



ANNUAL REPORT  
OCTOBER 2023

NEW ZEALAND LOCAL AUTHORITY  
PROTECTION PROGRAMME  
DISASTER FUND

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## CHAIR'S REPORT

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### **Cover from LAPP**

LAPP is a charitable trust that was set up by LGNZ and Civic in 1993, designed to provide local authorities with the maximum affordable amount of protection to fund the recovery of their underground infrastructure assets damaged by natural disaster events.

Where a local authority suffers a natural disaster there is an arrangement between Central Government and the local authority where Central Government will cover 60% of the reinstatement cost and the local authority will cover 40% of the reinstatement cost. Provided the local authority can demonstrate they can fund 40% of the cost to reinstate or replace their affected underground infrastructure caused by a natural disaster then Central Government will step in and fund the other 60%. The 60/40 split is currently uncapped.

A local authority through its membership with LAPP gets cover for 40% of this cost allowing Central Government to cover the other 60%.

LAPP provided cover in 2022-23 for three major events at levels of \$65m, \$105m and \$150m (at 100%), which can be used in any order. LAPP's reinsurance deductible is \$7.5 million (at 100%). LAPP is required to pay up to \$3 million (40%) of this deductible per claim, to be met by the claiming members' deductibles and the LAPP Fund reserves. LAPP's reinsurers are required to pay 40% of any amount over the \$7.5 million threshold up to LAPP's cover limits.

### **Three-Waters Reform**

In December 2022 Central Government enacted legislation relating to the establishment of four water service entities that would take over responsibility for local authority three-waters services, with the water service entities becoming fully operational and commence delivering water services from 1 July 2024. In April 2023 Central Government announced it was overhauling the three-waters regime by renaming it as "affordable water reforms" and would create 10 new public water entities to replace the 4 previously announced mega-entities. The deadline for having the new entities up and running was pushed out, from July 2024 to July 2026, with the proviso that regions that were ready could launch a public water entity sooner.

Following the October 2023 General Election, the new Government announced in mid-December 2023 it would introduce legislation repealing the Three Waters Reforms early in 2024, being part of its 100 Days programme. In mid-February 2024 the Government introduced the Water Services Act Repeal Bill repealing the previous Governments Three Waters Reform legislation. It also outlined the legislative process that it would follow to implement its own waters "reform", Local Water Done Well.

Your Trustees are closely monitoring this to ensure LAPP will continue to operate and provide the required cover and ability to pay claims until such time as and when this need for cover has transitioned to any the new water entities.

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## CHAIR'S REPORT

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### Financial Position

LAPP is managing two existing claims in the twelve months to 31 October 2023. This includes the existing claim from Marlborough District Council suffered by the July 2021 floods, which after reinsurance recoveries is expected to cost LAPP \$1.8 million, of which \$0.5 million has already been paid in the financial year ending 31 October 2022, and an additional post balance date payment of \$0.4 million paid in December 2023. There was one new claim in the twelve months to 31 October 2023. This was from Cyclone Gabrielle bringing torrential rain and widespread flooding to Hawke's Bay and the east coast of the North Island in February 2023 causing extensive damage to the underground three water assets of Hastings District Council and Wairoa District Council, which after any reinsurance recoveries is estimated to cost LAPP up to \$2.3 million. LAPP's deficit for 2022-2023 was \$454,803, taking the LAPP Fund from \$15,518,972 at 1 November 2022 to \$15,064,169 at 31 October 2023.

### Claims History

Since inception (1 July 1993), LAPP has paid 24 claims to 16 different members who are shown below:

Bay of Plenty Regional Council	Christchurch City Council
Horizons Regional Council	Hurunui District Council
Kaikōura District Council	Marlborough District Council
Manawatu District Council	Nelson City Council
Otorohanga District Council	Rangitikei District Council
Ruapehu District Council	Tararua District Council
Tasman District Council	Waimakariri District Council
West Coast Regional Council	Whakatane District Council

The amount paid to members in claims totals \$232 million, not counting an estimated \$3.4 million to be paid to Marlborough District Council resulting from its July 2021 floods, and \$2.3 million to be paid to Hastings District Council and Wairoa District Council for the February 2023 flooding caused by Cyclone Gabrielle. The amount collected from members in contributions from 1 July 1993 to 31 October 2023 totals \$128.9 million. Insurance claims on average typically equate to around 50 cents for every dollar of premium collected. LAPP has paid almost \$1.85 in claims for every dollar of contribution collected.

LAPP has also made a substantial contribution to the sector's understanding of the natural hazard risks to its three-waters and flood protection infrastructure, and this work continues.

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## CHAIR'S REPORT

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### Appointment of Trustees

The LAPP Board is made up of six trustees; two of which are appointed by Taituarā – Local Government Professionals Aotearoa (“Taituarā”), two by New Zealand Local Government Association Incorporated (“LGNZ”) and two by Civic Financial Services Ltd (“Civic”) with the Chair of the Board being appointed by the Board Trustees.

The members of the LAPP Board are:

Trustee	Designation	Appointed By
Langley Cavers (Chair)	CEO of Hauraki District Council	Taituarā
Andrew Dalziel	Contractor	Taituarā
Tim Davies	University of Canterbury	Civic
Charles Hett	Consulting Actuary	Civic
Dan Gordon	Mayor of Waimakariri District Council	LGNZ
Craig Little	Mayor of Wairoa District Council	LGNZ

### Acknowledgements

I would like to extend my thanks to the Civic staff, Charlie Howe, Ian Brown, Glenn Watkin, Racheal Harold and Lisa Lummis, who provide the administration services to LAPP, and to Aon New Zealand, who are LAPP's insurance brokers.



Langley Cavers

**Chair**

## **TO THE READERS OF NEW ZEALAND LOCAL AUTHORITY PROTECTION PROGRAMME DISASTER FUND'S FINANCIAL STATEMENTS AND STATEMENT OF SERVICE PERFORMANCE FOR THE YEAR ENDED 31 OCTOBER 2023**

The Auditor-General is the auditor of New Zealand Local Authority Protection Programme Disaster Fund (the Trust). The Auditor-General has appointed me, Brent Manning, using the staff and resources of KPMG Wellington, to carry out the audit of the financial statements and statement of service performance of the Trust on his behalf.

### **Opinion**

We have audited:

- the financial statements of the Trust on pages 7 to 15, that comprise the Balance Sheet as at 31 October 2023, the Statement of Financial Performance, Statement of Movements in Equity and Statement of Cash Flows for the year ended on that date and the Notes to the Financial Statements that include accounting policies and other explanatory information; and
- the statement of service performance of the Trust on pages 16 to 19.

In our opinion:

- the financial statements of the Trust:
  - present fairly, in all material respects:
    - its financial position as at 31 October 2023; and
    - its financial performance and cash flows for the year then ended; and
  - comply with generally accepted accounting practice in New Zealand in accordance with Public Benefit Entity Standards with disclosure concessions and
- the statement of service performance of the Trust presents fairly, in all material respects, the Trust's achievements measured against the performance targets adopted for the year ended 31 October 2023.

Our audit was completed on 4 March 2024. This is the date at which our opinion is expressed.

The basis for our opinion is explained below. In addition, we outline the responsibilities of the Trustees and our responsibilities relating to the financial statements and the statement of service performance, we comment on other information, and we explain our independence.

### **Basis for our opinion**

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the Professional and Ethical Standards and the International Standards on Auditing (New Zealand) issued by the New Zealand Auditing and Assurance Standards Board. Our responsibilities under those standards are further described in the Responsibilities of the auditor section of our report.

We have fulfilled our responsibilities in accordance with the Auditor-General's Auditing Standards.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### **Responsibilities of the Trustees for the financial statements and the statement of service performance**

The Trustees are responsible on behalf of the Trust for preparing financial statements that are fairly presented and that comply with generally accepted accounting practice in New Zealand.

The Trustees are also responsible for preparing a statement of service performance for the Trust that is fairly presented. This responsibility arises because the Trust has elected to prepare performance information in accordance with Public Benefit Entity Financial Reporting Standard 48.

The Trustees are responsible for such internal control as they determine is necessary to enable them to prepare financial statements and a statement of service performance that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements and the statement of service performance, the Trustees are responsible on behalf of the Trust for assessing the Trust's ability to continue as a going concern. The Trustees are also responsible for disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting, unless the Trustees intend to wind up the Trust or to cease operations, or have no realistic alternative but to do so.

The Trustees' responsibilities arise from clause 5.3 of the Trust Deed of the Trust.

### **Responsibilities of the auditor for the audit of the financial statements and the statement of service performance**

Our objectives are to obtain reasonable assurance about whether the financial statements and the statement of service performance, as a whole, are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit carried out in accordance with the Auditor-General's Auditing Standards will always detect a material misstatement when it exists. Misstatements are differences or omissions of amounts or disclosures and can arise from fraud or error. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of readers taken on the basis of these financial statements and the statement of service performance.

We have agreed to audit the statement of service performance that the Trustees have elected to prepare for the Trust.

We did not evaluate the security and controls over the electronic publication of the financial statements and the statement of service performance.

As part of an audit in accordance with the Auditor-General's Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. Also:

- We identify and assess the risk of material misstatement of the financial statements and the statement of service performance, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- We obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Trust's internal control.
- We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Trustees.
- We evaluate the appropriateness of the reported service performance within the Trust's framework for reporting its performance.

- We conclude on the appropriateness of the use of the going concern basis of accounting by the Trustees and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Trust's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements and statement of service performance, or if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Trust to cease to continue as a going concern.
- We evaluate the overall presentation, structure, and content of the financial statements, including the disclosures, and whether the financial statements and the statement of service performance represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the Trustees regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Our responsibilities to audit the financial statements arise from the Public Audit Act 2001.

### **Other information**

The Trustees are responsible for the other information. The other information comprises the information included on pages 1 to 3 and pages 20 to 37 but does not include the financial statements and the statement of service performance, and our auditor's report thereon.

Our opinion on the financial statements and the statement of service performance does not cover the other information and we do not express any form of audit opinion or assurance conclusion thereon.

In connection with our audit of the financial statements and the statement of service performance, our responsibility is to read the other information. In doing so, we consider whether the other information is materially inconsistent with the financial statements and the statement of service performance, or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on our work, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

### **Independence**

We are independent of the Trust in accordance with the independence requirements of the Auditor-General's Auditing Standards, which incorporate the independence requirement of the Professional and Ethical Standard 1: *International Code of Ethics for Assurance Practitioners* issued by the New Zealand Auditing and Assurance Standards Board.

Other than in our capacity as auditor, we have no relationship with, or interests in, the Trust.



**Brent Manning**

**KPMG Wellington**

**On behalf of the Auditor-General**

**Wellington, New Zealand**

## STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 31 OCTOBER 2023

	NOTE	OCTOBER 2023 \$	OCTOBER 2022 \$
<b>INCOME</b>			
Members' Below-Ground Contributions		6,011,103	4,819,400
Interest		846,887	308,801
Other Income		-	78
<b>TOTAL INCOME</b>		<b>6,857,990</b>	<b>5,128,279</b>
<b>EXPENDITURE</b>			
<b>Direct Expenses</b>			
Claims Expense	4	2,311,695	-
Reinsurance Recoveries	4	(11,695)	-
Net Claims Expense		2,300,000	-
Excess of Loss Insurance Premium		4,555,958	3,735,839
		6,855,958	3,735,839
<b>Other Expenses</b>			
Administration Fees	8	310,000	304,000
Audit Fees		19,440	18,539
Consultancy		-	81,500
Legal Fees		25,826	25,070
Meeting/Travel Expenses		13,767	11,880
Printing and Stationery		6,950	6,900
Trust Board Liability Insurance		36,000	42,960
Trust Board Remuneration		44,705	44,175
Sundry Expenses		146	211
		456,835	535,235
<b>TOTAL EXPENDITURE</b>		<b>7,312,793</b>	<b>4,271,075</b>
<b>NET SURPLUS/(DEFICIT)</b>		<b>(454,803)</b>	<b>857,205</b>

The notes to the Financial Statements form part of, and are to be read in conjunction with, these Statements.

**STATEMENT OF MOVEMENTS IN EQUITY** FOR THE YEAR ENDED 31 OCTOBER 2023

	<b>OCTOBER 2023</b>	<b>OCTOBER 2022</b>
	\$	\$
<b>Net Surplus for the Year</b>	(454,803)	857,205
<b>TOTAL RECOGNISED REVENUES AND EXPENSES</b>	(454,803)	857,205
<b>EQUITY AT BEGINNING OF THE YEAR</b>	<b>15,518,972</b>	<b>14,661,767</b>
<b>EQUITY AT END OF THE YEAR</b>	<b>15,064,169</b>	<b>15,518,972</b>

The notes to the Financial Statements form part of, and are to be read in conjunction with, these Statements.

**BALANCE SHEET** AS AT 31 OCTOBER 2023

	NOTE	OCTOBER 2023 \$	OCTOBER 2022 \$
<b>TOTAL EQUITY</b>		<b>15,064,169</b>	<b>15,518,972</b>
Represented By:			
<b>Current Assets</b>			
Cash		872,605	302,032
Short Term Deposits	6	21,770,000	19,660,000
Accrued Interest		377,819	173,201
Accounts Receivable & Prepayments		556,825	271,290
<b>Total Current Assets</b>		<b>23,577,250</b>	<b>20,406,523</b>
<b>TOTAL ASSETS</b>		<b>23,577,250</b>	<b>20,406,523</b>
<b>Current Liabilities</b>			
Accounts Payable		733,039	52,496
Deferred Income		3,664,582	3,110,947
GST Payable		545,092	442,241
Provision for Claims	5	3,570,367	1,281,867
<b>Total Current Liabilities</b>		<b>8,513,081</b>	<b>4,887,551</b>
<b>TOTAL LIABILITIES</b>		<b>8,513,081</b>	<b>4,887,551</b>
<b>EXCESS OF ASSETS OVER LIABILITIES</b>		<b>15,064,169</b>	<b>15,518,972</b>

Approved for and on behalf of the Board on 4 March 2024:



LANGLEY CAVERS (CHAIR)



ANDREW DALZIEL (TRUST BOARD MEMBER)

The notes to the Financial Statements form part of, and are to be read in conjunction with, these Statements.

**CASH FLOW STATEMENT** FOR THE YEAR ENDED 31 OCTOBER 2023

	NOTE	OCTOBER 2023 \$	OCTOBER 2022 \$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Cash was Provided from:</b>			
Members' Contributions		6,312,697	6,010,821
Interest Received – Bank		642,268	190,980
Other Income		-	78
		<b>6,954,965</b>	<b>6,201,879</b>
<b>Cash was Applied to:</b>			
Net Claims		11,500	518,133
Excess of Loss Insurance		4,555,958	3,735,839
Administration Fees		310,000	304,000
Meeting/Travel Expenses		16,678	8,434
Trust Board Remuneration		44,705	44,175
Other Expenses		98,625	155,408
Net GST Paid		(63,072)	(165,475)
		<b>4,974,393</b>	<b>4,600,514</b>
<b>NET CASH FLOW FROM OPERATING ACTIVITIES</b>	<b>7</b>	<b>1,980,573</b>	<b>1,601,365</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
<b>Cash was Applied from:</b>			
Investments – Short Term Bank Deposits		(1,410,000)	(1,460,000)
		(1,410,000)	(1,460,000)
<b>NET CASH FLOW FROM INVESTING ACTIVITIES</b>		<b>(1,410,000)</b>	<b>(1,460,000)</b>
Net Increase/(Decrease) in Cash Held		570,573	141,365
Opening Cash Balance		302,032	160,667
<b>CLOSING CASH BALANCE</b>		<b>872,605</b>	<b>302,032</b>
<b>Represented by:</b>			
Cash		872,605	302,032
		<b>872,605</b>	<b>302,032</b>

The notes to the Financial Statements form part of, and are to be read in conjunction with, these Statements.

## **NOTE 1 REPORTING ENTITY**

The purpose of the New Zealand Local Authority Protection Programme Disaster Fund, ("The Fund") is to provide cover to member local governments for losses or damage to infrastructure assets resulting from flooding, earthquakes and other damaging events.

The Fund is a charitable trust registered with the Charities Services on 8 May 2008 and is governed by a Deed of Trust dated 12 July 2019.

### **Statement of Compliance**

The financial statements have been prepared in accordance with Tier 2 Public Sector Public Benefit Entity (PBE) Standards. The criteria under which the Fund is eligible to report in accordance with Tier 2 PBE Standards are that it is not publicly accountable and is not large and disclosure concessions have been applied.

## **NOTE 2 GOING CONCERN**

The financial statements have been prepared on a going concern basis. The Trust Board believe that while members have the right to leave the fund, the equity (\$15 million) provides a solid basis to conclude that the Fund will continue as a going concern. There is uncertainty around the structure of the Fund in future given the three waters reform however it is too early to determine until more is known about the reform.

## **NOTE 3 STATEMENT OF ACCOUNTING POLICIES**

### **General Accounting Policies**

The reporting currency is New Zealand dollars. Income and expenses are accounted for on an accruals basis.

### **Particular Accounting Policies**

The following are particular accounting policies which materially affect the measurement of financial performance and financial position. Further particular accounting policies are contained in the relevant notes to the financial statements.

#### **INCOME RECOGNITION**

Contributions are recorded in the Statement of Financial Performance in the year in which they relate. All revenue is exchange revenue.

#### **TAXATION**

The Fund has been granted charitable status under section CW 41(1) of the Income Tax Act 2007 by the Inland Revenue Department, hence no taxation has been provided for in the financial statements.

#### **GOODS AND SERVICES TAX**

The Financial Statements are prepared on a GST exclusive basis, except for receivables and payables that are stated inclusive of GST.

### **Changes in Accounting Policies**

There have been no changes in accounting policies during the year.

**NOTE 4 CLAIMS AND REINSURANCE RECOVERIES**

Gross outstanding claims liabilities total \$3.57 million (2022: \$1.281). This estimate represents loss assessors' estimates, for the Marlborough flood from July 2021 and Cyclone Gabrielle in February 2023, as at October 2023 and of what LAPP will ultimately pay in relation to these claims. The estimates or projections are based on the known facts and circumstances and assumptions regarding future events and key variables.

Loss assessors have performed assessments on the claims however the extent of these assessments range from initial visual assessments to full detailed reviews. As such, the final extent of the claims that would be subject to consideration by LAPP is still being quantified.

Given the nature and number of uncertainties associated with the Marlborough flood and Cyclone Gabrielle, the actual claims experience may deviate from the gross outstanding claims liabilities as at 31 October 2023. Any changes to estimates will be recorded in the accounting period when they become known.

**NOTE 5 PROVISION FOR CLAIMS***Accounting Policy:*

*A provision for a claim is recognised when:*

- *a claim has been received;*
- *a potential obligation has been recognised by the Trust Board;*
- *it is probable that an outflow of resources will be required to settle the obligation; and*
- *a reliable estimate can be made of the amount of the obligation.*

	<b>OCTOBER 2023</b>	<b>OCTOBER 2022</b>
	\$	\$
<b>Opening Balance</b>	1,281,867	1,788,860
<i>Less: Claims Paid</i>		
<b>Marlborough flood July 2021</b>	-	(506,993)
<b>Cyclone Gabrielle February 2023</b>	(23,195)	-
<i>Plus: Claims Assessed</i>		
<b>Marlborough flood July 2021</b>	11,695	-
<b>Cyclone Gabrielle February 2023</b>	2,300,000	-
<b>Closing Balance</b>	<b>3,570,367</b>	<b>1,281,867</b>

Claims payments are made as claims are quantified and approved by the Trust Board.

**NOTE 6 FINANCIAL INSTRUMENTS***Accounting Policy:*

A financial instrument is recognised if the Fund becomes a party to the contractual provisions of the instrument.

Non-derivative financial instruments comprise cash and cash equivalents, trade and other receivables and trade and other payables.

**Financial Assets**

The Fund's financial assets are classified as either financial assets at fair value through surplus or deficit, or loans and receivables at amortised cost.

**Bank and Cash Equivalents**

Bank and cash equivalents are measured at amortised cost using the effective interest rate and any accrued interest is recorded separately in the Balance Sheet.

**Receivables**

Trade and other receivables are measured at initial recognition at fair value, and are subsequently measured at amortised cost using the effective interest rate.

**Financial Liabilities**

Financial liabilities include Sundry Creditors and Provision for Claims. Financial liabilities are recorded initially at fair value, net of transaction costs. Subsequent to initial recognition, liabilities are measured at amortised cost.

**Categories of Financial Assets and Liabilities**

All fixed interest investments were managed around a 90 to 210 day duration and carry a minimum Standard and Poor's credit rating of "A1" or equivalent.

	OCTOBER 2023	OCTOBER 2022
	\$	\$
<b>Financial Asset: Loans and Receivables</b>		
Bank & Cash Equivalents	22,642,605	19,962,032
Accounts Receivable	910,644	420,490
<b>Total Loans and Receivables</b>	<b>23,553,249</b>	<b>20,382,522</b>
<b>Financial Liability: Amortised Cost</b>		
Accounts Payable	733,039	52,496
Provision for Claims	3,570,367	1,281,867
<b>TOTAL AMORTISED COST</b>	<b>4,303,406</b>	<b>1,334,363</b>

## NOTE 7 RECONCILIATION OF NET SURPLUS TO NET CASH FLOW FROM OPERATING ACTIVITIES

### Accounting Policy:

The following are definitions of the terms used in the Cash Flow Statement:

**Cash:** comprises cash balances held with banks in New Zealand and overseas. Cash excludes term deposits that are not used as part of the Fund's day to day cash management.

**Investing activities:** comprise acquisition and disposal of investments. Investments include securities not falling within the definition of cash.

**Operating activities:** include all transactions and other events that are not investing activities.

	OCTOBER 2023	OCTOBER 2022
	\$	\$
<b>Net Surplus</b>	(454,802)	857,205
<b>Add/(less) movements in other working capital items</b>		
Accrued Interest	(204,618)	(117,820)
GST (Payable) / Receivable	102,852	77,995
Accounts Receivable & Prepayments	(285,536)	667,419
Accounts Payable, Deferred Income & Claims Provision	2,822,678	116,566
	2,435,377	744,160
<b>NET CASH FLOW FROM OPERATING ACTIVITIES</b>	<b>1,980,576</b>	<b>1,601,365</b>

### **NOTE 8 RELATED PARTIES**

Civic Financial Services Limited (Civic) provides administration services and technical support to the Fund. The Fund paid \$310,000 for these services for the year to 31 October 2023. Civic also has the power to appoint two Trustees to the Trust Board. The Chairman received \$13,041 and Trustees received \$6,521 for their services over the year.

### **NOTE 9 COMMITMENTS AND CONTINGENT LIABILITIES**

The Fund has the ability to provide support to Members based on its reserves and its ability to make reinsurance recoveries.

Protection is only available to Members at the discretion of the Trust Board exercised in accordance with the provisions of the Trust Deed.

### **NOTE 10 EVENTS AFTER BALANCE DATE**

Subsequent to balance date on 13 February 2024 the Government introduced the Water Services Act Repeal Bill, outlining the process and timetable for the implementation of its Local Water Done Well programme. This repealed the previous Governments Three Waters Reform legislation. The new policy indicates restoring local council ownership and control of water assets.

There have been no other material events subsequent to 31 October 2023 that requires adjustment to or disclosure in the financial statements.

### **LAPP's purpose, what it intends to achieve and how it goes about this**

LAPP is a charitable trust that was set up by Local Government New Zealand ("LGNZ") and Civic Financial Services Ltd ("Civic") in 1993, designed to provide local authorities with the maximum affordable amount of protection to fund the recovery of their underground infrastructure assets damaged by natural disaster events.

Where a local authority suffers a natural disaster there is an arrangement between Central Government and the local authority where Central Government will cover 60% of the reinstatement cost and the local authority will cover 40% of the reinstatement cost. Provided the local authority can demonstrate they can fund 40% of the cost to reinstate or replace their affected underground infrastructure caused by a natural disaster then Central Government will step in and fund the other 60%. The 60/40 split is currently uncapped.

A local authority, through its membership of LAPP, provides cover for 40% of this cost allowing Central Government to cover the other 60%. As such the formulation of the member's deductible, subsequent LAPP contribution and level of reinsurance has been designed to deliver just that.

The LAPP Board is responsible for looking after the interests of the members of the Fund, the administration and management of the Fund and its ability to pay claims to the members in accordance with LAPP's Trust Deed.

### **Pre-Renewal Member Engagement**

LAPP, in conjunction with its broker Aon NZ, conduct a series of LAPP Member Pre-Renewal Presentations, typically in the first half of each year. The purpose is to meet with all members, to set out and explain the rationale and timeline for the next upcoming renewal of insurance due on 1 November of that current year. The Member Pre-Renewal Presentations for this upcoming renewal on 1st November 2023 were held with all members between 27th June and 12th July 2023.

A key objective is to receive signed-off current asset valuations from each member in time to be presented to the LAPP Board at their August Board Meeting. This is required for the Board to sign-off and approve the new contribution rates and LAPP's cover protection limits for the upcoming renewal due on 1 November of that current year. Signed-off asset valuations were received from all members by 7th July 2023.

### **Member Renewal Communication**

The member contribution rates and cover limits for the 2023-2024 renewal were signed-off by the Board at the Board Meeting on 7th August 2023. This is required for the following Member Renewal Communication timeline to proceed.

**Early August:** A Renewal Advice Letter is sent to each member advising them of their new contribution rate and LAPP's cover protection limits for the next renewal period commencing from 1st November of that current year. This renewal advice letter also confirms the member's current asset valuation being used for this renewal, and their member claim threshold and deductible levels. LAPP's annual renewal date and period of cover runs from 1st of November of each year through to and including 31st October of the following year.

These advice letters are required to be issued in early August as LAPP's two-month withdrawal notice condition requires any member intending to withdraw from the Fund from the next annual renewal date to provide LAPP with written notice of their withdrawal before 1 September of that year. The Renewal Advice Letter for the 2023-2024 renewal were issued to members on 11th August 2023.

**Early September:** Issue 1st Member Contribution Letter and Invoice to each member requiring payment of the 1st invoice by 20th October, prior to 1st November renewal. It is LAPP's current practice to issue each member with two invoices for each yearly renewal period, each representing 50% of their annual contribution. The first invoice being issued before the end of September prior to the 1st November renewal with the second invoice being issued before the end of March of the following year. The 1st Member Contribution Letter and Invoice for the 2023-2024 renewal was issued to members on 4th September 2023.

**November:** Issue Member Certificates to each member confirming the member's value of assets protected, annual contribution, claim threshold and deductible, and LAPP's cover limits for the current period of protection. Membership Certificates for the 2023-2024 renewal were issued to members on 3 November 2023.

**March of Following Year:** Issue 2nd Member Contribution Letter and Invoice to each member requiring payment of the 2nd invoice to be paid by 20th April of that year.

**Current claims:** Claims currently being managed by LAPP

Member	Claim Event	Claims Paid / Provision
Marlborough District Council	Marlborough floods July 2021	\$1.80m
Hastings District Council	Cyclone Gabrielle February 2023	\$1.76m
Wairoa District Council	Cyclone Gabrielle February 2023	\$0.54m

**STATEMENT OF SERVICE PERFORMANCE** FOR THE YEAR ENDED 31 OCTOBER 2023

**Claims History:** The table below shows contributions from members collected life to date against gross claims paid/provisioned over that period.

<b>Fund Year</b>	<b>Contributions</b>	<b>Gross Claims Paid / Provisioned</b>
November 2022 - October 2023	6,011,103	2,300,000
November 2021 - October 2022	4,819,400	0
November 2020 - October 2021	3,812,571	3,400,000
November 2019 - October 2020	3,225,206	0
July 2019 - October 2019	823,874	0
July 2018 - June 2019	2,471,621	(74,006)
July 2017 - June 2018	2,713,435	0
July 2016 - June 2017	4,019,300	5,276,141
July 2015 - June 2016	4,155,960	(2,397,572)
July 2014 - June 2015	5,326,100	(6,948,317)
July 2013 - June 2014	8,500,000	(84,164,466)
July 2012 - June 2013	9,007,386	(188,245,827)
July 2011 - June 2012	14,153,451	298,281,611
July 2010 - June 2011	13,807,736	522,225,951
July 2009 - June 2010	3,213,066	1,327,394
July 2008 - June 2009	5,052,323	(366,276)
July 2007 - June 2008	3,533,164	0
July 2006 - June 2007	4,134,700	0
July 2005 - June 2006	2,038,315	251,871
July 2004 - June 2005	1,746,633	0
July 2003 - June 2004	1,534,785	4,819,429
July 2002 - June 2003	1,540,393	0
July 2001 - June 2002	2,257,113	5,143
July 2000 - June 2001	2,446,698	22,215
July 1999 - June 2000	2,337,860	132,232
July 1998 - June 1999	4,008,445	344,225
July 1997 - June 1998	2,761,867	0
July 1996 - June 1997	2,533,226	0
July 1995 - June 1996	2,634,176	0
July 1994 - June 1995	2,932,083	0
July 1993 - June 1994	2,898,250	0
<b>TOTAL</b>	<b>130,450,240</b>	<b>556,189,748</b>

\*Note the \$556 million gross claims paid / provisioned includes a layer of cover that LAPP provided to Civic Assurance for its above ground insurance programme. This means that the claims paid includes payments for above ground assets (predominantly related to the Canterbury earthquake claims) and the traditional underground assets covered by LAPP. Gross claims paid / provisioned specific to traditional LAPP coverage totals \$238 million over this period.

**Protection Cover Provided by LAPP**

LAPP provided cover in the 2022-23 renewal period for three major events at levels of \$65m, \$105m and \$150m (at 100%), which can be used in any order. LAPP's reinsurance deductible is \$7.5 million (at 100%). LAPP is required to pay up to \$3 million (40%) of this deductible per claim, to be met by the claiming members' deductibles and the LAPP Fund reserves. LAPP's reinsurers are required to pay 40% of any amount over the \$7.5 million threshold up to LAPP's cover limits.

**Performance Report**

Service Performance Measures	2022/23		2021/22 (unaudited)	
	Target Met	Target Not Met	Target Met	Target Not Met
Pre-renewal meetings held with every member prior to 31 July	✓		✓	
Renewal advice letters sent to all members by 31 August	✓		✓	
First member contribution invoices issued by 30 September	✓		✓	
Second member contribution invoices issued by 31 March	✓		✓	
Member Certificates issued to members by 30 November	✓		✓	
Maintain or increase insurance coverage for LAPP members	✓		✓	
All claims settled within three years	N/A		N/A	

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## TRUSTEE INFORMATION

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The Trustees as at 31 October 2023 and their nominating bodies are:

LD Cavers	Taituarā	CEO, Hauraki District Council
AJ Dalziel	Taituarā	GM Infrastructure / Deputy CE, Porirua City Council
TRH Davies	Civic	Researcher, University of Canterbury
DB Gordon	LGNZ	Mayor, Waimakariri District Council
CS Hett	Civic	Independent Actuary
C Little	LGNZ	Mayor, Wairoa District Council

During the year, the Trustees met for formal meetings on four occasions.

Attendance was:

JM Carter	1
LD Cavers	4
AJ Dalziel	4
TRH Davies	3
DB Gordon	3
CS Hett	4
JT Hicks	1
C Little	1

JM Carter and JT Hicks were replaced as the LGNZ appointees effective from 11 December 2022.

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## 2022–2023 FUND YEAR MEMBERSHIP

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Ashburton District Council

Carterton District Council

Gore District Council

Hastings District Council

Hauraki District Council

Horowhenua District Council

Hurunui District Council

Invercargill City Council

Kaikōura District Council

Marlborough District Council

Masterton District Council

New Plymouth District Council

Palmerston North City Council

South Taranaki District Council

South Wairarapa District Council

Southland District Council

Stratford District Council

Timaru District Council

Waimakariri District Council

Waimate District Council

Wairoa District Council

Waitaki District Council

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## DIRECTORY

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### ADMINISTRATION MANAGER

Civic Financial Services Ltd  
Level 7, Civic Chambers  
116 Lambton Quay  
Wellington 6011

### THE ADDRESS FOR CORRESPONDENCE IS

Ian Brown  
Administration Manager  
NZ Local Authority Protection Programme Disaster Fund  
PO Box 5521  
Wellington 6140

Phone: 04 978 1263

Email: [ian.brown@civicfs.co.nz](mailto:ian.brown@civicfs.co.nz)

New Zealand Local Authority  
Protection Programme  
Disaster Fund

**TRUST DEED**

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## THIS DEED is made the 12th day of July 2019

**BETWEEN** **NEW ZEALAND LOCAL GOVERNMENT ASSOCIATION INCORPORATED**, a society incorporated in Wellington pursuant to the Incorporated Societies Act 1908 ("the Settlor")

**AND** **JOHN MCGREGOR CARTER** of Ninety Mile Beach, Mayor of Far North District Council, **LANGLEY DAVID CAVERS** of Waihi Beach, Chief Executive of Hauraki District Council, **ANDREW JAMES DALZIEL** of Wellington, General Manager Porirua City Council, **TIMOTHY REGINALD HOWARD DAVIES** of West Melton, Professor University of Canterbury, **CHARLES STEWART HETT** of Wellington, Consultant and **JOSHUA TRACY HICKS** of Gore, Mayor of Gore District Council, (together "the Trustees")

## WHEREAS

- A The Settlor established a fund for the reinstatement of lost or damaged generally uninsurable local government infrastructure known as the New Zealand Local Authority Protection Programme Disaster Fund ("Fund"), by Deed of Trust dated 29 June 1993 ("the Establishment Trust Deed"). The Fund is currently governed by a Deed of Trust dated 14 December 2007 ("Existing Trust Deed").
- B Only those Local Authorities that are contributing to the Fund are to be eligible for distributions in the event of loss or damage to their infrastructure.
- C The Fund is to continue to be accumulated and applied for the purpose by the Trustees in accordance with this Deed.
- D The Existing Trust Deed provides that the Trustees may amend the Trust Deed by unanimous resolution of the Trustees present at any validly convened meeting, provided such amendment is not inconsistent with the charitable scope of the trusts contained in the Existing Trust Deed.
- E The Establishment Trust Deed was amended by Deeds of Variation dated 14 February 1997, 5 June 2003 and 14 December 2007, with the consent of the Settlor as required by the Establishment Trust Deed.
- F At a meeting of the Trustees held on 15 April 2019 the Trustees unanimously resolved to:
- (a) amend and replace the Existing Trust Deed with this Deed, and
  - (b) that this would take effect on the date the consent of the Settlor had been obtained in writing.

## COVENANTS

In accordance with the powers of amendment contained in clause 9 of the Existing Trust Deed it is declared that from the date the Settlor gives its written consent to the amendments to the terms of the Existing Trust Deed reflected in this Deed, the provisions of the Existing Trust Deed are hereby substituted in their entirety with the provisions of this Deed, so that the Fund established pursuant to the Existing Trust Deed continues in existence without interruption but from the date of the Settlor's consent will be administered exclusively in accordance with the provisions of this Deed.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Each of the following words and expressions shall, unless the context otherwise requires, have the following meanings, as indicated:

"the Act" means the Charitable Trusts Act 1957;

"Administration Manager" means the person appointed to that office;

"Advisory Trustee" means any advisory trustee appointed pursuant to clause 3.1.8;

"Alternative Trustee" means any alternate trustee appointed pursuant to clause 3.1.3;

"Annual Accounts" means statements of income and expenditure and balance sheets of the Fund prepared or to be prepared in accordance with the provisions of this Trust Deed;

"Annual Contribution" means the payment to the Fund made by each Member in return for Coverage by the Fund for a Fund Year;

"Asset Value" means the cost of reinstatement or replacement of a Member's Infrastructure as determined pursuant to clause 7.1.1(a);

"Auditor" means the office of auditor or auditors to the Fund for the time being;

"Commencement Date" means 1 July 1993;

"Coverage" means protection for the cost of reinstatement or replacement of the Members' Infrastructure required as a result of a Damaging Event;

"Damaging Event" includes flooding, earthquake, volcanic eruptions (including the effects of volcanic ash), storm surge, tsunami, wildfire, gas explosion, hail, snow, wind damage, landslide, lahar and any other sudden event or sudden situation causing serious disruption, loss or damage to Infrastructure;

"Deductible" means any first amount of any loss or damage following a Damaging Event that the Trustees determine shall be borne by the Member;

"Distribution" means payment, made to a Member from the Fund, consequent upon their Coverage;

"Extraordinary Contribution" means any contribution to the Fund which a Member is required to make as:

- (i) a condition of their entry to membership of the Fund at any time after the Commencement Date; or
- (ii) any contribution for Coverage for any part or portion of a year;

"Fund" means the New Zealand Local Authority Protection Programme Disaster Fund, established by the Establishment Trust Deed;

"Fund Year" means:

- (i) in respect of any twelve-month period commencing on 1 July and ending no later than 30 June 2019, each year of the Fund commencing on 1 July and ending on 30 June in the following calendar year; and
- (ii) in respect of the four-month period commencing 1 July 2019 and ending on 31 October 2019, the four-month period of the Fund commencing on 1 July 2019 and ending on 31 October 2019; and
- (iii) in respect of the twelve-month period commencing on 1 November 2019 and each twelve-month period commencing on 1 November thereafter, each year of the Fund commencing on 1 November and ending on 31 October in the following calendar year.

"Infrastructure" means any asset accepted as such by the Trustees for the purposes of this Trust Deed and registered with the Trustees for Coverage in relation to a Local Authority and may include reticulation, storage and treatment facilities (water, sewage, stormwater); tunnels other than road tunnels; dams; canals; stopbanks; flood control protection works; drainage works; detention ponds; sea walls; and harbour risks (including buoys, beacons and foreshore lighthouses).

"Investment Manager" means any person to whom the Trustees have contracted the investment of some or all of the assets of the Fund pursuant to clause 4.1.1(b);

"Local Authority" means any New Zealand Local Authority or Territorial Authority or Regional Council as defined in section 5 of the Local Government Act 2002 and includes any Council- Controlled Organisation as defined by section 6 of that Act.

"Member" means any Local Authority admitted as a member of the Fund, the membership of which has not been terminated.

"Participation Deed" means the agreements so called entered into by Local Authorities on admission to membership of the Fund;

"Stated Value" means the Member's estimate of the reinstatement or replacement value of its Infrastructure.

"the Trustees" means the trustees named in this Trust Deed (until removed from office), any new trustees appointed either pursuant to clause 3.1.2 or clause 3.1.6, any Alternate Trustees appointed pursuant to clause 3.1.3 and any Advisory Trustees appointed pursuant to clause 3.1.8 collectively.

"written" or "in writing" includes printing, facsimile, or emails or other form of electronic communication, or any other communication by written word.

## 1.2 Interpretation

- 1.2.1 Words importing any one gender shall include the other.
- 1.2.2 Plurals shall include the singular and vice versa.
- 1.2.3 Reference to persons shall include body corporates.
- 1.2.4 Reference to any Act of Parliament shall be deemed to include every amendment or re-enactment of it and every Act of Parliament substituted for it, and any regulations made under the Act.
- 1.2.5 All references in this Trust Deed, or to provisions or clauses of this Trust Deed, shall be deemed to be references to this Trust Deed and to those provisions or clauses as altered from time to time pursuant to the provisions of this Trust Deed.
- 1.2.6 Except as otherwise defined in this Trust Deed, the terms used in this Trust Deed which have been defined in the Act shall have the same meaning as ascribed to those terms in the Act.

## 2 CONSTITUTION OF THE FUND

### 2.1 New Zealand Local Authority Protection Programme Disaster Fund

- 2.1.1 A fund is hereby established by the New Zealand Local Government Association Incorporated, with the charitable purposes set out in clause 2.1.3.
- 2.1.2 The name of the fund shall be the New Zealand Local Authority Protection Programme Disaster Fund.
- 2.1.3 The charitable purposes of the Fund shall be:
- To assist New Zealand local government to carry out its responsibilities under central government's disaster recovery policies and plans; and
  - To provide funds for Members for the purpose of reinstatement of lost or damaged Infrastructure as a result of Damaging Events; and
  - To facilitate effective programmes to enable New Zealand local government to identify and manage risks to their Infrastructure by minimising and reducing the exposure, limiting the risks and diminishing the potential for loss or damage; and
  - To provide Members with the capacity for self-help to recover from consequences of Damaging Events; and
  - To do anything else which the Trustees may think is conducive or incidental to the attainment of the above charitable purposes.
- 2.1.4 There are no non-charitable purposes for the Fund.

2.1.5 The Fund shall consist of all property for the time being held by or on behalf of the Trustees, derived from:

- Any gifts or donations;
- Extraordinary Contributions;
- Annual Contributions;
- Income from investments;
- Proceeds of realisation of investments;
- Any policies or contracts of re-insurance;
- Any recoveries;
- Any other source.

2.1.6 The Fund shall be held in trust by the Trustees upon the trusts and for the charitable purposes contained in this Trust Deed and shall be managed, administered and applied by the Trustees, in accordance with the powers contained in this Trust Deed, in order to attain those charitable purposes.

2.1.7 The Trustees are and shall remain responsible for the safe custody of all money, policies, certificates and other documents of title and value in connection with the Fund and for the safe custody, realisation and distribution of all of the assets from the Fund, from time to time vested in them.

## 3 TRUSTEES

### 3.1 Appointment and Removal of Trustees

- 3.1.1 The number of Trustees shall be not less than four nor more than six. The Trustees shall be one or two appointees of the Settlor; one or two appointees of Civic Financial Services Limited; and one or two appointees of the NZ Society of Local Government Managers Incorporated (together called the "Appointors").
- 3.1.2 The power of appointing new Trustees shall be vested in the Appointors each of which shall have the power to appoint two persons as Trustees and they having been appointed as Trustees to remove and/or replace them, by notice in writing given to the Administration Manager.
- 3.1.3 The Appointors shall be entitled to appoint any person as an Alternative Trustee in place of any Trustee appointed by them, by notice in writing given to the Administration Manager, either for a specified period, or for a specified meeting or any part of a meeting, or for any particular subject matter at any meeting, or generally during the absence of any such Trustee, and from time to time, in the same manner, to remove any Alternate Trustee.
- 3.1.4 An Alternate Trustee appointed pursuant to clause 3.1.3 shall:
- not be remunerated otherwise than out of the remuneration of the Trustee in whose place the Alternate Trustee acts;
  - be deemed to have automatically vacated office when the Trustee in whose place the Alternate Trustee acts vacates office;
  - unless otherwise provided by the terms of appointment of the Alternate Trustee, have the same rights, powers and privileges (including without limitation, the right to receive notice of meetings of Trustees, the power to sign resolutions of Trustees and the power to witness the affixing of the common seal) as the Trustee in whose place the Alternate Trustee is appointed;
  - discharge all the duties of and be subject to the same provisions in this Trust Deed as the Trustee in whose place the Alternate Trustee acts.
- 3.1.5 The Administration Manager shall within seven days of it being notified in writing of the appointment, removal or resignation of a Trustee give to every Member and Appointor (other than an Appointor exercising its powers of appointment or removal) written notice of the appointment, removal or resignation of the Trustee.

- 3.1.6 Notwithstanding the provisions of clause 3.1.2 of this Trust Deed, if any Appointor shall fail at any time to exercise its power of appointment and notify the Administration Manager in writing accordingly, within fourteen days of:
- it being notified in writing of the removal or resignation of their appointee; or
  - it becoming aware of the occurrence of another event which creates a vacancy (as provided for in clause 3.1.7); and
  - the number of Trustees falls below four –
- then the Trustees shall forthwith appoint further or additional Trustees on behalf of any Appointors so failing, so as to ensure there are not less than four nor more than six Trustees and every Trustee then appointed may thereafter only be removed by resolution of the Trustees.
- 3.1.7 A vacancy in the office of Trustee shall arise if:
- a Trustee is adjudged bankrupt; or
  - a Trustee resigns by notice in writing to the Administration Manager;
  - a Trustee refuses to act; or
  - a Trustee becomes of unsound mind; or becomes subject to a property order under the Protection of Personal and Property Rights Act, 1988; or
  - a Trustee is removed by their Appointor in accordance with the provisions of this Trust Deed or by resolution of the Trustees under clause 3.1.6; or
  - a Trustee is otherwise removed by operation of law.
- 3.1.8 The Trustees shall have power to appoint any person at any time as an Advisory Trustee to the Fund, and to prescribe the function of such Advisory Trustee. An Advisory Trustee shall not be counted in the number of Trustees required by clause 3.1.1, or in the quorum required for meetings of the Trustees, nor be entitled to vote thereat.
- 3.2 Meetings of Trustees**
- 3.2.1 The Trustees shall from time to time meet for the despatch of business of the Fund and, subject to the provisions of this Trust Deed and particularly this clause 3.2, shall have the power to adjourn or otherwise regulate their meetings and proceedings and vary the regulation and procedure of such meetings and proceedings as the Trustees think fit.
- 3.2.2 Questions arising at any meeting of the Trustees shall be determined by a majority of the votes of those present and voting.
- 3.2.3
- The Trustees shall at their inaugural meeting and again before the end of each Fund Year elect one of their number to be the chairman of Trustees for the ensuing Fund Year. The person so elected shall hold office as chairman of Trustees during the ensuing Fund Year, and shall be eligible for re-appointment.
  - The person so appointed shall chair all meetings of the Trustees at which they are present. If at any meeting the chairman is not present within fifteen minutes of the appointed time for holding the meeting the Trustees present shall then choose one of their number to be the chairman of that meeting.
  - A chairman shall not be entitled to a second or casting vote.
- 3.2.4 Every meeting of the Trustees shall be called by giving not less than seven days' notice in writing to the Trustees provided that a meeting of the Trustees shall be deemed to have been duly called if it is so agreed by all the Trustees entitled to attend and vote thereat.
- 3.2.5 Upon the written request of three Trustees giving notice of the subject matter of that meeting, the Administration Manager shall summon a special meeting of the Trustees, within seven days of that request.
- 3.2.6 Every notice of a meeting of the Trustees shall;
- be given in writing by the Administration Manager to each Trustee at their last known address;
  - be exclusive of the day on which it is served and of the day of the meeting;
  - specify the place, day and hour of the meeting;
  - specify, in the case of special business, the general nature of that business.
- 3.2.7 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Trustee shall not invalidate the proceedings at the meeting.
- 3.2.8
- No business shall be transacted at any meeting of the Trustees unless a quorum is present at the time when the meeting proceeds to business. The quorum for meetings of the Trustees shall be as fixed by resolution of the Trustees and until so fixed any number of the Trustees more than one-half of the total number of the Trustees entitled to vote thereat shall constitute a quorum. Where one-half in number of the Trustees so entitled to vote is a fraction it shall be rounded-up to the next whole number and such number shall be the quorum for a meeting of the Trustees.
  - If within half an hour from the time appointed for a meeting of the Trustees a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Trustees present shall constitute a quorum.
  - Every Trustee present shall, notwithstanding their conflict between interest and duty (if any), be counted in a quorum present.
- 3.2.9 A validly called meeting of the Trustees at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Deed vested in or exercisable by the Trustees.
- 3.2.10 Any Trustee who is in any way, whether directly or indirectly;
- personally interested in a contract or arrangement or any proposed contract or arrangement with the Trustees or with any Member; or
  - is an elected member, office or employee of any Member or proposed Member which is interested –
- shall declare the nature of the interest and unless the interest is no greater than or any different from –
- in the case of an interest to which subclause (a) of this clause applies, that of the other Trustees present; or
  - on the case of an interest to which subclause (b) of this clause applies, that of the Members generally,
- they shall thereafter take no further part in the deliberations in respect of that matter.
- 3.2.11 The foregoing rule shall not operate to prevent any Trustee taking part in discussions and decisions regarding rules, guidelines, or policies regarding Annual Contributions.
- 3.2.12 All disclosures of interest by any Trustee, and whether or not they took part in discussion on or voted on the matter before the meeting, shall be recorded in the minutes of the meeting.
- 3.2.13
- The Trustees may meet by means of a Telephone Meeting, the Trustees having been given notice of the meeting as required by the provisions of this Trust Deed.

- (b) In this clause:
- “Telephone Meeting” means the contemporaneous linking together by telephone of Trustees comprising a quorum (whether or not any one or more of those persons is outside New Zealand); “Telephone” means and indicates any instant electronic means of communication.
- (c) Before a Telephone Meeting proceeds to business:
- (i) each of the Trustees taking part must be able to hear each of the other Trustees taking part;
  - (ii) the chairman shall ask each Trustee taking part in turn to respond by way of confirmation that they are in fact linked to and are taking part in the Telephone Meeting;
  - (iii) the chairman shall thereupon announce to the Telephone Meeting the names of those Trustees who have so responded.
- (d) The Trustees so named by the chairman shall be conclusively deemed to be present at the Telephone Meeting and, unless given permission to leave under subclause (e) of this clause, to have been present all the time during the Telephone Meeting.
- (e) No Trustee may leave a Telephone Meeting by disconnecting their telephone unless the chairman has first granted that Trustee permission to leave.
- (f) A minute of the proceedings at a Telephone Meeting shall be conclusive evidence of the proceedings and the regularity of the meeting if certified as a correct minute by the chairman.

### 3.3 Subcommittees

- 3.3.1 (a) The Trustees may at any time, for any specified purpose, appoint such of their number as they think fit to be members of any one or more subcommittees.
- (b) Each such subcommittee shall have such powers and duties as are delegated to it by the Trustees.
- (c) Each such subcommittee shall have power to co-opt such person or persons whether or not Trustees as the Trustees think fit, provided that:
- (i) in relation to each subcommittee the number of co-opted members shall not exceed the number of Trustees who are members of the subcommittee; and
  - (ii) such co-option shall be subject to the approval of the Trustees at the first meeting of the Trustees following the co-option.
- (d) The Trustees may appoint a chairman of each subcommittee. If no such chairman is appointed or if at any meeting the chairman is not present within 15 minutes after the time appointed for holding the same, the members of the subcommittee present shall then choose a chairman of the meeting.
- (e) Each subcommittee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of all those present and voting. In the case of an equality of votes the chairman shall have a second or casting vote.

### 3.4 Validity of Acts of Trustees

- 3.4.1 All acts done in good faith at any meeting of the Trustees or any subcommittees of the Trustees, or by any person acting as a Trustee, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Trustee or that such Trustee was disqualified, be as valid as if every such Trustee had been duly appointed, and was qualified to be a Trustee.

### 3.5 Resolutions in Writing

- 3.5.1 A resolution in writing, signed by all of the Trustees entitled to vote thereon shall be as valid as if it had been passed at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more of the Trustees so entitled. Any such document sent by a Trustee by telegram, cable, facsimile, copier, telex or other electronic means of communication shall be deemed to have been signed by the Trustee.

### 3.6 Remuneration of Trustees

- 3.6.1 The Trustees shall not make any private pecuniary profit from the Fund, except that the Trustees shall be entitled to reasonable fees for their services in respect of the management and administration of the Fund. The amount of the fees shall be determined from time to time by the Administration Manager after consultation with the Settlor and the Trustees.

### 3.7 Indemnity and Limitation of Trustee's Liability

- 3.7.1 The Trustees shall be indemnified and shall be entitled to reimburse themselves out of the Fund in respect of all costs, charges and expenses which they incur in or about management or administration of the Fund.
- 3.7.2 No Trustee acting or purporting to act in execution of the trusts created by this Trust Deed shall be liable for any loss not attributable to their own dishonesty or their wilful commission of or omission to do any act known by them to be a breach of trust, and in particular (without limitation) no Trustee shall incur any liability in respect of:
- (a) Any act done or not done in the exercise of or in respect of any discretion vested in them.
  - (b) Anything done or suffered by them in good faith in reliance upon any advice or opinion (whether or not obtained by the Trustees) of any professional person, or upon any advice the Trustees may obtain directly or indirectly from any company, firm or person as shall, in the opinion of the Trustees, be qualified to provide advice.
  - (c) Any failure or refusal to perform or do any act or thing which by reason or provision of any law of New Zealand they are hindered or prevented from doing or performing.
- 3.7.3 No Trustee shall be bound to or be liable for any failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by the co-Trustee.

## 4 POWERS OF TRUSTEES

### 4.1 General Powers

- 4.1.1 In addition to the powers conferred by law and elsewhere in this Trust Deed the Trustees shall have the power:
- (a) Subject to clause 5.1.3, from time to time to appoint and remove the Administration Manager and, subject to the specific duties imposed on the Administration Manager by this Trust Deed, define the duties and responsibilities of the Administration Manager, on terms to be agreed in writing between the Trustees and the Administration Manager.
  - (b) From time to time to appoint and remove one or more investment managers. The Investment Managers shall have such powers and duties in relation to the investment of the fund as the Trustees shall determine and agree in writing between the Trustees and the Investment Managers.
  - (c) To appoint and remove a custodian trustee to hold in safe custody all policies, certificates and other documents of title in connection with the whole or any part of the Fund, on terms to be agreed in writing between the Trustees and the custodian trustee.

- (d) To otherwise retain the services of professional advisors and managers in relation to the management, administration and investment of the Fund, to delegate powers and discretions to professional advisors and managers as the Trustees see fit, and to determine and to pay out of the Fund, any fees payable to those professional advisors and managers.
- (e) To make rules or guidelines, and to adopt procedures, consistent with the provisions of this Trust Deed, including, without limitation, in relation to membership; calculating and fixing Asset Values, Deductibles, Extraordinary Contributions, Annual Contributions and Distributions; determining from time to time which of a Member's assets can be registered with the Trustees as Infrastructure; and to make rules or guidelines and to adopt procedures as shall be appropriate for the convenient administration of the Fund.
- (f) To borrow money for the purpose of providing Distributions where the assets of the Fund are not immediately realizable, or if realizable are only realizable at a material loss to the Fund, and to secure the repayment of such moneys in any manner and upon any terms the Trustees consider advisable, whether by charge over all or any portion of the Fund or any particular property or otherwise, provided however the Trustees shall first have had and obtained the consent in writing of the Settlor thereto and provided further that in no event shall the amount borrowed exceed the then estimated values of the assets of the Fund, less any existing liabilities of the Fund, contingent or otherwise.
- (g) To seek insurance protection in support of the Fund.
- (h) Generally to do all such acts and things as the Trustees may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in performance of their obligations under this Trust Deed.

#### **4.2 Investments Authorised**

- 4.2.1 All moneys belonging to the Fund and available for investment shall be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.

#### **4.3 Exercise of Discretion**

- 4.3.1 The Trustees may exercise or enforce all of the authorities, discretions and powers vested in them from time to time, and at any time and may refrain from exercising all or any such powers.

#### **4.4 Appointment of Auditor**

- 4.4.1 The Trustees shall from time to time appoint an Auditor (being a 'qualified auditor' within the meaning of section 461E of the Financial Markets Conduct Act 2014) of the Fund at a remuneration to be fixed, and payable, by the Administration Manager, out of the Fund.

### **5 MANAGEMENT AND ADMINISTRATION**

#### **5.1 Appointment of Administration Manager**

- 5.1.1 The Trustees shall appoint an Administration Manager which shall, in addition to other duties or responsibilities conferred on the Administration Manager elsewhere in this Trust Deed, and as from time to time agreed by the Administration Manager with the Trustees:
  - (a) Receive applications for membership of the Fund;
  - (b) Ascertain and audit the infrastructural assets of Members;
  - (c) Issue debit notes for and maintain records of all Annual Contributions and Extraordinary Contributions paid to the Fund;
  - (d) Use its best endeavours to secure economic insurance support of the Fund;

- (e) Facilitate effective programmes to enable Members to identify and manage risks to their Infrastructure by minimising and reducing the exposure, limiting the risks and diminishing the potential for damage by Damaging Events;
- (f) Receive and process applications for Distributions, within the scope of guidelines laid down by the Trustees;
- (g) Furnish the Trustees with full and complete reports of all losses by and of all payments made out of the Fund;
- (h) Liaise with local government agencies with respect to the application of their appropriate disaster recovery and emergency plans;
- (i) Make recommendations to the Trustees regarding any matters pertaining to the administration and management of the Fund;
- (j) Undertake such services as may be required by the Trustees or as may be reasonably necessary for the management, administration and investment of the Fund, and the operation of the trusts contained in this Trust Deed.

- 5.1.2 The Administration Manager shall be responsible to the Trustees for the proper management, and administration of the Fund and the trusts contained in this Trust Deed.

- 5.1.3 The first Administration Manager shall be Civic Financial Services Limited which shall hold office for an initial term of six years from the Commencement Date (unless removed earlier) on such terms (including terms relating to performance) as may be agreed in writing with the Trustees.

#### **5.2 Records to be Kept**

- 5.2.1 The Administration Manager shall keep or cause to be kept a complete record of:
  - (a) The membership of the Fund including the dates on which Members were admitted to membership and when they ceased to be or were suspended as Members of the Fund.
  - (b) Proper records of all meetings, resolutions and decisions of the Trustees.
  - (c) The affairs, matters and transactions of the Fund.
  - (d) All other matters, information and data necessary or expedient for the proper and effective working of the Fund and the operation of this Trust Deed.

#### **5.3 Accounts**

- 5.3.1 The Administration Manager shall ensure that:
  - (a) All assets of the Fund are kept separate and apart from any assets or funds of the Administration Manager, with all moneys received by the Administration Manager to be banked in a separate bank account in the name of the Fund;
  - (b) Proper books of account are kept in respect of the Fund;
  - (c) Annual Accounts are prepared in respect of the Fund, presenting a true and fair view of the Fund's financial affairs at the end of each Fund Year; and
  - (d) The Auditor appointed in accordance with the provisions of this Trust Deed examines and reports upon the Annual Accounts.

#### **5.4 Annual Report of the Fund**

- 5.4.1 The Administration Manager shall within six months after the end of each Fund Year:
- (a) Prepare an Annual Report for the Fund for the previous Fund Year.
  - (b) Provide each Member with a copy of the Annual Report.
- 5.4.2 The following matters shall be contained in the Annual Report:
- (a) A statement of numerical changes in the membership of the Fund during the Fund Year;
  - (b) The Annual Accounts for the Fund in respect of the previous Fund Year;
  - (c) The Auditor's report on the Annual Accounts;
  - (d) A statement by the Administration Manager as to whether all the Annual Contributions and Extraordinary Contributions required to be made to the Fund in accordance with the Participation Deeds and this Trust Deed have been made by the Members, and if not the amount or amounts outstanding;
  - (e) A summary of any amendments to this Trust Deed that have been made during the Fund Year;
  - (f) The names of and any changes since the last Annual Report in the Trustees, the Administration Manager, re-insurers, and changes in any actuaries, auditors and solicitors to the Fund (either by reference to their own names or the names of their firms);
  - (g) The name and address of the person to whom all correspondence from the Members to the Trustees should be sent.

#### **5.5 Delegation**

- 5.5.1 Subject to this clause, the Administration Manager may at any time with the consent of the Trustees and from time to time, delegate any of its powers to any person.
- 5.5.2 A delegation pursuant to this clause may be:
- (a) Subject to such conditions and on such terms for the protection and convenience of persons dealing with the delegate as the person making the delegation thinks fit; and
  - (b) Amended or revoked at any time.
- 5.5.3 If the Trustees or the Administration Manager exercise a power that is for the time being delegated that shall not revoke the delegation.
- 5.5.4 The Trustees shall not be liable for any act or defaults of any delegate of the Administration Manager.

#### **5.6 Expenses of Administration**

- 5.6.1 The Administration Manager may pay from the Fund such costs, charges and expenses of management, administration and investment of the Fund as are properly payable by the Administration Manager on behalf of the Fund.
- 5.6.2 The Administration Manager shall be paid from the Fund such fees or charges for its administration of the Fund and the trusts contained in this Trust Deed, as shall from time to time be authorised by the Trustees.

#### **5.7 Indemnity of Administration Manager**

- 5.7.1 The Administration Manager shall not be liable for any loss which is not attributable to the Administration Manager's own dishonesty and the Trustees shall indemnify and keep indemnified the Administration Manager from the Fund against all claims demands and liabilities from Members or persons not parties to this Trust Deed, howsoever arising.

#### **5.8 Execution of Deeds**

- 5.8.1 If the Trustees are incorporated as a Board the Trustees shall obtain and adopt a common seal of the Board. The common seal of the Board shall be kept in the safe custody of the Administration Manager. The common seal shall only be used by the authority of the Board or of a committee of the Board authorised by the Board in that behalf, and every instrument to which the common seal is affixed shall be signed by a member of the Board and shall be countersigned by a second member of the Board or by some other person appointed by the Board for the purpose.

### **6 MEMBERSHIP COVERAGE**

#### **6.1 Admission of Members**

- 6.1.1 Only Local Authorities shall be eligible for admission as Members of the Fund.
- 6.1.2 A Local Authority shall not be admitted to membership without first entering into a Participation Deed with the Fund in the form and on the terms acceptable to the Trustees.
- 6.1.3 In executing a Participation Deed the Local Authority shall agree to be bound by the terms of this Trust Deed.

#### **6.2 Withdrawal from Membership**

- 6.2.1 Any Member may withdraw from membership of the Fund by giving notice in writing to the Trustees of its desire to withdraw from membership no later than two months before the end of any Fund Year, and their membership shall terminate at the end of that Fund Year.
- 6.2.2 Any notice in writing of a Member's desire to withdraw from membership may itself be withdrawn by the Member:
- (i) no later than two months prior to when termination of its membership would otherwise have taken effect, or
  - (ii) at any time within two months of when termination of membership would otherwise have taken effect if such notice is given within 14 days following a Damaging Event for which the Member has Coverage. In this circumstance the Member's Coverage from what would have been the Member's termination date may be limited by the Trustees in whatever way the Trustees think fit.
- 6.2.3 Members who have not given notice of their desire to withdraw from the Fund in accordance with clause 6.2.1 shall pay their Annual Contributions due for the following Fund Year.

#### **6.3 Suspension or Termination of Membership**

- 6.3.1 Membership of the Fund may be terminated or membership rights suspended, by resolution of the Trustees, in the event that a Member:
- (a) Refuses or fails to comply with the reasonable directions of the Trustees given for the purpose of minimizing or reducing the exposure, limiting the risks and diminishing the potential for loss or damage to its Infrastructure; or
  - (b) Refuses or fails to allow an audit of the Member's management of the risk to its Infrastructure; or
  - (c) Omits to make or unduly delays payment of its Annual Contribution; or
  - (d) Commits any breach of the provisions of this Trust Deed or its Participation Deed which in the opinion of the Trustees warrants the termination or suspension of membership.
- 6.3.2 A former Member may if so desiring re-apply for membership, but if successful shall not thereby gain any benefit credit or entitlement accruing consequent upon their former membership.

6.3.3 The action or decision of the Trustees in any matter relating to membership or suspension or termination of membership shall be final and binding.

#### **6.4 Coverage**

6.4.1 Coverage of Members shall commence from the later of the date of payment of the initial Annual Contribution (or part thereof if so agreed) and the Extraordinary Contribution (if any, or part thereof if so agreed) as required by the Trustees or such other date as may be agreed in writing by the Trustees.

6.4.2 There shall be no Coverage of Local Authorities that are not Members.

6.4.3 Upon termination or suspension of membership all Coverage shall cease from the date of termination or suspension as the case may be, and the Member shall not be eligible for Coverage until re-admission to membership (in the case of termination) or (in the case of suspension) the lifting of the suspension by further resolution of the Trustees, or the satisfaction of any pre-condition imposed for the automatic lifting of the suspension of the Member.

6.4.4 On termination of membership all claim, right, title or interest or benefit in the assets of the Fund shall forthwith cease.

### **7 GENERAL PROVISIONS RELATING TO CONTRIBUTIONS**

#### **7.1 Annual Contributions**

7.1.1 The Trustees shall before the end of each Fund Year:

- (a) Fix the Asset Value of each Member's Infrastructure, having regard to:
  - (i) whether the Member has agreed with the Trustees for the relevant Infrastructure to be valued on a reinstatement basis, or whether the Member has agreed with the Trustees for the relevant Infrastructure to be valued on a replacement basis;
  - (ii) their Stated Value;
  - (iii) any actual valuation made of a Member's Infrastructure, or any parts of it;
  - (iv) any other measure (including valuations) which may enable or assist the Trustees to assess the value of Members' Infrastructure;
  - (v) any appropriate method or principles of valuation whether or not they are the same as those applied in any other valuation of the Members' Infrastructure or parts of it.
- (b) Determine the approximate amount of total Annual Contributions to be sought from Members for the ensuing Fund Year having regard to:
  - (i) the combined Asset Values of Members as determined in clause 7.1.1(a) above; and
  - (ii) the risk or exposure of the Members' Infrastructure to Damaging Events; and
  - (iii) possible Deductibles; and
  - (iv) any other factors that seem relevant:

7.1.2 The Trustees shall after determining the approximate amount of the total Annual Contributions to be sought from Members for the ensuing Fund Year fix the Annual Contributions to be paid by individual Members, and in fixing the Annual Contributions to be paid by individual Members the Trustees shall have regard to:

- (a) The risk or exposure of the Member to a Damaging Event in its region compared with the risk or exposure of Members to Damaging Events generally;
- (b) The Asset Value of the Member, as determined by the Trustees pursuant to clause 7.1.1(a);
- (c) The likely availability to the Member of other monies by way of compensation, indemnity, replacement or subsidy for the loss or damage to its Infrastructure, including any payment from central government, from insurance claims, and any rights against persons not party to this Trust Deed;
- (d) The quantum of any Deductible for the Member which the Trustees may fix;
- (e) The state of repair, maintenance and condition generally of the Member's Infrastructure or parts of it;
- (f) The nature of any particular risks affecting the Member's Infrastructure;
- (g) Any refusal or persistent failure by the Member to comply with any reasonable directions given by the Administration Manager for the purpose of identifying and managing risk.

7.1.3 Members shall then be advised of the Annual Contribution payable by them, and the amount of any Deductible.

7.1.4 Notwithstanding anything hereinbefore contained the Trustees may adopt or determine such methods of setting Annual Contributions or Extraordinary Contributions as they in their absolute discretion think fit.

#### **7.2 Method of Payment**

7.2.1 Payment of the Annual Contributions shall be effected by the Members in accordance with any provisions of the Participation Deed for payment, or in the absence of any such provisions as from time to time determined by the Trustees.

7.2.2 Any unpaid Annual Contribution as determined by the Administration Manager shall be recoverable by the Fund as a debt with associated interest and recovery costs.

#### **7.3 Disputes regarding Quantum of Annual Contributions**

7.3.1 If the Member disputes the quantum of any Annual Contribution it shall give written notice to the Administration Manager within twenty-one days of receipt of advice of the quantum, following which the quantum of the Annual Contribution payable by the Member shall be reviewed by the Trustees, whose decision as to the appropriate quantum to be paid shall be final and binding.

7.3.2 Where the quantum of the Annual Contribution is not determined until after the date on which payment of the Annual Contribution was due, the Member shall have ten days following receipt of advice in writing of the determination of the dispute in which to pay the Annual Contribution.

7.3.3 Except as otherwise provided above the action or decision of the Trustees in fixing the Annual Contributions shall be final and binding.

#### **7.4 Extraordinary Contributions**

7.4.1 The Trustees may fix Extraordinary Contributions.

7.4.2 Subject to clause 7.1.4 in determining the quantum of any Extraordinary Contribution as a condition of entry to membership the Trustees shall have regard to:

- (a) The current value of the assets, and the amount of any liabilities of the Fund;
- (b) Any other factors which seem relevant to the Trustees.

- 7.4.3 In determining the quantum of any Extraordinary Contribution being fixed for Coverage of a part or portion of a Fund Year the Trustees shall have regard to the Annual Contribution that would have been payable by the Member for Coverage for the full Fund Year and, that part or portion of the Fund Year for which Coverage is being provided.
- 7.4.4 Any decision of the Trustees regarding the quantum of any Extraordinary Contribution shall be final and binding.
- 7.4.5 Any Extraordinary Contribution fixed by the Trustees that is not paid may be recovered in the same way as an Annual Contribution including associated interest and recovery costs.

## **8 DISTRIBUTIONS FROM THE FUND**

- 8.1 A Member may at any time within nine calendar months (time being of the essence) of a Damaging Event apply to the Trustees for a Distribution from the Fund in respect of any loss or damage caused to the Member's Infrastructure by that Damaging Event.
- 8.2 Upon receiving an application for a Distribution in respect of a Damaging Event, the Trustees shall satisfy themselves that:
- (a) the loss or damage is to Infrastructure;
  - (b) the loss or damage was caused by the Damaging Event.
- 8.3 Once the Trustees have satisfied themselves as to the matters specified in clause 8.2, they may make a Distribution to the Member in respect of its application, subject to:
- (a) any Asset Value or Stated Value of the Member's Infrastructure;
  - (b) the state of repair, maintenance and condition generally of the Infrastructure or of any particular parts of the Infrastructure before and after the Damaging Event for which the Distribution is claimed;
  - (c) the Member's Deductible;
  - (d) the expected availability when the Annual Contribution was set and the actual availability to the Member of other monies by way of compensation, indemnity, replacement or subsidy for the loss or damage to its Infrastructure, including any payment from central government, from insurance claims, and any rights against persons not party to this Trust Deed;
  - (e) the desirability of the Fund maintaining reserves for future Damaging Events;
  - (f) the length of time that the Member has been a Member of the Fund;
  - (g) any other factors which seem relevant to the Trustees.
- 8.4 The Trustees at their sole discretion will determine:
- 8.4.1 what (if any) Distribution will be made in any situation where in the Trustees' opinion the damage is a consequence of an act of war or terrorism;
- 8.4.2 for Fund Years commencing on or after 1 July 2019, whether an event that unfolds over more than three days is declared to be more than one Damaging Event for the purposes of deciding whether multiple applications of the Member's Deductible should apply.
- 8.5 Without being bound to see or being liable for not seeing to the application of any Distributions from the Fund, the Trustees shall take reasonable steps to ensure each Distribution from the Fund is applied by its Members for the reinstatement of their Infrastructure, and for that purpose, the Trustees may require from the Member reasonable evidences of the expenditure and may make progress payments.
- 8.6 The Trustees may also pay the whole or any part of the Fund to any other charity that is charitable under New Zealand law and has purposes similar or related to those of the Fund.

## **9 ALTERATION**

### **9.1 Alteration of the Trust Deed**

- 9.1.1 The Trustees may amend this Trust Deed in any way, subject to this clause 9.
- 9.1.2 The Trustees may by unanimous resolution of the Trustees present at any validly convened meeting revoke, vary or add to any of the provisions of this Trust Deed provided no such revocation, variation or addition may be made if it would result in the Fund ceasing to qualify for registration as a charitable entity under the Charities Act 2005 or would vary the terms of this proviso or would otherwise be inconsistent with the general charitable scope of the trusts contained in this Trust Deed.
- 9.1.3 Every amendment shall be conditional upon and come into effect upon the Settlor giving its consent in writing.
- 9.1.4 Amendments shall not be retrospective in effect.

### **9.2 Notice to Members**

- 9.2.1 The Trustees shall notify Members forthwith in writing of every amendment to this Trust Deed made pursuant to these provisions.
- 9.2.2 Any accidental failure or omission on the part of the Trustees to give a Member notice as required by this clause, or its non-receipt by a Member, shall not affect the validity of the amendment.

### **9.3 Alteration of Participation Deeds**

- 9.3.1 The Trustees, with the agreement of a Member, may from time to time:
- (a) Amend any of the provisions of the Participation Deed relating to the Member; or
  - (b) Cancel any Participation Deed and in substitution, enter into a new Participation Deed with a Member.

## **10 WINDING UP OF THE FUND**

### **10.1 Procedures**

- 10.1.1 The Trustees shall wind up the Fund and shall apply the provisions of this Clause in relation to every Member:
- (a) If the Trustees unanimously resolve that the Fund shall be wound up, and advise the Settlor accordingly, and the Settlor consents thereto; or
  - (b) Upon the determination of the trusts hereof; or
  - (c) Upon any insolvency of the Fund; or
  - (d) Upon any order of the Court that the Fund be wound up.
- 10.1.2 The Trustees shall within fourteen days after they have resolved to wind up the Fund, lodge a copy of that resolution with the Settlor and (the Settlor consenting thereto) with the Registrar of Incorporated Societies.
- 10.1.3 The Trustees shall for the purpose of winding up the Fund:
- (a) Ensure that final accounts of the Fund are prepared showing the financial position of the Fund as at the date on which the winding up commenced; and
  - (b) Ensure that those final accounts are audited; and
  - (c) As soon as practicable after the final accounts have been audited send a copy of those accounts to the Settlor and all the Members as at the date the winding up commenced.

## **10.2 Allocation of Proceeds**

- 10.2.1 Members shall have no right or claim against the Fund on winding up except in respect of any application for a Distribution made prior to the commencement of the winding up.
- 10.2.2 The Trustee shall apply the proceeds of the Fund in accordance with the following priority:
- (a) First, in providing for the payment of the costs of the winding up;
  - (b) Secondly, in providing for the payment of all liabilities and debts of the Fund;
  - (c) Thirdly, paying any outstanding Distributions which the Trustees have resolved to pay any Member prior to the commencement of the winding up and remain unpaid at that date;
  - (d) Fourthly, in providing for payment of any Distributions for which applications have been made immediately prior to the commencement of the winding up;
  - (e) Finally, payment of any balance in the Fund is to be made or transferred to another organisation as decided by the Trustees that is charitable under New Zealand law and has purposes similar or related to those of the Fund, or in default of a decision by the Trustees, as directed by the Court pursuant to section 27 of the Act.

## **11 MISCELLANEOUS**

### **11.1 Notices**

- 11.1.1 Any notice or document shall be deemed to have been served upon the Trustees if left at the registered office of the Fund or if sent through the post in a registered letter addressed to the Administration Manager at that office. Any notice or document shall be deemed to have been duly given to a Member, if given generally or sent to the Member at the address of the Member last known to the Administration Manager.
- 11.1.2 Any notice or document delivered by post shall be deemed to have been delivered in the ordinary course of post and in proving such service it shall be sufficient to prove that the envelope or wrapper containing it was properly addressed and posted. A statement signed by the Administration Manager that a notice was so addressed and posted to a Member and when, shall be conclusive evidence of those facts.

### **11.2 Succession**

- 11.2.1 If the activities of any of the Appointors are assigned to or succeeded by any other undertaking (whether a corporation, association partnership or natural person) then that other undertaking may, with the written approval of the Trustees as from the date of the assignment or succession, take the place of that Appointor for the purposes of the Fund, and assume all rights and obligations of that Appointor under the Trust Deed.
- 11.2.2 If the Trustees do not give their written approval of such other undertaking taking the place of that Appointor, then the Fund shall either be wound up in accordance with the provisions of this Trust Deed, or the Trustees may appoint another body to take over the role of that Appointor.

### **11.3 Waiver and Precedent**

- 11.3.1 No failure by the Trustees to enforce any breach of any obligation or provision contained or implied in by this Trust, in one, or more instances shall constitute a waiver of the right of the Trustees to enforce any other provision, or any subsequent breach, whether against the same Member or another.
- 11.3.2 No action on the part of the Trustees or the Administration Manager whether taken in accordance with any specific provisions contained in this Trust Deed or otherwise shall be taken as a precedent for any like or similar action on either part and neither the Trustees nor the Administration Manager may thereafter be compelled to take similar or identical action consequent thereupon.

### **11.4 Office**

- 11.4.1 The office of the Fund shall be at the offices of Civic Financial Services Limited, 116 Lambton Quay, Wellington, or at such other place as the Trustees may from time to time by resolution determine.

**IN WITNESS WHEREOF** this Deed has been executed on the day and year first hereinbefore written.

**THE COMMON SEAL** of the )  
**NEW ZEALAND LOCAL GOVERNMENT** )  
**ASSOCIATION INCORPORATED** was )  
hereunto affixed in the presence of: )

**Signed by** )  
**JOHN MCGREGOR CARTER** )  
in the presence of: )

**Signed by** )  
**LANGLEY DAVID CAVERS** )  
in the presence of: )

**Signed by** )  
**ANDREW JAMES DALZIEL** )  
in the presence of: )

**Signed by** )  
**TIMOTHY REGINALD HOWARD DAVIES** )  
in the presence of: )

**Signed by** )  
**CHARLES STEWART HETT** )  
in the presence of: )

**Signed by** )  
**JOSHUA TRACY HICKS** )  
in the presence of: )

# **PARTICIPATION DEED**

## **ADMITTING**

.....

To membership of the  
New Zealand Local Authority  
Protection Programme Disaster Fund

**THIS DEED is made the \_\_ day of \_\_\_\_\_ 202\_\_.**

**BETWEEN NEW ZEALAND LOCAL AUTHORITY PROTECTION PROGRAMME DISASTER FUND** ("the Fund") and **CIVIC FINANCIAL SERVICES LIMITED ("the Administration Manager")** (together called "the Administration")

**AND** ..... being a Local Authority as defined in the Trust Deed ("the Member")

#### **BACKGROUND**

- A. The Trustees of the New Zealand Local Authority Protection Programme Disaster Fund are incorporated as a Board pursuant to the Charitable Trusts Act, 1957 ("the Board").
- B. The Fund is also registered as a charitable entity under the Charitable Trusts Act 1957.
- C. The Settlor of the Fund is the New Zealand Local Government Association Incorporated. The Settlor established the Fund as a self funding disaster protection scheme for the purposes of and for the objects set out in the original trust deed dated 29 June 1993. The trust deed was amended by deeds of variation dated 14 February 1997 and 5 June 2003. The trust deed was further amended and all amendments consolidated by a new trust deed dated 14 December 2007 and again on 12 July 2019 ("the Trust Deed").
- D. Civic Financial Services Limited is the Administration Manager of the Fund.
- E. The Trust Deed contains provision for Local Authorities to apply for membership of the Fund, and for their admission to membership of the Fund, on the terms required by the Board.
- F. The Member has applied to become a member of the Fund and is being admitted as a member on the terms and conditions contained herein.

#### **NOW THIS DEED WITNESSES AND IT IS AGREED AND DECLARED**

as follows:

#### **1 MEMBERSHIP**

##### **Admission to Membership**

1. The Member hereby covenants and agrees with the Administration to be bound by
  - (a) the terms of the Trust Deed, as if it were a party to the Trust Deed; and
  - (b) this Participation Deed;and acknowledges and accepts the powers, discretions and authorities of the Board, and the Administration Manager appointed pursuant to the Trust Deed, as provided in the Trust Deed.
2. In consideration of the Member agreeing to be bound by the terms of the Trust Deed, and of this Participation Deed, the Member is hereby admitted as a Member of the Fund.

##### **Withdrawal, Suspension or Termination of Membership**

Withdrawal from, termination and suspension of membership shall be effected in accordance with the provisions of the Trust Deed.

#### **2 COVERAGE AND DEDUCTIBLE**

##### **Coverage**

Coverage of the Member shall commence on the date appearing in the First Schedule and shall continue until the Member's membership of the Fund is either terminated, or the Member is suspended, as provided in the Trust Deed.

##### **Deductible**

The level of any deductible shall be fixed by the Board and the first such deductible shall be as provided in the First Schedule.

#### **3 CONTRIBUTIONS AND DISTRIBUTIONS**

##### **Payment of Annual Contributions**

1. The Member shall forthwith pay to the Fund the Annual Contribution set out in the First Schedule.
2. The Member shall pay to the Fund its Annual Contribution as determined by the Board, within 14 days of the commencement of each Fund Year, or as otherwise agreed by the Administration in writing.

##### **Payment of Extraordinary Contributions**

The Member shall forthwith pay to the Fund the Extraordinary Contribution set out in the First Schedule.

##### **Distributions**

1. The Member shall in making an application for a Distribution use any form of application which the Administration may prescribe, and shall from time to time provide such information as the Administration may reasonably require to enable it to consider the Member's application.
2. Any Distribution from the Fund shall be at the sole and absolute discretion of the Board, which shall, having regard to the factors set out in the Trust Deed, act in accordance with the objectives of the Fund and in the interests of all members.
3. The amount of the Deductible applying at the time of any Natural Disaster or Emergency or event shall be deducted from any Distribution from the Fund in respect of the same.

#### **4 ASSET VALUES**

##### **Information Regarding Assets**

1. The Member shall within 3 months of the commencement of each Fund Year or such lesser period as the Administration may from time to time advise:
  - (a) supply the Administration with any information regarding categories, details and condition of its Infrastructure, including any list of or register of its Infrastructure, both insured and uninsured, and any insurance particulars, which the Administration may reasonably require;
  - (b) state to the Administration in writing its estimate of the cost of reinstatement of its Infrastructure;
2. The Member shall advise the Administration of any additions or deletions to its Infrastructure, during the Fund Year.

## 5 RISK MANAGEMENT AND AUDIT

### Risk Management

The Member agrees to:

- (a) introduce and maintain such programs to identify, assess and control risks applicable to its Infrastructure, as may from time to time be reasonably required by the Administration; and
- (b) notify the Administration of any matters, events or things which might be reasonably considered relevant to the assessment and management of the risk or exposure of the Member's Infrastructure to Natural Disasters and Emergencies.

### Audit of Infrastructure

The Member agrees that the Administration Manager may from time to time inspect and audit the Member's Infrastructure and all records and information pertaining thereto.

## 6 ALTERATION

### Alteration of the Trust Deed

- 1 The Member acknowledges that every alteration or amendment to the Trust Deed shall upon the consent of the Settlor being given in writing, be binding on the Member as to its terms and conditions, as if it were a party thereto.
- 2 This Participation Deed shall be deemed to be amended to the extent and in the manner (if any) required as a consequence of the amendment of the Trust Deed.

## 7 MISCELLANEOUS

### Co-operation

The Member agrees to take all such other actions and supply such information and assistance as the Administration may reasonably require from time to time in order to give effect to the provisions and purposes of the Trust Deed and this Participation Deed, including (without limitation) following any rules or guidelines or prescribed procedures required by the Administration, not being rules, guidelines or procedures inconsistent with this Participation Deed or the Trust Deed.

### No Assignment

The Member may not assign its rights under this Participation Deed or any of its rights or obligations as a member of the Fund to any other person, or encumber, charge or otherwise dispose of any of its right, entitlement or interest in the Fund.

## Notices

- 1 Any notice or document shall be deemed to have been served upon the Administration if left at the registered office of the Fund or if sent through the post in a letter addressed to that office.
- 2 Any notice or document shall be deemed to have been duly served on the Member, if delivered personally to the Member's chief executive officer, or if sent through the post to the Member at the address of the Member last known to the Administration.
- 3 Any notice or document delivered by post shall be deemed to have been delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the envelope or wrapper containing it was properly addressed and posted.

## 8 DEFINITIONS AND INTERPRETATION

### Definitions

- 1 Each of the following words and expressions shall, unless the context otherwise requires, have the following meanings:  
  
"the Trust Deed" means the consolidated Trust Deed dated 12 July 2019;  
  
"the Board" means the Trustees of the Fund and vice versa.
- 2 The words and expressions used in this Participation Deed shall unless the context otherwise requires have the same definitions as given them in the Trust Deed.

### Interpretation

- 1 Unless the context otherwise requires the same interpretations shall be placed on words and phrases used in this Participation Deed as contained in the Trust Deed.
- 2 In the event of any conflict between the terms and conditions of this Deed and the provisions of the Trust Deed, the provisions of the Trust Deed shall prevail.
- 3 Nothing in this Participation Deed shall be taken to excuse the failure of the Member to perform any and each of its obligations as a Member of the Fund, nor the commission of any act in breach of its obligations as a Member of the Fund, as set out in the Trust Deed.

## FIRST SCHEDULE

### Annual Contribution:

The Annual Contribution for the period 31 October 202\_ to 31 October 202\_ is assessed at \$\_\_\_\_\_ plus GST.

### Extraordinary Contribution:

The Extraordinary Contribution is assessed at \$\_\_\_\_\_ plus GST.

In consideration of the payment of the Extraordinary Contribution ..... Council shall immediately be entitled to full rights of Fund Membership including any discount on the assessed Annual Contribution for future years that the Fund Trustees may declare from time to time.

### Deductible:

The Deductible shall be .....

**IN WITNESS WHEREOF** this Deed has been executed on the day and year first herein before written.

**THE COMMON SEAL** of the **NEW ZEALAND LOCAL AUTHORITY** )  
**PROTECTION PROGRAMME DISASTER FUND** was hereunto affixed )  
in the presence of: )

**THE COMMON SEAL** of **NEW ZEALAND LOCAL GOVERNMENT** )  
**INSURANCE CORPORATION LIMITED** was hereunto affixed )  
in the presence of: )

**THE COMMON SEAL** of the ..... **COUNCIL** )  
was hereunto affixed pursuant to a resolution of the Council, )  
in the presence of: )

