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- 8.2.5 Removal by Board:** The Board has the power to remove any Trustee if the Board considers on reasonable grounds that such removal is in the best interests of the Trust in relation to the advancement of its purposes, provided that any such removal must be 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.
- 8.2.6 Exercise of Powers:** When exercising their respective powers under this clause 8.2, each of TPWT, CHBDC and the Board:
- (a) **Trusts Act Duty:** must act honestly, in good faith and for a proper purpose, in accordance with the Trusts Act 2019; and
 - (b) **Appointee Attributes:** in relation to exercising the power to appoint a Trustee, must take into account a prospective appointee's skills, knowledge, experience and/or other attributes relevant to their ability to contribute to the Board and its advancement and achievement of the Trust's Charitable Purposes set out in clause 3.2.
- 8.2.7 Confirmation of Appointments:** Each Trustee appointment under this clause 8.2 will be confirmed by the Board and the relevant appointee recording the appointment and the appointee's acceptance of the appointment in writing, by way of a deed of appointment or otherwise.
- 8.3 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:
- 8.3.1 Youth:** under eighteen (18) years of age;
 - 8.3.2 Bankruptcy:** an undischarged bankrupt, or a discharged bankrupt who is prohibited by court order from engaging in any form of business activity;
 - 8.3.3 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;
 - 8.3.4 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;

8.3.5 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

8.3.6 Statutory Disqualification: disqualified from holding office as a trustee under the Trusts Act 2019, or from being an officer of a charitable entity registered under the Charities Act 2005.

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

8.4.1 Term of Appointment: Subject to clause 8.4.2, the Initial Trustees and every individual subsequently appointed to hold office as a Trustee (including any individual reappointed as a Trustee) will hold such office:

- (a) **Initial Trustees:** in the case of the Initial Trustees, until the conclusion of the third Annual Meeting following the date of establishment of the Trust; and
- (b) **Appointed Trustees:** in the case of Trustees other than Initial Trustees:
 - (i) **Standard Term:** until the conclusion of the third Annual Meeting held after the date of their appointment as a Trustee; or
 - (ii) **Shorter Term:** for a lesser period if agreed by the person appointing the Trustee and the appointee at the time of the appointment;

and, unless reappointed as a Trustee, the individual will cease to hold office as a Trustee when their term of appointment expires.

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

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- (a) **Resignation:** the expiry of 28 days (or a shorter period if approved by the Board) following the Trustee giving written notice of their resignation to the Board;
- (b) **Ineligibility:** becoming ineligible to hold office as a Trustee under clause 8.3;
- (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 in accordance with 8.2.

8.5 Appointment/Removal of Officers: In relation to the appointment of the Chair and any Deputy Chair and other Officers of the Trust:

8.5.1 Chair and Deputy Chair: The Board:

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

provided that the Board may remove a Trustee from such office at any time, and any individual appointed to hold such office will only hold the office while they remain a Trustee.

8.5.2 Other Officers: The Board may appoint from time to time either one of the Trustees or some other person to hold any other 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 8.3.

8.6 Records and Notice: On every appointment, reappointment, removal or cessation of office of any Trustee or Officer, the Board must ensure that an entry to that effect is included in the records kept and maintained by the Board and, if required, notified to any relevant authority (for example, under the Charities Act 2005).

9. MANAGING TRUSTEE/OFFICER CONFLICTS OF INTEREST

- 9.1 Entry into Transactions:** Subject to the provisions of this clause 9, 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 terms of advancing and achieving its Charitable Purposes as set out in clause 3.2.
- 9.2 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 Trustee remuneration or reimbursement under clauses 13.1.1 and 13.3 or general Trustee indemnification or insurance under clause 15):

- 9.2.1 Disclosure:** the Trustee or Officer, immediately upon becoming aware that they are Interested in the transaction, must disclose to the Board:
- (a) Disclosure of Interest:** the fact of their interest in the transaction; and
 - (b) Disclosure of Nature/Extent of Interest:** the nature of their interest and the monetary value of the interest (if the monetary value of the interest is able to be quantified) or the extent of the interest (if the monetary value of the interest is not able to be quantified); and
- 9.2.2 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.
- 9.3 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 13.1.1 or clause 13.3, remuneration of a particular Trustee or a particular Trustee's employee, partner or firm under clause 13.1.2, or indemnification or insurance for a particular Trustee under clause 15):
- 9.3.1 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;
 - 9.3.2 Attendance at Meetings:** subject to clause 9.3.1, 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
 - 9.3.3 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 decision(s) 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.
- 9.4 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:
- 9.4.1 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

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- 9.4.2 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 non-Interested 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 a special trust advisor as referred to in the Trusts Act 2019 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.
- 9.5 Meaning of "Interested":** For the purpose of this clause 9, a Trustee or Officer will be interested in a transaction if the Trustee or Officer:
- 9.5.1 Direct Financial Interest:** is a party to, or will or may derive a material financial benefit from, the transaction;
- 9.5.2 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 of a person who will or may derive a material financial benefit from, the transaction; or
- 9.5.3 Other Material Interest:** otherwise has, directly or indirectly, any material personal interest in the transaction that conflicts, or may conflict, with the best interests of the Trust in terms of advancing and achieving its Charitable Purposes as set out in clause 3.2.
- 9.6 Determination:** Each Trustee and Officer must, in good faith, consider and determine whether they are Interested in any transaction and refer the matter to the Board for the Board's determination if the relevant individual is uncertain regarding the matter.

10. PROCEEDINGS OF THE BOARD

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

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

- (a) **Minimum Requirement:** the Board must meet at least two (2) times each year and its meetings each year must include a meeting designated as the Trust's annual meeting and held within six (6) months of the end of the Financial Year, to receive and approve the Annual Report for that Financial Year and to deal with any other business as determined by the Board; and
- (b) **Convening Meetings:** the Chair or any two (2) or more Trustees may convene a meeting of the Board at any time by giving, or arranging for any Officer or other personnel of the Trust to give, written notice of the meeting in accordance with clause 10.1.3; and

10.1.2 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.

10.1.3 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 (5) 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 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).

10.1.4 Decision-making at Meetings: In relation to conducting business and making decisions at Board meetings, subject to clause 9.3 :

- (a) **Quorum:** a quorum for a meeting of the Board will be established only if there are at least three (3) Trustees in attendance who are entitled to vote, and a meeting will not commence and no business will be transacted at a meeting at any time unless a quorum is established;
- (b) **Votes:** each Trustee in attendance at a meeting shall have one vote;
- (c) **Passing Resolutions:** unless provided otherwise in this deed, for a resolution to be passed on any matter at a Board meeting it must be approved by a number of Trustees that exceeds 50% of the total number of Trustees for the time being; and
- (d) **Resolutions Binding:** any resolution passed at a Board meeting will be binding on all Trustees.

10.1.5 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.

10.1.6 Attendance by Officers and Others: Any Officer who is not a Trustee will be notified of Board meetings and, subject to the Board determining otherwise in relation to the whole or any part of any such meeting, will be entitled to attend and participate (but not vote) at such meetings. Any other person may attend all or part of any Board meeting as determined by the Board.

10.2 Written Resolutions: A written resolution signed or approved in writing by all of the Trustees for the time being will be as valid and effective 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 Board meeting must not be Interested in any transaction to which the resolution relates. Any such resolution may consist of several documents in like form (electronic or otherwise) each signed or approved by in writing by one or more of the Trustees, and will be binding on all Trustees.

10.3 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

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from time to time any rules and/or regulations relating to its proceedings as the Board thinks fit.

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

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

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

10.4.3 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:

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

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

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

10.5 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 or similar records kept and maintained by the Board. Once any minutes of any meeting 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.

11. PLANNING, REPORTING AND ACCOUNTABILITY REQUIREMENTS

11.1 Annually-reviewed Strategy: For the purpose of planning the Trust's advancement and achievement of its Charitable Purposes:

11.1.1 Development of Strategy: as soon as reasonably practicable following the establishment of the Trust, the Board must develop and adopt a strategy for advancement and achievement of the Trust's Charitable Purposes, which must cover at least the next three to five years and may cover any longer period as determined by the Board;

11.1.2 Review of Strategy: the Board must review the strategy the from time to time (and at least once each year), and may amend or replace the strategy as a result of any such review; and

11.1.3 Distribution/Publication: the Board must promptly provide a copy of the initial Strategy and any subsequent amendment or

replacement document to TPWT and CHBDC, and must make the Strategy available to the general public.

11.2 Financial Reporting and Assurance: Without limiting the requirements that may apply to the Trust under clause 6.1 (or any other applicable law):

11.2.1 Financial Statements: the Board must ensure that financial statements are prepared as soon as practicable after the end of each Financial Year (starting with the year ending 30 June 2025), for inclusion in the Trust's Annual Report and presentation and approval at the Annual Meeting, which must:

- (a) **True/Fair View:** give a true and fair view of the financial position of the Trust and the Trust Fund for the relevant Financial Year;
- (b) **Content:** include statements of financial position and performance (or equivalent statements or information, however described), and appropriate notes; and
- (c) **Compliance:** comply with all applicable financial reporting standards and other relevant requirements;

11.2.2 Audit or Review: if the Board so resolves or if required by law, such Financial Statements will be independently audited or reviewed by a chartered accountant or other appropriately qualified person appointed for that purpose by the Board; and

11.2.3 Records and Filing: the Financial Statements, and any audit or review of such statements if applicable, 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).

11.3 Annual Report: As soon as practicable after the end of each Financial Year (starting with the year ending 30 June 2025)), for presentation and approval at the Annual Meeting, the Board must prepare an Annual Report that includes a report on the Trust's activities, funding and expenditure during the relevant Financial Year and a copy of the Financial Statements (audited or reviewed, if applicable) for that Financial Year. Once the Annual Report for the Financial Year is finalised and approved at the Annual Meeting, the Board must promptly provide a copy of the Annual Report to WHHBL, TPWT and CHBDC, and must make the Annual Report available to the general public.

11.4 Publication of Documents: For the purpose of clauses 11.1 and 11.3, the Board may make copies of the Trust's Strategy and its Annual Report available to the general public by:

11.4.1 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

11.4.2 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.

12. GENERAL ADMINISTRATIVE MATTERS

12.1 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. The Trust's records must include all records required under the Trusts Act 2019 and any other applicable law, and in particular must include:

12.1.1 Trust Fund Records: full and accurate records identifying the Trust Fund and associated matters, including all assets, liabilities, income and expenses of the Trust;

12.1.2 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;

12.1.3 Minute Book or Similar: a minute book and/or similar records, including 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 or similar records relating to the Trust; and

12.1.4 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 other parties, and any contracts and other documents and information relating to the Trust and its affairs and activities.

All such records will be open to inspection by the Trustees, and all of the Trustees must have and retain a copy of the terms of the Trust including this deed and any subsequent variation.

12.2 Financial Matters: The Board must ensure that:

12.2.1 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 being either a Trustee or another person acting on, and in accordance with, the written authority of the Board; and;

12.2.2 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.

12.3 Method of Contracting: Unless the law requires otherwise, and subject to clause 12.4:

- 12.3.1 Deeds:** a deed to be executed by the Board may be signed on behalf of the Board by two (2) or more Trustees;
- 12.3.2 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
- 12.3.3 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.
- 12.4 Common Seal:** If the Trustees are incorporated as a board under the Charitable Trusts Act 1957 and required to have a common seal, the Board will have a common seal and the common seal:
- 12.4.1 Custody of Seal:** must be held by one of the Trustees, or an Officer, as determined by the Board;
- 12.4.2 Mandatory Use:** must be affixed to any document required to be executed by the Board under common seal; and
- 12.4.3 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 (2) or more Trustees.
- 12.5 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:
- 12.5.1 Delivery:** delivered to the Recipient directly or to an address given by the Recipient to the Sender for such purpose;
- 12.5.2 Post:** posted to an address given by the Recipient to the Sender for such purpose; or
- 12.5.3 Electronic Means:** sent by electronic means to an email address or in accordance with other instructions provided by the Recipient for notice/communication purposes.
- 12.6 Receipt of Notices:** A notice given by a Sender to a Recipient pursuant to clause 12.5 is deemed to be given:
- 12.6.1 Delivery:** in the case of delivery, when the notice is handed to the Recipient or delivered to the address of the Recipient;
- 12.6.2 Post:** in the case of posting, five (5) days after it is posted; and
- 12.6.3 Electronic Means:** in the case of electronic means, at the time of transmission.

13. REMUNERATION AND REIMBURSEMENT OF TRUSTEES**13.1 Remuneration of Trustees:** Subject to clause 13.2:

13.1.1 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

13.1.2 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.

13.2 Remuneration Restrictions: In relation to any remuneration to be paid under clause 13.1:

13.2.1 Fair Market Value: the amount of the remuneration must not exceed fair market value for the services provided, and the Board must take reasonable steps (which may include obtaining independent advice if appropriate) to ensure that this requirement is met;

13.2.2 Best Interests of Trust: the Board must be satisfied, on reasonable grounds, that the payment of the remuneration is in the best interests of the Trust in terms of advancing and achieving its Charitable Purposes; and

13.2.3 Business Income Restriction: if the remuneration is a benefit or advantage in respect of which clause 5.3 applies, neither the relevant Trustee referred to in clause 13.1 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.

13.3 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.**14. LIABILITY OF TRUSTEES****14.1 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:

14.1.1 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

- 14.1.2 Higher Standard Excluded:** no Trustee will be subject to any more onerous duty or higher standard of care on account of any special skill, knowledge or experience of the Trustee, under section 29 or 30 of the Trusts Act 2019 or under any equivalent or similar legislation.
- 14.2 Limited Liability – Subject to Restrictions:** 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:
- 14.2.1 Dishonesty:** dishonesty on the part of the Trustee; or
- 14.2.2 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
- 14.2.3 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, employee or other person engaged by the Board in connection with the Trust.
- 14.3 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.
- 14.4 Receipt of Money:** Subject to this clause 14, 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.
- 15. TRUSTEE INDEMNIFICATION AND INSURANCE**
- 15.1 Indemnification:** Subject to clause 15.2, 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.
- 15.2 Indemnification Restrictions:** The indemnification provided under clause 15.1 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:
- 15.2.1 Dishonesty:** dishonesty on the part of the Trustee; or
- 15.2.2 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

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

15.3 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 15 and meet the cost of such insurance out of the Trust Fund.

16. REVIEW AND VARIATION OF TRUST TERMS

16.1 Periodic Review: The Board must review the terms of the Trust, and in particular the governance terms (including terms relating to the Board's composition and procedures and representation or involvement of relevant stakeholders), at least once every three (3) years to ensure that the Trust's terms remain fit for purpose in relation to advancing and achieving water security and resilience for Tamatea – Central Hawke's Bay and the wider Hawke's Bay region for the benefit of its present and future communities.

16.2 Approval of Variation: Subject to clause 16.3, 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 3.2), provided that any such variation must be approved by a 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 10.2.

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

16.3.1 Focus of the Trust: detract from the Trust's principal focus on water security and resilience for Tamatea – Central Hawke's Bay and the wider Hawke's Bay region, for the benefit of its present and future communities; or

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

16.3.3 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 and achieving the Trust's Charitable Purposes as set out in clause 3.2; or

16.3.4 Mandatory Requirements: purport to modify, limit or exclude any legally mandatory provision or requirement that cannot be modified, limited or excluded by the terms of the Trust (including the mandatory duties referred to in clause 4.4, which cannot be modified or excluded, and the restrictions on limitation of liability and indemnification under clauses 14.2 and 15.2, which are the minimum restrictions required by law).

- 16.4 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/or the Charities Act 2005).

17. RESETTLEMENT OF TRUST FUND

- 17.1 Approval of Resettlement:** Subject to clause 17.2, the Board may, by deed, resettle all or any part of the Trust Fund on trust for any one or more Charitable Purposes in Aotearoa New Zealand, on terms determined by the Board, provided that any such resettlement must be approved by a 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 10.2.

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

17.2.1 Focus of the Trust: 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 in a manner that is inconsistent with the Trust's principal focus on water security and resilience for Tamatea – Central Hawke's Bay and the wider Hawke's Bay region, for the benefit of its present and future communities; or

17.2.2 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 Aotearoa New Zealand, pursued for public benefit and not for private profit; or

17.2.3 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 and achieving the Trust's Charitable Purposes as set out in clause 3.2.

18. WINDING UP THE TRUST

- 18.1 Approval of Winding Up:** Subject to clauses 18.2 and 18.3, the Board may, by a resolution passed at a meeting of the Board, 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 18.3, provided that such resolution must be 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.

- 18.2 Board Meeting Required:** In relation to the Board's consideration of any resolution to wind up the Trust under clause 18.1:

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

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18.2.2 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).

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

18.3.1 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;

18.3.2 Distribution/Application of Surplus for Charitable Purposes: the remainder of the Trust Fund must then be distributed or applied for exclusively Charitable Purposes in Aotearoa New Zealand, for the benefit of the public and not for private profit, and in particular for one or more Charitable Purposes for the benefit of Tamatea – Central Hawke's Bay and the wider Hawke's Bay region falling within, similar to, or otherwise aligned with the Charitable Purposes of the Trust; and

18.3.3 Determination of Distribution/Application: the distribution or application of any surplus in accordance with clause 18.3.2 is to be determined:

(a) **Trustee Resolution:** by resolution of the Board, under clause 18.1 or otherwise, following Board consultation with TPWT and CHBDC; or

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

18.4 Notice Requirements: The Board must ensure that notice of the Trust's winding up is filed with any relevant authority (for example, under the Charitable Trusts Act 1957, the Charities Act 2005, or any relevant tax legislation).

19. GOVERNING LAW AND JURISDICTION

19.1 Governing Law: This deed is governed by the law of Aotearoa New Zealand.

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

20. EXECUTION AND DELIVERY OF DEED

20.1 Single Document or Counterparts: This deed may be executed and delivered in any number of counterparts signed by one or more of the signatories and all signed counterparts taken together will be deemed to constitute one document.

20.2 Trustee Acceptance and Eligibility: By executing this deed, each Initial Trustee is confirming their acceptance of office as a Trustee and confirming that they are eligible to hold office as a Trustee.

EXECUTED AND DELIVERED AS A DEED

SIGNED by *[FULL NAME OF TRUSTEE]* as
Initial Trustee and one of the TPWT Trustees,
in the presence of:

[Full name of 1st TPWT Trustee]

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED by *[FULL NAME OF TRUSTEE]* as
Initial Trustee and one of the TPWT Trustees,
in the presence of:

[Full name of 2nd TPWT Trustee]

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED by *[FULL NAME OF TRUSTEE]* as
Initial Trustee and the CHBDC Trustee, in the
presence of:

[Full name of CHBDC Trustee]

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED by **[FULL NAME OF TRUSTEE]** as
Initial Trustee and the WHHBL Trustee, in the
presence of:

[Full name of WHHBL Trustee]

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

DRAFT