



Notice is hereby given that an Extraordinary Meeting of Southland District Council will be held on:

Date: **Wednesday, 31 January 2018**
Time: **9.30am**
Meeting Room: **Council Chamber**
Venue: **15 Forth Street**
Invercargill

Extraordinary Council Agenda

OPEN

MEMBERSHIP

Mayor	Mayor Gary Tong
Deputy Mayor	Paul Duffy
Councillors	Stuart Baird
	Brian Dillon
	John Douglas
	Bruce Ford
	Darren Frazer
	George Harpur
	Julie Keast
	Ebel Kremer
	Gavin Macpherson
	Neil Paterson
	Nick Perham

IN ATTENDANCE

Chief Executive	Steve Ruru
Committee Advisor	Fiona Dunlop

Contact Telephone: 0800 732 732
Postal Address: PO Box 903, Invercargill 9840
Email: emailsdc@southlanddc.govt.nz
Website: www.southlanddc.govt.nz

Full agendas are available on Council's Website
www.southlanddc.govt.nz

Note: The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.

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PUBLIC EXCLUDED		
Nil		

1 Apologies

At the close of the agenda no apologies had been received.

2 Leave of absence

At the close of the agenda no requests for leave of absence had been received.

3 Conflict of Interest

Councillors are reminded of the need to be vigilant to stand aside from decision-making when a conflict arises between their role as a councillor and any private or other external interest they might have.

4 Public Forum

Notification to speak is required by 5pm at least two days before the meeting. Further information is available on www.southlanddc.govt.nz or phoning 0800 732 732.

5 Extraordinary/Urgent Items

To consider, and if thought fit, to pass a resolution to permit the Council to consider any further items which do not appear on the Agenda of this meeting and/or the meeting to be held with the public excluded.

Such resolution is required to be made pursuant to Section 46A(7) of the Local Government Official Information and Meetings Act 1987, and the Chairperson must advise:

- (i) The reason why the item was not on the Agenda, and
- (ii) The reason why the discussion of this item cannot be delayed until a subsequent meeting.

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

"Where an item is not on the agenda for a meeting,-

- (a) that item may be discussed at that meeting if-
 - (i) that item is a minor matter relating to the general business of the local authority; and
 - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion."

Whakamana te Waituna - Request for Council endorsement of draft Trust Deed and appointment of Trustees

Record No: R/18/1/1104
Author: Bruce Halligan, Group Manager Environmental Services
Approved by: Steve Ruru, Chief Executive

☒ Decision ☐ Recommendation ☐ Information

Purpose

- 1 The purpose of this report is to seek the Council's endorsement of the Whakamana te Waituna Trust Deed and appointment of SDC elected representatives as Trustees.

Executive Summary

- 2 Councillors are aware that the Southland District Council has been part of the Waituna Partnership for several years, along with Ngāi Tahu, Environment Southland and the Department of Conservation.
- 3 Councillors will also recall that in 2017, the Council agreed to commit approximately \$250,000 of future funding (2020-2022) towards infrastructural work in the Waituna catchment, as part of a joint Partners' application to the Ministry for the Environment's Fresh Water fund for Waituna enhancement works.
- 4 This application to the Ministry for the Environment was successful and a commitment of \$5 million of central government funding was obtained, to be matched by similar combined funding from the partners. Hence, overall there is approximately \$10 million available to give effect to the Whakamana Te Waituna work programme developed by the partners.
- 5 The most appropriate governance structure has been discussed to move this process forward, with input from a Trust's legal expert from Buddle Findlay. The formation of a new trust, the Whakamana te Waituna Trust (loosely translates to restoring the mana of Waituna) has been recommended and endorsed in principle at the Waituna Partners meeting, where a preliminary draft trust deed was circulated for discussion and suggested amendments were also discussed.
- 6 Hence, the Council's endorsement of this Trust deed is now sought, and this special meeting has been called to seek to obtain such endorsement prior to the scheduled signing of the Trust deed at Te Rau Aroha Marae at Bluff on Waitangi Day, Tuesday, 6 February 2018.
- 7 Council's appointment of two trustees is now also sought. It is recommended initially that this be the two elected representatives from the Waihopai Toetoes ward, being currently Cr Duffy and Cr Keast.

Recommendation

That the Council:

- a) Receives the report titled “Whakamana te Waituna - Request for Council endorsement of draft Trust Deed and appointment of Trustees” dated 23 January 2018.**
- b) Determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.**
- c) Determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the Act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.**
- d) Endorses the draft Whakamana te Waituna Trust deed for signing by the appointed Trustees at the upcoming ceremony at Bluff on Waitangi Day, 6 February 2018**
- e) Resolves that the two Southland District Council appointees to the Trust shall initially be the two Waihopai Toetoes elected representatives, being Crs Duffy and Keast**
- f) Determines, in accordance with the provisions of section 80 of the Local Government Act 2002 that the decision to appoint the two Waihopai Toetoes Councillors as Trustees constitutes a decision that is inconsistent with its Appointment of Directors Policy**
- g) Determines that it is making this inconsistent decision because of the local knowledge and experience with the Waituna matters that the two Councillors concerned would bring**
- h) Determines, in accordance with section 80(1)(c) of the Local Government Act 2002, that it will not be amending its Appointment of Directors policy to accommodate this decision.**

Background

- 8 As councillors will be aware, the Southland District Council has been an active participant in the Waituna Partnership for several years, since the signing of the partnership agreement in 2013.
- 9 Cr Duffy and the Group Manager Environmental Services are the current SDC appointees to the Waituna Partners Group.
- 10 This partnership currently has no formal legal status, and hence it cannot receive and manage funds from external funders. To date, most administrative functions for the Waituna Partnership have been undertaken via Environment Southland.
- 11 The Waituna wetland is a RAMSAR wetland of international significance and also is of great cultural significance to Ngai Tahu, as recognised in the Ngai Tahu Claims Settlement Act 1998.
- 12 The key driver for the creation of the Waituna Partnership was the significant environmental degradation in the catchment, and in particular that Environment Southland monitoring had identified the potential for the Waituna Lagoon at the southern end of the catchment to “flip” and be irrevocably damaged.
- 13 Over time, the Waituna Partners have developed (along with input from stakeholders, and landowners in the catchment), the Waituna Strategy and Action Plan which is attached as **Appendix A**. This outlines an overall road map and a set of actions for environmental enhancement in the catchment, while also seeking to enhance cultural social and economic values.
- 14 As referred to above, through significant contributions from the Partners and Fonterra, commitments of approximately \$5 million of funding were obtained to support an application to the Ministry for the Environment’s national Fresh Water fund for approximately \$7 million of further funding.
- 15 This application was largely successful, with the Ministry awarding \$5 million to the project. A key component of this success was the multi-agency collaborative approach and the clear Strategy and Action Plan.
- 16 Hence, having now obtained a large proportion of the funding required to give effect to the Strategy and Action Plan, discussions have now occurred amongst the partners as to the most appropriate governance structure to move this project forward. An updated Whakamana te Waituna work programme has also been developed.
- 17 Ngai Tahu facilitated this by obtaining governance legal advice from Buddle Findlay and also engaging Mr Bob Penter of the Waikato Rivers organisation, an expert in environmental governance structures, to give advice.
- 18 Their advice was that a new charitable trust, to be known as the Whakamana te Waituna Charitable Trust should be created. This would enable the Trust to receive funds already committed, and also to seek further funding from other external agencies that may not fund individuals, entities which have no formal legal status, nor local authorities. It also has the advantage of providing a clear ‘multi-agency’ structure that can lead the implementation of the overall programme of work.

- 19 A range of options were explored to enable the partners to continue to co-ordinate and participate in the rehabilitation and restoration work associated with Waituna Lagoon and the catchment, including the formation of a Council-controlled organisation (CCO), the continuation of the partnership model and the formation of a trust. The key criteria were:
- the need to maintain the current working relationships;
 - the need to provide a structure that can attract further external resources outside that provided by the partners; and
 - a structure that offered a high level of rigour.
- 20 In short, it was not seen as appropriate that a CCO be formed, as it was not a model that either provided an easier pathway to attract external funding or matched the spirit of the partnership. Maintaining the partnership approach and essential charter was seen as important and this could be achieved through a trust structure in addition to more easily providing a vehicle which could be used to attract further external funding and providing the operational flexibility to deliver work through the various individual partners.
- 21 Buddle Findlay circulated a draft Trust deed for feedback and discussion, and some minor amendments were made.
- 22 The revised draft Trust deed is now presented for Council's consideration and endorsement, see **Appendix B**.
- 23 As outlined above, endorsement is sought, via this special meeting rather than in a normal scheduled Council meeting, as it is hoped that the final Trust Deed can be signed formally by all four Partners and Fonterra as part of the Waitangi Day celebrations at Te Rau Aroha marae at Bluff on 6 February 2018. Some items in the draft Trust deed are highlighted below for Councillors' information.
- 24 Most of the content is reasonably standard for charitable trusts, as confirmed by Buddle Findlay. It does however, propose a joint Chairmanship arrangement between Awarua Runaka and Environment Southland (see Schedule 2, Item 15 Page 10), to recognise the key roles of each of these entities in cultural and environmental enhancement in the area and the mana and significance which Ngāi Tahu assigns to this area and project.
- 25 Likewise, the draft Trust Deed places very strong emphasis on the views of Ngāi Tahu as Kaitiaki (see Clause 5, Page 3 "Tangata Whenua") and the re-establishment of Te Runanga o Awarua Tahu's connection and role as Kaitiaki in the area (See Page 1, Item B (d)).
- 26 While this type of content would obviously not be standard in any charitable trust deed, it could be seen to be appropriate as strong positive recognition of the role of Ngāi Tahu and particularly the Te Runanga o Awarua as kiatiaki/guardians of the area, and to be giving practical effect to the provisions of the Ngāi Tahu Claims Settlement Act 1998. It is also noted that Ngāi Tahu has made a significant financial contribution to Whakamana to Waituna and continues to do so via measures such as provision of the Buddle Findlay legal advice on the Trust deed.
- 27 Of some peripheral relevance to this is the Charter of Understanding / He Huarahi mo Nga Uri Whakatapu between the combined councils and iwi, which contains the following content:

1.4 Common Goal and Objectives

- 1.4.1 The signatory Councils and the tangata whenua of Murihiku have a common goal. It is the sustainable management of the region's environment and for the social, cultural, economic, and environmental needs of communities, for now and into the future.
- 1.4.2 In pursuit of this goal, the signatory Councils and the tangata whenua of the region agree that:
 - 1.4.2.1 The relationships are based on good faith, co-operation, and understanding.
 - 1.4.2.2 There is commitment to work towards solutions with reasonableness and honesty of purpose.
 - 1.4.2.3 All parties respect and seek to accommodate different cultural values and ways of working. They recognise a range of philosophies and practices of environmental and local government management and acknowledge that tangata whenua are working to restore an iwi environmental management system.
 - 1.4.2.4 Issues relating to Māori are appropriately addressed in local government decision-making processes.
 - 1.4.2.5 The specific relationship of tangata whenua and their culture, traditions and values with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga where considering all significant decisions in relation to land or water bodies.

- 28 As referred to above, the significance of the Waituna wetland to Ngai Tahu is also recognised by the Crown in the provisions of the Ngai Tahu Claims Settlement Act 1998, via a statutory acknowledgement in Schedule 73 as outlined below.
- 29 This statutory acknowledgement does not impose any direct legal obligation to create a Trust nor on the operations of the Trust itself. It could, however, be seen as a further driver for the overall creation of the Trust and the Whakamana te Waituna work programme.

Schedule 73 Statutory acknowledgement for Waituna Wetland

ss 205, 206

Statutory area

The statutory area to which this statutory acknowledgement applies is the wetland known as Waituna, the location of which is shown on Allocation Plan MD 58 (SO 12260).

Preamble

Under [section 206](#), the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Waituna, as set out below.

Ngāi Tahu association with Waituna

Intermittently open to the sea, Waituna wetland (with the western end, where the lagoon breaks out to sea known as Kā-puna-wai) was a major food basket utilised by nohoanga and permanent settlements located in the immediate vicinity of the wetlands, and further away, for its wide variety of reliable mahinga kai. The great diversity of wildlife associated with the complex includes several breeds of ducks, white heron, gulls, spoonbill, kōtuku, oyster-catcher, dotterels, terns and fernbirds. The wetlands are important kōhanga (spawning) grounds for a number of indigenous fish species. Kaimoana available includes giant and banded kōkopu, varieties of flatfish, tuna (eels), kanakana (lamprey), inaka (whitebait), waikākahi (freshwater mussel) and waikōura (freshwater crayfish). Harakeke, raupō, mānuka, tōtara and tōtara bark, and pingao were also regularly harvested cultural materials. Paru or black mud was available, particularly sought after as a product for making dyes.

The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Waituna, the relationship of people with the lake and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

As a result of this history of use and occupation of the area, there are wāhi tapu and wāhi taonga all along its shores. It is also possible that particular sections of the wetland were used for waiwhakaheketūpāpāku (water burial).

Urupā and wāhi tapu are the resting places of Ngāi Tahu tūpuna and, as such, are the focus for whānau traditions. These are places holding the memories, traditions, victories and defeats of Ngāi Tahu tūpuna, and are frequently protected by secret locations.

The mauri of Waituna represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the

natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the area.

Purposes of statutory acknowledgement

Pursuant to [section 215](#), and without limiting the rest of this schedule, the only purposes of this statutory acknowledgement are—

- (a) to require that consent authorities forward summaries of resource consent applications to Te Rūnanga o Ngāi Tahu as required by regulations made pursuant to [section 207](#) (clause 12.2.3 of the deed of settlement); and
- (b) to require that consent authorities, Heritage New Zealand Pouhere Taonga, or the Environment Court, as the case may be, have regard to this statutory acknowledgement in relation to Waituna, as provided in [sections 208 to 210](#) (clause 12.2.4 of the deed of settlement); and
- (c) to empower the Minister responsible for management of Waituna or the Commissioner of Crown Lands, as the case may be, to enter into a Deed of Recognition as provided in [section 212](#) (clause 12.2.6 of the deed of settlement); and
- (d) to enable Te Rūnanga o Ngāi Tahu and any member of Ngāi Tahu Whānui to cite this statutory acknowledgement as evidence of the association of Ngāi Tahu to Waituna as provided in [section 211](#) (clause 12.2.5 of the deed of settlement).

Limitations on effect of statutory acknowledgement

Except as expressly provided in [sections 208 to 211, 213, and 215](#),—

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
- (b) without limiting paragraph (a), no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw, may give any greater or lesser weight to Ngāi Tahu's association to Waituna (as described in this statutory acknowledgement) than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement did not exist in respect of Waituna.

- 30 Overall, the way that the draft Trust deed is couched will give Ngai Tahu/ Te Runanga o Awarua considerable influence overall in the workings of the Trust. This is deliberate, and it is suggested

that this be viewed positively in terms of the overall partnership and trust between Ngāi Tahu and the other partner agencies.

- 31 During perusal of the draft Trust deed and provision of feedback, staff did query whether two trustees were necessary, or whether alternatively one trustee and an alternate was sufficient. However, the other partners were unanimous that they desired that 2 trustees be appointed from each of the current partners, as this would provide governance critical mass and continuity.
- 32 The Trust deed itself is silent on how each of the “appointers” (of which SDC is one) shall choose their appointees, although Rules Governing the Appointment, Retirement and Proceedings of the Trust are specifically outlined in the Second Schedule of the Trust Deed.
- 33 It is suggested in the recommendations that this should initially be the two Waihopai Toetoes councillors as the Waituna catchment sits within this ward. However, this is just a staff recommendation and could be readily changed.
- 34 Staff have discussed this recommendation with Councillors Duffy and Keast in advance of this meeting and they have signalled that they are willing to perform the role if that is the wish of the Council. It could be appropriate at some stage in the future that SDC, as appointer, could choose to appoint parties as SDC representatives on the Trust who are not elected representatives, such as landowners in the catchment who strongly support the project. This matter has been discussed with the Chief Executive and it is not considered appropriate to appoint Council staff as trustees due to potential conflicts of interest, and it is understood that DOC holds a similar position on this.
- 35 As councillors will be aware, when an appointee sits around a Trust table as a Trustee they are there to pursue the purposes of the Trust (specified in Section 4, Page 3). If there was conflict between their role as Trustee and their role with the appointer, then there are specific provisions to deal with “Interested Trustees” / Disclosure of Interests (Section 10, Pages 4 and 5) and Restrictions on Private Pecuniary Profit (Section 11, Page 5) Buddle Findlay has advised that the wordings used are relatively standard content. Elected members appointed as Trustees would also need to manage any conflicts in relation to business relating to the Trust that might come before Council.
- 36 Councillors should note that it is also proposed that Fonterra appoints a trustee, to recognise Fonterra’s significant financial commitment to the project. This also avoids a potential situation of the Trust becoming a Council Controlled Organisation under the Local Government Act by virtue of having 50% or more of its members as direct appointees to the Trust from local government (e.g. if there were only 8 trustees and 4 of them were direct local government appointments).
- 37 The term of appointment of Trustees (see Schedule 2, Clause 2.2 of Appendix B) has been specified to correspond with the local government 3 year election cycle.
- 38 Also included in the Trust deed is a map to define the Waituna catchment (Third Schedule) which has relevance to the scope of the operations of the Trust.
- 39 Staff have discussed the proposed financial operations of the Trust with Mr Johnathan Streat of Environment Southland. Mr Streat is Environment Southland’s Director of Operations and has had a pivotal role in the successful funding application to the Ministry and subsequent progress. He has advised that the intention is that all the administration of the Trust will be via

Environment Southland, and that therefore the establishment and operation of the Trust will not impose any significant additional costs on the other appointers. Mr Streat has specifically advised as follows:

“The funding and operation of the work of the trust will be based on contributions from the partner members and/ or external funds granted. The operation and administration of the Trust and associated activities of the Whakamana Te Waituna programme will be primarily supported by Environment Southland, and through other in-kind support offered by partners, such as housing meetings. Funding made to the Trust may be for specific actions or as a more general contribution to a programme of works.

Funds made available to the trust do not replace existing funding agreements between parties, unless those parties agree to such a change. The appointees will not be remunerated for participating in trust activities, and this is the same situation which exists with the current partnership structure. All appointed trustees are to be paid their normal elected member or other meeting fees and travel by the parent organisation, in accordance with parent organisational policies unless alternative arrangements have been made with the Trust and the WPG.”

- 40 It should be noted that under Council’s Elected Members’ Remuneration and Reimbursement Policy, it would not be currently lawful nor feasible to pay the SDC appointees a meeting fee or travel allowance, unless this was specifically amended to do so. In discussions with Mr Streat, he suggested that there is potential for the Trust, once established, to pay Trustees a meeting fee directly if they were financially disadvantaged by their role as a Trustee.

Issues

- 41 There is a need for the Council to determine whether it supports the formation of the proposed Whakamana te Waituna Trust as a Council organisation.
- 42 While participation will involve an ongoing commitment from the Southland District Council and its appointed Trustees, the Council has previously committed to the Waituna Partnership when it was created.

Factors to Consider

Legal and Statutory Requirements

- 43 There is no statutory requirement to consult in relation to the creation of this Trust as under the current proposed arrangements it would be a council organisation rather than a council controlled organisation.
- 44 Buddle Findlay is a leading legal firm and has had a specialist Trusts lawyer provide detailed input into the Trust deed. This was facilitated by Ngāi Tahu and Ngāi Tahu’s contribution in that regard is acknowledged. Staff have not sought independent legal advice on the proposed Deed given that it will be completely independent of the Council.
- 45 Under section 57 of the Local Government Act 2002 a local authority is required to have a policy that details an objective and transparent process for the appointment of directors to a council organisation. It is also required to ensure that appointees have the necessary skills, knowledge and experience to guide the organisation and contribute to the achievement of its objectives.

Community Views

- 46 As referred to above, there is no statutory requirement to consult the public in relation to the creation of this Trust. Council is, however, required to consider the range of community views that might exist on the proposal.
- 47 The public/community has been regularly informed on the evolution of the partnership via the website www.waituna.org.nz and distribution of regular newsletters within the catchment itself. It can be expected that many within the catchment are supportive of the work completed to date and the need for this to continue.

Costs and Funding

- 48 Administration costs of the Trust are currently being largely funded by Environment Southland, and it is understood from the information provided by Mr Streat above that this will continue. Environment Southland was the lead agency in the establishment of the Waituna Partnership initially.
- 49 There may be some ongoing costs for Southland District Council in this Trust such as meeting fees/travel for attendance at Trust meetings, depending on how this reimbursement arrangement is finally structured.

Policy Implications

- 50 The Council "Appointment of Directors Policy" dates from 2003. The policy requires that a public advertising and robust selection process be followed for the appointment of directors to any council organisations. Some of the relevant content of the policy is as follows:

Identification of Skills, Knowledge and Experience Required of Directors

Where a director is to be appointed the Council will develop a director specification for the role. It will detail the skills, the knowledge and experience required for that directorship role. The role specification will take into account:

- (i) The nature and scope of the organisation, the organisation's future directions and its constitutional set up.*
- (ii) The strategic objectives of the organisation and the attributes, skills and knowledge, which will be required to deliver the strategic objectives of the organisation.*
- (iii) The skills of the current directors of the company or the required skills of all the directors of the company.*
- (iv) Any specific skill, knowledge and experience that is currently required or may be required in the future.*
- (v) The role specification will detail:*
 - The organisation's context.*
 - The functional relationships of the role.*
 - The responsibilities and liabilities attached to the role.*
 - The key result areas for the role.*
 - The personal attributes for the role.*
 - The specific skills/ qualifications required for the role.*

The Appointment Process for Directors

The Council will first complete a director's role specification.

A list of potential directors will be achieved by:

- (i) Publicly advertising the position/positions that are available.*
- (ii) Directly approaching people it is felt may be appropriate for the role.*
- (iii) Asking relevant groups within the community for nominations for the role of directors.*
- (iv) Asking the candidates to supply:*
 - A curriculum vitae, which establishes how well they meet the role specification for the directorship role.*
 - A letter detailing why they are interested in the particular role.*
 - A report on any conflicts of interest their appointment may cause.*

A selection panel will be established that will consider all applications, short list applicants for interview and make a recommendation to Council. The panel will include:

- (i) The Chief Executive Officer of the Council.*
- (ii) The Council's Human Resources Manager.*
- (iii) Other councillors, staff or outside consultants with specific skills that add value to the process.*

The selection panel will make a recommendation to Council, which will be adopted by a full resolution of the Council.

The term of the director's position will be determined by the constitution of the company to which the director is appointed.

At the end of each term the candidate selection panel will carry out a formal review of the director's performance. They will use this to decide whether to reappoint the director to the position.

A director may be reappointed for one term, the position will be opened to the full application process at the end of the second term in office. A retiring director is eligible to be reappointed under this process.

The Remuneration of Directors

The remuneration of a director will be determined based on each specific role.

The director's role specification will be used to establish market rates for comparable positions at the time of appointment. The market rates will determine the remuneration for the role.

The market rates will then be reviewed on an annual basis. The expectation will be that directors who are performing adequately will receive any increase on an annual basis.

- 51 It could be argued that this Policy is not necessarily appropriate, in this instance, given the nature of the Trust, the relationships that have been built up over time and the specific local knowledge that the ward councillors would bring to the establishment phase of the Trust. Nevertheless, the policy does apply and hence a decision to use an approach, other than that outlined would represent an inconsistent decision in accordance with the provisions of section 80 of the Local Government Act 2002.

Analysis**Options Considered**

- 52 Options are either to endorse the draft Trust deed and appoint trustees, or not do so.
- 53 In a teleconference held between the Partner agencies on Thursday, 18 January 2018, there was strong support expressed from the other partner agencies for the creation of the Trust and the Trust deed content.

Analysis of Options**Option 1 – Endorse Trust deed and appoint SDC trustees**

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">Shows ongoing support to the enhancement of the Waituna catchment.Shows support for work which is of very strong significance to Ngāi Tahu, thereby recognising and strengthening the Council's partnership relationship with Ngāi Tahu.Will provide the ability to access funding from external agencies due to charitable trust status	<ul style="list-style-type: none">Ongoing commitment for appointed trustees.Some costs for meeting fees and travel for trustees if these are not covered directly by the Trust.Trustees will have the responsibilities which go with that e.g. for instance the Trust would be the PCBU under the Health and Safety at Work Act 2015 when contractors are undertaking work in the catchment under contract from the Trust.

Option 2 – Do not endorse the Trust deed and do not appoint trustees

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">No ongoing commitment of trustee time and resourcesNo potential peripheral exposure of the Southland District Council to any issues which could arise during the implementation of the Strategy and Action Plan.	<ul style="list-style-type: none">Would be a major impediment to the progression of Whakamana te Waituna and achieving significant environmental and cultural enhancement of an area of the Southland District, part of which is recognised as being of international significance.Could significantly adversely affect the Council's positive relationship with Ngāi Tahu and the other partners.

Assessment of Significance

- 54 This matter is not considered significant in terms of section 76 of the Local Government Act 2002. This is seen as the next logical governance step in the evolution of the Whakamana te Waituna project.

Recommended Option

- 55 Option 1 is recommended – endorsement of the Trust deed and appointment of trustees.

Next Steps

- 56 The other partner agencies will be advised of the outcome of this meeting. If Option 1 is adopted, then this authorises the SDC appointed Trustees to formally sign the Trust deed on 6 February 2018.

Attachments

- A Strategy and Action Plan for Waituna 2015 [↓](#)
B Final draft Waituna Deed [↓](#)

Strategy and Action Plan for Waituna



August 2015



Department of
Conservation
Te Pahi Atawhai



Te Pahi Atawhai



People First
Southland District Council



environment
SOUTHLAND

Supported by:



WORKING TOGETHER TO CARE
FOR FIVE KEY CATCHMENTS

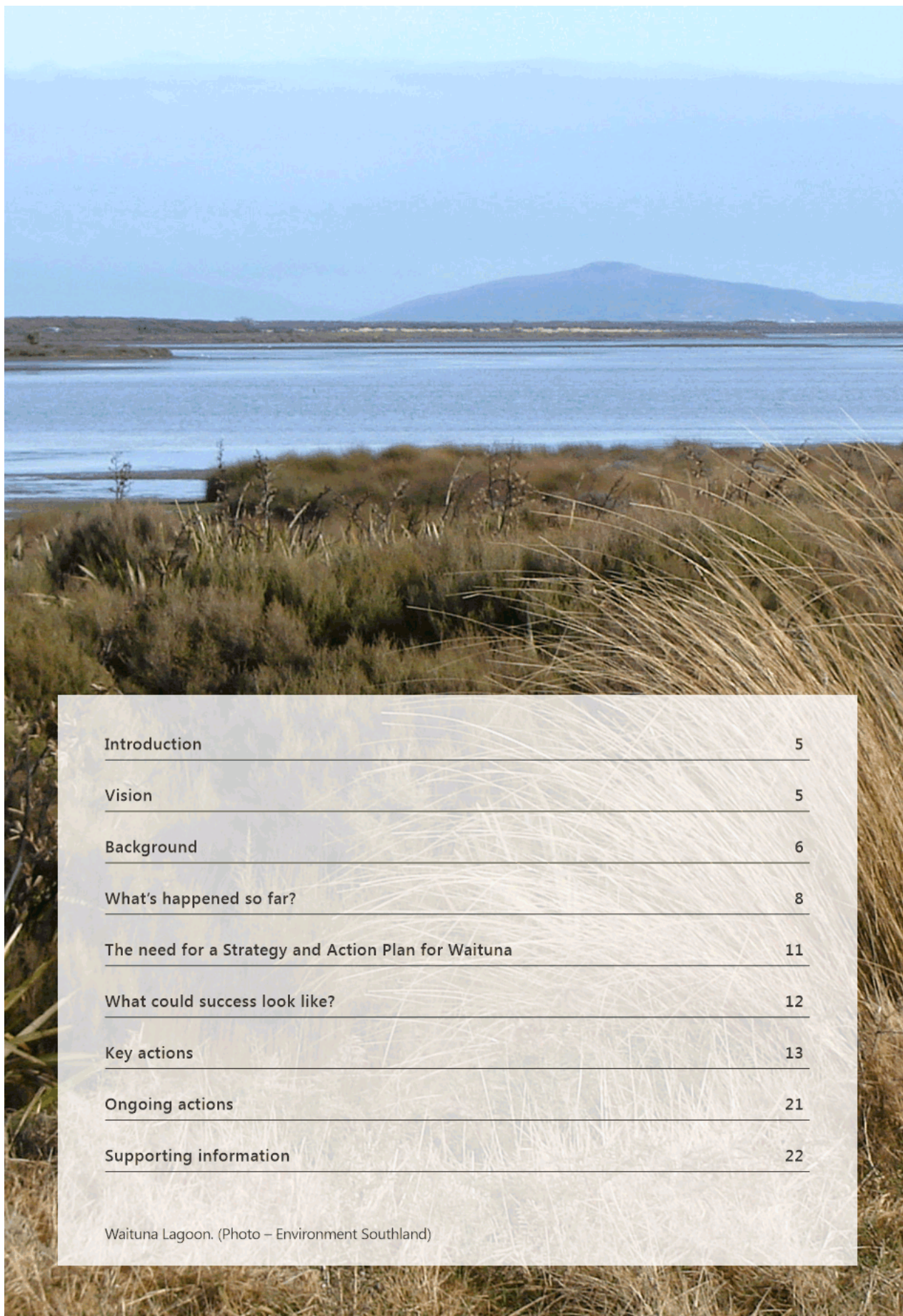


Cover – Waituna Lagoon. (Photo – Environment Southland)

Strategy and Action Plan for Waituna

Defining a pathway for ensuring the wellbeing of the people, the land, the waters, the ecosystems, and the life-force of the Waituna catchment and lagoon, now and for future generations through a partnership approach.

August 2015



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Waituna Lagoon. (Photo – Environment Southland)

INTRODUCTION

This Strategy and Action Plan for Waituna builds on the work that has been done to date and is designed to enable further progress to be made on defining, prioritising and reaching agreement on the next steps for improving the condition of the catchment and lagoon. This is a living document and will be reviewed and updated annually with a report on progress produced.

This plan is in two parts. The first part states the vision, sets the context, describes what has happened so far, outlines why there is a need for a Strategy and Action Plan and defines what success may look like.

The second part identifies goals and the key actions that are proposed to achieve each goal. For each of the actions, the lead and other party(ies) responsible for the action(s) and how progress might be measured are noted. These actions include those that are planned for the short-term and some potential actions that may be undertaken in the long-term (three to five years). A comprehensive Activity Plan in a separate document underpins and provides the detail about the actions. This is also updated regularly.

VISION

The vision¹ for the Waituna catchment and lagoon is:

Mana oranga; Mana tangata; Mana ki uta; Mana ki tai; Mana Waituna

Ensuring the wellbeing of the people, the land, the waters, the ecosystems, and the life-force² of the Waituna catchment and lagoon, now and for future generations through a partnership approach.



-
- 1 It is important to recognise that the vision and objectives for the Waituna Lagoon are bound by the Ramsar Convention and the requirements of the Ngāi Tahu Settlement Act, Local Government Act, Resource Management Act and various Acts as administered by the Department of Conservation.
 - 2 Life-force is the closest English term that could be used in the translation of this vision. When an environment or living thing's health or wellbeing deteriorates, its ability to function is compromised, becoming sick or dying.
-

BACKGROUND

Waituna Lagoon is part of the internationally recognised 20,000ha Awarua Wetland. The 1,350ha lagoon and immediately surrounding wetland known as the Waituna Wetland Scientific Reserve (an area of 3,500ha) was designated a Ramsar Wetland of International Importance³ in 1976, with the wider wetland complex being included in 2008. A key commitment under the Ramsar Convention is to maintain and enhance the ecological health of the wetland.

Waituna Lagoon is one of the largest remaining wetland systems in New Zealand and is made up of a number of nationally significant ecosystems. Its cultural significance to Ngāi Tahu was recognised by a Statutory Acknowledgement under the Ngāi Tahu Claims Settlement Act 1998. The lagoon and wetland have also been a source of food and recreation for the wider community over many generations e.g. fishermen, hunters and trampers.

Waituna Lagoon sits at the bottom of a small (approximately 20,000ha), intensively farmed catchment. Because of many years of land development in the catchment, and changes in lagoon water levels, its health and that of its tributaries is under stress. Land development has included: drainage of wetland areas; clearance of indigenous vegetation; and more recent land use intensification since the 1950s when the main tributaries to the Waituna Lagoon were straightened, and Government schemes cleared and developed land and encouraged other people to do so as well.

Waituna is just one example of a number of lagoons and estuarine systems located at the end of agricultural catchments which are under stress throughout New Zealand. As such, the primary concerns are the loss of nutrients and sediment from land use activities, thus increasing the risk of the lagoon becoming eutrophic, as well as the loss of wetlands through land development. The management of lagoon opening events is important as it influences ecosystem health and farm management practices.

Environmental monitoring shows that the water quality in the lagoon and the creeks that flow into it is under stress. As such, the catchment and lagoon require on-going active management to improve their ecological condition. This is to reduce the risk of the lagoon experiencing a 'regime shift', that is, a change from having clear water and an aquatic environment dominated by aquatic macrophyte plants such as *Ruppia*⁴, to one which has turbid and murky water dominated by algal slime and other suspended phytoplankton.

The Waituna Lagoon system is highly complex. Over the last few years there has been significant investment by various parties to develop a greater understanding of the catchment and lagoon. While the level of knowledge has improved dramatically, some of the causes of the water quality decline, and the relationships between land use activities, lagoon openings and lagoon ecosystem health are still not fully understood. Therefore, the agencies and community are taking an incremental approach to undertake actions with known benefits now, whilst continuing to investigate the feasibility of potential actions⁵.

3 The Convention on Wetlands of International Importance is known as the 'Ramsar' Convention. It is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. The Ramsar Convention is the only global environmental treaty that deals with a particular ecosystem. The Waituna Lagoon is particularly deserving of this status because of its extensive range of bird, wildlife, ecological and Ngāi Tahu values.

4 *Ruppia* is a native macrophyte/water plant. Its presence or absence is regarded as a key indicator for the ecosystem health of the Waituna Lagoon and is integral to supporting life in the lagoon.

5 The need for additional action is reinforced not only by the requirements of the recently amended National Policy Statement for Freshwater Management but also by the New Zealand Coastal Policy Statement, Environment Southland's Regional Water Plan and treaty obligations. The Waituna Working Group have also noted that the cost of intervention will be less now than that required if further degradation does occur.

While there is lots of discussion around the environmental concerns at Waituna, the investments families and businesses have made in their land in the Waituna catchment have contributed to the economic and social development of the area, some over a number of generations. Any actions will need to continue to give consideration to the wide ranging values that a wide range of people hold for the Waituna catchment and lagoon, and any legislative requirements.

WHAT'S HAPPENED SO FAR?

In 2001, members of the Waituna community became aware that changing and intensive land use was having effects on the catchment and lagoon and set up the Waituna Landcare Group. Since then the community have held a number of field days to raise awareness about good management practices and worked on projects to improve water quality.

In 2007 efforts were stepped up. With funding assistance from the Government, the Department of Conservation (DOC) Arawai Kākāriki Wetland Restoration Programme⁶ supported a number of actions on farms in the catchment. These actions included subsidising riparian fencing, culvert alignment and riparian planting. This was supported by Environment Southland's 'Living Streams' programme.

Another initiative was the joint funding by DOC and Environment Southland of a dedicated Land Sustainability Officer for the Awarua and Waituna catchments to provide targeted advice and assistance to farmers and the community on sustainable land management practices.

By 2011, Environment Southland's State of the Environment reporting (which combined water quality monitoring results with DOC's *Ruppia* monitoring) identified that the health of the lagoon was still under stress. Community and agency efforts took on an added intensity.

With one-on-one support, farmers willingly and quickly made changes to their management practices, often at considerable personal expense. There was an immediate focus on winter grazing management practices for properties with crops beside waterways. This was followed by detailed 'farm-walk' assessments of on-farm practices and the piloting of 'Sustainable Milk Production Plans' for dairy farmers and dairy graziers with support from DairyNZ, Environment Southland and Fonterra staff, and assistance from Federated Farmers. This led to the dairy farming community preparing a Waituna Catchment Action Plan 'Waituna Lagoon and Catchment: dairy farming for lagoon health 2011/2012'. The purpose of this plan was to document the work that the farmers are doing to help to ensure a sustainable future for the Waituna Lagoon and their community. This was updated in October 2012.

On top of this, Environment Southland, with the support of the community, successfully applied to the Ministry for the Environment's 'Fresh Start for Fresh Water Clean-up Fund' to reconstruct stream banks to minimise sediment loss, and to trial constructed wetlands and utilise lagoon opening events to assist with managing nutrient levels.

The 'Sustainable Dairying Water Accord' and its predecessor the 'Clean Streams Accord' have played their part by assisting to get the remaining waterways fenced off on dairy platforms. Fonterra farmers have committed to the environmental modules of the 'Supply Fonterra' programme. This includes fencing of waterways, effluent management, and reporting on nitrogen loss and nitrogen conversion efficiency.

Over time, numerous parties have contributed to the drive that has given this project its ever-evolving momentum, and have also undertaken a vast amount of work over the last decade to learn about the catchment and lagoon, the risks posed to its ecological health and ways to resolve the issues causing the stress.

6. The DOC Arawai Kākāriki Wetland Restoration Programme has been working to improve the health of the wetland across the Awarua Wetland since July 2007. The work has included key applied and research projects across the lagoon, wetlands and catchment working alongside the community, Ngāi Tahu, local government and non-government agencies.

A significant cause of the current unstable state of the lagoon is the quantity of incoming nutrients and sediment, through the development and intensification of productive agricultural systems in the catchment. More recent work has shown how the different soil types in the catchment impact upon the nutrient loads from these areas, and the sources of sediment to the lagoon e.g. bank erosion. This understanding will inform the development of actions to reduce nutrient and sediment loads which support sustainable farming and the farming community.

Guidelines and targets prepared by the Lagoon Technical Group identified *Ruppia* as a key indicator of ecosystem health. These guidelines recommended a reduction of nutrients entering the lagoon, with a focus on the protection of *Ruppia* species to maintain and enhance the health of the lagoon.

In 2013, Fonterra and DOC committed to a 10-year Living Water partnership to improve water quality in five key catchments around New Zealand, and the Waituna catchment was one of those chosen.

The Department of Conservation, Environment Southland, Southland District Council, Te Runanga o Ngāi Tahu and Te Rūnanga o Awarua formed the Waituna Partners' Group in August 2013. These organisations have statutory roles in the care and management of the Waituna catchment and lagoon, and signing the Partners' agreement provides a strong commitment to work together for the ongoing improvement of its health and wellbeing. The Partners' Group is supported by a working group made of staff from these agencies, plus the DOC–Fonterra Living Water partnership and DairyNZ. Local landowners assisted the working group with the development of this plan. A formal structure to guide efforts allows for a more comprehensive and coordinated approach and will achieve greater improvements than could be achieved working separately.



Part of Waitona Creek after its banks have been successfully reconstructed to reduce erosion.
(Photo – Environment Southland)

THE NEED FOR A STRATEGY AND ACTION PLAN FOR WAITUNA

An important component in the development of the plan is to build on work that has already been done to generate confidence, ownership, commitment, understanding and trust between all parties, toward a preferred suite of future actions.

As outlined above, many actions have already been taken. However, if we are to avoid a regime shift within the lagoon a number of additional actions will be needed both immediately and in the future. While there are a number of actions which can be undertaken in the short-term which have reasonably well known and positive outcomes, potential future actions will continue to evolve as more information comes to light and with the development of new technologies and management practices.

One of the purposes of this plan is to provide a vision of the future state of the Waituna catchment and lagoon while also tracking the actions being undertaken by various party(ies) in order to achieve that vision. To do this there needs to be a process with clear deadlines and milestones. It should also be noted that funds, cost sharing and mandate to undertake various actions also need consideration.

The on-going support of the Waituna community is crucial to achieve an improvement in catchment and lagoon health, and to reverse the trend of wetland loss within the catchment. We all have a role to play in improving the health of the catchment and the lagoon.

The need for the plan is reinforced by the Government's adoption of the 2011 National Policy Statement for Freshwater Management. This requires Environment Southland to define 'limits' for achieving objectives in all of Southland's catchments, including Waituna. Environment Southland is responding to this through its Water and Land 2020 & Beyond project. While this plan will inform the limit setting exercise required by the National Policy Statement, it is not about developing Waituna specific rules.

The plan will provide a foundation to facilitate the work being undertaken under the umbrella of the Water and Land 2020 & Beyond project sometime over the next five to ten years. Therefore it needs to recognise the community values for the catchment, the lagoon, and farming in this area.

WHAT COULD SUCCESS LOOK LIKE?

To give life to the vision, these are the things we're aiming to achieve:

OUTCOMES SOUGHT	GOAL/PERFORMANCE MEASURE/S
1. Thriving communities & sustainable economies	Healthy people and a vibrant community. Sustainable farming community that ensures their long-term future.
2. Kaitiakitanga	Strong relationship between Ngāi Tahu (Awarua Rūnanga) and their culture and traditions with their ancestral lands, sites, waahi tapu and other taonga, and the exercise of kaitiakitanga.
3. Recreation and sense of place	Brown trout fishery values, aesthetic appreciation, hunting and other recreational opportunities.
4. Healthy catchment and lagoon	Healthy lagoon and wetland ecosystem in which the flora and fauna, for which the Awarua-Waituna is renowned for and recognised under Ramsar, flourish. Abundant and healthy rooted aquatic and wetland plant community in the lagoon, particularly species of <i>Ruppia</i> but also wiwi and harakeke (flaxes). Preventing a regime shift from an aquatic plant dominated system to an algal dominated eutrophic system in the lagoon. Catchment and lagoon in such a healthy state that they no longer require the focused intensive attention they currently receive; the focus shifts to sustaining their values and appreciating the positive relationship which exists between the community and the environment in which the community lives. The nutrient and sediment loads to the lagoon are reduced and an opening/closing regime managed so that the lagoon will display some eutrophic conditions rather than be a pristine environment, but will still support healthy macrophyte and fish communities.
5. Agreed lagoon levels	Agreed water level management regime for the lagoon which provides for all the values of the catchment.
6. Mahinga kai	Abundant and healthy mahinga kai* including: strong kokopu, patiki (flounder), tuna, kanakana (lamprey), waikoura (freshwater crayfish) and inaka (whitebait) populations; a diversity of life as part of a healthy ecosystem; and maintaining healthy recruitment/replenishment of these from the mountains to the sea (ki uta ki tai).
7. Healthy streams	Recreation, improved habitat and water quality.
8. Biodiversity	Protect, enhance and value biodiversity. Abundant and healthy native fish, plant, invertebrate, reptile and bird populations; protection of wetlands in the catchment as refuges of biodiversity and for the ecosystem services they provide; and lagoon, stream, and wetland ecosystems thrive and support indigenous biodiversity.

* Mahinga kai encompasses the resource harvested, the ability to access the resource, the site where gathering occurs, the act of gathering and using the resource, and the good health of the resource (Tipa 2011).

We are planning to measure, monitor, review and celebrate our successes as we go, and will review the progress annually.

KEY ACTIONS

ACTION 1	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Find out what makes the Waituna catchment and lagoon important to people at the individual, community, local and regional levels. 	1, 2, 3, 4, 5, 6, 7, 8	<ul style="list-style-type: none"> Environment Southland in conjunction with all stakeholders 	September 2015	<ul style="list-style-type: none"> Report completed. Number of reports this information has fed into. Community survey on specific values people living, working and undertaking recreational activities in the catchment have.

ACTION 2	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Cultural Opportunities Mapping Assessment and Response (COMAR) project. This work is to provide a Ngāi Tahu whanui assessment on Waituna catchment and lagoon. Mapping in GIS system of place names, mahinga kai and associated histories. 	2, 4, 6, 8	<ul style="list-style-type: none"> TAMI (Te Ao Marama Inc) & Te Rūnanga o Awarua Department of Conservation Living Water Partnership 	Stage One - 31 March 2015 Stage Two - 30 September 2015 Stage Three - April 2016	<ul style="list-style-type: none"> Stage One - Place names, mahinga kai and associated histories in GIS system. Stage Two - Monitoring and COMAR Plan completed. Ready to start COMAR site work in Spring. Stage Three - COMAR field work completed, data collected and analysed, report completed.

ACTION 3	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<p>Undertake research to increase knowledge about nutrient losses by investigating new technologies/ techniques for minimising nitrogen, phosphorus and sediment losses, and the cost/benefit relationships about these, including:</p> <ul style="list-style-type: none"> • pasture/fodder crop trials; • polishing of discharges from tile drains; • constructed wetlands, including investigation of the effectiveness and costs associated with the development of constructed wetlands and identification of appropriate locations for constructed wetlands within the catchment; • nitrification inhibitors. 	1, 4, 6, 7, 8	<ul style="list-style-type: none"> • Environment Southland • DairyNZ • Living Water Partnership 	Ongoing	<ul style="list-style-type: none"> • Annual reporting by individual parties on results/outcomes of activities undertaken. • Nutrient losses decrease. Water quality improves as a result of these activities.

ACTION 4	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Work with landowners to scope and investigate the potential locations and benefits arising from retirement of land both within the catchment and/ or a buffer area around the lagoon. 	1, 2, 3, 4, 5, 6, 7, 8	<ul style="list-style-type: none"> Landowners Lake Waituna Control Association Environment Southland DairyNZ Living Water Partnership Department of Conservation 	30 September 2016	<ul style="list-style-type: none"> Soil moisture mapping completed of land surrounding the lagoon at various lagoon levels. Mapping completed of the sources of nutrients throughout the catchment and the relative contribution to loads to the lagoon. Potential areas for retirement identified. Cost/benefit analysis produced for potential areas. If appropriate, application for government assistance completed.

ACTION 5	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<p>Minimise environmental risk of effluent storage/ disposal at a farm and catchment level through:</p> <ul style="list-style-type: none"> compliance with farm dairy effluent discharge consents; compliance with industry-led farm dairy and environmental assessments; implementation of good management practices. 	1, 4, 6, 7	<ul style="list-style-type: none"> Dairy farmers Environment Southland Fonterra 	At all times	<ul style="list-style-type: none"> Number of abatement notices, infringement notices, prosecutions.



Waituna Lagoon (Photo – DOC)

ACTION 6	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Take practical steps to reduce nutrient loads coming into the lagoon from the Waituna catchment. Managing riparian, winter grazing, and drain maintenance activities according to good practice guidelines. Preparation of annual nutrient budgets for each farm and, undertake mitigation measures to reduce nutrient loss. 	1, 4, 6, 7, 8	<ul style="list-style-type: none"> Environment Southland Southland District Council Department of Conservation Landowners/ individual farmers Industry groups e.g. fertiliser representatives, Beef Living Water Partnership Waituna Landcare Group 	Ongoing	<ul style="list-style-type: none"> Ongoing specific water quality monitoring and reporting against baseline to show water quality trends over time within the catchment. Number of farms with mitigation measures due to dairy conversion rule. Number of indigenous and vegetation removal consents processed/ managed. Annual assessment of total catchment nutrient load. Annual reporting on the length of waterways fenced and length planted. Length of waterways that have stable banks. Percentage of farms with nutrient budgets. Percentage of farms with nutrient management plans. Percentage of farms with environmental farm plans (or equivalent).

ACTION 7	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Review effectiveness of the current bank reconstruction work and investigate other areas for further works. Undertake bank stabilisation works to reduce the sediment load to the lagoon. Implement a wider stream habitat management project to restore in-stream and riparian habitat at priority sites. 	1, 3, 4, 6, 7, 8	<ul style="list-style-type: none"> Environment Southland, with support from Ministry for the Environment's Fresh Start for Freshwater Clean-up Fund and landowners. Living Water Partnership Department of Conservation 	<ul style="list-style-type: none"> Complete current Fresh Start for Fresh Water funded bank reconstruction programme – 30 June 2015. Undertake further bank reconstruction works as funds become available and individual landowners agree. 	<ul style="list-style-type: none"> Length of stream bank stabilised. Photographic record of stabilised banks at long-term photo points. Length of riparian habitat restored. Reduction in sediment load in Waituna Creek at State of the Environment monitoring sites. Monitoring of habitat and native species within both the catchment and lagoon.

ACTION 8	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Investigate options for short and long-term management of lagoon levels with an opening/closing regime. New consent for management of lagoon opening is in place. (Note: the approval process requires consents and also Department of Conservation approvals given Scientific Reserve Status) 	1, 4, 5, 6	<ul style="list-style-type: none"> Lake Waituna Control Association Landowners Environment Southland DairyNZ Department of Conservation Iwi Fish & Game 	31 December 2015	<ul style="list-style-type: none"> Peer-review report completed – 31 October 2015. Report prepared which sets out all the values to be considered in the development of the lagoon management regime – 31 December 2015. A workshop convened with affected and interested parties. Areas affected by different lagoon levels mapped both in terms of land inundation, elevation of groundwater levels and reduction of drainage efficiency. The maximum depth of water in the lagoon that can be tolerated by farmers is clarified, and the period for which those higher water levels can be tolerated by the farming community and identify how these impacts affect environmental values Option confirmed for long-term management of lagoon levels. Relevant resource consent applications lodged.

ACTION 9	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Identify location and extent of existing wetlands on farms and provide guidelines and assistance with protection. Protection of existing wetlands and indigenous vegetation. 	1, 2, 3, 4, 6, 7, 8	<ul style="list-style-type: none"> Environment Southland Living Water Partnership Department of Conservation Landowners Southland District Council 	Ongoing	<ul style="list-style-type: none"> Location and extent of existing wetlands within the catchment mapped. Options investigated to provide assistance to landowners who wish to protect/enhance/ enlarge their wetlands. Bed disturbance provisions of the Regional Water Plan in effect. Biodiversity provisions of the District Plan in effect.

ACTION 10	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Raise awareness of the importance of mahinga kai in the catchment, how it can be accessed and understand the implications for the Scientific Reserve status of the lagoon. 	2, 6, 8	<ul style="list-style-type: none"> Te Ao Marama Inc Ngāi Tahu Department of Conservation Living Water Partnership Landowners 	30 June 2016	<ul style="list-style-type: none"> Mahinga kai communications strategy completed and publically available.

ACTION 11	RELATED OUTCOME(S)	BY WHO? (lead party is shown in bold)	BY WHEN?	HOW MIGHT PROGRESS BE MEASURED?
<ul style="list-style-type: none"> Monitor the extent of <i>Ruppia</i> coverage and investigate the risks for <i>Ruppia</i> re-establishment, including viability of existing seed bank, effect of lack of water clarity, and the optimal depth of water. 	1, 2, 3, 4, 6, 7, 8	<ul style="list-style-type: none"> Department of Conservation 	30 March 2017	<ul style="list-style-type: none"> Peer-review report completed.

ONGOING ACTIONS

In addition to the actions above, the following actions will be continued by the parties responsible:

ACTION	PARTY(IES) RESPONSIBLE
Communicate first and foremost with the Waituna community, but also the wider general public: <ul style="list-style-type: none"> • progress for the catchment and lagoon; • people's sense of place and attachment to the catchment and/or lagoon; • issues for the catchment and lagoon. 	<ul style="list-style-type: none"> • Environment Southland • Department of Conservation • Industry bodies e.g. Fonterra • Living Water Partnership • DairyNZ • Ngāi Tahu
Improve opportunities for recreational facilities on public conservation land.	<ul style="list-style-type: none"> • Department of Conservation
Provide advice and assistance on good practice for: <ul style="list-style-type: none"> • riparian management; • nutrient management; • winter grazing; • drain maintenance; • stock exclusion from waterways and wetlands. 	<ul style="list-style-type: none"> • Environment Southland • DairyNZ • Living Water Partnership • Industry bodies, e.g. Beef & Lamb, Fonterra
Monitor the streams and lagoon to determine the nutrient concentrations and loads entering the lagoon.	<ul style="list-style-type: none"> • Environment Southland
Increase public awareness of the importance of wetlands.	<ul style="list-style-type: none"> • Department of Conservation • Southland District Council • Environment Southland • Living Water Partnership

SUPPORTING INFORMATION

- DairyNZ Southern Wintering Systems Project
- DairyNZ Waituna Work Programme
- Department of Conservation Arawai Kākāriki Wetland Restoration Programme
- Department of Conservation-Fonterra Living Water Annual Operational Plan Summary (2014/15).
- Environment Southland Waituna Work Programme
- Ngāi Tahu Waituna Work Programme
- Supply Fonterra Environmental Modules
- Sustainable Dairying Water Accord – July 2013
- Ecological Guidelines for Waituna Lagoon. Prepared by the Lagoon Technical Group for Environment Southland – December 2013



The mouth of Waituna Creek (Photo – Environment Southland)

Strategy and Action Plan for Waituna



draft
19 January 2018

Dated

2018

WHAKAMANA TE WAITUNA CHARITABLE TRUST

[TRUSTEE FULL NAME 1]
[TRUSTEE FULL NAME 2]
[TRUSTEE FULL NAME 3]
[TRUSTEE FULL NAME 4]
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[TRUSTEE FULL NAME 9]

Trustees

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DATED**PARTIES**

- (1) **TRUSTEE FULL NAMES AND OCCUPATIONS** (the "Trustees").

BACKGROUND

- A. The vision for Waituna is to ensure the wellbeing of the people, the land, the waters, the eco-systems and the life-force of the Waituna catchment and lagoon, now and for future generations through a partnership approach.
- B. To achieve this vision, the Trustees wish to establish the Whakamana Te Waituna Charitable Trust to assist with the delivery of Whakamana Te Waituna and to:
- a) Re-establish a hydrological regime protecting the ecological, cultural, scientific and recreational values associated with Waituna Lagoon's status (Ramsar site, scientific reserve, taonga of Te Rūnanga o Awarua and Southland);
 - b) Provide alternative land-use options for the land adjacent to the lagoon, re-establishing the hydrological regime and protecting the lagoon's values;
 - c) Demonstrate the scalability of alternative drainage system design and management and farm system interventions to reduce impacts of ground and surface water contaminants on Waituna Lagoon and its tributaries; and
 - d) Re-establish Te Rūnanga o Awarua's connection and role as Kaitiaki.
- C. On signing this deed the Trustees declare a trust on and subject to the terms of this deed and with the powers set out in this deed.

NOW THIS DEED RECORDS:**1. DEFINITIONS AND CONSTRUCTION**

- 1.1 **Defined terms:** In this deed, unless the context requires otherwise:

"**Balance Date**" means 30 June or any other date which the Trustees adopt by resolution as the date up to which accounts are to be made in each year;

"**Income Year**" means any year or other accounting period ending on a Balance Date;

"**Teleconference Meeting**" for the purposes of rule 20 in the Second Schedule means a meeting where the participants are contemporaneously linked by telephone or some other means of instant audio or audio and visual communication;

"**Trust**" means the charitable trust created by this deed;

"**Trust Deed**" when appearing in the rules set out in the Second Schedule, means this deed;

"**Trust Fund**" includes any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees after this deed has been signed with the intention that it be held by the Trustees subject to the trusts and other provisions set out in this deed.

"**Waituna Catchment**" means the area shaded on the map in the Third Schedule.

"**Whakamana te Waituna**" means ensuring the wellbeing of the people, the land, the waters, the eco-systems and the life-force of the Waituna catchment and lagoon, now and for future generations through a partnership approach.

1.2 Construction: In the construction of this deed, unless the context requires otherwise:

- (a) a reference to "Trustees" is a reference to the trustees for the time being of the Trust Fund, whether original, additional or substituted, and whether incorporated as a Board under the Charitable Trusts Act 1957 or otherwise;
- (b) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporated;
- (c) a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- (d) the schedules form part of this deed;
- (e) headings appear as a matter of convenience and shall not affect the construction of this deed;
- (f) if there is a conflict between the rules and the other provisions of this deed the other provisions of this deed shall prevail.

2. CREATION OF THE TRUST

Declaration of trust

- 2.1 The Trustees declare that they hold the Trust Fund upon the trusts and with the powers set out in this deed.

Name of trusts

- 2.2 The trusts created by this deed are to be known as the "**Whakamana te Waituna Charitable Trust**" or by such other name as the Trustees may determine by resolution from time to time.

3. REGISTRATION

Incorporation under the Charitable Trusts Act 1957

- 3.1 If they consider it appropriate the Trustees may apply under the Charitable Trusts Act 1957 for incorporation as a Board under the name **Whakamana te Waituna Charitable Trust**, or under such other name as may be approved by the Registrar of Incorporated Societies. Upon incorporation, rule 23 of the Second Schedule shall govern the adoption and use of the common seal.

Registration under the Charities Act 2005

- 3.2 If they consider it appropriate the Trustees or the Board (as the case may be) may apply to be registered as a charitable entity under the Charities Act 2005. If and while so registered, the Trustees or the Board (as the case may be) will comply with the requirements of that Act.

4. PURPOSES

The Trust is established to promote the wellbeing of the people, the land, the waters, the ecosystems, and the life-force of the Waituna Catchment and the surrounding area, now and for the benefit of future generations and in particular although without limitation to:

- (a) protect and enhance the spiritual, physical and cultural values of the people, the land and the waters for present and future generations;
- (b) restore and enhance the cultural and natural resources of the Waituna Catchment and the surrounding area as a mahinga kai;
- (c) protect and restore the indigenous ecological values present at the Waituna Catchment;
- (d) promote the educational values of the Waituna Catchment; and
- (e) do any and all other things that the Trustees may in their absolute discretion consider necessary and proper to further the Trust's charitable purposes above.

5. TANGATA WHENUA

In pursuing its purposes the Trust shall have regard to the views of Ngāi Tahu as Kaitiaki of the area that includes the Waituna Catchment.

6. INCOME TRUSTS

Power to pay, apply or appropriate income

- 6.1 The Trustees may pay, apply or appropriate, or decide to pay, apply or appropriate as much of the income arising from the Trust Fund in an Income Year as they think fit for or towards one or more of the purposes of the Trust. If the Trustees provide for more than one purpose they need not treat each purpose equally.

Provisions relating to payments, applications and appropriations of income

- 6.2 The Trustees, by written resolution, may appropriate any investments for one or more of the purposes of the Trust in anticipation of a payment or application under clause 6.1.
- 6.3 In any Income Year, the Trustees may appropriate all or part of the income derived or to be derived from the Trust Fund during that Income Year even though, at the time of appropriation, they have not received the income being appropriated.
- 6.4 If the Trustees appropriate any income for any purpose of the Trust the recipient of that income shall take an absolute and indefeasible interest in that income as from the date on which it is appropriated.

Power to retain income

- 6.5 The Trustees need not distribute all of the income arising from the Trust Fund in an Income Year, but may retain or decide to retain all or part of that income to establish or augment any reserve

fund, which may be used at any later time for any purpose for which income arising from the Trust Fund may be used.

7. CAPITAL TRUSTS

At any time the Trustees may, or may decide to pay, apply or appropriate as much of the capital of the Trust Fund as they think fit for or towards one or more of the purposes of the Trust. If the Trustees so provide for more than one purpose they need not treat each purpose equally. Any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of income.

8. RECEIPTS

Receipt of gifts

- 8.1 The Trustees may receive solicited and unsolicited gifts of any real or personal property for the purposes of the Trust or for any specific purpose that comes within the purposes of the Trust.

Receipts for payments

- 8.2 The receipt of the secretary, treasurer or other person or persons appearing to the Trustees to be authorised to give receipts on behalf of the recipient of any payment made under the terms of this deed, shall be a complete discharge to the Trustees for that payment.

9. SEPARATE SUB-TRUSTS

- 9.1 The powers of the Trustees set out in clauses 6, 7 and 8 shall without limitation include power by resolution to establish discrete funds within the Trust dedicated to such one or more of the Trust's purposes as the Trustees may in their absolute discretion determine.
- 9.2 Without limiting clause 9.1, the powers vested in the Trustees pursuant to clause 8.1 shall include the power to accept a gift of any real or personal property to be held as a discrete fund to be applied to any one or more of the purposes of the Trust subject to any terms and conditions attached to such gift by the donor provided that such terms and conditions are not inconsistent with the charitable nature of the Trust.
- 9.3 For the avoidance of doubt the costs of administration of any discrete fund established under either clause 9.1 or 9.2 shall be met either out of such fund or out of the Trust Fund or any income derived from the Trust Fund as the Trustees may in their absolute discretion determine.

10. INTERESTED TRUSTEES

Disclosure of interests

- 10.1 A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:
- (a) is a party to, or will derive or may derive a material financial benefit from that transaction;
 - (b) has a material financial interest in another party to the transaction;
 - (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;

- (d) is the parent, child or spouse, civil union partner, or de facto partner of another party to, or person who will or may, derive a material financial benefit from the transaction; or
 - (e) is otherwise directly or indirectly materially interested in the transaction.
- 10.2 As soon as a Trustee becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, he or she must disclose to his or her co-Trustees at a meeting of the Trustees:
- (a) if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest; or
 - (b) if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.
- 10.3 A disclosure of interest by a Trustee must be recorded in the minute book of the Trust.

Dealing with interested Trustees

- 10.4 Subject to clause 10.1, clause 11 and to rule 13 in the Second Schedule, each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee. This right to continue to act as a Trustee shall apply even though a Trustee's interest or duty in a particular matter may conflict with his or her duty to carry out the purposes of the Trust Fund, or his or her duty to the beneficiaries of the Trust Fund, as the case may be.

11. RESTRICTIONS ON PRIVATE PECUNIARY PROFIT

No private pecuniary profit of any individual and exceptions

- 11.1 No private pecuniary profit shall be made by any person involved in this Trust, except that:
- (a) any Trustee or committee member appointed by the Trustees shall be entitled to be reimbursed out of the assets of the Trust for all expenses which he or she properly incurs in connection with the affairs of the Trust;
 - (b) the Trust may pay reasonable and proper remuneration to any Trustee, officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
 - (c) any Trustee is to be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust;
 - (d) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

- 11.2 The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by clauses 10.2 and 11.3 of this deed are strictly observed.

Prohibition of benefit or advantage in business activity

- 11.3 In the carrying on of any business under this deed no benefit or advantage shall be given to, or received, by any person in any manner which would prevent the income from being exempt under section CW 42 of the Income Tax Act 2007.
- 11.4 A person who is in the course of and as part of the carrying on, of his or her business of a professional public practice, shall not, by reason only of him or her rendering professional services to the Trust or to any company or person by which any business of the Trust is carried on, be in breach of the terms of clause 11.3 above.

12. TRUSTEES' POWERS

General power

- 12.1 It is intended that in the exercise of their discretion the Trustees shall have the fullest possible powers in relation to the Trust Fund, and that they may do anything they think necessary, expedient or desirable even though it is something which they would not normally have power to do in the absence of an express power or an order of the Court. However:
- (a) this general power does not authorise the Trustees to do anything which may prejudice the charitable nature of the purposes of the Trust; and
 - (b) all the Trustees' powers, authorities and discretions shall be subject to any direction to the contrary in any instrument evidencing or conferring a gift accepted by the Trustees, provided that such direction is not inconsistent with the charitable nature of the Trust.

Specific powers

- 12.2 Without prejudice to the generality of clause 12.1 above, or to any of the Trustees' express or implied powers, the Trustees shall have the powers specified in the First Schedule and may exercise them either alone or with any other person(s).

13. ADVICE OF COUNSEL

- 13.1 If the Trustees are in doubt over any matter relating to the administration of the Trust Fund, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister or barrister and solicitor of the High Court of New Zealand of at least 7 years' standing.
- 13.2 The Trustees may act upon any opinion obtained in accordance with clause 13.1 without being liable to any person who may claim to be beneficially interested in respect of anything done or any failure or refusal to act in accordance with that opinion.
- 13.3 For the avoidance of doubt, the right to obtain and act upon an opinion as set out in this clause does not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

14. LIABILITY OF TRUSTEES

A Trustee shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

15. INDEMNITY

A Trustee shall be entitled to exoneration and indemnity out of the assets of the Trust for any liability which that Trustee incurs in relation to the Trust and which is not attributable to that Trustee's dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust.

16. WINDING UP

16.1 The Trustees may wind up the Trust if:

- (a) in their opinion, it becomes impossible, impracticable or inexpedient to carry out the purposes of the Trust set out in clause 4; and
- (b) they decide not to exercise their power under clause 7 to pay, apply or appropriate the whole of the capital of the Trust Fund for the purposes set out in clause 4.

16.2 On the winding up or dissolution of the Trust, the Trustees must give or transfer all surplus assets after the payment of costs, debts and liabilities:

- (a) to some other charitable organisation or body registered under the Charities Act 2005 having similar objects to the Trust; or
- (b) to any other charitable organisation or body registered under the Charities Act 2005 if no sufficiently similar charitable organisation or body can in the opinion of the Trustees in their absolute discretion be identified in accordance with clause 16.2(a).

17. RULES

The rules (with any valid variations) set out in the Second Schedule which govern the appointment, retirement and proceedings of the Trustees subject to the provisions of this deed, will bind the Trustees both before and after their incorporation as a Board under the Charitable Trusts Act 1957.

18. VARIATIONS TO DEED

18.1 This deed may be altered only by a resolution of 7 out of 9 Trustees.

18.2 The secretary of the Trust shall give each Trustee written notice (which notice may for the avoidance of doubt be hand-delivered, posted, or sent by facsimile or email) of any proposed resolution for the alteration of this deed at least 21 days before the date of the meeting at which it is to be considered, provided that such notice requirement may be waived in relation to any particular alteration if all Trustees so resolve in writing.

- 18.3 The power to alter the deed vested in the Trustees by this clause shall, subject to clause 18.4, include the power to vary, add to or revoke any or all of the provisions of this deed or any Schedule hereto provided that where any such variation, addition or revocation relates to a change in the prescribed number of Trustees of the Trust or to the persons or manner in which Trustees of the Trust are appointed, such variation, addition or revocation shall not be effective without the written consent of each of the persons then holding the power to appoint Trustees pursuant to the Second Schedule.
- 18.4 Before resolving to make any alteration to this deed, the Trustees must be satisfied that the proposed alteration does not prejudice the charitable nature of the Trust, and in particular the efficacy of clauses 4, 10, 11, 16 and this clause 18 in meeting the requirements for any tax benefits or exemptions available to charities under the laws of New Zealand.

19. COUNTERPARTS

- 19.1 This deed and any resolution of the Trustees may be signed in two or more counterparts all of which, when taken together will constitute one and the same instrument. A party to this deed or any resolution may enter into it by executing any such counterpart.
- 19.2 The parties or Trustees (as the case may be) may sign a counterpart copy of this deed or any resolution whether received by facsimile or email or by any other means by signing that copy. The transmission by facsimile or email by one party to another of a counterpart copy of this deed or a resolution signed by that party will be deemed proof of signature of the original and the signed copy so transmitted will be deemed an original.

EXECUTED as a DEED by)
[TRUSTEE 1 FULL NAME])
 as Trustee in the presence of:)

 Signature

 Witness signature

 Full name

 Address

 Occupation

Note: The signature must be witnessed by an independent person

EXECUTED as a **DEED** by)
[**TRUSTEE 2 FULL NAME**])
as Trustee in the presence of:)

Signature

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

EXECUTED as a **DEED** by)
[**TRUSTEE 3 FULL NAME**])
as Trustee in the presence of:)

Signature

Witness signature

Full name

Address

Occupation

EXECUTED as a **DEED** by)
[**TRUSTEE 4 FULL NAME**])
as Trustee in the presence of:)

Signature

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

EXECUTED as a **DEED** by)
[TRUSTEE 5 FULL NAME])
as Trustee in the presence of:)

Signature

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

EXECUTED as a **DEED** by)
[TRUSTEE 6 FULL NAME])
as Trustee in the presence of:)

Signature

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

EXECUTED as a **DEED** by)
[TRUSTEE 7 FULL NAME])
as Trustee in the presence of:)

Signature

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

EXECUTED as a DEED by)
[TRUSTEE 8 FULL NAME])
as Trustee in the presence of:)

Signature

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

EXECUTED as a DEED by)
[TRUSTEE 9 FULL NAME])
as Trustee in the presence of:)

Signature

Witness signature

Full name

Address

Occupation

Note: The signature must be witnessed by an independent person

FIRST SCHEDULE
TRUSTEES' SPECIFIC POWERS

The Trustees have the following powers which may only be exercised to further the charitable purposes of the Trust or to further purposes which are incidental or ancillary to the charitable purposes of the Trust:

1. To raise funds

To raise money for any of the purposes of the Trust by all lawful means, including without limitation the conduct of fundraising campaigns.

2. To invest

To invest the Trust Fund and the income from it in any form of investment, and to vary any such investment from time to time. Where, for the time being, there is more than one person acting as a trustee of the Trust Fund, and one or more, but not all, of them is or are engaged in a profession, employment or business which is or includes acting as a trustee or investing money on behalf of others, then in exercising any power of investment, that trustee or those trustees (as the case may be) shall not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others. Rather, that trustee or those trustees (as the case may be) shall be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

3. To retain investments

To retain any investments coming into the Trustees' hands as part of the Trust Fund for as long as the Trustees think proper, even if they are not investments which could be properly made by a trustee.

4. To sell

To sell any real or personal property forming part of the Trust Fund in the manner and on the terms and conditions the Trustees think fit, including (without limitation) power to allow such part of the purchase price as the Trustees think fit to remain on loan with or without security or to be payable by instalments.

5. To postpone sale

To postpone the sale of any real or personal property forming part of the Trust Fund for as long as the Trustees think fit without being liable for any resultant loss to the Trust Fund.

6. **To let**

To let any real and personal property at such rent and on such terms and conditions (including an option to purchase) as the Trustees think fit and to accept surrenders of any leases and tenancies.

7. **To borrow**

To borrow any money at whatever rate of interest and upon whatever other terms and conditions the Trustees may think fit. For this purpose the Trustees may give security for repayment over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the borrowing.

8. **To carry on business**

8.1 To carry on any business anywhere in the world, whether in partnership or otherwise, for as long as the Trustees think fit. The Trustees may use any part of the Trust Fund as capital in the business, and may also employ in the business such managers, agents, employees and other persons (including any Trustee other than a person who for the time being is the sole Trustee of the Trust Fund) as they think fit.

8.2 The Trustees shall be absolutely indemnified out of the Trust Fund for any losses which they may sustain in so carrying on any such business.

8.3 Subject to the terms and conditions on which any business is carried on by the Trustees, the net annual profits from any business shall, at the Trustees' discretion, be distributable as income in the Trustees' hands without having to be first applied in making good any earlier business losses. Any business losses for any year, unless the Trustees decide otherwise, shall be borne by the capital of the Trust Fund and not recouped out of later profits.

9. **To accept payment in company securities**

In the sale of any business to a company, to accept payment for all or part of the purchase price in ordinary deferred or preference shares (whether fully paid or partly contributory) or debentures or debenture stock of such company. In exercising this power the Trustees shall not be taken to be exercising a power of investment.

10. **To promote a company**

To promote a company or companies for the purpose of acquiring any business or the assets of any business.

11. To act in relation to certain companies

In respect of any company in which the Trust Fund holds or is the beneficial owner of shares, notes, stock or debentures:

- (a) to act as a director of the company and to receive and retain fees or other remuneration for so acting without having to account to the Trust Fund unless the Trustees otherwise require;
- (b) to provide out of the Trust Fund on such terms as the Trustees think fit further capital for the company either by way of advances, loans, deposits or otherwise (with or without security) or by taking further shares in the company, but only insofar as the Trustees are satisfied on reasonable grounds that the provision of such further capital will contribute to the ability of the Trustees to fulfil the charitable purposes specified in clause 4 of the Trust Deed;
- (c) to concur in the winding up, reconstruction or amalgamation of the company or in the modification of its regulations, on whatever terms the Trustees think fit; and
- (d) generally to act in relation to the company in whatever manner the Trustees consider to be in the best interests of the Trust Fund.

12. To subdivide

To subdivide any real property forming part of the Trust Fund and to meet the costs of subdivision out of the Trust Fund.

13. To maintain property

To maintain, manage and improve property which, or any interest in which, forms part of the Trust Fund, in whatever manner the Trustees think fit. For those purposes, the Trustees may pay and apply any of the capital and income of the Trust Fund as they think fit.

14. To develop

To spend any sums out of the capital or income of the Trust Fund the Trustees think fit in developing any real property forming part of the Trust Fund, and to do all things which the Trustees consider necessary or desirable for the proper completion of the development.

15. To purchase property

To purchase as an asset of the Trust Fund any property or interest in property which the Trustees consider will benefit the Trust Fund. In exercising this power the Trustees shall not be taken to be exercising a power of investment.

16. To grant and acquire options

To grant, acquire, dispose of and exercise any option to purchase, lease or exchange any interest in real or personal property of any value, whether the option is incidental to, or independent of, any

sale, lease, exchange or other disposition. An option may be granted acquired or disposed of on such terms and conditions as the Trustees think fit, and in respect of a grant, may be granted at a price determined at the time of the grant or at such later date as the Trustees think fit. The Trustees shall not be personally liable for any loss arising from their exercise of this power and shall be indemnified accordingly out of the Trust Fund.

17. **To make loans and advances**

To make any loans or advances (with or without security) for any of the purposes of the Trust Fund in such manner and on such terms and conditions as the Trustees think fit.

18. **Capital, income and blended funds**

To determine whether any money is to be considered as capital or income, and which expenses should be paid out of capital and out of income respectively, and also to apportion blended funds. Each determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund.

19. **Depreciation or replacement funds**

To set up and maintain any depreciation or replacement funds for any purpose the Trustees may consider advisable, and in this regard to determine in their discretion:

- (a) the amount of income to be credited from time to time to any of those funds;
- (b) whether those funds are income or capital.

20. **Bank accounts**

To open any bank accounts in any name(s) either on the Trustees own behalf or jointly with some other person(s), and to overdraw any such account with or without giving security. The Trustees may also make arrangements with any bank for any one or more of the following persons to operate on any of the Trustees' accounts at that bank:

- (a) the Trustees; and
- (b) any delegate(s) named in writing by all the Trustees.

21. **To guarantee obligations**

To guarantee the liability of any person or corporation for the purposes of the Trust Fund and to give security in support of any such guarantee.

22. **To insure**

To insure any building or other insurable property to any amount up to its full insurable value, or at the Trustees' option, up to its full replacement value, against destruction or damage by fire,

earthquake, fire following earthquake and such other risks as the Trustees think fit. The Trustees may pay the premiums out of income or capital as they think fit.

23. **To waive debts**

Without being liable for loss, to waive any debts due to the Trust Fund, either absolutely or on such terms as the Trustees think expedient.

24. **To deposit funds**

To deposit all or part of the Trust Fund in any currency in a savings or other interest or non-interest bearing account with any bank, trust, company or other financial or investment institution in any jurisdiction in the world. In making any deposit the Trustees shall not be liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

25. **To hold the Trust Fund uninvested**

To hold any part of the Trust Fund uninvested and in any currency for as long as the Trustees think fit without being liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

26. **To protect or enhance assets**

To enter into any type of contract whatever to protect, maintain or enhance the value of any assets acquired or held by the Trustees or which they have the right to acquire or hold.

27. **To do all other necessary or desirable things**

The Trustees may do all other lawful things that are necessary or desirable in their opinion for the carrying out of the purposes of the Trust.

SECOND SCHEDULE
 RULES GOVERNING THE APPOINTMENT, RETIREMENT AND
 PROCEEDINGS OF THE TRUSTEES

1. **The Trustees**

The first Trustees shall be:

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 1]

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 2]

(who shall be deemed to have been appointed as the first **Ngāi Tahu Trustees**, as that term is defined later in this Schedule)

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 3]

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 4]

(who shall be deemed to have been appointed as the first **Environment Southland Trustees**, as that term is defined later in this Schedule)

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 5]

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 6]

(who shall be deemed to have been appointed as the first **Department of Conservation Trustees**, as that term is defined later in this Schedule)

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 7]

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 8]

(who shall be deemed to have been appointed as the first **Southland District Council Trustees**, as that term is defined later in this Schedule)

[FULL NAME; CITY/TOWN OF RESIDENCE; OCCUPATION TRUSTEE 9]

(who shall be deemed to have been appointed as the first **Fonterra Trustee**, as that term is defined later in this Schedule)

2. **Number of Trustees**

2.1 There shall never be fewer than 9 Trustees, comprising:

- (a) two persons appointed by [position of Appointors] of Awarua Rūnanga and/or Te Rūnanga o Ngāi Tahu ("Ngāi Tahu Trustees");
- (b) two persons appointed by [position of Appointor] of Environment Southland ("Environment Southland Trustees");
- (c) two persons appointed by [position of Appointor] of the Department of Conservation ("Department of Conservation Trustees");

- (d) two persons appointed by [position of Appointor] of Southland District Council ("Southland District Council Trustees"); and
 - (e) one person appointed by [position of Appointor] of the Fonterra Co-operative Group ("Fonterra Trustee").
- 2.2 Subject to Rule 2.3 below, a Trustee shall hold office for a term not exceeding three (3) years from the date of appointment but shall be eligible for reappointment for a further three terms. The first Trustees shall be deemed to be first appointed on the date of this deed.
- 2.3 The following Trustees [Trustees a, b, c and d – being one Trustee appointed by each of the first four Appointors listed above] shall hold office for a term not exceeding [x-1] years from the date of appointment but shall be eligible for reappointment for a further three (3) terms.
- 2.4 [Retirement provisions to be inserted. It is intended that the timing for retirement of Trustees will align with local body elections for Trustees that are elected to their (non-trust) positions]

3. Appointment of new and additional Trustees

- 3.1 For the purposes of this rule 3 and of rule 5(a) of this Schedule, a person or group of persons named in rule 2 of this Schedule as having the power of appointment of Trustees of the Trust shall be the "Appointor" and this rule 3 and rule 5(a) of this Schedule shall be construed as referring to each Appointor only in respect of the Trustees that that Appointor has the power to appoint pursuant to rule 2 of this Schedule.
- 3.2 Trustees shall be appointed by the Appointor whenever a Trustee ceases to hold office in accordance with rules 2.2, 2.3, 2.4 or rule 5 of this Schedule.
- 3.3 The statutory power of appointment of new Trustees shall be vested in the Trustees in the event that any Appointor fails or is unable to appoint new Trustees, but if at any time there are no Trustees then it shall be vested in the President for the time being of the New Zealand Law Society.

4. Quorum

The quorum at meetings of the Trustees shall be not less than six (6) Trustees, including at least one Trustee appointed by each Appointor and at least one co-chair.

5. Termination of office

A Trustee shall cease to hold office if he or she:

- (a) is removed from office by the Appointor;
- (b) retires from office by giving written notice to the Trustees or the secretary of the Trust;
- (c) completes his or her term of office;
- (d) refuses to act;

- (e) is absent without leave from 3 consecutive ordinary meetings of the Trustees; or
- (f) ceases to qualify as an officer of a charitable entity under section 16 of the Charities Act 2005.

6. **Record of changes of Trustees**

Upon every appointment, retirement, re-appointment or termination of office of any Trustee the Trustees will ensure that an entry is made in the minute book of the Trust to that effect and that any statutory requirements as to the vesting of the Trust Fund in the Trustees and the notification of the appointment are satisfied.

7. **Validity of Proceedings**

- 7.1 Where, for any reason, a Trustee is not properly appointed, re-appointed or is disqualified from holding office, anything done by that Trustee (or by a meeting at which that Trustee was present as a Trustee) before discovery of the irregularity, shall be as valid as if that Trustee had been duly appointed, re-appointed or had not been disqualified (as the case may be).
- 7.2 If at any time the Trustees number less than the minimum number of Trustees required by the Trust Deed, anything done by the continuing Trustees in accordance with the provisions of the Trust Deed pending the appointment of a new Trustee or Trustees shall be as valid as if the requirement for a minimum number of Trustees had been met during that period.

8. **Appointment of secretary and others**

The Trustees may appoint a secretary and any other officers or employees that the affairs of the Trust may require on such terms and conditions as they think fit. The Trustees may also remove and replace any persons so appointed.

9. **Ordinary meetings**

- 9.1 The Trustees shall meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Trust, but in any event at least twice in each Income Year.
- 9.2 At their first ordinary meeting held after the date that is four months from the Balance Date for the relevant Income Year (other than the first Income Year) the Trustees shall present a report dealing with the affairs of the Trust, supported by a statement of the Trust's income and expenditure during the previous Income Year and a statement of its assets and liabilities at the end of that Income Year.
- 9.3 At an ordinary meeting held no sooner than the third anniversary of the date of this deed and no later than the fifth anniversary of the date of this deed, and at an ordinary meeting held periodically thereafter every three to five Income Years, the Trustees shall report on and review the activities and governance of the Trust to ensure that the Trust is carrying on its charitable purposes in a manner that is satisfactory to the Trustees and each of the Appointors.

10. **Special meetings**

A special meeting may be called at any time by two (2) or more Trustees, provided that at least one of those Trustees is the co-chair.

11. **Conduct of meetings**

All meetings of the Trustees shall be confidential. No members of the public other than employees of the Trustees or the Board (as the case may be), or employees or officers of the Appointors shall attend without the consent of all the Trustees then present and voting.

12. **Notice of meetings**

12.1 Subject to clause 18.2 of the Trust Deed, written notice of every Annual General Meeting and every ordinary or special meeting shall be either hand-delivered, posted, or sent by facsimile or email to each Trustee at least (14) days before the date of the meeting. The secretary or some other person acting under the direction of the Trustees or, in the case of a special meeting, acting under the direction of those Trustees calling the meeting, shall give the notice of the meeting. No notice shall be required for adjourned meetings.

12.2 Every notice of a meeting shall state the place, day and time of the meeting, and in the case of a notice of a special meeting, shall also state the subject-matter of the meeting.

12.3 The requirement for notice of a meeting may be waived if all of those Trustees who are for the time being in New Zealand give their written consent to such a waiver.

13. **Interested Trustee may not take part in deliberations or vote**

An interested Trustee may not take part in the deliberations or vote in relation to any transaction with the Trust where that Trustee is interested, and but may:

- (a) attend a meeting of the Trustees and be counted as part of the quorum;
- (b) sign a document relating to the transaction on behalf of the Trust; and
- (c) do anything else as a Trustee in relation to the transaction, as if he or she were not interested in the transaction.

14. **No Council control**

If both of the Southland District Council Trustees and/or both of the Environment Southland Trustees are in attendance at a meeting of the Trustees, and the aggregate number of Southland District Council and Environment Southland Trustees in attendance at the meeting is equal to or greater than fifty percent (50%) of the total number of Trustees in attendance at the meeting, then:

- (a) only one Southland District Council Trustee and one Environment Southland Trustee in attendance at the meeting shall be entitled to vote at the meeting; and

- (b) any other Southland District Council and/or Environment Southland Trustee in attendance at the meeting shall abstain from voting at that meeting,

provided that nothing in this rule 14 shall in any way derogate from or restrict the entitlement of Trustees in attendance at the meeting that are not Southland District Council Trustees or Environment Southland Trustees to vote at that meeting;

15. **Co-chairs**

The Awarua Rūnanga and Environment Southland shall respectively appoint one (1) of the Ngai Tahu Trustees and one (1) of the Environment Southland Trustees to the role of co-chair of meetings of the Trustees and determine the term of his or her office as co-chair. The co-chairs shall jointly if both present take the chair at all the meetings of the Trustees. The co-chairs shall not have a casting vote either individually or jointly.

16. **Adjournment**

If a quorum is not present within 30 minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. The co-chair or co-chairs may adjourn any meeting on the adoption of a resolution for its adjournment.

17. **Committees**

The Trustees may appoint sub-committees, ad hoc committees or executive committees as they may from time to time think expedient for carrying out the purposes of the Trust. Any such committee may co-opt any other person, whether a Trustee or not, to be a member of that committee. Subject to these rules and to any directions that the Trustees might give, each committee may regulate its own procedure.

18. **Resolutions**

- 18.1 Except where these rules or the Trust Deed provide otherwise, a resolution is validly made when it is passed by at least 5 of the Trustees, then in office present and voting at a duly convened and conducted meeting of the Trustees.
- 18.2 A written resolution signed by all the Trustees of the Trust shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees. Such a resolution may comprise several duplicated documents, each signed by one or more of the Trustees.

19. **Minutes**

- 19.1 The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.

19.2 Any minute of the proceedings at a meeting which is purported to be signed by each of the co-chairs of that meeting or by each of the co-chairs of the next succeeding meeting shall be evidence of those proceedings.

19.3 Where minutes of the proceedings at a meeting of the Trustees have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

20. **Teleconference Meetings**

For the purposes of these rules a Teleconference Meeting between a number of Trustees or committee members who constitute a quorum, together with the secretary or another person acting as a secretary, shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to Teleconference Meetings so long as the following conditions are met:

- (a) all of the Trustees or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a Teleconference Meeting and to be linked for the purposes of such a meeting. Notice of a Teleconference Meeting may be given on the telephone or by email;
- (b) throughout the Teleconference Meeting each participant and the secretary or person acting as a secretary must be able to hear each of the other participants taking part;
- (c) at the beginning of the Teleconference Meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- (d) a participant may not leave the Teleconference Meeting by disconnecting his or her telephone or other means of communication without first obtaining the express consent of both of the co-chairs. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the Teleconference Meeting unless he or she leaves the meeting with the express consent of both of the co-chairs;
- (e) a minute of the proceedings at the Teleconference Meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by both of the co-chairs of that meeting and by the secretary or person acting as a secretary.

21. **Audit**

Subject to any audit or other reporting requirements from time to time imposed by statute, if the Trustees at any time resolve to appoint an auditor then they will ensure that the financial statements of the Trust for each Income Year are audited by a chartered accountant in public practice within 4 months after the end of that Income Year or in time to be available for the first ordinary meeting of

the Trust in each Income Year (other than the first Income Year). The person appointed as auditor must not be a Trustee.

22. **Control of funds**

All money received by or on behalf of the Trust shall be paid immediately to the credit of the Trust in an account or accounts with a Bank or Banks selected from time to time by the Trustees. All cheques and other negotiable instruments, withdrawal slips and receipts for money shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) on behalf of the Trust in such manner as the Trustees decide from time to time.

23. **Custody and use of common seal**

If the Trustees become incorporated as a board under the Charitable Trusts Act 1957 they shall have custody of the common seal, and from time to time by resolution they may adopt any seal they think fit. The common seal must not be affixed to any document unless the Trustees have already authorised its use on that document. When a document is to be sealed on the prior authority of the Trustees the seal must be affixed to the document in the presence of two Trustees who must sign the document.

THIRD SCHEDULE

