



**The Ordinary Meeting of the
Kawerau District Council will be held
on Tuesday 24 November 2020
in the Council Chamber commencing
at 9.00am**

AGENDA

GUIDELINES FOR PUBLIC FORUM AT MEETINGS

1. A period of thirty minutes is set aside for a public forum at the start of each Ordinary Council or Standing Committee meeting, which is open to the public. This period may be extended on by a vote by members.
2. Speakers may address meetings on any subject. However, issues raised must not include those subject to legal consideration, or be issues, which are confidential, personal, or the subject of a formal hearing.
3. Each speaker during the public forum is permitted to speak for a maximum of three minutes. However, the Chairperson has the discretion to extend the speaking time.
4. Standing Orders are suspended for the duration of the public forum.
5. Council and Committees, at the conclusion of the public forum, may decide to take appropriate action on any of the issues raised.
6. With the permission of the Chairperson, members may ask questions of speakers during the period reserved for public forum. Questions by members are to be confined to obtaining information or clarification on matters raised by the speaker.

**Minutes of an Ordinary Meeting of the Kawerau District Council
held on Tuesday, 27 October 2020
in the Council Chamber commencing at 9.06am**

Present: His Worship the Mayor M J Campbell
Deputy Mayor F K N Tunui
Councillor B J Julian (9.08am)
Councillor A Rangihika
Councillor W Godfery
Councillor D Sparks

In attendance: Chief Executive Officer (R George)
Manager, Operations & Services (H van der Merwe)
Manager, Finance & Corporate Services (P Christophers)
Communications Manager (T Humberstone)
Administration Officer (T Barnett)

Apologies

Resolved **Deputy Mayor Tunui / Councillor Sparks**

That apologies from Councillor Kingi and Councillor Savage are received.

Leave of Absence

Resolved **Deputy Mayor Tunui / Councillor Sparks**

Councillor Ion

Opening Prayer

Pastor Paul Heke opened the meeting with a prayer.

Public Forum

Tracy-Ann Hill

Inquired how long it would be before our water is metered.

Has concerns that Council can issue non-compliance fines for vehicles. Requested list of Enforcement Officers to be made public.

Brett Pacey

Requested an update on the crossing in front of the Police Station he has previously inquired about.

Mentioned that the kerbing along 1-27 River Road is deteriorated, and asked if this can be tidied up in conjunction with the overhead power lines along River Road that look unsightly.

Would like Council to address the potholes in front of Galway Street Dairy as a Health and Safety issue.

Would like to see more information available in the property files.

Anne Kubler

Requested an update on the Exceloo toilet door. Manager, Operations and Services is still finding a solution.

Raewyn Geary

Would like the door on the upstairs Council toilets to be upgraded to accommodate people with disabilities.

Inquired if there was any long term plan to upgrade the lift as it was difficult to use without assistance.

Stuart MacGregor

Would like to see Covenant 1.1 (g) revoked in the Bowen Street subdivision registered covenants and asked Council to give it due consideration.

Alistair Holmes

Questioned whether the speed hump by the pool was still necessary and still has concerns with the speed hump on Glasgow Street / Fenton Street.

Declarations of Conflict of Interest

No Conflict of Interest declared.

1 CONFIRMATION OF COUNCIL MINUTES

1.1 Ordinary Council – 29 September 2020

Correction:

- Page 3 – Item 3 – Change the Action Item to clearer define the purpose of the meeting with the Trustee of Rautahi Marae.

Resolved

Councillors Sparks / Julian

That the Minutes of the Council meeting held on 29 September 2020 are confirmed as a true and accurate record.

2 RECEIPT OF COMMITTEE MINUTES

2.1 Regulatory and Services Committee – 13 October 2020

Resolved

Councillor Julian / Deputy Mayor Tunui

That the Minutes of the Regulatory and Services Committee meeting held on 13 October 2020 are confirmed as a true and accurate record.

2.2 Community Awards Committee – 8 September 2020

Resolved **Councillor Sparks / His Worship the Mayor**

That the Minutes of the Community Grant Scheme Committee meeting held on 8 September 2020 are confirmed as a true and accurate record.

3 Action Schedule (101120)

Resolved **Councillors Julian / Sparks**

That the updated Action Schedule of resolutions/actions requested by Council is received.

4 His Worship the Mayor's Report

Resolved **His Worship the Mayor / Deputy Mayor Tunui**

That His Worship the Mayor's report for the period Wednesday, 23 September to Tuesday, 20 September 2020 is received.

5 Request for Closure of Alleyway – Fenton Street to Pollen Street (Customer Services Manager) (408140)

Resolved **Councillors Rangihika / Godfery**

- 1. That the report "Request for Closure of Alleyway – Fenton Street to Pollen Street" is received.*
- 2. That Council approves the request to close the Fenton Street / Pollen Street alleyway subject to the community feedback and the period for providing feedback will be 1 month.*

11 Exclusion of the Public

Resolved **Deputy Mayor Tunui / Councillor Sparks**

That the public is excluded from the following part of the proceedings of this meeting, namely:

- 1. Residential Sections – Registered Covenants*
- 2. Water Supply Reticulation Tenders*

The general subject of the matter to be considered while the public is excluded; the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Information & Meetings Act 1987 for the passing of this resolution is as follows:

General Subject of the matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
1. Residential Sections – Registered Covenants. 2. Water Supply Reticulation Tenders.	<i>Maintain the effective conduct of public affairs through the free and frank expression of opinions.</i>	<i>That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists. Section 48 (1) (a) (i)</i>

This resolution is made in reliance on Section 48(1) (a) of the Local Government Official Information & Meetings Act 1987 and the particular interest or interests protected by Section 7 (2) (b) (i) of that Act.

Following the resumption of open meeting

Meeting Closed 10.47am

M J Campbell

Mayor

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**Minutes of the Regulatory & Services Committee
held on Tuesday, 10 November 2020
in the Council Chamber commencing at 9.00am**

Present: Councillor C J Ion (Chairperson)
His Worship the Mayor M J Campbell
Deputy Mayor F K N Tunui
Councillor B Julian
Councillor W Godfery
Councillor A Rangihika
Councillor D Sparks
Councillor R G K Savage

In Attendance: Chief Executive Officer (R George)
Manager, Finance and Corporate Services (P Christophers)
Manager, Planning, Compliance and Capability (C Jensen)
Manager, Operations and Services (H van der Merwe)
Manager, Economic and Community Development (G Sutton)
Events and Venues Manager (L Barton)
Administration Officer (T Barnett)

Apologies

Resolved

Councillors Sparks / Godfery

That apologies from Councillor Kingi are received.

Public Forum

Alistair Holmes

Thanked the Amenity Gardens Team for their work around the town.

Questioned if we have changed our policy on the berms in town, as they are looking untidy. The Manager, Operations and Services responded by saying due to staff vacancies they were a bit behind on the mowing but hoped to be caught up in the near future.

Declarations of Conflict of Interest

No conflict of interest were declared.

PART A – REGULATORY

1 Monthly Report - Regulatory and Planning Services (340000)

The Committee discussed a report from the Manager, Planning, Compliance and Capability covering activities for the month of October 2020.

Action Item

The Committee asked for a report to Council on the number of licensed premises per Town or City per capita of population.

Resolved

Deputy Mayor Tunui / Councillor Julian

That the report from the Manager, Planning, Compliance and Capability on Regulatory and Planning Services activities for the month of October 2020 is received.

PART B – NON REGULATORY

2 Monthly Report - Finance and Corporate Services (211000)

The Committee discussed a report from the Manager, Finance and Corporate Services covering activities for the month of October 2020.

Resolved

Councillors Julian / Deputy Mayor Tunui

That the report from the Manager, Finance and Corporate Services for the month of October 2020 is received.

3 Monthly Report - Operations and Services (440000)

The Committee discussed a report from the Manager, Operations and Services covering activities for the month of October 2020.

Resolved

Councillors Sparks / Savage

That the report from the Manager, Operations and Services for the month of October 2020 is received.

4 Monthly Report - Economic and Community Development (309005)

The committee discussed a report from the Manager, Economic and Community Development covering activities for the month of October 2020.

Resolved

Councillors Ion / Julian

That the report from the Economic and Community Development Manager for the month of October 2020 is received.

5 Monthly Report – Events and Community Activities (Events and Venues Manager) (340000)

The Committee discussed a report from the Events and Venues Manager covering events and community activities for the month of October 2020.

Resolved

Councillors Julian / Rangihika

That the report from the Events and Venues Manager for the month of October 2020 be received.

6 NZCT Funding Application to Extend the Tarawera and Kawerau Trails Project Development Manager Contract (Events and Venues Manager) (340000)

The Committee discussed a report requesting the approval for the funding application for the NZCT Funding Application to Extend the Tarawera and Kawerau Trails Project Development Manager.

Resolved

His Worship the Mayor / Deputy Mayor Tunui

1. *That the report "NZCT Funding Application to Extend the Tarawera and Kawerau Trails Project Development Manager Contract" be received.*
2. *That Council approves the funding application for this targeted project to be prepared and submitted to:*
 - *New Zealand Community Trust (NZCT) for \$30K.*

The meeting closed at 9.48 am

C J Ion

Chairperson

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**Kawerau District Council Minutes of an
Audit & Risk Committee Meeting held on 17 November 2020
In the Council Chamber commencing at 1.01pm**

Present: Philip Jones – P J Associates (Chair)
His Worship the Mayor M J Campbell (Deputy Chair)
Councillor F K N Tunui
Councillor C J Ion
Councillor A Rangihika
Councillor D Sparks

In attendance: Chief Executive Officer (R George)
Manager, Finance & Corporate Services (P Christophers)
Manager, Compliance and Capability (C Jensen)
Health and Safety Officer (P Snook)
Office Administrator (T Barnett)

Apologies

No apologies.

Declarations of Conflict of Interest

No conflicts of interest were received.

1 Confirmation of the Audit & Risk Committee Meeting Minutes dated 14 September 2020

The Committee considered the Minutes of the Audit & Risk Meeting on 14 September 2020.

Resolved **Councillors Sparks / Rangihika**

That the Minutes of the Audit & Risk Committee meeting held on 14 September 2020 is confirmed as a true and accurate record.

2 Occupational Health and Safety Management System Status (Health and Safety Officer) (509500)

The Health and Safety Officer provided an overview of his report.

Action Item

Health and Safety Officer to give an update at the next meeting on the outstanding recommendations for Firmin Lodge Facility – Health and Safety Observations.

Resolved **Councillors Sparks / Ion**

That the report "Occupational Health and Safety Management System Status" is received.

3 Treasury Report to 31 October 2020 (Manager, Finance and Corporate Services) (110551)

The Manager, Finance & Corporate Services explained that the Treasury report expanded on his monthly report to the Regulatory & Services Committee.

Action Item

The Manager, Finance and Corporate Services to give an update at the next meeting on Council's Treasury Policy.

Resolved **His Worship the Mayor / Deputy Mayor Tunui**

That the report "Treasury Report to 31 October 2020" is received.

4 Residential Development – Progress and Risk Analysis Update (Manager, Finance and Corporate Services) (206700)

The Committee discussed the Residential Developments – Progress and Risk Analysis Update.

Resolved **Chair Jones / Sparks**

That the report "Residential Developments (Bowen Street, Te Arika Place and River Road) - Progress and Risk Analysis Update" is received.

5 Proposed Insurance Policies for 202/21 (Manager, Finance and Corporate Services) (201000)

The Committee discussed the report Proposed Insurance Policies for 2020/21.

Resolved **Councillor Ion / Deputy Mayor**

1. *That the report "Proposed Insurance Policies for 2020/21" is received.*
2. *That a further report go to Council which highlights:*
 - *The re-insurance process.*
 - *If the excesses are appropriate.*
 - *If there are other policies (insurance), that should be added.*
 - *Assessment of benefit of using brokers and if there were cheaper options.*

The meeting closed at 1.45pm

P Jones

P J Associates

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KAWERAU DISTRICT COUNCIL

**Minutes of the Creative Communities Scheme Assessment Committee
held on Wednesday 18 November 2020
in the Council Chambers commencing at 1.00pm**

Present: Warwick Godfery (Councillor)
Trish Brady (Arts Representative)
Bernie Milne (Arts Representative)
Skarlett Starr (Community Representative)
Irma Hoani (Community Representative)
Kelly Johnson (Iwi Representative)

In Attendance: Theresa Barnett (Office Administrator)

Due to the Chair not being present, Councillor Godfery took the chair.

Karakia:

Councillor Godfery opened the meeting with a prayer

Declaration of Conflicts of Interest

Bernie Milne stated that she had a conflict of interest with the first and third application from Kawerau Photography Group Exhibition and the Kawerau Art Society and Trish Brady stated she had a conflict of interest with the second application being her own application for funding.

1. Confirmation of Minutes of The Creative Communities Scheme Assessment Committee Meeting held on 23 June 2020

Resolved

Johnson / Starr

That the Minutes of the Kawerau Assessment Committee for the Creative Communities Scheme meeting held on 23 June 2020 are confirmed as a true and correct record.

2. Return of Project Completion Reports

Due to Covid-19 none of last rounds participants have been able to complete their projects.

Resolved

Starr / Brady

That the information is received.

3. Funding Application Summary 2020/21 Funding Round

Councillor Godfery reiterated to members the assessment criteria to be used for each application and requested that each application be scored accordingly.

Resolved

That the Funding Application Summary for the 2020/21 Funding Round is received.

The committee assessed each application and scored the applications as follows:

	Applicant	Ave Score (out of 100)
	Kawerau Photography Group Exhibition	80
	Patricia Brady	87
	Kawerau Arts Society	88

3.1 Kawerau Photography Group Exhibition

Committee member Bernie Milne declared an interest and left the room (1.20) and returned (1.30) after discussion of the application had concluded.

Amount requested: \$1946.00 (GST inclusive)

Purpose: Developing photography skills to create an exhibition of members work for viewing.

That funding of \$1946.00 excluding GST is approved.

3.2 Patricia Brady

Committee member Trish Brady declared an interest and left the room (1.35) and returned (1.40) after discussion of the application had concluded.

Amount requested: \$1318.62 (GST inclusive)

Purpose: To paint a mural on her fence.

That funding of \$1318.62 including GST is approved.

3.3 Kawerau Arts Society

Committee member Bernie Milne declared an interest and left the room (1.43) and returned (1.50) after discussion of the application had concluded.

Amount requested: \$2484.00 (GST inclusive)

Purpose: A membership drive through the provision of affordable art demonstrations for all people in Kawerau.

That an allocation of \$2484.00 including GST is approved.

The meeting closed at 1.57pm with a karakia from Kelly Johnson

S Kingi
Chairperson

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Action Schedule

Meeting Date	Resolution / Action Requested	Action	Status	Comments	Estimated Completion Date
Council 26.06.18	<p>Eastern Bay Road Safety Committee</p> <p>Councillor Marjoribanks raised a concern about the poor quality of the railway crossing on SH34 and road dip Kawerau side of the SH34 at the overbridge. Councillor Julian mentioned the poor road quality of Tamarangi Drive (coming down the hill into Kawerau). The Manager, Operations & Services to raise with NZTA.</p> <p><u>Council Meeting – 28 August 2018</u></p> <p>The Mayor noted a complaint about the railway crossing and stated NZTA should be advised that this is an issue and get it done urgently.</p>	MOS	Pending	Some remedial work was carried out on the rail crossing and Tamarangi Drive had a reseal in 2019. Issues are regularly raised at any meetings with NZTA and at the Regional Land Transport Committee.	Dependent upon NZTA.
R&S 12.02.19	<p>Monthly Report - Finance & Corporate Services</p> <p>Advise Council whether insurance will be paid for the bridge repair work <u>26.05.20</u></p> <p>Staff were asked to contact Council's lawyers and request arbitration.</p>	MFCS	In progress	Council's lawyers sought further information from consultant (Opus) regarding whether the bridge could have been repaired in situ or required removal. Opus have completed the report and Council lawyers are negotiating with Trident's insurers.	Ongoing
Council 30.04.19	<p>Action Schedule</p> <p>Councillor Kingi noted the poor lighting between the Rautahi Marae drive-way to the other side of the Cosmopolitan Club</p>	MOS	In Progress	Investigation was completed in August. New Streetlights to be installed, NZTA funding applied.	2020/2021 Financial Year

Meeting Date	Resolution / Action Requested	Action	Status	Comments	Estimated Completion Date
R&S 16.07.19	Earthquake Prone Buildings The Committee expressed a desire to understand what was required for Rautahi Marae and then to discuss the issues with Trustees.	MPCC	In Progress	A report on CDEM status will be provided to a Council workshop. Council can then determine their next steps.	December Workshop 2020
A&R 17.12.19	Review of Revenue and Financing Policy Amend Council's Revenue and Financing Policy for 2021/22 so that it matches the practice adopted by Council.	MFCS	In Progress	Council will review the Revenue and Financing Policy as part of the preparation of the 2021 – 31 Long Term Plan	During 2020/21
A&R 04.02.20	Council's Risk Maturity – Improvement Programme Arrange KPMG to review Council's Risk Management Maturity profile once the tasks in progress/underway are completed.	MFCS	In Progress	There are still a couple of tasks remaining. Following their completion, a further review will be undertaken.	November 2020
Council 26.05.20	Results of 2020 NRB Survey Elected Members agreed to review the way in which Council engages community satisfaction.	CEO	Pending	The Leadership Team will review how to measure community satisfaction for 2022-2023 and report to Council.	March 2021
R&S 16.06.20	Monthly Report – Operations & Services Elected Members requested a report on the downstairs ladies toilets.	EM	In Progress	Minor works will commence in December. A full report will be provided to Elected Members in February.	February 2021
R&S 16.06.20	Maurie Kjar Memorial Pool Further discussion is needed and possible input from the community on the new hours.	PRM	In Progress	A workshop will be held with Elected Members in February.	February 2021
R&S 16.06.20	KDC Traffic Calming Measures Elected Members requested a report to Council on the safety aspects of speed humps around Kawerau schools.	EM	In Progress	A report will be provided to Elected Members in December.	December 2020

Meeting Date	Resolution / Action Requested	Action	Status	Comments	Estimated Completion Date
R&S 14.07.20	Monthly Report - Operations & Services Elected Members requested an update on the status of CCTV cameras, where vandalism had been occurring and a mobile camera be put in the carpark behind the Library. R&S 13.10.20 Monthly Report – Economic & Community Development The Manager, Operations & Services to investigate the logistics in the installation of a mobile camera at the Community gardens.	MFCS / MOS	In Progress	A verbal update was provided to Elected Members. A mobile camera has been installed in an area subject to repeated vandalism. A workshop will be held with Elected Members to discuss mobile cameras.	Completed December 2020
A&R 17.11.20	Occupational Health and Safety Management System Status Report The Committee requested an update on the outstanding recommendations for Firmin Lodge facility – health and safety observations.	HSO /EM	In Progress	The outstanding recommendation was a speedhump installed at Firmin Lodge. The Health and Safety Officer has contacted the Engineering Manager to arrange installation.	
A&R 17.11.20	Treasury Report The Committee requested an update on Council's Treasury Policy.	MFCS			

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OC: Ordinary Council

EC: Extraordinary Council

R&S: Regulatory & Services Committee

A&R: Audit & Risk Committee

MOS: Manager, Operations & Services

MFCS: Manager, Finance & Corporate Services

MPCC: Manager, Planning, Compliance & Capability

ECDM: Economic & Community Development Manager

Completed Items

Meeting Date	Action	Comments
R&S 10.09.19	<p>Monthly Report – Operations & Services Roading – Manager, Operations and Services to include for consideration a speed hump for Tuwharetoa Road as well as others previously identified.</p>	<p>Installation of speed humps was completed in November 2020.</p>
A&R 15.05.20	<p>Occupational Health and Safety Management System Status The Health & Safety Officer will organise for the Engineering Manager to provide an update to Councillors on the status of the Netball Pavilion and preference for reinstatement or demolition.</p>	<p>An update was provided to Elected Members on 19 May 2020 and a workshop was held on 10 November 2020.</p>
R&S 10.11.20	<p>Monthly Report - Regulatory and Planning Services The Committee asked for a report to Council on the number of licensed premises per Town or City per capita of population.</p>	<p>Enquiries of the Alcohol, Regulatory and Licensing Authority indicate that such specific data is not available. A research report (Feb 2018) published by the Health Promotion Agency has been circulated.</p>

Meeting Council
Meeting Date: 24 November 2020
Subject: His Worship the Mayor's Report
File No. 101400

1 Purpose

The purpose of this report is to outline meetings, functions and events that I have hosted, attended and/or participated in from the period Wednesday, 21 October to Tuesday 17 November 2020.

October

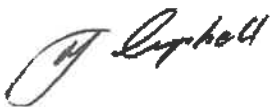
- Monthly Council Meeting
- Catch-up with Tuwharetoa Kaumatua Te Haukaka (Boycie) Te Rire
- LGNZ Zone 2 Meeting, Paeroa
- Kawerau King of the Mountain Race

November

- Opening of new wing at Mountain View Resthome
- Eastern Bay of Plenty Mayors Taskforce for Jobs / ITO Graduation Ceremony
- Porritt Glade Lifestyle Village Residents Meeting
- Regulatory & Services Committee Meeting
- Tarawera High School Senior Prizegiving
- Audit & Risk Committee Meeting

2 RECOMMENDATION

That His Worship the Mayor's report for the period Wednesday, 21 October to Tuesday 17 November 2020 be received.



Malcolm Campbell, JP
Mayor

Meeting: Council

Meeting Date: 24 November 2020

Subject: Annual Plan Performance for the Three months ended 30 September 2020

File No.: 110400

1 Purpose

The purpose of this report is to review and compare Council's actual financial and non-financial performance to 30 September 2020 with what is in the Annual Plan for 2020/21.

Comments are provided where expenditure/revenue is likely to vary from the budget by year end, and the performance target may not be achieved for the year.

A summary of this report will also go to the Audit and Risk Committee.

2 Financial Performance

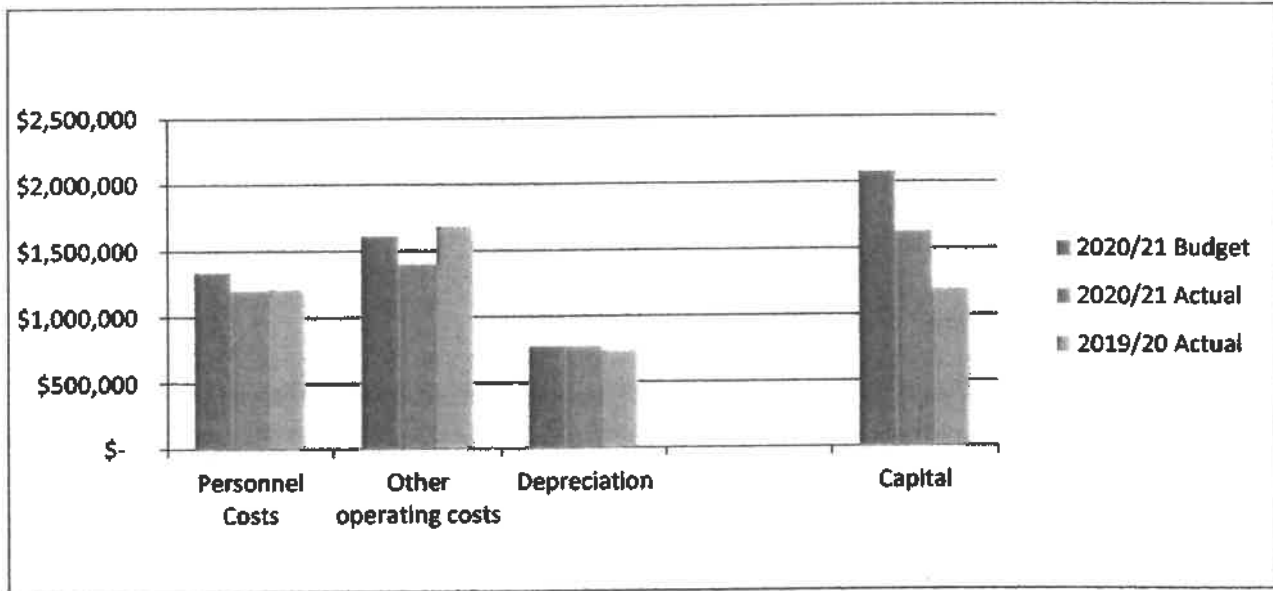
2.1 Statement of Comprehensive Revenue and Expense

The following table shows Council's financial performance to date, the annual budget and the amended annual budget. The amended budgets include the carried forward figures as well as any budget amendments approved by Council.

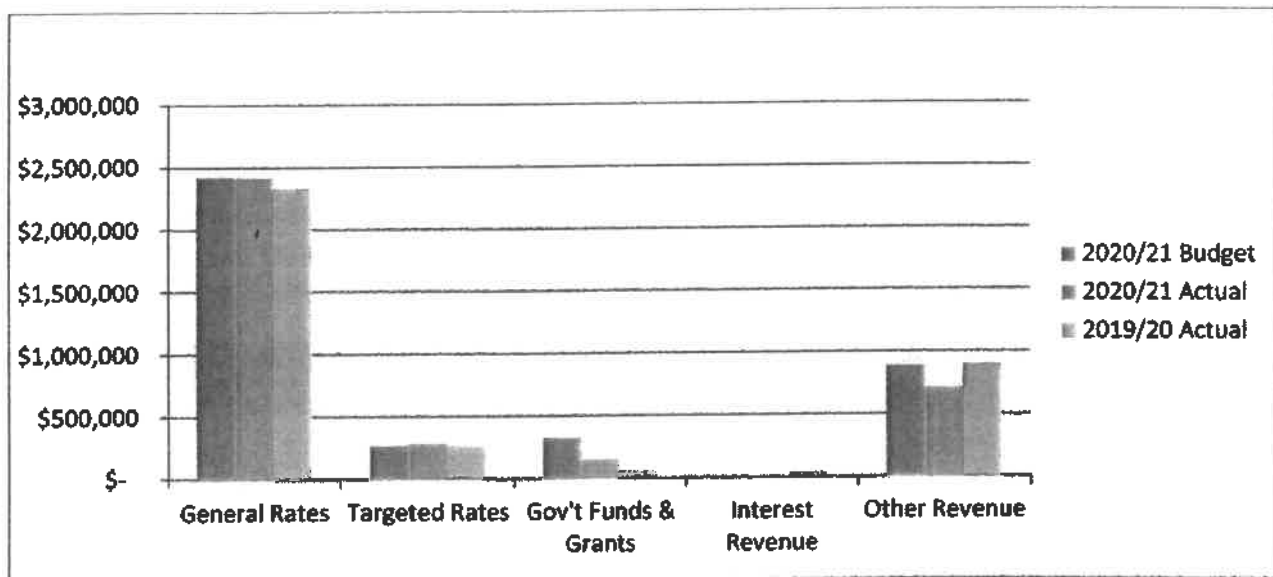
	Adopted Budget	Amended Budget	Actual 30-9-20	Comments
Revenue:	\$	\$	\$	
Rates	10,751,220	10,751,220	2,685,384	
Subsidies and Grants	1,393,820	1,840,820	146,673	Roadwork done in 2 nd half of year
Interest Revenue	28,310	28,310	7,082	
Fees and Charges	2,784,730	2,784,730	716,189	
Other Revenue	69,000	69,000	5,636	Petrol Tax
Total Revenue	15,027,080	15,474,080	3,560,964	
Expenditure:				
Personnel Costs	5,366,150	5,366,150	1,200,944	On track
Depreciation	3,082,300	3,082,300	772,009	
Finance Costs	6,210	6,210	943	
Other Expenses	6,215,870	6,285,870	1,395,123	There will be additional expenditure for refuse disposal, KPTW & events
Total Expenditure	14,670,530	14,740,530	3,369,019	
Surplus (Deficit)	356,550	733,550	191,945	

Council's expenditure and revenue for the three months to 30 September 2020 are shown in the graphs below, compared to the budget and expenditure/revenue for 2018/19.

Expenditure to 30 September 2020



Revenue to 30 September 2020



2.2 Statement of Financial Position

The following shows Council's financial position at 30 September 2020 compared to the budget (at 30 June 2021). The financial position does not include all the final accruals for receivables and payables.

	Budget @ 30/6/2021	Actual to 30 Sept 2020	Comments
Assets:			
Current assets:			
Cash & cash equivalents	\$2,648,950	\$3,734,418	
Receivables	\$1,377,790	\$874,583	
Inventories	\$1,495,800	\$1,219,632	Includes residential developments
Non-current assets:			
Property, plant and equipment	\$68,517,750	\$67,615,602	
Intangible assets	\$85,100	\$55,926	
Other financial assets	\$36,250	\$36,252	
Total Assets	\$74,161,640	\$73,536,413	
Liabilities:			
Current liabilities:			
Payables, provisions & employee benefits	\$3,136,260	\$1,995,482	
Borrowing	\$10,340	\$15,226	
Non-current liabilities:			
Provisions & employee benefits	\$249,530	\$237,481	
Borrowing	\$9,560	\$19,917	
Total Liabilities	\$3,405,690	\$2,268,106	
Ratepayers Equity	\$70,755,950	\$71,268,307	
Total liabilities & ratepayers equity	\$74,161,640	\$73,536,413	

2.3 Statement of Cashflow

The cashflow statement shows a reduction of \$59.1 k in Council's cash position up to 30 September 2020.

	Budget @ 30/6/2021	Actual to 30 June 2020	Comments
Cashflow from operating activities:			
Rates	\$10,620,810	\$2,766,418	
Subsidies	\$1,393,820	\$500,941	
Fees & Charges	\$2,853,730	\$738,697	
Interest Received	\$28,310	\$40,373	
Payments to suppliers and employees	\$(11,468,730)	\$(3,714,265)	
Interest paid on debt	\$(6,200)	\$(943)	
Net cashflow from Operations	\$3,421,740	\$331,221	
Net cashflow from investing:			
Disposal of Assets	\$1,860,000	\$1,240,000	
Property, Plant & Equipment purchase (less asset disposals)	\$(6,350,250)	\$(1,625,517)	
Net cashflow from investing:	\$(4,490,250)	\$(385,517)	
Net cashflow from financing:			
Debt repayment	\$(20,030)	\$(4,827)	
Net cash inflow/(outflow)	\$(1,088,540)	\$(59,123)	
Opening balance (1/7)	\$3,737,490	\$3,794,541	Includes investments > 3 months
Closing cash balance	\$2,648,950	\$3,734,418	

3 Non-Financial Performance

The following is a summary of the non-financial targets performance to date:

Activity	2020/21 No. of Targets	On track to achieve	2019/20 Achievement Rate
Democracy	5	5	38%
Economic & Community Development	7	7	67%
Environmental Services (excludes N/As)	18	18	37%
Roading (including Footpaths)	7	6	44%
Stormwater	3	3	100%
Water Supply	12	11	77%
Wastewater	7	5	63%
Solid Waste Management	4	4	63%
Leisure and Recreation	16	14	40%
TOTAL	79	73	51%

4 Capital Expenditure

The following is Council's capital budget (including carry forwards and amendments) and expenditure for the year.

Activity	2020/21 Budget	Actual	Comments
Economic & Community Development	\$1,523,740	\$904,174	Residential developments – River Road
Environmental Services	\$720,000	\$5,369	Dog Pound building
Roading	\$1,405,810	\$260,308	2 nd half of year
Stormwater	\$250,000	\$0	
Water Supply	\$2,517,150	\$155,179	
Wastewater	\$360,000	\$72,124	
Solid Waste	\$5,000	\$502	
Leisure & Recreation	\$1,165,970	\$35,377	
Plant, Depot and Office	\$353,080	\$188,751	New plant/vehicles, PCs & office building
Total	\$8,300,750	\$1,621,784	

5 RECOMMENDATION

That the report "Annual Plan Performance for the three months ended 30 September 2020" be received.



Peter Christophers, BBS, ACA
Manager, Finance & Corporate Services

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ACTIVITY GROUP 1: DEMOCRACY

Funding Impact Statement

	Budget	Actual
Operating funding – Rates & Charges (A)	\$737,014	\$184,220
Applications of operating funding – Staff & Suppliers (B)	\$713,920	\$188,840
Surplus (deficit) of operating funding (A - B)	\$23,094	\$(4,620)
Sources of capital funding (C)	\$0	\$0
Less (D):		
Renewals/capital	\$0	\$0
Increase/(decrease) in reserves	\$23,094	\$(4,620)
Surplus (deficit) of capital funding (C - D)	\$(23,094)	\$4,620
Funding balance ((A - B) + (C - D))	\$0	\$0

Statement of Service Provision

Levels of Service	Measures	Target	Status	Comment
Financial management is prudent, effective and efficient.	Percentage completion of the annual work programme.	>90%	On track	There are 102 projects in the annual work programme and significant progress has been made
Council provides quality democracy and representation to the Community.	Number of public meetings held (Committee and Ordinary Council).	11 Ordinary Council and 10 Committee meetings	Achieved to date	Every Council and committee meeting was publically notified. (3 Council and 3 R & S Committee meetings)
Council informs the Community about key issues and activities.	Number of visits to Council's website.	At least 44,000	On track	There were 14,677 visits to the council website to 30 September 2020.
	Number of newsletters.	At least 11	On track	7 newsletters were published to 30 September 2020
Council encourages the Community to contribute to Council decision-making.	Provision of a public forum at public Council and Committee meetings.	Every meeting	Achieved to date	Public forums have been provided for every council and committee meeting to date.

ACTIVITY GROUP 2: ECONOMIC AND COMMUNITY DEVELOPMENT

Funding Impact Statement

	Budget	Actual	Comment
Operating funding -- Rates & Charges (A)	\$2,311,837	\$446,900	
Applications of operating funding -- Staff & Suppliers (B)	\$2,132,840	\$433,603	
Surplus (deficit) of operating funding (A - B)	\$178,997	\$13,297	
Sources of capital funding (C)	\$1,860,000	\$1,240,000	Proceeds from unit sales (4)
Less (D):			
Renewals/capital	\$1,523,740	\$904,174	Development of retirement village
Increase/(decrease) in reserves	\$515,257	\$349,123	
Surplus (deficit) of capital funding (C - D)	\$(178,997)	\$(13,297)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Statement of Service Provision

Levels of Service	Measures	Target	Status	Comment
Economic Development				
Council is actively involved in the Eastern Bay of Plenty Regional Economic Development Agency.	Representation at Trustee Meetings.	Representation at 90% of Trustee meetings.	Achieved to date	CEO has attended all trustee meetings to date
Council is actively involved in the Industrial Symbiosis Project.	Allocation of resources to ISK.	0.5 FTE staff member allocated	Achieved to date.	ECD Manager manages ISK projects/programmes and CEO is standing member of ISK Steering Group.
Council provides a local information centre.	Number of days open each year.	At least 360 days.	On track	The i-SITE was open 92/92 days.
Council encourages positive perceptions of Kawerau by supporting local events.	At least 1 event ¹ held per month from February to December.	At least 1 event held per month from February to December.	Achieved to date	There was at least 1 event held for each month of the year to 30 September 2020
Council contributes to the continuation of successful events.	Council employs an Events Coordinator.	1 FTE Events Coordinator employed.	Achieved to date.	0.75 FTE Event Co-ordinator 1 FTE Events & Venues Manager Additional event support provided by Youth Projects Officer and Visitor Information Officers.
Council supports young people to develop skills and attitudes needed to take a positive part in society.	Youth Council in place.	Annual appointments made.	Achieved to date	Youth Council appointed March 2020 and sworn in.

¹ An 'event' is a public gathering of people for a distinctly defined celebratory, educational, commemorative or exhibition purpose. It occurs for a limited time and may be repeated on a cyclical basis (e.g. annually) but is not regularly scheduled (e.g. regular organised Saturday sport, a series of regular meetings, or ongoing gallery or commercial art exhibitions). Conferences are also considered to be events.

Levels of Service	Measures	Target	Status	Comment
	Satisfaction with youth council collaboration from collaborating groups	78% satisfaction	Achievement anticipated	Survey of collaborating groups undertaken later in year.

ACTIVITY GROUP 3: ENVIRONMENTAL SERVICES

Funding Impact Statement

Both revenue and expenditure are on target for these activities.

	Budget	Actual	Comment
Operating funding – Rates & Charges (A)	\$1,179,734	\$349,433	
Applications of operating funding – Staff & Suppliers (B)	\$1,210,350	\$253,218	Includes review of District Plan
Surplus (deficit) of operating funding (A - B)	\$(30,616)	\$96,215	
Sources of capital funding (C)	\$0	\$0	
Less (D):			
Renewals/capital	\$720,000	\$5,369	New dog pound
Increase/(decrease) in reserves	\$(750,616)	\$90,846	
Surplus (deficit) of capital funding (C - D)	\$30,616	\$(96,215)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Statement of Service Provision

Levels of Service	Measures	Target	Status	Comment
Building Control				
Service users consider Council's Building Control Activity to be effective	Satisfaction survey of service users - building consents processes	>90%	Achieved to date	1/1 satisfaction with building consent processes.
	Satisfaction survey of service users - building inspection processes	>90%	Achieved to date	3/3 satisfaction with building inspections.
Council provides in-house building consent, inspection and approval services	Bi-annual Building Consent Authority accreditation re-assessment	Accreditation and registration retained.	Achieved	IANZ routine assessment undertaken 26 – 29 November 2019. BCA accreditation has been retained for 2020/21
Relevant Kawerau buildings comply with Building Warrant of Fitness requirements.	Buildings audited for BWOF requirements	35%	On track	14/80 buildings audited.

Levels of Service	Measures	Target	Status	Comment
Building Control (continued)				
Swimming pools comply with statutory requirements	Survey to identify swimming pools in the District.	Survey and all follow up action undertaken.	N/A	Survey discontinued.
	Inspection of fencing for compliance – existing registered swimming pools.	35%	On track	2/44 (21.7%) inspected.
Environmental Health				
Customers consider Council's Environmental Health Activity to be effective.	Satisfaction of service users – Environmental health inspection processes	90%	On track	No survey forms returned to date.
	Audit of food premises operating Food Control Plans	100% annually.	On track	14/29
Registered premises comply with statutory requirements.	Inspection of registered premises for compliance with relevant standards.	100% annually.	Achievement anticipated	0/5 (100%)
	Inspection of licensed premises for compliance	100% annually.	On track	7/13
Premises licenced under the Sale and Supply of Liquor Act 2012 comply with the license conditions.	Weekday litter patrols.	At least 480 weekday patrols.	On track	130 weekday patrols to 30 September

Levels of Service	Measures	Target	Status	Comment
Environmental Health (continued).				
Council responds to complaints and service requests for environmental health conditions (noise, nuisance and conditions/health risks) complaints.	Response to noise complaints.	80% within 20 minutes and 98% within 30 minutes.	Achievement anticipated	68/70 within 30 minutes. 2 exceeded 30 minutes
	Response to other environmental health service requests/complaints.	100% within 1 working day.	Achieved to date	31/31 responses within 1 working day
Dog Registration and Control				
The level of dog registration is maximised.	Frequency of dog patrols.	At least 480 weekday and 345 after hours dog patrols.	On track	130 weekday patrols to date and 92 after hours patrols
	Annual District survey to detect unregistered dogs.	All residential properties surveyed and follow up action undertaken.	N/A	Survey discontinued
	Number of dogs on Council's register of known dogs that are unregistered.	None as at 30 April ²	On track	1,408/1491 (94.4%) of known dogs registered to date
Service requests about public nuisance and intimidation by uncontrolled dogs are actioned.	Adherence to complaint response process to respond, investigate and record the complaint and advise complainant of progress or the outcome within 24 hours.	80% within 20 minutes and 98% within 30 minutes.	Achieved to date	174/176 responses within 30 minutes 2/176 responses exceeded 30 minutes

² Date chosen to coincide with beginning of cycle for the ensuing year's registration programme.

Civil Defence					
<p>Council plans and provides for civil defence emergency management as required by the Civil Defence Emergency Management Act.</p>	<p>Kawerau District Civil Defence Emergency Management Plans are current and reviewed every three years.</p>	<p>All plans reviewed within past 3 years.</p>	<p>Achievement anticipated</p>	<p>6 plans are due to be reviewed</p>	
	<p>Emergency Operating Centre (EOC) is equipped and operational within two hours of the controller activating.</p>	<p>Staff are identified, trained and exercised twice each year</p>	<p>Achievement anticipated</p>	<p>29/30 staff were identified and 81% trained to date. Exercises to be held later in year.</p>	
	<p>Council delivers 4 public engagement initiatives to promote Community awareness, preparedness and resilience.</p>	<p>Initiatives delivered.</p>	<p>Achievement anticipated</p>		

ACTIVITY GROUP 4: ROADING

Funding Impact Statement

	Budget	Actual	Comment
Operating funding -- Rates & Charges (A)	\$1,443,051	\$340,264	
Applications of operating funding -- Staff & Suppliers (B)	\$1,092,180	\$255,209	
Surplus (deficit) of operating funding (A - B)	\$350,871	\$85,055	
Sources of capital funding (C)	\$858,900	\$112,396	
Less (D):			
Renewals/capital	\$1,405,810	\$260,309	Work delayed due to COVID-19
Increase/(decrease) in reserves	\$(196,039)	\$(62,858)	
Surplus (deficit) of capital funding (C - D)	\$(350,871)	\$(85,055)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Capital Renewals

Item	Budget	Actual	Comment
Kerb replacement	\$93,500	\$10,922	
Street light renewals and upgrades	\$81,500	\$0	
Reseals	\$134,000	\$0	
Pavement treatment	\$36,500	\$2,372	
Minor safety improvements (speed humps)	\$36,600	\$26,340	
Stormwater upgrade	\$596,000	\$0	Culverts
Footpath repairs	\$167,100	\$110,227	
Bins/seating/music system/lights	\$26,510	\$0	
Town centre video cameras	\$10,000	\$2,580	
Town centre - paving	\$210,000	\$105,128	
Carparks and turnarounds	\$14,100	\$2,740	
Total	\$1,655,180	\$260,309	

Statement of Service Provision

Levels of Service	Measures	Target	Status	Comment
Roading				
Council provides a network of roads which facilitates the safe movement of people and vehicles around the District.	The change from the previous financial year in the number of fatalities and serious injury crashes on the local road network, expressed as a number.	Increase of zero or less.	Achieved to date	There have been no fatalities/serious injuries on the roads controlled by Council.
Road Quality.	The average quality of ride on a sealed local road network, measured by smooth travel exposure. ³	Not less than 95%.	Achievement anticipated	Road roughness survey to be completed May 2021
Road maintenance.	The percentage of the sealed local road network that is resurfaced.	Between 5 and 6.5 % per annum.	Achievement anticipated	Resealing undertaken in summer
Response to service requests. (Roads)	The percentage of customer service requests relating to roads to which Council responds within the time frame specified.	Potholes: 90% within 14 days and 100% within 28 days.	Achieved to date	
		Streetlights: 90% within 14 days and 100% within 28 days.	Not Achieved	14 Streetlight outages reported. 5 responded to within 14 days and 4 exceeded 28 days to repair. 1 still in progress
Footpaths				
Footpath condition	Percentage of footpaths that fall within the level of service or service standard for the condition	95%. ⁴	Achievement anticipated	Survey Completed May 2021

³ The percentage of Vehicle Kilometres Travelled in the District exposed to roads with roughness less than the threshold for urban roads set by the National State Highway Strategy

⁴ Against a standard of no more than 20 lips in the 70 km of footpaths (each lip above 20 mm equates to three metres of footpath needing replacement).

Levels of Service	Measures	Target	Status	Comment
Response to service requests.	<p>The percentage of customer service requests relating to footpaths set out in the Long Term Plan.</p> <p>The percentage of customer service requests relating to footpaths to which Council responds within the time frame specified.</p>	100% within 14 days.	Achieved to date	1 service request received was attended to within 14 days.

ACTIVITY GROUP 5: STORMWATER

Funding Impact Statement

	Budget	Actual	Comment
Operating funding – Rates & Charges (A)	\$96,450	\$21,439	
Applications of operating funding – Staff & Suppliers (B)	\$43,550	\$7,695	
Surplus (deficit) of operating funding (A - B)	\$52,900	\$13,744	
Sources of capital funding (C)	\$187,500	\$0	
Less (D):			
Renewals/capital	\$250,000	\$0	
Increase/(decrease) in reserves	\$(9,600)	\$13,744	
Surplus (deficit) of capital funding (C - D)	\$(52,900)	\$(13,744)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Capital Renewals

Item	Budget	Actual	Comment
Stormwater pipe renewals	\$250,000	\$0	

Statement of Service Provision

Levels of Service	Measures	Target	Status	Comment
Council provides an effective stormwater network which removes stormwater to protect dwellings from flooding (System adequacy)	The number of flooding events that occur in the District. For each flooding event, the number of habitable floors affected.	No more than 0	Achieved to date	There were no flooding events
Council provides an effective stormwater network which removes stormwater to protect dwellings from flooding (Customer satisfaction)	The number of complaints received by Council about the performance of its stormwater system.		Not applicable. ⁵	
Response times	The median response time to attend a flooding event.	Less than one hour.	Achieved to date	There were no flooding events
Discharge compliance.	Compliance with Council's resource consents for discharge from its stormwater system, measured by the number of: <ul style="list-style-type: none"> • abatement notices • infringement notices • enforcement orders, and • convictions, received by Council in relation those resource consents.	No notices, orders or convictions	Achieved to date	Council has complied with all the conditions of its resource consent. Council did not receive any notices, orders or convictions.

⁵ The mandatory measure per 1,000 properties connected to Council's stormwater system is not applicable, because properties in Kawerau are not permitted by building consents to connect to the stormwater system.

⁶ The mandatory measure per 1,000 properties connected to Council's stormwater system is not applicable, because properties in Kawerau are not permitted by building consents to connect to the stormwater system.

ACTIVITY GROUP 6: WATER SUPPLY

Funding Impact Statement

Both revenue and expenditure are on target.

	Budget	Actual	Comment
Operating funding – Rates & Charges (A)	\$1,182,550	\$308,769	
Applications of operating funding – Staff & Suppliers (B)	\$735,330	\$182,935	
Surplus (deficit) of operating funding (A - B)	\$447,220	\$125,834	
Sources of capital funding (C)	\$0	\$0	
Less (D):			
Renewals/capital	\$2,517,150	\$155,179	
Increase/(decrease) in reserves	\$(2,069,930)	\$(29,345)	
Surplus (deficit) of capital funding (C - D)	\$(447,220)	\$(125,834)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Capital Renewals

Item	Budget	Actual	Comment
Pipework replacement	\$2,016,000	\$76,909	Project c/fwd from 2019/20
Toby replacement	\$80,000	\$18,161	
Valve refurbishment	\$36,900	\$522	
UV Tube Replacement	\$12,850	\$0	
Pump Refurbishment	\$167,400	\$7,013	
Headworks	\$20,000	\$52,574	
Chlorine and Lime dosing	\$15,000	\$0	
Water flow restrictor	\$49,000	\$0	
Tarawera Bores	\$120,000	\$0	
Total	\$2,517,150	\$155,179	

Statement of Service Provision

Levels of Service	Measures	Target	Status	Comment
Customer satisfaction.	<p>The total number of complaints received about any of the following:</p> <ul style="list-style-type: none"> a) drinking water clarity b) drinking water taste c) drinking water odour d) drinking water pressure or flow e) continuity of supply, and f) Council's response to any of these issues expressed per 1,000 connections to the networked reticulation system. 	<ul style="list-style-type: none"> a) No more than 4 per 1,000 connections b) No more than 2 per 1,000 connections c) No more than 1 per 1,000 connections d) No more than 2 per 1,000 connections e) No more than 2 per 1,000 connections f) 0 per 1,000 connections 	Not achieved	<p>Council has 2,800 connections</p> <ul style="list-style-type: none"> a) 16 complaints about dirty water (5.7 per 1,000 connections) b) No complaints about taste c) No odour complaints d) No complaints about water pressure e) No complaints regarding continuity of supply f) No complaints about responses to above issues
Safety of drinking water.	<p>The extent to which Council's drinking water supply complies with:</p> <ul style="list-style-type: none"> a) part 4 of the 2008 drinking-water standards (bacteria compliance criteria), and b) part 5 of the 2008 drinking-water standards (protozoal compliance criteria). 	<ul style="list-style-type: none"> a) No more than 1 instance of bacteria criteria non-compliance, and b) No instances of protozoal criteria non-compliance. 	<ul style="list-style-type: none"> a) Achieved to date b) Achieved to date 	<p>There no instances of bacteria or protozoal non-compliance</p>

Levels of Service	Measures	Target	Status	Comment
Maintenance of the reticulation network.	The percentage of real water loss from the Council's networked reticulation system, measured using the minimum night flow (MNF) analysis method contained in the DIA Guidelines.	<200 litres per connection per day ⁷	Achievement anticipated	Measured in June 2021
Demand management.	The average consumption of drinking water per day per resident within the district.	< 0.6 m ³	Achieved to date	The average daily consumption to 30 September was 0.56 m ³ per person.
	Where the local authority attends a call-out in response to a fault or unplanned interruption to its networked reticulation system, the median response times are:			
	a) attendance for urgent call-outs: from the time that Council receives notification to the time that service personnel reach the site, and	Less than two hours.	Achieved to date	There were 2 urgent call outs received and the median response time was 5 minutes
	b) resolution of urgent call-outs: from the time that Council receives notification to the time that service personnel confirm resolution of the fault or interruption.	Less than 8 hours.	Achieved to date	Median resolution was 2 hours 29 minutes.
Fault response times.	c) attendance for non-urgent call-outs: from the time that Council receives notification to the time that service personnel reach the site.	24 hours.	Achieved to date	13 non-urgent call outs and median response time 10 minutes
	d) resolution of non-urgent call-outs: from the time that Council receives notification to the time that service personnel confirm resolution of the fault or interruption	48 hours.	Achieved to date	Median resolution was 10 minutes.

⁷ Measured using the minimum night flow (MNF) analysis method contained in the DIA Guidelines.

Levels of Service	Measures	Target	Status	Comment
The water supply is reliable and has minimal disruptions.	Number of unplanned shutdowns – reticulation.	No more than 12.	Achieved to date	3 unplanned shutdowns occurred.
	Number of unplanned shutdowns – pump stations.	None.	Achieved to date	No unplanned shutdowns of the pump stations.
	Number of water main breaks.	No more than 8.	Achieved to date	1 water main break occurred.
Water is sourced with minimal environmental effects.	Compliance with BOP Regional Council water supply resource consents as reported in Annual Consents and Compliance Field Sheet.	Compliance ⁸	Achieved to date	Complying with old consent.

⁸ BOPRC inspection reports state either compliance or non-compliance.

ACTIVITY GROUP 7: WASTEWATER

Funding Impact Statement

	Budget	Actual	Comment
Operating funding – Rates & Charges (A)	\$1,776,871	\$459,311	
Applications of operating funding – Staff & Suppliers (B)	\$1,346,960	\$298,908	
Surplus (deficit) of operating funding (A - B)	\$429,911	\$160,403	
Sources of capital funding (C)	\$0	\$0	
Less (D):			
Renewals/capital	\$360,000	\$72,124	
Increase/(decrease) in reserves	\$69,911	\$88,279	
Surplus (deficit) of capital funding (C - D)	\$(429,911)	\$(160,403)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Capital Renewals

Item	Budget	Actual	Comment
Pump refurbishment	\$35,000	\$6,839	
Milliscreen bearings	\$42,000	\$0	
Wastewater treatment plant & computer equipment	\$190,000	\$30,675	
Pumping Station	\$93,000	\$32,443	
Polymer Dosing	\$0	\$2,168	
Total	\$360,000	\$72,125	

Statement of Service Provision

Levels of Service	Measures	Target	Status	Comment
Customer satisfaction.	<p>The total number of complaints received about any of the following:</p> <ul style="list-style-type: none"> a) sewage odour b) sewerage system faults c) sewerage system blockages, and d) Council's response to issues with its sewerage system, (expressed per 1,000 connections to the sewerage system). 	<ul style="list-style-type: none"> a) No more than 1 per 1,000 connections b) No more than 15 per 1,000 connections c) No more than 15 per 1,000 connections d) 0 per 1,000 connections 	Achieved to date	<p>Council has 2,800 connections</p> <ul style="list-style-type: none"> a) No odour issues b) 0 faults c) 1 blockage (0.4 per 1,000) d) No complaints about response to service
System adequacy.	<p>The number of dry weather sewage overflows from Council's sewerage system, expressed per 1,000 connections to that sewerage system.</p>	0 per 1,000 connections to the sewerage system.	Achieved to date	No dry weather overflows
Fault response times.	<p>Where Council attends to sewage overflows resulting from a blockage or other fault in its sewerage system, the median response times are:</p> <ul style="list-style-type: none"> a) attendance time: from the time that Council receives notification to the time that service personnel reach the site, and 	Less than 1 hour.	Achieved to date	1 sewerage overflow that was attended (10 minutes)

Levels of Service	Measures	Target	Status	Comment
	b) resolution time: from the time that Council receives notification to the time that service personnel confirm resolution of the blockage or other fault.	Less than 8 hours.	Not achieved	1 sewerage overflow that was resolved after 2 weeks – due to sewer line collapse
Council provides a reliable domestic wastewater collection and disposal service.	Number of disruptions to wastewater collection service.	No more than 50.	Achieved to date	There has been 1 disruption to the waste water collection service to date.
Discharge compliance.	Compliance with resource consents for discharge from Council's sewerage system measured by the number of: a) abatement notices b) infringement notices c) enforcement orders, and d) convictions, received in relation those resource consents.	No notices, orders or convictions.	Achieved to date	Council has not received infringement notices for 2020/21
The wastewater treatment plant operates effectively.	Compliance with BOPRC wastewater treatment plant resource consents as reported in annual Consents and Compliance Field Sheet.	Compliance. ⁹	Not achieved	Council did not comply with all conditions of the resource consent due to volumes received from the dairy factory

⁹ BOPRC inspection reports state either compliance or non-compliance.

ACTIVITY GROUP 8: SOLID WASTE

Funding Impact Statement

Both revenue and expenditure are likely to exceed the budget due to additional waste volumes.

	Budget	Actual	Comment
Operating funding – Rates & Charges (A)	\$1,826,118	\$478,674	
Applications of operating funding – Staff & Suppliers (B)	\$1,792,010	\$470,133	
Surplus (deficit) of operating funding (A - B)	\$34,108	\$8,541	
Sources of capital funding (C)	\$0	\$0	
Less (D):			
Renewals/capital	\$5,000	\$502	Recycling shed
Increase/(decrease) in reserves	\$29,108	\$8,039	
Surplus (deficit) of capital funding (C - D)	\$(34,108)	\$(8,541)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Statement of Service Provision

Levels of Service	Measures	Target	Status	Comment
Refuse Collection and Disposal				
Council's refuse collection and disposal services meet the needs of the Kawerau Community and help maintain public health and a clean environment.	Frequency of residual refuse collection from residential properties.	52 weekly collections.	On track	Collection occurred every week (13/13)
	Level of compliance with BOP Regional Council refuse disposal resource consents as reported in annual Consents and Compliance Field Sheet.	Compliance. ¹⁰	Achieved to date	No notices, abatement notices, enforcement orders or convictions.
Zero Waste (Recycling)				
Material that would otherwise go to landfill as household refuse is collected by the recycling collection service.	Average amount of recyclable material collected from each household.	No less than 178 kg per annum.	On track	2,800 households
	Frequency of recycling collection from properties.	52 weekly collections.	On track	Collection occurred every week (13/13)

¹⁰ BOPRC inspection reports state either compliance or non-compliance

ACTIVITY GROUP 9: LEISURE AND RECREATION

Funding Impact Statement

Costs and revenue are on track and it is expected to be close to budget at year end

	Original Budget	Actual	Comment
Operating funding – Rates & Charges (A)	\$4,136,883	\$1,024,004	
Applications of operating funding – Staff & Suppliers (B)	\$3,393,960	\$750,659	
Surplus (deficit) of operating funding (A - B)	\$742,923	\$273,345	
Sources of capital funding (C)	\$550,000	\$0	
Less (D):			
Renewals/capital	\$1,165,970	\$35,377	
Increase/(decrease) in reserves	\$126,953	\$237,968	
Surplus (deficit) of capital funding (C - D)	\$(742,923)	\$(273,345)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Capital Renewals

Item	Budget	Actual	Comment
Library:			
Collection renewals	\$71,360	\$13,460	Replacement books
Equipment, Fixtures and Fittings	\$25,160	\$0	
Building	\$77,700	\$7,500	
Swimming Pool:	\$789,600	\$5,290	
Recreation Centre	\$16,500	\$0	
Town Hall	\$8,600	\$0	
Concert Chambers	\$24,400	\$0	
Sports fields and amenity buildings	\$19,350	\$0	Tarawera Park – irrigation & changing room upgrade
Passive Reserves	\$72,850	\$6,407	Boundary fences, carparks and outlet
Playgrounds	\$40,230	\$2,720	Playground and fence renewals
Cemeteries	\$20,220	\$0	New plots and fence
Total	\$1,165,970	\$35,377	

Measures	Target	Status	Comment
Percentage of the population who are members of the library. ¹¹	>25%	On track	Currently 1,749 (24.5%) of the population are active members of the library.
Number of visits to the library	>90,000	Unlikely to achieve	14,503 people visited the library to 30/9
Items per 1,000 population added to the collection each year.	>500	On Track	660 new items (90 per 1,000 population) were added to the collection.
Number of exhibitions held.	6	On track	3 exhibitions have been held to date.
Number of historical articles produced. ¹²	10	On track	7 articles produced to date.
Number of objects accessioned to museum collection per annum.	200	On track	There were 6 objects accessioned into the museum collection to 30 Sept 2020
Percentage compliance with standards.	Full compliance in 95% of tests.	Achieved to date.	97% compliance of tests done.
Number of weeks open per year.	At least 48.	On track	Pool has been open 13/13 weeks for the year to date.

Levels of Service	Measures	Target	Status	Comment
Four Community halls are available for hire: Ron Hardie Recreation Centre, Town Hall, Concert Chambers and the Bert Hamilton Hall.	Number of weeks public halls available for hire	Each hall is available for 50 weeks. ¹³	Not achieved	All halls were closed for 5 weeks due to COVID lockdown.
Clean public toilets are provided in the central business district.	Council provides town centre public toilets.	Open at least 360 days.	On track	The town centre public toilets were open 92/92 days
Parks and Reserves				
Playing surfaces at sports fields are maintained to the requirements of the codes for which they are used.	Implementation of recommendations of NZ Sports Turf Institute advisory reports.	100%	On track	NZ Sports and Turf inspected the sports fields in August and provided recommendations
Council provides an adequate number of reserves for Community leisure and recreation.	Percentage of households situated within 500 metres of a reserve.	At least 95%.	Achieved	100% of properties are within 500 metres of a reserve.
Bedding displays are attractive and updated to suit the season.	Number of bedding displays.	2 (1 summer and 1 winter).	On track	Summer displays are planted in October and the winter displays planted in May.
Playground equipment is safe for children to use.	Monthly inspections of all playground equipment.	12 inspections conducted.	On track	3 inspections have been undertaken to date.
	Remediation of all identified ¹⁴ problems.	All repairs completed within 2 weeks.	Achieved to date	Minor defects identified by inspection and from the public via requests for service. All rectified within 2 weeks

¹³ Each hall is closed for scheduled maintenance for up to two weeks per year.

¹⁴ Problems can be identified by users, parents, community members or staff at any time.

Levels of Service	Measures	Target	Status	Comment
Cemetery				
The Kawerau cemetery meets community interment needs in the present and the medium term	Number of burial plots available	Enough for at least 5 years	Achieved	There are currently enough plots for approximately a further 10 years.

SUNDRY (VANDALISM, PLANT AND ELIMINATIONS)

Funding Impact Statement

These activities include vandalism, plant and eliminations. Eliminations mostly include the rates charged to Council properties and any past years' surpluses that Council has resolved to use to reduce rates.

	Budget	Actual	Comment
Operating funding – Rates & Charges (A)	\$(934,824)	\$(223,651)	
Applications of operating funding – Staff & Suppliers (B)	\$(812,860)	\$(273,621)	
Surplus (deficit) of operating funding (A - B)	\$(121,964)	\$49,970	
Sources of capital funding (C)	\$0	\$0	
Less (D):			
Renewals/capital	\$136,220	\$156,277	Small plant & vehicles
Increase/(decrease) in reserves	\$(258,184)	\$(106,307)	
Surplus (deficit) of capital funding (C - D)	121,964	\$(49,970)	
Funding balance ((A - B) + (C - D))	0	0	

ACCOMMODATION AND CORPORATE OVERHEADS

Funding Impact Statement

These activities include the buildings costs as well as overheads (CEO's and Managers' cost centres). These costs are allocated and are included in the other activities costs, which is required for reporting purposes.

	Budget	Actual	Comment
Operating funding – Rates & Charges (A)	\$121,920	\$29,776	
Applications of operating funding – Staff & Suppliers (B)	\$3,272,950	\$869,037	
Less allocated to activities	\$(3,272,950)	\$(869,037)	
Surplus (deficit) of operating funding (A - B)	\$121,920	\$29,776	
Sources of capital funding (C)	\$0	\$0	
Less (D):			
Renewals/capital	\$216,860	\$32,474	IT and building renewals
Increase/(decrease) in reserves	\$(94,940)	\$(2,698)	
Surplus (deficit) of capital funding (C - D)	\$(121,920)	\$(123,029)	
Funding balance ((A - B) + (C - D))	\$0	\$0	

Meeting: Council
Meeting Date: 24 November 2020
Subject: Membership of Local Government Funding Agency (LGFA)
File No: 206700

1 Purpose

The purpose of this report is to obtain Council approval to become a member of the Local Government Funding Agency (LGFA), which will allow Council to borrow money from them.

2 Background

To date Council has not had to raise loans apart from two finance leases for the purchase of the copier/printers and the telephone system. This was because Council has been funding the depreciation on its assets and also being a relatively young town, much of the infrastructure has not needed renewing.

However, due to more renewals being carried out in recent years and undertaking residential developments as well as other projects, it is projected that Council will need to borrow funds by March 2021.

Council consulted the community about raising debt and becoming a member of LGFA as part of the 2020/21 Annual consultation process. It was indicated that Council would be borrowing up to a maximum of \$2.0 million. There were no submissions received opposing this proposal.

3 Process to become a member of LGFA

The LGFA was established approximately 10 years ago to assist local government throughout the country to borrow funds and to obtain lower interest rates for its members. LGFA is owned by NZ Government (20%) and 30 shareholder councils (80%).

The majority of councils throughout the country are members.

Following the approval by Council and the signing of the documents, Council will "accession" to the LGFA on Wednesday 2 December 2020. This still gives Council plenty of time to raise the necessary funds when required in late February / early March.

4 Options and Financial Considerations

There are two options available to Council:

- Not join LGFA and raise a bank loan or overdraft as required
- Join LGFA which has been set up for the purpose of raising local government debt

While the difference between the interest rate at LGFA and the banks will vary, the rates with LGFA are lower which overall results in a saving for ratepayers.

5 Policy and Plan Considerations

Council indicated in its 2020/21 Annual Plan consultation document that it intended joining the LGFA and that would mean borrowing up to \$2.0 million. This proposal is not contrary to any Council plan or policy.

6 Risks

There are minimal risks associated with joining LGFA and borrowing funds through them.

The risks of not joining LGFA are higher in that Council will pay higher interest rates and also banks may not always be in a position to lend money when needed.

7 Appendix

The following documents are attached to the report and are required to be signed prior to accessioning to LGFA.

- ACCESSION DEED TO MULTI-ISSUER DEED
- STOCK ISSUANCE CERTIFICATE
- DEBENTURE TRUST DEED
- SECURITY STOCK CERTIFICATE
- OFFICER'S CERTIFICATE
- REGISTRY CUSTOMER AGREEMENT
- ACCESSION DEED TO NOTES SUBSCRIPTION AGREEMENT
- CHIEF EXECUTIVE CERTIFICATE
- CHIEF EXECUTIVE CERTIFICATE

8 RECOMMENDATIONS

1. That the report "Membership of Local Government Funding Agency" be received.
2. That Council confirms its intention to join LGFA as a borrower.
3. That Council approves the following documents in relation to Council's accession to LGFA:

- Accession Deed to Multi-Issuer Deed
- Stock Issuance Certificate
- Debenture Trust Deed
- Security Stock Certificate
- Officer's Certificate
- Registry Customer Agreement
- Accession Deed to Notes Subscription Agreement
- Chief Executive Certificate
- Chief Executive Certificate

4. That Council authorises the Mayor and Deputy Mayor to execute the following documents:

- Debenture Trust Deed
- Registry Customer Agreement
- Accession Deed to Multi-Issuer Deed and
- Accession Deed to Notes Subscription Agreement

5. That Council delegates the Chief Executive to execute the following documents:

- Security Stock Certificate – in relation to the Multi-Issuer Deed
- Stock Issuance Certificate – in relation to the Security Stock Certificate

6. That Council delegates the Chief Executive to execute such other documents and undertake such other steps as necessary to give effect to the above recommendations.



Peter Christophers, BBS, ACA
Manager Finance and Corporate Services

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Accession Deed to Multi- issuer Deed

PARTIES

Kawerau District Council

Acceding Party

New Zealand Local Government Funding Agency Limited

Subscriber

DEED dated

PARTIES

Kawerau District Council

("Acceding Party")

New Zealand Local Government Funding Agency Limited

("Subscriber")

pursuant to the Multi-issuer Deed defined below.

INTRODUCTION

- A. The Subscriber has agreed that the Acceding Party may accede to the Multi-issuer Deed as an "Issuer".
- B. This deed records the accession.

COVENANTS

1. INTERPRETATION

1.1 Interpretation: In this deed:

"Local Authority" has the meaning given to it in the Local Government Act 2002.

"Multi-issuer Deed" means the deed dated 7 December 2011 (as amended and restated on 6 July 2020) between the Subscriber and various Local Authorities entitled "Multi-issuer Deed".

1.2 Multi-issuer Deed: Terms defined in the Multi-issuer Deed have the same meaning in this deed unless the context requires otherwise.

1.3 Inconsistency: In the event of any inconsistency between the terms of this deed and those of the Multi-issuer Deed, the terms of this deed will prevail in respect of the Acceding Party.

2. ACCESSION

2.1 Accession: The Acceding Party hereby:

- (a) agrees with the Subscriber that with effect on and from the date of this deed, it will be bound by the Multi-issuer Deed as an Issuer as if it had been an original party thereto and named therein as an Issuer, and agrees to be bound by the terms of, and perform its obligations under, the Multi-issuer Deed; and
- (b) agrees that it will be bound by the special conditions (if any) set out in the annexure to this deed as if those were terms of the Multi-issuer Deed.

- 2.2 **Acknowledgement:** The Subscriber acknowledges and agrees to the accession made under this deed.
- 2.3 **Implied provisions:** For the purposes of section 14 of the Property Law Act 2007, the Acceding Party acknowledges that this deed is, and for all purposes and at all times shall be construed as being, supplemental to the Multi-issuer Deed.

3. NOTICE

The details for notices for the Acceding Party for the purposes of the Multi-issuer Deed are:

Delivery Address: Kawerau District Council
2 Ranfurly Court
KAWERAU 3169

Attention: Peter Christophers

Email: Peter.Christophers@kaweraudc.govt.nz

Postal Address: Kawerau District Council
Private Bag 1004
KAWERAU 3169

4. GOVERNING LAW

This deed shall be governed by the laws of New Zealand.

5. NO CROWN GUARANTEE

The obligations and liabilities of the Acceding Party and Subscriber under this deed and the Multi-issuer Deed are not guaranteed by the Crown.

6. COUNTERPARTS

This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart.

EXECUTED AS A DEED

Acceding Party

KAWERAU DISTRICT COUNCIL by:

Signature of Elected Member

Signature of Elected Member

Name of Elected Member

Name of Elected Member

Subscriber

**NEW ZEALAND LOCAL GOVERNMENT
FUNDING AGENCY LIMITED by:**

Signature of director

Signature of director

Name of director

Name of director

ANNEX TO THE ACCESSION DEED

[Annex intentionally left blank.]

STOCK ISSUANCE CERTIFICATE

I, Russell George, the Chief Executive of Kawerau District Council (the **Council**) hereby certify that:

1. the issue of Security Stock with a nominal amount equal to the aggregate amount, from time to time, of the liabilities, advances and other accommodation or obligations referred to in the Stock Certificate for that Stock (the **New Stock**) under the terms of the Debenture Trust Deed dated on or about the date of this certificate (the **Trust Deed**) has been duly authorised by the Council, or has been authorised by a person or persons within the delegated authorities approved by the Council;
2. as at the date of this certificate (but prior to the issuance of the New Stock if it is to be issued on the date of this certificate) the total nominal amount of Stock issued and outstanding under the Trust Deed (showing separately the respective total nominal amounts) is as follows:

(i)	Debenture Stock of:	\$0.00
(ii)	Security Stock (issued with a fixed nominal amount) of:	\$0.00
(iii)	Bearer Stock of:	\$0.00
together with:		
(iv)	Security Stock (issued with a floating nominal amount), which as at _____ amounted to:	\$0.00
3. no Enforcement Event has occurred and remains unremedied;
4. for the purposes of section 115(3) of the Act, the loans or obligations secured by the New Stock have been raised for the benefit of all of the Council's district;
5. for the purposes of section 118 of the Act, the Council has complied with the Act in entering into and the performance of its obligations under the Trust Deed, the Registrar and Paying Agency Agreement and all other obligations entered into by the Council in connection with the Council's borrowing and granting security under the Trust Deed, including in respect of the New Stock.

This Certificate is given by me as Chief Executive of the Council in good faith on behalf of the Council and I shall have no personal liability in connection with the issuing of this Certificate.

Unless otherwise defined or the context otherwise requires, terms with a defined meaning in the Trust Deed shall have the same meaning where used in this Certificate.

Dated:

Chief Executive
Kawerau District Council

DEBENTURE TRUST DEED

between

KAWERAU DISTRICT COUNCIL

and

COVENANT TRUSTEE SERVICES LIMITED

 **Simpson Grierson**
Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrerson.com

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FIRST SCHEDULE - Part I
 FIRST SCHEDULE - Part II
 FIRST SCHEDULE - Part III
 FIRST SCHEDULE - Part IV

SECOND SCHEDULE
 THIRD SCHEDULE
 FOURTH SCHEDULE

- (i) such notional conversion shall not alter the amount owing to, or secured in favour of, such person; and
 - (ii) where a notional conversion is undertaken for the purposes of clause 15.1, the conversion shall be undertaken on the same date as the Trustee makes the distribution under that clause.
- (b) Following application of clause 15.1, for the purpose of distributing the amount available for distribution to the relevant Stockholder, the Trustee will convert the New Zealand dollar amount available to be distributed to a Stockholder to the relevant foreign currency in which the relevant part of the Secured Money is owing by reference to the applicable spot rate, as quoted to the Trustee by a Reference Bank for the purposes of clause 1.1.3(a)(ii) above.

1.2 Definitions:

"Account Receivable" has the same meaning as in the PPSA;

"Act" means the Local Government Act 2002;

"Annual Plan" means the report prepared and adopted by the Council under section 95 of the Act for each forthcoming financial year of the Council;

"Annual Report" means the report prepared and adopted by the Council under section 98 of the Act at the end of each financial year of the Council;

"Auditor(s)" means the person or persons for the time being holding the office of auditor of the Council (or any agent or delegate of such person or persons);

"Bearer Stock" means Stock issued in bearer form as provided for in clause 7.1;

"Charged Assets" means:

- (a) all rates from time to time set or assessed by the Council under the Rating Act, and all rates revenue in respect thereof;
- (b) each rate arising under section 115 of the Act in relation to any Secured Money and the rates revenue from each such rate;
- (c) the Proceeds of the rates, special rates or rates revenues described in paragraphs (a) and (b) above, but only to the extent to which such Proceeds constitute Accounts Receivable, Negotiable Instruments or Money (as the term "Money" is defined in the PPSA) arising directly from the collection of those rates, special rates or rates revenues,

but, for the avoidance of doubt, excludes any rates (or the Proceeds thereof) which may be collected by the Council on behalf of any other local authority;

"Chief Executive" means the Chief Executive of the Council appointed under section 42 of the Act from time to time, and includes a reference to any person to whom any right or obligation of such Chief Executive has lawfully been delegated;

"Class of Stock" means any category of Stock having substantially the same rights, privileges, limitations and conditions which, at any particular time for any particular purpose, constitute a separate class of Stock within the Stock, as determined by the Council;

"Class of Stockholders" means the Stockholders of a particular Class of Stock;

"Companies Act" means the Companies Act 1993, or in respect of a company not registered under that Act means the equivalent legislation applicable to that company;

"Date of Enforcement" means the date on which the security created by this Deed is enforced by the Trustee;

"Debenture Stock" means all Stock which is not Security Stock;

"Enforcement Event" means any of the events listed in clause 12.1;

"Extraordinary Resolution" has the meaning contained in the Second Schedule;

"Facility" means any loan, advance, accommodation, bill, stock or note issuance, acceptance, endorsement or discount, guarantee, indemnity, letter of credit, bond, note, stock, bill, exchange, swap, rate, or other financial facility, agreement, liability, obligation or arrangement which is lawfully entered into by the Council and in respect of which the money or other liabilities or obligations owing or which may become owing thereunder are, or are proposed to be, secured by Stock;

"financing statement" has the same meaning as in the PPSA;

"FMC Act" means the Financial Markets Conduct Act 2013;

"FMC Regulations" means the Financial Markets Conduct Regulations 2014;

"Financial Markets Supervisors Act" means the Financial Markets Supervisors Act 2011;

"Information and Meetings Act" means the Local Government Official Information and Meetings Act 1987;

"Long Term Plan" means the long term plan prepared and adopted by the Council under section 93 of the Act, as amended from time to time;

"Negotiable Instrument" has the same meaning as in the PPSA;

"NZX" means NZX Limited and includes its successors and assigns;

"Paying Agent" means Link Market Services Limited, or such other or additional person who from time to time fulfils the role of paying agent for the purposes of the Registrar and Paying Agency Agreement and this Deed;

"PPSA" means the Personal Property Securities Act 1999;

"Principal" and **"Principal Money"** means, at any time:

- (a) in relation to Stock (other than Security Stock) the sum other than interest payable on redemption of the Stock inclusive of the premium (if any) of the Stock payable in accordance with the conditions of issue of that Stock;
- (b) in relation to Security Stock any amounts secured by that Security Stock which are not in the nature of interest on other amounts secured by that Security Stock;

"Priority Interest Amount" in relation to any Security Stock and the holder thereof, means the amount referred to as such in clause 6.3.1(b), unless otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate);

"Priority Principal Amount" in relation to any Security Stock and the holder thereof, means the amount referred to as such in clause 6.3.1(a), unless otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate);

"Priority Total Amount" in relation to any Security Stock and the holder thereof, means the aggregate of the Priority Principal Amount and the Priority Interest Amount in respect of that Security Stock;

"Proceeds" has the same meaning as in the PPSA;

"Rating Act" means the Local Government (Rating) Act 2002;

"Receiver" means a receiver or receiver and manager or manager of all or any part of the Charged Assets appointed by the Trustee under this Deed;

"Receiverships Act" means the Receiverships Act 1993;

"Reference Bank" means any one of ANZ Bank New Zealand Limited, Bank of New Zealand, ASB Bank Limited and Westpac New Zealand Limited;

"Register" means the register of Stock, or each such register, to be kept by the Registrar pursuant to clause 4;

"Registered Address" means, in respect of a Stockholder, the address in New Zealand for the time being recorded in the Register;

"Registered Facsimile Number" means the facsimile number for the time being recorded in the Register;

"Registered Stock" means all Stock other than Bearer Stock;

"Registrar" means Link Market Services Limited, or such other or additional person who from time to time fulfils the role of registrar for the purposes of the Registrar and Paying Agency Agreement and this Deed;

"Registrar and Paying Agency Agreement" means the registry customer agreement dated on or about the date of this Deed between the

Council, the Registrar and the Paying Agent, and includes a reference to such as may be amended, or to any other registrar and paying agency agreement entered into, to provide for more than one Register, and more than one Registrar or Paying Agent;

"Reporting Certificate" means a certificate substantially in the form as appears in the Fourth Schedule or in such other form as the Council and the Trustee may agree;

"Secured Money" means the principal and interest payable on, or in respect of, the Stock and, to the extent that such is lawfully entered into by the Council, all other money owing or payable to or at the direction of the Trustee or any Receiver or any Stockholder under this Deed or the terms of issue of any Stock;

"Secured Obligations" means the obligations of the Council under this Deed and any Stock, but excludes any obligation to pay or deliver any Secured Money;

"Security Stock" means Stock issued pursuant to and in accordance with clause 6.1.1;

"Security Stock Certificate" means a Stock Certificate in respect of Security Stock;

"Stock" means Security Stock, Bearer Stock or any secured indebtedness by whatever name called which in any case is lawfully entered into by the Council and is constituted and issued by the Council under, and in accordance with, this Deed and for the time being outstanding and uncanceled, or a specified portion thereof as the case may require;

"Stock Certificate" or **"Certificate"** means a certificate or other written acknowledgement in respect of Stock issued by the Council under clauses 3.3, 3.8, or 3.10, or clause 7 evidencing (subject to the Register, in the case of Registered Stock, and the provisions of this Deed, including the conditions applicable to that Stock) that the person named therein is the holder of the amount of Stock stated therein and, in relation to any Stock in respect of which a Stock Certificate has not been issued, includes a reference to the Stock Certificate which would otherwise have been issued in respect of that Stock;

"Stock Issuance Certificate" means a certificate of the Chief Executive for the purposes of clause 3.1 substantially in the form as appears in the Third Schedule or in such other form as the Council and the Trustee may agree;

"Stockholders" or **"Holders"** means those persons from time to time and for the time being entered in the Register as the holders of Stock and includes their respective successors and personal representatives;

"Trust Deed" and **"this Deed"** means this trust deed (inclusive of its Schedules) as amended from time to time in accordance with the provisions of this trust deed and, except where inconsistent with the context, includes every other deed or other agreement collateral or supplemental to or varying this trust deed or any such collateral or supplemental deed or agreement; and

"Trustee" means the trustee or trustees for the time being holding office as trustee under this Deed.

1.3 Construction: Any reference to:

an **"agreement"** includes a deed and any other instrument or document recording rights and/or obligations, and includes a reference to such as modified, varied, supplemented, novated or substituted from time to time;

a **"business day"** means a day (other than a Saturday or a Sunday) on which registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989) are open in Whakatane for the transaction of general banking business;

a **"charge"** has the same meaning as in the Act, and includes a reference to a security interest (within the meaning of the PPSA);

a **"clause"** or **"Schedule"** is a reference to a clause or section of, or schedule to, this Deed;

a **"company"** means any company or body corporate wherever incorporated or domiciled;

"conditions" in respect of any Stock shall be to the conditions applicable to that Stock as referred to in clause 3.3.2 and, includes the further conditions set out in Part IV of the First Schedule (the **"further conditions"**);

the **"Council"** includes any delegate of the Council as referred to in clause 1.6;

"default" means a breach, failure to comply or failure to do, however caused, whether voluntary or involuntary and whether within or beyond the control of any person;

"interest" includes discounts and other payments in the nature of interest;

"month" means calendar month;

"nominal amount" in respect of Stock, has the meaning set out or referred to in the relevant Stock Certificate;

"owing" includes unpaid;

"payment" includes a reference to repayment;

"person" means an individual, company, body corporate, corporation, local authority, an association of persons whether corporate or not, a trust or a state or agency of a state whether of central government or local government (in any case, whether or not having separate legal personality);

"right" includes right, benefit, entitlement, authority, discretion, remedy or power;

"supervisor" has the meaning set out in the FMC Act;

"tax(es)" includes a present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature regardless of where or by

whom imposed, levied, collected, withheld or assessed and includes interest, penalties, fines, costs, charges or expenses or other amounts relating to or arising in connection therewith;

"the security created by this Deed" means the security in favour of the Trustee created by or pursuant to this Deed or any deed or other agreement collateral or supplemental to or varying this Deed;

"in writing" and **"written"** include words written, printed, typewritten, lithographed or otherwise represented or reproduced in permanent visible form by any other means;

the sign "\$" and the word "Dollars" means New Zealand dollars;

a gender includes each other gender;

the singular includes the plural, and vice versa;

any legislation includes a modification or re-enactment of, legislation enacted in substitution for, or a regulation, order-in-council or other instrument from time to time issued or made under, that legislation;

something being done, includes a reference to it being done from time to time;

an example or an inclusion does not limit what else may be included;

a party to this Deed or any other agreement includes its successors or its permitted assignees or transferees; and

time means a reference to New Zealand time.

1.4 Headings: Headings and the table of contents are to be ignored in construing this Deed.

1.5 Trustee's Actions:

1.5.1 Decisions: Except to the extent the Trustee cannot by law do so or such action is in the opinion of the Trustee contrary to generally accepted prudent practice or is not in the interests of Stockholders, the Trustee shall act reasonably as regards the Council in respect of any consent, approval, discretion, consideration, decision, opinion, determination or action (collectively referred to in this clause 1.5 as a "decision") by it in respect of, or pursuant to, this Deed unless this Deed expressly provides for some other basis for the exercise of such decision by the Trustee.

1.5.2 Discretion: Subject to clause 1.5.1, and except to the extent otherwise expressly required by this Deed or by law, the Trustee may exercise any decision in respect of, or pursuant to, this Deed or any Stock in its own discretion.

1.5.3 Binding on Stockholders: Any action taken, or omitted to be taken, by the Trustee under or for the purposes of this Deed (or purportedly so) shall bind the Stockholders.

1.6 Council Powers: Subject to the Act, where this Deed confers any right or obligation on the Council, the right or obligation may be exercised under

delegated authority from the Council by any committee or sub-committee, member or officer of the Council.

2. CONSTITUTION OF STOCK

2.1 Constitution of Stock:

2.1.1 Benefit of Deed: The Council may from time to time in accordance with the provisions of this Deed, and in compliance with the Act, create and issue Stock to, or for the benefit of, such persons, in such amounts (whether such amount be set or indeterminate at the time of issue) in such currencies on such terms and upon such conditions contained in this Deed or modified for the purposes of such Stock and at par or at a premium or at a discount and bearing such respective rate of interest (whether fixed, variable or determined by a stated method) or with or without interest and payable or redeemable at such respective times or periods or on demand as the Council may from time to time determine (but subject to any restrictions in that regard imposed by law).

2.1.2 Registration: The Issue of Registered Stock will be effected and evidenced by particulars of the Stock being entered in the Register by the Registrar on the instructions of the Council.

2.1.3 Other Indebtedness: Without prejudice to the express provisions of this Deed relating to the issue of Stock generally, nothing in this Deed shall in any way restrict the right of the Council, and the Council shall at all times be free (but subject to the Act), to undertake or issue obligations or indebtedness (including Stock) ranking subordinate to the indebtedness and obligations of the Council in respect of the Stock.

2.1.4 Modification: If any modification to this Deed, or any other documentation, consent or acknowledgement, is in the opinion of the Council necessary or desirable to permit, facilitate or give effect to any right referred to in clause 2.1.3 the Trustee is, subject to it being reasonably satisfied with the relevant documentation, authorised to concur with the Council in executing the same and any such concurrence shall be on behalf of, and shall bind, the Stockholders.

2.2 Ranking: To the fullest extent permitted by law, the Stock and the Secured Money secured pursuant thereto shall, subject to the provisions of clause 6, as to the security created by this Deed rank *pari passu* as between themselves as to payment of Secured Money even though it and/or the indebtedness forming part of the Secured Money is or was, created or issued at different dates or at par or at a premium or at a discount and carries interest at different rates and matures or is payable or redeemable at different times or on demand or in different currencies or with, or without the knowledge of any other Stockholder.

2.3 Payment of Brokerage or Commission: The Council shall be at liberty to pay a commission, a procuration, application or subscription fee or brokerage to any person for subscribing, underwriting the subscription of, or obtaining subscriptions for, any Stock.

2.4 Redemption of Stock:

- 2.4.1 Redemption:** The Council may at any time, and from time to time, redeem any Stock by purchase either on the market or by private treaty.
- 2.4.2 Related Persons:** No person in, or in respect of, which the Council has an interest shall be precluded from at any time purchasing, re-purchasing, subscribing for, acquiring, holding, selling or otherwise disposing of, any Stock.
- 2.4.3 Surrender:** Security Stock may at any time be surrendered in whole or in part by the holder thereof, and upon surrender the Council shall cancel such Security Stock.
- 2.4.4 Required Surrender:** The Council may require any Stockholder to surrender its Security Stock if the Council has no indebtedness (actual or contingent) to the Stockholder which is secured by that Security Stock, and no obligation to allow the Council to incur any indebtedness to it which would be secured by that Security Stock at any future time.

3. ISSUE OF STOCK**3.1 Stock Issuance Certificate:**

- 3.1.1 Precondition:** The Council shall not at any time issue any Stock until a copy of a Stock Issuance Certificate in respect of the issue of that Stock has been delivered to the Trustee.
- 3.1.2 Suspension:** The Council shall not issue any Stock by reference to a Stock Issuance Certificate at any time after the Council is required to give a notice to the Trustee pursuant to clause 10.1.3 in respect of that certificate, and while such notice is operative.

3.2 Compliance with Acts Prior to Issue: The Council shall comply with any applicable provisions of the Act or the FMC Act prior to the issue of any Stock pursuant to a regulated offer under the FMC Act, and in any case the Council shall not issue any Stock pursuant to a regulated offer under the FMC Act unless:

- 3.2.1 Advice to Trustee:** it has first advised the Trustee;
- 3.2.2 Remuneration:** the Trustee and the Council have reviewed and agreed upon the remuneration payable to the Trustee under clause 11.2 for the issue of that Stock; and
- 3.2.3 Supplemental deed:** the Trustee and the Council have made such modifications to the provisions of this Deed, and such additional provisions, as are deemed necessary or desirable by the Council and the Trustee for compliance in all respects with the Act or the FMC Act as required.

3.3 Stock Certificates:

- 3.3.1 Issue:** The Council shall, subject to the conditions applicable to the Stock:

- (a) issue to, or for the account of, every Stockholder (other than a Holder of Security Stock, Bearer Stock or Stock which is repayable in a currency other than Dollars) upon request one or more Stock Certificates in, or to the effect of, the form set out in Part I of the First Schedule or in such other form as is appropriate to reflect the terms of the relevant Stock;
- (b) issue to, or for the account of, each Holder of Security Stock upon request one or more Security Stock Certificates in, or to the effect of, the form set out in either Part II or Part III of the First Schedule or in such other form as is appropriate to reflect the terms of the relevant Security Stock;
- (c) issue (in such circumstances, if any, as the Council is entitled to issue Stock which is repayable in a currency other than Dollars) to, or for the account of, each Holder of Stock which is repayable in a currency other than Dollars upon request one or more Stock Certificates in such form as is appropriate to reflect the terms of the relevant Stock;
- (d) where the FMC Act applies to any Stock, provide such information as is required to be provided under section 100 of the FMC Act.

3.3.2 Terms of Issue: The Stock (whether or not represented by a Stock Certificate) shall be, and be deemed to be, held with the benefit of and subject to the provisions of this Deed, and the terms of the Stock shall include:

- (a) those terms entered in the Register in respect of such Stock; and
- (b) those terms set out in any Stock Certificate issued in respect of such Stock, except to the extent that they:
 - (i) conflict with the terms entered in the Register; or
 - (ii) conflict with the form of Stock Certificate set out in Part I, II or III (as applicable) of the First Schedule (including the conditions attached to those forms and the further conditions set out in Part IV of the First Schedule) (Stock Certificate Form), unless such conflict has been agreed to by the Stockholder and the Council; and
- (c) those terms set out in the relevant Stock Certificate Form, as amended by agreement with the Stockholder (and, for the avoidance of doubt, if a Stock Certificate is issued in a form agreed with the Stockholder, that Stock Certificate shall amend the relevant Stock Certificate Form for that Stock); and
- (d) any further terms (including those stipulated in any application form or other issuing or offer documentation

in respect of the Stock) as may be required by the Council and approved by the Trustee,

provided that:

- (e) notwithstanding any agreement between the Council and the relevant Stockholder contemplated by the provisions of paragraphs (b)(ii) and (c) above, no term of any Stock which conflicts with an express term of this Deed shall be effective unless agreed to by the Trustee or paragraph (f) applies; and
- (f) any change to a Stock Certificate Form agreed to by the Council and/or the relevant Stockholder but not the Trustee will only be effective to the extent that it is, in the Council's reasonable opinion:
 - (i) required to correct a manifest error or omission, or is of a minor, formal or technical nature; or
 - (ii) required to comply with, or as a result of the coming into effect of, any legislation.

Those provisions and terms, or such of them as are applicable to the respective Stock, shall be binding on the Council, the Trustee and, by their acceptance of the Stock, the relevant Stockholders and all persons claiming through them respectively, each of whom shall be deemed to have notice thereof.

3.3.3 Execution: Stock Certificates shall be executed by the Council either by the Chief Executive on behalf of the Council or in such other manner (including by way of facsimile execution) as is duly authorised by the Council.

3.3.4 Passing of Title: Notwithstanding anything to the contrary contained or implied in this Deed, title to Stock (other than Bearer Stock) shall pass only upon registration by the Registrar of the transfer in compliance with this Deed and the conditions applicable to that Stock, and no dealing with any Stock Certificate (other than in respect of Bearer Stock) shall operate to transfer or otherwise affect title to the Stock to which it relates.

3.4 Validity: No Stockholder, nor the Trustee, shall be concerned or obliged to enquire whether any Stock has been issued in contravention of any provision of this Deed nor, subject to section 119(2) of the Act, shall the validity of any Stock be affected by knowledge of such contravention.

3.5 Deemed Validity: Subject to the Act and to any other limitations arising by law, all Stock issued for valuable consideration, the Stock Certificate for which, or the entry on the Register in respect of which, or other evidence indicates that it has been issued or was intended to be issued under this Deed, shall (without prejudice to the right of the Council to correct any error) be validly issued and (in the case of Debenture Stock) constituted by this Deed and entitled to the benefit of the provisions of this Deed even though it may subsequently be determined that the issue of such Stock was in breach of any provision of this Deed, but without prejudice to the Trustee's rights under this Deed against the Council in relation to such breach.

- 3.6 Exclusion of Interests:** The Stockholders are to be regarded as the beneficial owners of the Stock registered in their names respectively, and in the case of Bearer Stock held by them respectively, and are to be regarded as exclusively entitled thereto, and all persons and the Council may act accordingly. The Registrar shall not, except as provided in the conditions applicable to the Stock or as ordered by a court of competent jurisdiction, be bound to enter in the Register or recognise any trust, equity, right, title, interest (including security interest) or claim affecting the ownership of any Stock or the indebtedness represented thereby.
- 3.7 Limitation on Enforcement:** No Stockholder shall be entitled to enforce any rights under this Deed or in respect of any Stock or otherwise in respect of any Secured Money directly against the Council other than if the Trustee wrongly fails to enforce such rights after having become bound to do so in accordance with the provisions of this Deed.
- 3.8 Replacement:** The Council may with the consent of, or at the request of, the Stockholder concerned execute and deliver to that Stockholder:
- 3.8.1 Loss:** (subject to provision to the Council of such evidence and indemnities as it may require) a Stock Certificate in replacement of a lost, destroyed or damaged Stock Certificate;
 - 3.8.2 Correction:** a Stock Certificate in replacement of any Stock Certificate issued in an incorrect form or for an incorrect amount or containing incorrect terms or conditions;
 - 3.8.3 Substitution:** several Stock Certificates in substitution for one Stock Certificate, or vice versa;
 - 3.8.4 Replacement:** a Stock Certificate in replacement for a Stock Certificate cancelled in error where the Stock evidenced thereby has not been purchased or redeemed;
 - 3.8.5 Changed indebtedness:** where the indebtedness or other obligation evidenced or secured by a Security Stock Certificate has been repaid or otherwise discharged in part, a replacement Stock Certificate for a lesser nominal amount than the original Stock Certificate; and
 - 3.8.6 Change of Name:** (subject to provision to the Council of proper proof of the relevant change of name) a Stock Certificate to record the change of name of any Stockholder,

but, except for the purposes of correcting an error, nothing contained in this clause shall permit the Council to alter the terms of issue upon which the Stock evidenced by the original Stock Certificate was issued or to increase the amount of Stock on issue or authorise an alteration to the identity of the Stockholder.

- 3.9 Alteration:** The Council may at any time with the prior written approval of the Trustee (and subject to any conditions which the Trustee may impose) and (subject to clause 16) the Stockholder concerned, alter any of the terms and conditions of any Stock which has been issued, including:
- 3.9.1 Redemptions:** accelerate the redemption or extend the redemption date of any Stock; or

- 3.9.2 Interest:** alter the rate of interest payable on any Stock; or
- 3.9.3 Premium:** agree to the payment of a premium on the redemption of any Stock; or
- 3.9.4 Alteration:** alter (by addition, deletion or amendment) any of the other terms or conditions applicable to any Stock,

but so that no such acceleration, extension, alteration, agreement or payment or any other alteration is inconsistent with the provisions of this Deed or the Act.

- 3.10 Register:** Any acceleration, extension, alteration, agreement or payment or any other alteration of any terms and conditions of any Stock shall be recorded in the Register in respect of the Stock affected and the Council may issue one or more replacement Stock Certificates in respect of such Stock embodying the terms and conditions of any such acceleration, extension, alteration, agreement or payment or any other alteration.

3.11 Payment of Instalments:

- 3.11.1 Non-Payment:** The terms of issue of any Stock may provide such Stock is to be paid for by instalments. If the amount of any instalment is not duly paid to the Council, the Council at any time thereafter before such instalment is paid but only after giving to the Stockholder in default not less than 14 days' notice of its intention so to do may either:

- (a) forfeit all instalments previously paid (except to the extent that such would constitute a penalty, and subject to clause 3.11.2) and cancel the allotment of the Stock in question, or reissue it; or
- (b) charge and sue for the recovery of such unpaid instalment and charge and sue for the payment of interest thereon at the rate of three percent (3%) per annum above the rate payable on the Stock concerned from the date that such instalment became due until the date it is paid.

- 3.11.2 Cancellation:** A statutory declaration by an officer of the Council that the allotment of Stock has been cancelled on the date stated in the declaration shall be conclusive evidence of the facts therein as against all persons claiming to be entitled to such Stock. If the Council cancels the allotment of such Stock the Council shall refund to the Stockholder concerned the instalments which the Stockholder had paid less the expenses of the Council in relation to the cancellation, but if the Stock is reissued the Council shall apply the proceeds of reissue first in payment of any expenses of reissue and next in satisfaction of the money due to the Council by the Stockholder concerned in respect of such Stock and the balance (if any) shall be paid to that Stockholder.

4. REGISTER OF STOCK

- 4.1 Register:** The Council shall take all reasonable steps to procure that the Registrar establishes and maintains, in accordance with the Registrar and Paying Agency Agreement and all applicable laws and this Deed, a

separate Register of Stock to be kept at such place in New Zealand as the Council and the Registrar may from time to time agree.

4.2 Provisions as to Register: In respect of the Register:

4.2.1 Details: the following details shall be entered in the Register in respect of Stock:

- (a) the principal amount of the Stock for the time being issued and outstanding (which, in the case of Security Stock, shall be its nominal amount);
- (b) the date or dates of payment for Stock (when applicable);
- (c) the rate of interest applicable;
- (d) when interest is payable;
- (e) the redemption date;
- (f) the number and date of each Stock Certificate (if any);
- (g) (except for Bearer Stock) all subsequent transfers or changes of ownership of Stock;
- (h) (except for Bearer Stock) the names and addresses of the Stockholders and the date at which such names are entered on the Register;
- (i) where Stock is no longer outstanding, particulars of its redemption, purchase, cancellation or forfeiture by the Council;
- (j) any other additional matters to be entered in the Register in accordance with conditions required by the terms of any particular issue of Stock or by law; and
- (k) any other particulars as may be required by the Council, the Registrar or the Paying Agent as agreed to by the Council and the Registrar;

4.2.2 Security Stock: any Security Stock shall be identified as such in the Register and the details set out in paragraphs 4.2.1(b), 4.2.1(c), 4.2.1(d) and 4.2.1(e) will not be required;

4.2.3 Change of Details: except in the case of Bearer Stock, any change of name or address of any Stockholder or any change in any other information required to be inserted in the Register in respect of any Stockholder shall forthwith be notified to the Registrar in writing by the Holder, or if a joint holding by all the joint Holders, and the Register shall then be altered accordingly;

4.2.4 Replacement/Exchanges: there shall be entered in the Register details of any replacement Stock Certificates issued pursuant to clause 3.8;

4.2.5 Inspection: provided the Register is not closed, the Trustee, any Receiver and any Stockholder (or any person authorised in

writing by any of such persons or any other person entitled by law) shall be at liberty at all reasonable times and upon giving reasonable notice during office hours to inspect the Register (but in the case of a Stockholder or any person authorised by a Stockholder, only to inspect the entries in the Register relating to that Stockholder) and (where required by the Registrar, except in the case of the Trustee or a Receiver, upon payment of a reasonable fee) to take copies of and extracts from such entries in the Register as that person is entitled to inspect;

- 4.2.6 **Closure:** subject to any applicable laws, the Council or the Registrar may from time to time, subject to the conditions relating to any particular issue of Stock, close the Register for any period or periods not exceeding 30 days in any one year;
 - 4.2.7 **Statutory Requirements:** the Council shall use all reasonable endeavours to ensure that the Registrar complies with all statutory requirements relating to the keeping of the Register and the details to be entered therein;
 - 4.2.8 **Auditing:** the Register shall be kept and audited to the satisfaction of the Trustee annually and (if applicable) as required by the FMC Act, or upon request in writing by the Trustee (which request shall only be made when the Trustee considers upon reasonable grounds that special circumstances relating to the maintenance of the Register warrant an audit, and so certifies in writing to the Council and the Registrar); and
 - 4.2.9 **Evidence:** the Register shall, in the absence of manifest error, be conclusive evidence of the matters entered therein.
- 4.3 **Form:** The Register, Registered Stock, or any Stock Certificate in respect of Registered Stock, may be kept in book form, or in the form of a paper or card record, or by computer or any device by means of which information is recorded or stored. If the Register or any such Stock or Stock Certificate is kept by computer or any such device:
- 4.3.1 **Deemed Entry:** the recording or storing of any information therein shall be deemed to be the entry thereof in the Register or in respect of the Stock or Stock Certificate; and
 - 4.3.2 **Deemed Extract:** any material subsequently derived from information so recorded or stored shall be deemed to be an extract from the Register or the Stock or Stock Certificate, as the case may be.

5. INDEMNITY BY STOCKHOLDER

- 5.1 **Indemnity:** Whenever, in respect of any Stock, in consequence of:
 - 5.1.1 **Death, Liquidation:** the death, winding up or liquidation of the Holder of such Stock;
 - 5.1.2 **Taxes:** the non-payment of any income, or other, tax payable by or in respect of the Holder of such Stock;
 - 5.1.3 **Duties:** the non-payment of any estate, stamp or other duty by the Holder or personal representatives or successors of the Holder of such Stock;

- 5.1.4 Breach:** non-compliance by the Holder of such Stock with the provisions of the FMC Act, or any other law, or the provisions of this Deed (including the terms and conditions applicable to such Stock in respect of the offering, sale and transferring of Stock); or
- 5.1.5 Other:** any other act of the Holder of such Stock or thing referable to the Holder of such Stock,

there shall by law be imposed any immediate or possible liability on the Council and/or the Trustee under or in respect of the FMC Act or any other law or to make any payment to the New Zealand Government or any taxation authority, the Council and/or, as the case may be, the Trustee shall in respect of such liability be indemnified (subject to section 105 of the FMC Act if applicable) by the Holder of such Stock, the personal representatives or estate, or out of the assets, or by the successors, of the Holder of such Stock.

- 5.2 Recovery of Sums Paid:** Any money paid, or losses, damages, costs, fines or claims incurred, by the Council and/or, as the case may be, the Trustee in respect of any liability described in clause 5.1 may be recovered by action from the Holder of such Stock or such Holder's personal representatives or successors or estate or out of relevant assets as a debt due to the Council and/or, as the case may be, the Trustee.
- 5.3 No Prejudice to Rights:** Nothing in this clause 5 shall prejudice or affect any right which any law may confer or purport to confer on the Council and/or, as the case may be, the Trustee, and as between the Council and/or, as the case may be, the Trustee and every Stockholder or the personal representatives, successors, estate or assets of any Stockholder (wherever constituted or situated) any right which such law confers on the Council and/or, as the case may be, the Trustee shall be enforceable by the Council and/or, as the case may be, the Trustee.

6. SECURITY STOCK PROVISIONS

6.1 Issue:

- 6.1.1 Terms:** Stock issued in accordance with this Deed may be issued as Security Stock which shall be issued as a continuing security for the payment on demand or otherwise of any present or future debts, liabilities, advances and other accommodation or obligations of whatever nature, and whether or not pursuant to any one or more Facilities, of or to or for or on behalf of or at the request of the Council (whether by way of indemnity, guarantee or otherwise) generally or as mentioned in the relevant Security Stock Certificate (if one is issued), but in any case, only to the extent that such is lawfully entered into by the Council.
- 6.1.2 Nominal Amount:** Any Security Stock Certificate which is issued shall state a nominal amount, which will not limit the amount secured, but will be relevant for the purposes of determining priority in accordance with clause 6.3.
- 6.1.3 Transferability:** Security Stock shall be transferable to the same extent as the debts, liabilities, advances or other accommodation or obligations to which it relates.

6.2 Validity of Security Stock: Security Stock issued pursuant to clause 6.1.1 shall for all purposes and on all occasions be deemed to be validly issued to each Holder thereof as security for the payment of the accommodation or obligations referred to in clause 6.1.1 (but subject to clause 6.3), provided that if the amount of such accommodation or obligations is less than the nominal amount of such Security Stock held then such Holder shall not be liable solely by virtue of that fact to make any payment to the Council or the Trustee in respect of the Security Stock held by it or be obliged to make any further advance or afford any further accommodation to the Council.

6.3 Priority of Security Stock: Stock issued as Security Stock pursuant to clause 6.1.1 shall at all times, except where otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate), be held upon and subject to the following conditions (which shall, or shall be deemed to, be mentioned, summarised or referred to in every Security Stock Certificate, with the necessary amendments):

6.3.1 Priority Total Amount: notwithstanding anything to the contrary contained or implied in this Deed, in any distribution to the Stockholders pursuant to the provisions of clause 15 the Holder shall be entitled to payment *pari passu* with other Stockholders under clause 15.1.6 in respect of not more than that Stockholder's Priority Total Amount,

PROVIDED THAT:

(a) **Priority Principal Amount:** the principal in respect of which a Stockholder shall be entitled to payment *pari passu* with other Stockholders under clause 15.1.6 shall be limited at any date (the **relevant date**) to the lesser of:

(i) the aggregate amount (as finally determined) of all liabilities, advances, and other accommodation or obligations, in respect of which the Security Stock was issued (as determined in accordance with clause 6.1.1), including capitalised interest and any fees, commissions or expenses, owing by the Council to the Holder of the Security Stock at the **relevant date** but excluding any uncapitalised interest owing at such date; and

(ii) the nominal amount of that Security Stock held,

(which lesser amount is, except where otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate), the **Priority Principal Amount**);

(b) **Priority Interest Amount:** the interest in respect of which a Stockholder shall be entitled to payment *pari passu* with other Stockholders under clause 15.1.6 shall be all interest (except to the extent that it is capitalised into the Priority Principal Amount) payable to it on principal secured by that Stock (up to the Priority

Principal Amount) but excluding any interest which has been due and owing since a date more than six months prior to the Date of Enforcement (which amount is, except where otherwise agreed between the Council and the Trustee (including by agreeing wording in the relevant Stock Certificate) the Priority Interest Amount);

- (c) **Excess:** all amounts owing to a Stockholder in respect of which Security Stock was issued but which do not form a part of the Priority Total Amount shall rank for payment subsequent to the Priority Total Amounts of other Stockholders, but pari passu with any amounts payable under this clause 6.3.1(c) in respect of other Stockholders.

6.4 Selection of Priority Principal Amount: If the amount referred to in clause 6.3.1(a)(i) exceeds the amount referred to in clause 6.3.1(a)(ii), the Stockholder may, in its sole discretion, determine which of the liabilities, advances, accommodation and obligations secured by the Security Stock shall be included as the Priority Principal Amount, and the interest referred to in clause 6.3.1(b) will be calculated on this basis.

6.5 Issue of Second Ranking Stock: Stock may be issued on a second-ranking basis. At the request of the Council the Trustee may, without the consent of the Stockholders, concur with the Council in making any variation or addition to this Deed, the conditions or the form of the Stock Certificates (including, if desirable, approving a new form of Stock Certificate and new conditions applicable to second-ranking Stock) as the Trustee and the Council may agree in order to facilitate the issuing of second-ranking Stock or make provision for outstanding Stock to be in second-ranking form.

7. BEARER STOCK

7.1 Issue: Stock may be issued in bearer form. At the request of the Council the Trustee may, without the consent of the Stockholders, concur with the Council in making any variation or addition to this Deed, the conditions or the form of the Stock Certificates (including, if desirable, approving a new form of Stock Certificate and new conditions applicable to Bearer Stock) as the Trustee and the Council may agree in order to facilitate the issuing of Bearer Stock or make provision for outstanding Stock to be in bearer form.

7.2 Trustee's Entitlements re Bearer Stock:

7.2.1 Bearer as Holder: Whenever in this Deed the Trustee is required or entitled to exercise a trust, duty or right by reference to the interests of Stockholders, the Trustee shall be entitled to assume that in relation to Bearer Stock the bearer of the Stock Certificate in respect of the Bearer Stock is the Holder of such Bearer Stock and that each Holder thereof is also the holder of all coupons or other instruments relating to interest pertaining to such Bearer Stock.

7.2.2 No Liability: The Trustee shall not be liable to the Council or any Stockholder or any holder of any such coupons or other instruments by reason of having accepted as valid or not having rejected any Stock Certificate in respect of the Bearer Stock or

coupon or other such instrument purporting to be such and subsequently found to be not authentic.

8. ACKNOWLEDGEMENT OF INDEBTEDNESS AND COVENANT TO PAY

8.1 Acknowledgement of Indebtedness and Covenant to Pay:

8.1.1 Acknowledgement: The Council acknowledges its indebtedness to the Trustee, on behalf of the Stockholders, in respect of the Principal Money outstanding from time to time in respect of the Stock and interest owing thereon and any other sums forming part of the Secured Money represented by such Stock, and covenants with the Trustee to pay such indebtedness to the Trustee when due, in the currency and manner in which it is payable and, at such place as the Trustee directs by notice in writing.

8.1.2 Payment to Stockholders: Notwithstanding the provisions of clause 8.1.1, the Council shall, unless and until requested otherwise by the Trustee or prevented by law, pay all Principal Money and interest in respect of the Stock and any other sums forming part of the Secured Money represented by such Stock to the Stockholders in accordance with the terms and conditions of issue of the Stock. Each such payment shall operate as payment to the Trustee in satisfaction, to the extent of the payment, of the indebtedness of the Council acknowledged in this clause 8.1.

8.1.3 First Payee: Notwithstanding the provisions of clause 8.1.2, if by the terms of issue of any Stock the first of any payment of interest thereon is payable only to the person to whom such Stock was issued (whether or not such person is the registered Holder of such Stock at the date of the first payment of interest), then payment of interest to such person in accordance with the said terms of issue shall operate in satisfaction of the obligations of the Council in regard to such payment of interest under clause 8.1.2.

8.1.4 Satisfaction: Notwithstanding any of the provisions of this Deed or of any Stock or Stock Certificate, any payment by the Council from time to time in respect of the Stock made to the Trustee shall, to the extent of such payment, satisfy all obligations of the Council to make such payment.

8.2 Unclaimed Payments:

8.2.1 Treatment: If any payment made to any Stockholder pursuant to clause 8.1.2 or 8.1.3 at the Stockholder's last Registered Address is returned unclaimed and remains unclaimed for a period of three months, then the amount of that payment shall (unless notice of a change of Registered Address has in the meantime been received by the Council or the Registrar) be held by, or on behalf of, the Council in a separate trust account designated for such purpose but without any liability to invest the same or to pay interest thereon.

8.2.2 Entitlement: The person or persons who are entitled to those payments shall be entitled to payment upon providing to the satisfaction of the Council sufficient evidence of such entitlement, and details of any such payment so made shall be given to the

Trustee. Any money unclaimed for six years or longer shall be forfeited in accordance with the Unclaimed Money Act 1971.

8.3 Right to Deduct Withholding and Other Taxes:

8.3.1 Deduction: The Council, or the Paying Agent on behalf of the Council, may (subject to any specific conditions to the contrary relating to any particular issue of Stock or unless and except to the extent that a Stockholder has provided to the Council evidence satisfactory to the Council that such Stockholder is entitled to the benefit of any exemption therefrom) deduct from any amount payable to, or for the benefit of, a Stockholder (including a Stockholder of Bearer Stock) the amount of any withholding, or other, tax required to be deducted in respect of that amount under the laws of New Zealand. Where any deduction has been made and the amount of it accounted for by the Council, or the Paying Agent on behalf of the Council, to the Commissioner of Inland Revenue or other appropriate authority and the balance of the amount payable has been paid to, or for the benefit of, the Stockholder concerned, the full amount payable to such Stockholder shall be deemed to have been duly paid and satisfied by the Council.

8.3.2 Approved Issuer Levy: Stockholders to whom such is relevant may in writing request the Council, or the Paying Agent on behalf of the Council, to advise the basis (if any), or may otherwise respond to any indication by the Council, or the Paying Agent on behalf of the Council, from time to time of the basis upon which, the Council, at no cost to itself, is prepared from time to time to deduct and pay an approved issuer levy (within the meaning of section 86F of the Stamp and Cheque Duties Act 1971) as an alternative to the exercise by the Council of its rights as referred to in clause 8.3.1.

9. CHARGES BY COUNCIL

9.1 Charge:

9.1.1 Charged Assets: To secure the due payment of the Secured Money and its performance of and compliance with the Secured Obligations, the Council charges, and grants a security interest (within the meaning, and for the purposes, of the PPSA), in favour of the Trustee on behalf of the Stockholders, all its right, title and interest (present and future, legal and equitable) in and to its Charged Assets with the intent that the Charged Assets shall, to the fullest extent permitted by law, be security for the due payment of all of the Secured Money and the performance of and compliance with the Secured Obligations.

9.1.2 Continuing Security: Each such charge and security interest by the Council is and shall be a continuing security for the payment of the Secured Money and the performance of and compliance with the Secured Obligations, in each case as provided for in clause 9.1.1.

9.2 Floating Charge: Each charge by the Council pursuant to clause 9.1 as regards its Charged Assets (to the extent that it is not a security interest under the PPSA) is a floating charge, and in either case until the Date of Enforcement (upon which date such charge shall become fixed in respect

of such of the Charged Assets as are subject to action by the Trustee pursuant to clauses 13.1.2, 13.1.3 or 14.1) the Council shall be in no way hindered or prevented from dealing with (whether or not in the ordinary course of its activities) all or any part of its Charged Assets and the Trustee shall, at the request of the Council, execute and deliver all documents which may reasonably be necessary or desirable to permit such dealing by the Council.

9.3 First Charge: Each charge by the Council pursuant to clause 9.1 is, subject to any prior charge created pursuant to clause 9.4, a first ranking charge.

9.4 Other Charges: The Council covenants with the Trustee that, without the prior written consent of the Trustee, it will not, for so long as any Stock is outstanding, create, allow to come into existence or permit to subsist any charge over all or any part of its Charged Assets ranking:

9.4.1 Competing: in priority to, or *pari passu* with, the charges in favour of the Trustee under this Deed; or

9.4.2 Subsequent: after the charges in favour of the Trustee created under this Deed, unless by the specific provisions of such charge (and, if considered necessary by the Trustee, by a separate priority agreement) the priority thereover of the said charges in favour of the Trustee as a continuing security is expressly reserved to the reasonable satisfaction of the Trustee.

9.5 Further Assurance:

9.5.1 Assurances: The Council shall, to the extent permitted by law, execute and do all registrations, assurances and things which the Trustee may reasonably require for perfecting the security intended to be created by this Deed. Without limiting the foregoing, the Council shall, to the extent permitted by law, do all things and provide all information which the Trustee reasonably considers is desirable, in order:

- (a) to perfect, preserve or otherwise protect the Charged Assets or the security intended to be created under and by this Deed, and the priority of that security as contemplated by this Deed;
- (b) for the Trustee to register and maintain (including to renew before expiry) one or more financing statements in relation to the security interest in the Charged Assets created or provided for by this Deed;
- (c) to remove any financing statement which is registered against the Council in relation to any security which is not permitted by this Deed or otherwise consented to by the Trustee in writing.

9.5.2 Realisation: The Council shall, to the extent permitted by law, from time to time and at all times after the Date of Enforcement execute and do all registrations, assurances and such things (including, without limitation, in respect of the assessing of rates once set) which the Trustee may reasonably require for taking possession of the Charged Assets and facilitating the realisation

of the Charged Assets and for exercising all the trusts and rights conferred on the Trustee or any Receiver by this Deed.

9.5.3 Execution: Without limiting the generality of clause 9.5.1, the Council shall, to the extent permitted by law following the Date of Enforcement, execute all mortgages, transfers, conveyances, assignments and assurances of the Charged Assets whether to the Trustee or its nominees and shall, to the extent permitted by law, perform or cause to be performed all acts and things requisite or reasonably desirable according to law for the purpose of giving effect to the carrying out or exercise of any of the said trusts and rights and shall, to the extent permitted by law, give all notices, orders and directions which the Trustee may reasonably consider expedient.

9.6 Attachment not Delayed: Any security interest created by this Deed to which the PPSA applies shall attach, in the case of:

9.6.1 Present: any present Charged Assets, from when the Council first signs or assents to this Deed in one of the ways specified in section 36(1)(b) of the PPSA; or

9.6.2 After-Acquired: any after-acquired Charged Assets, from when the Council acquires any rights in those assets.

The Council acknowledges and agrees that there has been no agreement between the Council and the Trustee that the attachment of any security interest to which the PPSA applies shall be at a time other than that provided in this clause.

9.7 Quiet Enjoyment: Subject to the provisions of this Deed and to the charges upon the Charged Assets contained in this Deed, the Trustee and the Stockholders shall until the Date of Enforcement permit the Council to hold and enjoy the Charged Assets and all other assets and to receive and apply as it thinks fit all income and Proceeds arising from the Charged Assets and to carry on with the Charged Assets any of its activities.

10. COVENANTS BY COUNCIL

10.1 Continuing Covenants: The Council covenants with the Trustee that it shall, subject to the Act and to its rights to withhold information pursuant to the Information and Meetings Act, at all times at which any Stock is outstanding, except as otherwise permitted by the Trustee:

10.1.1 Comply with Act: duly comply with all the requirements of the Act with respect to the keeping and filing of reports, accounts and statements and registration of charges (including this Deed);

10.1.2 Records: procure that the financial statements (within the meaning of clause 29 of Schedule 10 of the Act) and other records of the Council are audited in accordance with any statutory requirements and are (subject to section 40D(4) of the Receiverships Act) at all reasonable times (whether kept at its principal office or any other place or places in New Zealand) open for inspection by the Trustee and any Receiver, or any person properly appointed by the Trustee or the Receiver and that where the FMC Act applies those records will be retained by the Council for a period of at least seven years after the date on which they

are made or the date of completion of the transaction to which they relate (whichever is the later);

- 10.1.3 **Notice of Defective Stock Issuance Certificate:** forthwith give notice in writing to the Trustee if any event occurs or any matter or thing comes to the notice of the Council which would cause any current Stock Issuance Certificate to be materially defective;
 - 10.1.4 **Compliance with FMC Act:** duly comply with the provisions of the FMC Act so far as they may be applicable to the issue of any Stock, and prior to the issue of any product disclosure statement as is required by the FMC Act in respect of any Stock forward a draft copy thereof to the Trustee for its approval and an advance copy of any register entry information under the FMC Act in respect of any Stock the subject of a regulated offer under the FMC Act;
 - 10.1.5 **Details of Security Stock:** whenever requested by the Trustee deliver to the Trustee within ten business days from the date of such request being received by the Council a certificate as to the amount owing in respect of Security Stock as known to the Council;
 - 10.1.6 **Notification of Enforcement Event:** notify the Trustee immediately in writing of the occurrence of any Enforcement Event giving full details of any action that has been taken (or is to be taken) as a result; and
 - 10.1.7 **Refund Trustee for Expenditure:** permit the Trustee or any Receiver or other person properly appointed by the Trustee under this Deed, after giving at least five business days' notice to the Council, and the Council having within that time failed itself to take appropriate action, to make any payments that may in the reasonable opinion of the Trustee be rendered necessary or expedient by reason of any default on the part of the Council in performing any of the covenants contained in this Deed in that regard, and will on demand repay to the Trustee all money expended by the Trustee for any such purpose and, pending such repayment, all money so expended (with interest not exceeding the overdraft rate charged by the Trustee's bankers) shall, to the extent permitted by law, from the date of expenditure be a charge on the Charged Assets and form part of the Secured Money and the Council will, to the extent permitted by law, on demand pay and satisfy and obtain the release of any liabilities to which the Trustee or any such person may become subject consequent upon the execution of any of the Trustee's rights conferred by this Deed.
- 10.2 **Reporting Covenants:** The Council covenants with the Trustee that it shall, subject to the Act and to its rights to withhold information pursuant to the Information and Meetings Act, at all times at which any Stock is outstanding, except as otherwise permitted by the Trustee:
- 10.2.1 **Long Term Plan, Annual Plan and Annual Report and Liability Management Policy:** as soon as each is adopted by the Council within the terms of sections 93, 95, 98 and 102(2)(b) of the Act respectively, and in any event within one month of each such adoption, deliver to the Trustee a copy of each of the Annual Plan and the Annual Report for the forthcoming, and previous,

financial years respectively and (where not already delivered to the Trustee) the most recent Long Term Plan and the Liability Management Policy (within the meaning of those sections);

10.2.2 Interim Financial Information: promptly after such is prepared in each year, provide to the Trustee a copy of such financial information as the Council may have prepared for external dissemination as to its financial position as at the end of the first six months of each of its financial years;

10.2.3 Amendments: as soon as the Council has approved and adopted any material amendment to any such Long Term Plan or Liability Management Policy, provide details of that amendment to the Trustee;

10.2.4 Reporting Certificate: as soon as reasonably practicable, but in any event no later than 4 months after the end of each of the Council's financial years and no later than 2 months after the end of each of the Council's financial half-years, and, if required by the Trustee, each other financial quarter, and within 21 days of receipt of a written request by the Trustee (which request may only be made where the Trustee certifies that it has reasonable grounds to believe that the Council is not complying with its obligations under this Deed), deliver to the Trustee a completed and signed Reporting Certificate;

10.2.5 Information on Request: on request by the Trustee, provide to the Trustee, any agent of the Trustee or a Receiver, any information which the Trustee reasonably requires with respect to matters relating to the financial statements (within the meaning of clause 29 of Schedule 10 to the Act) of the Council, other records of the Council, the Charged Assets and to the financial position of the Council;

10.2.6 Auditors' Reports:

(a) at the same time as it furnishes its Annual Report under clause 10.2.1, provide a separate report by the Auditors addressed to the Trustee stating:

(i) whether or not in the performance of their duties as auditors they have become aware of any matter which in their opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Trustee and if so, giving particulars thereof;

(ii) whether or not their audit has disclosed any matter (and if so, particulars thereof) calling in their opinion for further investigation by the Trustee in the interests of the Stockholders;

(iii) that they have perused the certificate (if any) given on behalf of the Council after the end of the relevant financial year pursuant to clause 10.2.4 and that so far as matters which they have observed in the performance of their duties are concerned the statements made in such certificate are correct;

- (iv) whether or not the Council or its agents (including the Registrar) have duly maintained the Register in accordance with the provisions of this Deed; and
- (v) as at the end of each relevant financial year:
 - (aa) the amount of the Stock showing separately how much is Security Stock and how much, if any, is Bearer Stock;
 - (bb) the Principal Money owing or secured under the Stock, distinguishing between Security Stock and other Stock;
 - (cc) whether or not from normal audit tests they have conducted they are satisfied that all Principal Money due and payable on the Stock has been paid or otherwise satisfied and that all interest due and payable on the Stock has been paid; and
- (b) where the FMC Act applies in respect of any Stock:
 - (i) provide the Trustee with a copy of any report, financial statement or certificate which the Auditors have issued in respect of the Council or which is otherwise required to be provided to the Trustee pursuant to the FMC Act;
 - (ii) procure that, if the Auditors become aware of any matter that is relevant to the exercise or performance of the rights or duties of the Trustee, the Auditors shall, within seven business days of becoming aware of the matter, report the matter to the Trustee; and
 - (iii) on request of the Trustee provide to the Trustee all information relating to the Council relevant to the exercise of the Council's rights and duties in respect of this Deed;

10.2.7 Furnish Copy of Register: provided the Register is not closed at the relevant time, furnish upon request to the Trustee a copy of the Register;

10.2.8 Name Change: notify the Trustee as soon as is reasonably practicable, and in any event within five business days, of any change in the Council's name.

11. POWERS OF AND OTHER PROVISIONS RELATING TO TRUSTEE

11.1 Enforcement of Holders' rights

11.1.1 The Trustee holds its rights and benefits under this Deed (including the right to enforce the Council's duty to repay or pay

interest under the terms of any Stock, the benefit of the security created under clause 9 and the right to enforce the Council's obligations and duties under the terms of the Stock, this Deed and, where applicable, the FMC Act) in trust for, and for the benefit of, the Holders.

11.2 Trustee's Remuneration:

11.2.1 General: The Council shall pay to the Trustee by way of remuneration for its services as trustee such remuneration as shall from time to time be agreed between the Council and the Trustee.

11.2.2 Expenses: Without limiting the generality of the other provisions of this Deed, the Council shall also, to the extent permitted by law, pay on demand all expenses (including travelling expenses and expenses incurred in the taking of any expert advice deemed necessary or expedient by the Trustee) reasonably incurred by or on behalf of the Trustee in connection with:

- (a) the exercise by the Trustee of any right or duty conferred by this Deed on the Trustee;
- (b) any breach or default in the observance or performance by the Council of any provision of this Deed or the PPSA (and not excluded by this Deed);
- (c) any application under the trusts and provisions of this Deed for its consent to, or approval or execution of, any act, document or matter;
- (d) any action taken by or required of the Trustee under this Deed;
- (e) the convening and holding, and carrying out of any directions or resolutions, of any meeting of the Stockholders; and
- (f) any other expenses agreed by the Council from time to time.

11.2.3 Continuation: The remuneration and other payments payable under this clause 11.2 shall continue to be payable until the trusts contained in this Deed are finally wound up and whether or not a Receiver has been appointed or the trusts contained in this Deed are in the course of administration by or under the direction of a court.

11.2.4 Payment: All expenses incurred and payments made by the Trustee or any Receiver in the lawful exercise of the rights conferred by this Deed and all remuneration payable to the Trustee or to any Receiver, shall be payable by the Council promptly following demand and, while unpaid following demand, shall, to the extent permitted by law, be a charge on the Charged Assets and form part of the Secured Money, and shall be satisfied before any payment is made to the Stockholders in respect of the Secured Money.

- 11.3 Powers of Investment:** Any money held by the Trustee and subject to the trusts of this Deed may, to the extent permitted by law, at the discretion of the Trustee, be invested in the name of the Trustee or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments.
- 11.4 Applications to Court:** The Trustee may, on or at any time after the security created by this Deed has become enforceable (but subject to clause 13.3), apply to a court for an order that the rights and trusts contained in this Deed be exercised under the direction of the court and for the appointment of a Receiver of all or any part of the Charged Assets and for any other order or direction in relation to the execution and administration of the rights and trusts contained in this Deed as the Trustee may deem expedient. The Trustee may in its capacity as Trustee assent to, approve of or oppose any application to a court made by or at the instance of any of the Stockholders and shall, to the extent permitted by law (including, for the avoidance of doubt, section 105 of the FMC Act), be indemnified by the Council against all reasonable costs, charges and expenses incurred by and in relation to any such application or proceedings (except where such alleges, or relates to, any fraud, default, negligence or wrongful action or omission by the Trustee).
- 11.5 Waiver by Trustee:** Except in respect of any event referred to in clauses 12.1.1(a) or 12.1.1(b), the Trustee may, subject to any direction pursuant to clause 13.1, and if so directed by an Extraordinary Resolution, at any time and from time to time by notice in writing to the Council waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Council of any provision expressed or implied in this Deed provided that the Trustee, unless so directed, is satisfied that the interests of the Stockholders will not be materially prejudiced thereby, but such waiver shall not prejudice the rights of the Trustee or the Stockholders in respect of any other breach.
- 11.6 Supplemental Powers of Trustee:** In addition to the provisions of law relating to trustees and to facilitate the discharge of its duties under this Deed, but subject always to section 105 of the FMC Act, it is expressly declared that:
- 11.6.1 Reliance:** the Trustee may, providing that it acts bona fide, without liability for loss, obtain, rely and act on, or decline and elect not to act on:
- (a) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant or other expert whether obtained by any Stockholder or by the Trustee or otherwise, and although the same may subsequently be found to contain some error or not be authentic;
 - (b) a certificate signed by the Chief Executive on behalf of the Council as to any fact or matter prima facie within the knowledge of such person or that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the Stockholders as sufficient evidence of such fact or matter or the expediency of such dealing, transaction, step or thing; or

- (c) the statements contained in any certificate, resolution or report given under this Deed as conclusive evidence of the facts stated therein;

11.6.2 Reference on Record: the Trustee shall not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Stockholders, or any class thereof, in respect of which a proper record has been made and which the Trustee believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings of the meeting;

11.6.3 Application: the Trustee shall not be responsible for, or be bound to see to the application of, the money subscribed by applicants for, or subscribers of, the Stock;

11.6.4 Title: the Trustee shall not be bound or concerned to examine or enquire into, or be liable for any defects or failure in, the title of the Council to the Charged Assets, whether such defects or failure might have been discovered upon an examination or enquiry and remedied or not;

11.6.5 Discretion: except as otherwise expressly provided in this Deed, the Trustee shall have sole discretion as to the exercise of all trusts and rights vested in it by this Deed and as to the commencement, prosecution, variation, discontinuance or compromise of any action, proceeding or claim and, provided it has acted with reasonable care and diligence, it shall not be responsible for any loss or cost that may result from the exercise or non-exercise thereof;

11.6.6 Delegation: subject to clause 11.6.7, the Trustee, whenever it thinks it expedient in the interests of the Stockholders to do so, may:

- (a) delegate (with the prior written approval of the Council, except where the security created by this Deed has become enforceable) at any time, to any person, any of the trusts or rights vested in the Trustee by this Deed which cannot conveniently be exercised by it or through its employees, upon such terms and conditions and under such regulations (including power to sub-delegate) as the Trustee may think fit;
- (b) authorise (with the prior written approval of the Council, except where the security created by this Deed has become enforceable) any person it thinks fit to act as its representative at any meeting of Stockholders;
- (c) instead of acting through its permanent employees employ, with the prior written approval of the Council (which shall not be unreasonably withheld), in the carrying out of any of the trusts or rights vested in the Trustee by this Deed and pay, at the expense of the Trustee, an agent to transact all business and do all acts required to be done under this Deed including the receipt and payment of money;

- (d) delegate from time to time and at any time to any one of its officers any of the trusts or rights vested in the Trustee by this Deed which, owing to the place in which they are to be or may require to be exercised, cannot conveniently be exercised by the Trustee;
- (e) in addition to the exercise of the rights contained in clause 11.4, apply to a court for directions in relation to any question arising, either before or after the Date of Enforcement; and

11.6.7 No delegation of supervisor functions: notwithstanding any provision of this Deed, the Trustee shall not delegate any of its functions set out in section 111(1) of the FMC Act (if applicable) except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act.

11.6.8 Attendance at Meetings: the Trustee, and any representative of the Trustee, shall be entitled to attend any meeting of the Council and to be heard at any such meeting on any part of the business of the meeting which concerns the Trustee as such or the Stockholders.

11.7 Indemnity of Trustee:

11.7.1 Indemnification: Without prejudice to the right of indemnity by law given to trustees, the Trustee and every Receiver, attorney, manager, agent or other person appointed by the Trustee pursuant to this Deed shall (subject to section 105 of the FMC Act and to the provisions of the Act and the Receiverships Act) be indemnified out of the Charged Assets in respect of all liabilities and expenses incurred in the execution or purported execution of the rights or trusts of this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, or in any way relating to the provisions of this Deed or its licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act), other than a claim arising out of a wilful default, wilful breach of trust, negligence or breach of duty on the part of the Trustee or any such attorney, manager, agent or other person.

11.7.2 Retention: The Trustee may retain and pay out of any money in its hands arising pursuant to this Deed or from the trusts of this Deed all sums necessary to effect such indemnity and also the remuneration and disbursements of the Trustee as provided for in this Deed, and the Trustee shall, to the extent permitted by law, have a charge on the Charged Assets for all money payable to it under this clause 11.7 or otherwise however properly arising out of or in connection with this Deed or the issue of the Stock.

11.8 Fiduciary Relationship:

11.8.1 Stockholder: Nothing in this Deed shall be deemed to prohibit the Trustee or any related company of the Trustee (all of whom in this clause 11.8 where the context permits are included in the expression **the Trustee**), or its directors, or officers, from being a Stockholder or the holder of any other security (including any

Stock issued under this Deed) issued by the Council or from acting in any representative capacity for a Stockholder, or other such holder.

11.8.2 Own Account: Without limiting the generality of clause 11.8.1, it is expressly declared that the Trustee may so act on its own account or as executor, administrator, trustee, receiver, committee, attorney or agent or in any other fiduciary, vicarious or professional capacity and the acting in such capacity shall not be deemed a breach of any of the obligations under, or arising in respect of, this Deed or otherwise imposed or implied by law arising out of the fiduciary relationship between the Trustee and the Council, or between the Trustee and the Stockholders as the case may be.

11.8.3 Other Transactions: The Trustee shall not by reason of its fiduciary capacity be precluded from making any contracts or entering into any transactions with the Council or with itself as trustee in the ordinary course of the business of the Trustee or from undertaking any insurance, financial or agency service with the Council or for itself as trustee, and the Trustee shall not be accountable either to the Council or the Stockholders for any profits arising from such contracts, transactions or services.

11.9 Represent Stockholders: The Trustee may at any time, either of the Trustee's own volition or pursuant to any direction or in accordance with any policy given or indicated by any meeting of Stockholders, represent Stockholders in any investigation, negotiation, action, transaction or proceedings concerning the interests of the Stockholders generally in the affairs of the Council or in the enforcement of the rights of the Stockholders or any of them, and in particular in obtaining legal, accountancy or other professional advice as to the rights of the Stockholders or the Trustee, the duties of the Trustee and the liabilities of the Council and in enforcing the rights of the Stockholders or the Trustee under any demand, action or proceeding.

11.10 Retirement: Subject to applicable law, the Trustee may without assigning any reason therefor, and shall if requested to do so pursuant to an Extraordinary Resolution or if requested by the Council, retire at any time by giving 90 days (or such shorter period as the Council may agree) notice in writing to the Council of its intention to do so, subject to the due appointment of a new Trustee previously approved in writing by the Council and the transfer to such new Trustee of the money, records and investments held by the Trustee under this Deed.

11.11 Notice to Stockholders: Upon receipt of a notice given under clause 11.10, the Council shall promptly give notice of its contents to Stockholders appearing in the Register as at the date of receipt.

11.12 Appointment of New Trustee:

11.12.1 Power to Appoint: The power of appointing a new trustee or trustees of this Deed shall be vested in the Council, but no trustee shall be appointed unless such appointment is first approved by an Extraordinary Resolution. Upon the Trustee notifying the Council under clause 11.10 that it is to retire, the Council shall promptly call a meeting of the Stockholders for the purpose of approving an appointment of a new trustee or trustees, and if

approval is given the Council shall exercise its power of appointment.

- 11.12.2 Failure to Appoint:** In the event that the Council, within 30 days of receiving notice of the Trustee's intention to retire, fails to call a meeting of the Stockholders as aforesaid, or to exercise the power vested in it by this Deed after receiving the approval referred to in clause 11.12.1 for appointing a new trustee or new trustees, then in either case the Stockholders may by Extraordinary Resolution exercise such power to the exclusion of the Council.
- 11.13 Additional Powers of Trustee:** The rights conferred upon the Trustee by this Deed shall be in addition to any rights which may from time to time be vested in trustees by law and to any rights which may from time to time be vested in the Trustee as a Stockholder.
- 11.14 Trustee's Duty of Care:** None of the provisions of this Deed shall in any case in which the Trustee has failed to exercise reasonable care, skill and diligence, relieve the Trustee from, or indemnify the Trustee against, any liabilities which by virtue of any legislation or rule of law would otherwise attach to it in respect of any negligence, wilful default, or wilful breach of trust undertaking or breach of duty for which it may be liable in relation to this Deed.
- 11.15 Duties of Trustee:** Notwithstanding any other provision of this Deed:
- 11.15.1 Breach:** the Trustee shall exercise reasonable diligence to ascertain whether or not any breach of the terms of this Deed or of the terms of the Stock has occurred and, except where it is satisfied that the breach will not materially prejudice the security of the Stock or the interests of the Holders thereof, shall do all such things as it is empowered to do to cause any breach of those terms to be remedied; and
- 11.15.2 Available Assets:** the Trustee shall exercise reasonable diligence to ascertain whether or not the assets of the Council that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the Stock as they become due, provided that except where otherwise required by law, the Trustee will be entitled to assume without special inquiry, that no such breach is occurring or has occurred, and that the assets of the Council are sufficient to discharge the amounts of Stock as they become due under and until the Trustee receives actual advice to the contrary, whether in the form of the information and reports provided to the Trustee pursuant to clause 10.2 or otherwise.
- 11.16 Trustee's Indemnity by Stockholders:** If the Trustee receives a direction or request pursuant to an Extraordinary Resolution, in accordance with the provisions of this Deed the Trustee shall not be bound to comply with it unless the Trustee has first been indemnified (subject to section 105 of the FMC Act if applicable) to its satisfaction against any actions, proceedings, claims and demands to which the Trustee may be rendered liable and all costs, charges, damages and expenses which it may incur by doing so.
- 11.17 Not Bound to Give Notice:** The Trustee shall not be bound to give notice to any person of the execution of this Deed.

11.18 Disclosure and Confidentiality: Except where the Trustee, in its reasonable opinion, considers it necessary for the purposes of this Deed to disclose such to Stockholders, or to any person referred to in clause 11.6.1(a), the Trustee shall treat, and maintain, as confidential all information which it receives from, or in respect of, the Council pursuant to this Deed.

12. ENFORCEMENT OF SECURITY ON DEFAULT

12.1 Enforcement Events: Subject to clause 11.5 and clause 13, the security created by this Deed shall become enforceable following the occurrence of any one or more of the following events, and while such is continuing unremedied or unwaived:

12.1.1 Non-Payment:

- (a) default is made by the Council in the payment on due date or, where payable on demand, promptly following proper demand therefor (or on the expiration of any applicable grace period) of any Principal Money of the Stock, or on any earlier date that the Principal Money shall become payable to a Stockholder, and such default continues unremedied for two business days; or
- (b) default is made by the Council for a period of seven business days in the payment of any interest on or secured by the Stock; or
- (c) default is made by the Council for a period of 30 days after final demand in writing in the payment of any other material amount due and payable by the Council pursuant to this Deed;

12.1.2 Receivership: If a receiver, or receiver and manager, is appointed of (or the Council requests any such appointment), or an encumbrancer takes possession of or exercises its powers of sale in respect of, all or any material part of the Charged Assets unless the Council demonstrates to the satisfaction of the Trustee that such appointment or taking of possession or exercising of power will not have a material adverse effect on the ability of the Council to repay the Secured Money when such is due and payable; or

12.1.3 Material Default: If any material default not otherwise referred to in the preceding provisions of this clause 12.1 is made by the Council in the performance or observance of any other material covenant, condition or other provision binding upon the Council under this Deed (whether or not the Trustee has waived any prior similar default) and such default continues for more than 30 days after receipt by the Council of a notice in writing from the Trustee specifying the default and requiring such to be remedied.

12.2 Application of the PPSA: The Council and the Trustee:

12.2.1 Contracting Out: contract out of:

- (a) section 120(1) of the PPSA;
- (b) sections 108 and 109 of the PPSA to the extent that:

- (i) "default" in terms of those sections may occur before the occurrence of an Enforcement Event and accordingly agree, for the purposes of clarification, that those two sections of the PPSA will not apply unless and until an Enforcement Event occurs and continues unremedied and unwaived; and
 - (ii) those sections may require that only a secured party with priority over all secured parties may enforce in the manner permitted by those sections (to the intent that the Trustee and the Council agree that the Trustee shall be entitled, subject to the terms of this Deed, to enforce pursuant to those sections regardless of whether or not the Trustee has priority over all other secured parties);
 - (c) section 114(1)(a) of the PPSA to the extent that that section obliges the Trustee to give any period of notice beyond that which the Trustee is obliged to give under clause 13.3;
 - (d) section 109(1)(b) and section 109(2) of the PPSA (except to the extent that the events referred to in those sections have led to the security created by this Deed becoming enforceable as provided for in clause 12.1); and
 - (e) section 133(1) of the PPSA.
- 12.3 Verification Statement:** The Council waives its right to receive a copy of the verification statement in respect of a financing statement or financing change statement relating to any security interests created by this Deed until such time as the Council may request such.
- 12.4 Security Trust Deed:** The Council agrees that this Deed is a security trust deed for the purposes of the PPSA, and consents to any registration of a financing statement in respect of the security interest created pursuant to this Deed disclosing that this Deed is a security trust deed.

13. TRUSTEE'S POWERS OF ENFORCEMENT OF SECURITY

- 13.1 Trustee's Powers to Act:** At any time after the security created by this Deed has become enforceable (but subject to clauses 13.3, 13.5 and to the Act), and while it remains enforceable, the Trustee may, and shall forthwith upon being directed to do so by an Extraordinary Resolution, take one or more of the following steps:
- 13.1.1 Accelerate:** subject to the conditions or limitations applicable to any particular Stock, declare the whole or any affected part of the Stock and Secured Money to have become immediately due and payable, whereupon such money shall forthwith become due and payable;
 - 13.1.2 Take Possession:** enter into or take possession of all or any part of the Charged Assets;

- 13.1.3 Realise:** either with or without taking possession sell, call in, collect and convert into money all or any part of the Charged Assets in such manner and for such consideration as the Trustee thinks fit;
- 13.1.4 Apply:** apply in accordance with section 108 of the PPSA, Charged Assets in the form of Accounts Receivable, Money (as the term "Money" is defined in the PPSA) or Negotiable Instruments in or towards satisfaction of the Secured Money; and
- 13.1.5 Meeting:** call a meeting of Stockholders for determining what action (if any) the Trustee should take in the circumstances.
- 13.2 Decrystallisation:** At any time after the floating charge created by this Deed has taken effect as a fixed charge in respect of any part of the Charged Assets, it shall resume the status of a floating charge in respect of that part of the Charged Assets which the Trustee identifies in a notice to that effect to the Council.
- 13.3 Notice of Exercise of Powers:** The powers conferred by clause 13.1 shall be exercisable by the Trustee without further notice to the Council. However, before exercising any of the powers contained in clauses 13.1.1 to 13.1.4 (the powers of conversion) the Trustee shall, except where it certifies in writing to the Council that, in its opinion, delay would imperil the interests of Stockholders or except upon the happening of any one or more of the events referred to in clauses 12.1.1(a), 12.1.1(b), 12.1.2 or 12.1.3, give written notice of its intention to the Council and shall not enforce the security created by this Deed or exercise the powers of conversion until the expiration of 14 days after the giving of such notice or if within such period the breach or event so specified is remedied to the reasonable satisfaction of the Trustee or the Trustee notifies the Council in writing that the particular breach or event relied upon no longer in the reasonable opinion of the Trustee detrimentally affects the security created by this Deed. However, if the Trustee has appointed a Receiver in accordance with clause 14.1, no further notice shall be required before exercising any other powers of conversion.
- 13.4 Power After Entry:**
- 13.4.1 Take Action:** After the Trustee has entered into possession, and until the whole of the Charged Assets have been applied, sold, called in, collected and converted under the powers of conversion, the Trustee may if it thinks fit (but subject to the Act, and except where precluded or limited by law) take such action in and with all or any part of the Charged Assets in such manner as it thinks fit. For this purpose the Trustee may employ such agents, managers, receivers, accountants and employees, upon such terms as to remuneration and otherwise as it thinks proper, and generally may (but subject to the Act, and except where precluded or limited by law) do or cause to be done all acts and things and may enter into such arrangements respecting all or any part of the Charged Assets as it could do if it were absolutely entitled to those assets and without being responsible for any loss or damage which may arise or be occasioned thereby **PROVIDED ALWAYS THAT** no action of the Trustee may prevent the provision of those services of the Council that are essential for the maintenance of public health and safety requirements and for the purposes of this clause an action of the

Trustee shall be deemed not to prevent provision of the services mentioned above unless:

- (a) that action necessarily results in that outcome; and
- (b) the outcome is not more fairly attributable to the act or omission to act of persons outside the control of the Trustee.

13.4.2 Expenses: The Trustee shall by and out of the proceeds and income of the Charged Assets pay and discharge the expenses incurred in and about the exercise of any of the powers under clause 13.1 and clause 14, or otherwise in respect of the Charged Assets, and shall pay and apply the residue of the said proceeds and income in the manner provided in clause 15. The Trustee may for any such purpose, and for the purpose of payment to the Trustee of all sums for the time being owing to it (whether by way of remuneration or otherwise) advance, borrow or raise money on the security of all or any part of the Charged Assets in priority to the Stock and interest thereon and at the rate of interest, and on the terms, which the Trustee thinks fit.

13.5 Essential Services: The Council and the Trustee agree that the regime as set out in section 40D of the Receiverships Act shall be deemed to apply mutatis mutandis to any action taken by the Trustee in relation to any Charged Assets pursuant to the powers referred to in clause 13.1 as if the references in that section to "receiver" were references to the Trustee, and the provisions of this Deed shall be read accordingly.

14. APPOINTMENT OF RECEIVER

14.1 Appointment and Removal: At any time after the security created by this Deed has become enforceable, but subject always to clause 13.3, the Act and the Receiverships Act, the Trustee may in its discretion and shall upon being directed to do so by an Extraordinary Resolution, (and in any such case without any further notice to or consent on the part of the Council) appoint in writing one or more Receivers (whether severally, jointly or both) of all or any part of the Charged Assets with power from time to time to remove any Receiver so appointed and in case of removal, retirement or death to appoint another in his or her place. Any such Receiver may be appointed either before or after the Trustee has entered into or taken possession of all or any part of the Charged Assets.

14.2 Rights of Receiver: Following an appointment of a Receiver, the Receiver shall (subject to the provisions of the Act, and the Receiverships Act and except where precluded or limited by law) have power to do all or any of the following which are not specifically excluded by his or her appointment:

14.2.1 Take Possession: take possession of, demand, collect, or get in all or any part of the Charged Assets and exercise the rights conferred on Receivers by the Act (and, in particular, section 115 of the Act), and the Receiverships Act, in respect of the Charged Assets;

14.2.2 Deal with Charged Assets: deal with and exploit all or any part of the Charged Assets in any manner;

- 14.2.3 Dispose of Charged Assets:** dispose of or concur in the disposal of all or any part of the Charged Assets and any interest in the Charged Assets generally upon such terms and conditions as the Receiver may consider necessary or expedient;
- 14.2.4 Acquire Property:** acquire an asset or an interest in an asset for inclusion in the Charged Assets;
- 14.2.5 Appoint Agents:** appoint and employ officers, managers, employees, advisers, contractors or agents for any purpose and on the terms which the Receiver may consider necessary or expedient;
- 14.2.6 Borrow Money:** advance money to, or borrow or raise money from, any person with or without a charge or other security interest over or affecting the Charged Assets;
- 14.2.7 Settle Disputes:** bring, defend, submit to arbitration, negotiate, compromise, abandon or settle a claim or a proceeding, or make an arrangement or compromise, in relation to the Charged Assets;
- 14.2.8 Execute Documents:** (subject to the Receiverships Act) execute or do, or cause or authorise to be executed or done, on behalf of or in the name of the Council or otherwise and under the common seal of the Council or otherwise, all agreements, acts or things which the Receiver may reasonably consider necessary or expedient in relation to the Charged Assets;
- 14.2.9 Give Receipts:** give a receipt for money paid to or an asset received by the Trustee or Receiver (which receipt shall effectively discharge the payer or the person delivering that asset);
- 14.2.10 Delegate:** delegate any of the rights conferred upon the Receiver under this Deed, the Receiverships Act, the Act or by law;
- 14.2.11 Authorise Transactions:** generally carry out, or cause or authorise to be carried out, any transaction, scheme or arrangement whatever in relation to the Charged Assets which the Receiver may consider necessary or expedient; and
- 14.2.12 Incidental Rights:** do or omit to do anything incidental to the rights contained in this clause 14.2.

The above rights of a Receiver, together with those referred to below, are in addition to and not in substitution for the rights conferred on receivers under statute or at law and are at all times subject to any restrictions imposed from time to time by the Act or the Receiverships Act, including sections 40D(1) and (4).

- 14.3 Withdrawal:** The Trustee may at any time give up possession of any Charged Assets and may at any time discontinue any receivership.
- 14.4 Receiver Agent of the Council:** A Receiver is, to the extent permitted by the Act or the Receiverships Act, to be the agent of the Council, and the Council is to be solely responsible for his or her acts and defaults (including misconduct, negligence or default), but without prejudice to the Council's rights against the Receiver.

- 14.5 Receiver's Remuneration:** The remuneration of a Receiver will be fixed by the Trustee (and may be, or include, a reasonable commission calculated by reference to the gross amount of all money received by the Receiver). Such remuneration is to be payable by the Council and, to the extent permitted by law, is to form part of the Secured Money and will accordingly be secured by the Charged Assets.
- 14.6 The Trustee and a Receiver: Any Receiver:**
- 14.6.1 Rights:** shall unless otherwise directed by the Trustee, have such rights as are conferred upon the Trustee by this Deed and are capable of being exercised by the Receiver as the Trustee may think expedient, and if the Trustee thinks expedient may have the power to sub-delegate the same;
- 14.6.2 Directions:** shall in the exercise of his or her rights comply with any directions given by the Trustee;
- 14.6.3 Payment:** shall (except as otherwise directed by the Trustee) pay all money he or she receives to the Trustee to be held by the Trustee on the trusts declared in clause 15;
- 14.6.4 Application:** is to apply, for the purposes of this Deed, all money received from the Trustee arising from the Charged Assets and the Trustee may determine what funds the Receiver shall keep in hand;
- 14.6.5 Borrow:** may, for the purpose of defraying any costs, losses, charges or expenses (including his or her remuneration) which shall be incurred by him or her in the exercise of rights vested in him or her, and for all or any other purposes of this Deed raise and borrow money by way of any transaction which is lawfully entered into by the Council on the security of all or any part of the Charged Assets either in priority to the Secured Money and the security created by this Deed as may be permitted by the Act or otherwise, at such rate or rates of interest and generally on such terms and conditions as he or she thinks fit (and no person lending any such money shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see to the application of any money so raised or borrowed) and for those purposes may execute and do all such assurances and things as he or she thinks fit **PROVIDED ALWAYS THAT** a Receiver shall not exercise any such power without first obtaining the written consent of the Trustee thereto but the Trustee shall incur no responsibility or liability to the lender or otherwise by reason of its giving or refusing such consent whether absolutely or subject to any limitation or condition.
- 14.7 Trustee's Right to Sell Concurrently:** The Trustee may, upon such terms as it thinks proper, join in exercising its rights under this Deed with any other secured creditor of the Council and in particular may on such terms as it thinks proper join in appointing a common Receiver of all or any part of the Charged Assets, subject to the Trustee retaining such priority as is enjoyed by it in respect of the Charged Assets but with liberty for the Trustee to make any arrangement it thinks proper for the purpose of ensuring the respective priorities.

- 14.8 No Liability as Mortgagee in Possession:** The Trustee or any Receiver shall not be liable, by reason of an entry into possession of all or any part of the Charged Assets, to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on reallocation or for any default or omission for which a mortgagee in possession might be liable.
- 14.9 Protection of Third Parties:** No person dealing with the Trustee or any Receiver, or their respective agents, shall be concerned to enquire:
- 14.9.1 Enforceability:** whether the security created by this Deed has become enforceable; or
 - 14.9.2 Right Exercisable:** whether any right exercised or purported to be exercised pursuant to this Deed has become exercisable; or
 - 14.9.3 Money Due:** whether any money remains due upon the security of this Deed; or
 - 14.9.4 Conditions:** as to the necessity or expediency of the conditions subject to which any sale shall be made; or
 - 14.9.5 Property:** otherwise as to the propriety or regularity of any exercise of the powers of conversion; or
 - 14.9.6 Application:** as to the application of any money paid to the Trustee or to any Receiver.

In the absence of fraud on the part of such person, such dealing shall, to the extent permitted by law, be deemed with respect to such person to be within the rights conferred by this Deed and to be valid and effectual accordingly, and the remedy of the Council in respect of any irregularity or impropriety whatever in the exercise of such rights shall be in damages only.

- 14.10 Receipt of Trustee or Receiver:** Upon any exercise of the powers of conversion, and upon any other dealing or transaction under this Deed, the receipt of the Trustee or the Receiver for any money paid to them shall effectively discharge the payer, who need not be concerned to see to the application or be answerable for the loss or misapplication of such payment.

15. TRUSTS OF PROCEEDS OF ENFORCEMENT

- 15.1 Application:** Subject always to the Act, the Receiverships Act and clause 15.5, all money arising from each exercise of the powers of conversion, and all money received under the covenant contained in this Deed for payment to the Trustee of the Principal Money and interest under the Stock, or under any rights conferred by this Deed upon a Receiver or upon the Trustee after the security created by this Deed has become enforceable and the Trustee has determined or become bound to enforce the same, shall be held and applied in the following order:
- 15.1.1 Remuneration and Costs:** (subject to any direction made by any court under the Receiverships Act) in or towards payment or retention of all remuneration payable to the Receiver as provided in this Deed and the costs incurred by the Receiver, and the costs of obtaining appointment of the Receiver incurred by the Trustee or any other person who has incurred them; then

- 15.1.2 Preferred Claims:** in payment of amounts (if any) payable in respect of claims by law to be preferred to claims under any charge over the Charged Assets; then
- 15.1.3 Essential Services:** in or towards payment or retention of those amounts (if any) required to enable the Receiver to provide those services specified in section 40D(1) of the Receiverships Act as are applicable; then
- 15.1.4 Prior Charges:** in or towards payment of, or provision for, any debts or liabilities (if any) secured by any charge or security interest having priority over the security created by this Deed in respect of the Principal Money and interest under the Stock (or, in the case of Security Stock, the Priority Total Amount of the Stock), in accordance with their respective priorities; then
- 15.1.5 Trustee:** in or towards payment of, or provisions for, all amounts owing to the Trustee (including by way of indemnity) under this Deed; then
- 15.1.6 Priority Amounts:** in or towards payment to the Stockholders, pari passu in proportion to the amounts actually or contingently owing to them, of the Principal Money in respect of the Stock (whenever issued) held by them (the Principal Money in respect of Security Stock for this purpose being the Priority Principal Amount) and interest thereon, as in any case entitled thereto **PROVIDED ALWAYS** that:
- (a) the interest payable to each Holder of Security Stock shall be limited to the Priority Interest Amount;
 - (b) before making any payment referred to in paragraph (a) above, the Trustee shall, in the case of each Holder of Security Stock but subject to the following provisions, set aside an amount (or the proper proportion thereof in the event of the amount available for distribution and application in accordance with this clause in respect of the abovementioned amounts owing to the Stockholders respectively being less than one hundred cents in the dollar) equal to the aggregate of the contingent liabilities (if any) which are determinate or limited in amount forming part of the Priority Principal Amount in the case of that Security Stock, but so that the amount set aside under this paragraph (b) in respect of any Stockholder shall not, when aggregated with money paid by the Trustee to the Stockholder on account of principal, exceed the Priority Principal Amount for the relevant Stock;
 - (c) in the event of all or part of a contingent liability being indeterminate or unlimited in amount, the Trustee shall, subject to the following provisions, set aside as referred to above such amount as shall be nominated by the Holder of the relevant Security Stock as its reasonable estimate of that contingent liability or the proper proportion thereof (in the event of the amount available for distribution and application in accordance with this clause in respect of the abovementioned amounts

owing to the Stockholders respectively being less than one hundred cents in the dollar) as the case may be but so that the amount set aside under this paragraph (c) in respect of any Stockholder shall not, when aggregated with money paid by the Trustee to the Stockholder on account of principal, exceed the Priority Principal Amount for the relevant Stock; and

(d) any amount set aside in accordance with these provisos shall be held by the Trustee and applied in the following manner:

(i) each time all or part of a contingent liability becomes an absolute ascertained liability the Trustee shall pay to the Holder of the relevant Security Stock the amount or a proportionate part of such absolute and ascertained liability as referred to above as if the same had been a debt presently payable to such Holder at the Date of Enforcement;

(ii) each time any portion of the amount set aside pursuant to these provisos is no longer required for the purposes of paragraph (i) above then it shall become available for distribution and payment as otherwise provided in this clause 15.1; then

15.1.7 Excess Amount: in or towards payment to the relevant Security Stockholders of any amount of the Security Stockholder's Secured Money as referred to in clause 6.3.1(c) (and in accordance with that clause), as in any case entitled thereto; then

15.1.8 Subsequent Charges: in or towards payment of, or provision for, any debts or liabilities secured by any charge or security interest ranking subsequent to the security created by this Deed, as in any case entitled thereto (including, where applicable, pursuant to section 117 of the PPSA); then

15.1.9 Council: to, or for the benefit of, the Council as it may direct.

15.2 Payment of Principal Before Interest: In any payments pursuant to clause 15.1, interest shall ordinarily be paid prior to Principal, however, if the Trustee considers it expedient in the interests of Stockholders, payments may, subject to the Act, be made on account of Principal before interest, or the whole of the interest, has been paid, but such alteration in the order of payment shall not prejudice the right of Stockholders to receive the whole amount to which they would have been entitled if the ordinary order of payment had been observed or any lesser amount which the sum ultimately realised from the security created by this Deed would be sufficient to pay.

15.3 Production of Stock Certificates on Payment: Upon any payment being made under any of the provisions of clauses 15.1 or 15.2 any relevant Stock Certificate shall be produced to and endorsed by the Trustee, or the Register noted, with details of the payment. The Trustee may in any particular case dispense with such production and endorsement upon such indemnity (if any) being given as it considers sufficient (subject to section 105 of the FMC Act).

15.4 Stockholders Certificate:

15.4.1 Evidence: For the purposes of clauses 15.1 and 15.2, a certificate from any Stockholder as to the Principal Money or interest at any time of any Stock held by that Stockholder shall in the absence of manifest error be prima facie evidence of the amount of such Principal Money or interest, as the case may be.

15.4.2 Information: For the purposes of the Council, the Registrar or the Paying Agent making any determination, calculation, payment or determining any voting entitlements pursuant to this Deed or the Registrar and Paying Agency Agreement, the Council, the Registrar or the Paying Agent may require any Stockholder to provide it with a certificate or other information giving details of all amounts of any particular kind due or owing or alleged to be due or owing in respect of such Stockholder's Stock as at any date. The Council, the Registrar or the Paying Agent shall be entitled to act in reliance on such a certificate or other information and shall incur no liability in so acting, or for the consequences of so acting, should any such certificate or other information prove to have been incorrect, or for failing to request or obtain such a certificate or other information.

15.5 Notice of Distribution: The Trustee shall give not less than 14 days' notice to the Stockholders of the day, place and time fixed for any payment to them under clauses 15.1 or 15.2 and after the day so fixed the Stockholders shall be entitled to interest on the balance only (if any) of the Principal Money owing on the Stock held by them (or in the case of the Security Stock on the actual balance secured thereby) after deducting the amount (if any) payable in respect thereof on the day so fixed.

15.6 Postponement of Distribution: If the amount of the money at any time available under clause 15.1 for payment of the Principal Money owing on the Stock is less than ten percent of the amount of such Stock, the Trustee may at its discretion invest that money upon any of the investments authorised in this Deed with power from time to time to vary such investments, and such investments (with the resulting income) may be accumulated until the accumulations together with any other funds for the time being under the control of the Trustee and applicable for the purpose amount to a sum sufficient to pay at least ten percent of the amount of such Stock.

15.7 Certificates of Indebtedness:

15.7.1 Determinations: For the purposes of determining the appropriate payment to be made to any Stockholder pursuant to clause 15.1, or the voting entitlement of any Stockholder under this Deed, the Trustee may (but need not) require any Stockholder to provide it with a certificate giving details of all amounts of any particular kind due or alleged to be due in respect of the Stockholder's Stock as at any date. The Trustee shall be entitled to rely upon the accuracy and correctness of any such certificate.

15.7.2 Information: Each Stockholder shall also provide the Trustee with whatever information it may require for the purpose of this clause 15.7. The Trustee shall incur no liability in so acting or for the consequences of so acting should any such certificate or

information prove to have been incorrect, or for failing to request or obtain any such certificate or information.

16. ALTERATIONS

16.1 Trustee May Consent to Certain Alterations: Subject to the FMC Act and Financial Markets Supervisors Act (if applicable), the provisions of this Deed or the terms of any Stock may be added to or varied by deed executed by the Council and the Trustee:

16.1.1 Without Consent: without the consent of the Stockholders, if in the opinion of the Trustee it is necessary or desirable:

- (a) to correct a manifest error or omission, or it is of a minor, formal or technical nature; or
- (b) to facilitate the expedient issue of Stock by the Council or to make provision for outstanding Stock to be issued in bearer form; or
- (c) to facilitate the expedient issue of types of Stock not specifically provided for in this Deed; or
- (d) to comply with the FMC Act and FMC Regulations in relation to the issue of Stock to which that Act or those regulations may apply; or
- (e) to facilitate the listing or maintenance of listing of any Stock on any stock exchange; or
- (f) to facilitate the establishment and maintenance of more than one Register, and the appointment of more than one Registrar or Paying Agent, in respect of the issuing of different types of Stock; or
- (g) to facilitate transfer of Stock under a system authorised or approved under the FMC Act; or
- (h) to comply with, or as a result of the coming into effect of, any applicable law,

and which does not to the satisfaction of the Trustee have a material adverse effect on the interests of the Stockholders; or

16.1.2 With Consent: with the consent of the Stockholders given by an Extraordinary Resolution or being contingent on such consent; or

16.1.3 No Material Adverse Effect: in any other case, if the Trustee is of the opinion it does not have, or is not likely to have, a material adverse effect on the interests of the Stockholders,

PROVIDED ALWAYS THAT no variation or addition shall be made in the terms and conditions of issue of any Security Stock (as distinct from the provisions of this Deed) without the consent in writing of the Holder of that Stock and that the Trustee shall not consent to any amendment without giving the certification required by section 108(2)(b) of the FMC Act to the extent that such certification is required by law.

17. MISCELLANEOUS PROVISIONS**17.1 Notices:**

17.1.1 Requirements: Any notice, requisition, demand, request or direction under this Deed (a notice) may be signed by or on behalf of the Council or the Trustee or any Stockholder by an authorised officer, employee, agent or attorney or by their respective solicitors and may (without prejudice to any lawful mode of service) be given or made through the post by prepaid letter or by facsimile transmission. Any notice to be given or made to:

- (a) any Stockholder, shall be given or made to its Registered Address or in the case of a Stockholder having a Registered Facsimile Number, its Registered Facsimile Number;
- (b) the Council, shall be given or made to the Council's address stipulated or otherwise advised in accordance with clause 17.1.2; and
- (c) the Trustee, shall be given or made to the Trustee's address stipulated or otherwise advised in accordance with clause 17.1.2.

17.1.2 Deemed Notice: Subject to written advice being given as to an alteration of the address for the Council or for the Trustee appearing below their respective signatures to this Deed, a notice shall be deemed to have been given or made (in the case of a notice given or made by facsimile) when transmitted to such facsimile number (as to which a transmission confirmation report showing the transmission of the relevant facsimile in its entirety produced by the transmitting facsimile machine shall be prima facie evidence) and (in the case of a notice given or sent by post) two business days after being placed in the post, properly addressed to such address and postage prepaid. Any notice received or deemed to have been received after 5 pm on a business day, or at any time on a day which is not a business day, shall be deemed not to have been received until 9 am on the next business day.

17.1.3 Joint Holders: In the case of joint Holders of Stock, a notice given to any Stockholder in the Register in respect of such holding shall be sufficient notice to all the joint Holders.

17.1.4 Council: Any notice to be given by the Council may, where authorised by the Council, be given on its behalf by the Trustee, the Registrar or the Paying Agent.

17.2 Authenticity of Notices: The recipient of a notice shall be entitled to rely on, without the need to carry out any investigation or make further inquiry, any notice which purports to have been given by any person pursuant to clause 17.1 and shall not be liable to that person or any other person in any way should any such notice subsequently be proved not to have been authorised by that person or to have been made, given or signed by someone other than an officer, employee, agent or attorney of that person or any solicitor.

17.3 Registration of Deed: The Trustee may at the Council's cost, or may require the Council at its own cost to, register or procure the registration and recording of this Deed as may be required by law or as may be necessary to perfect the security interest created by this Deed to give it full legal effect.

17.4 Release of Trust Deed: Upon the:

- (a) Trustee being satisfied (in the Trustee's reasonable discretion):
 - (i) that all Stockholders have been paid or satisfied in respect of Principal, interest and all other Secured Money payable to them, or that provision for such payment or satisfaction has been made in accordance with the provisions of this Deed and the requirements of any Stock; and
 - (ii) that there is no reasonable likelihood that any Secured Money will or might be avoided by, or required to be refunded or repaid under, or required to be accounted for under, any applicable law (including any law relating to preferences or insolvency); and
- (b) payment or retention of all costs, charges and expenses incurred by or payable to the Trustee or any Receiver in relation to this Deed, and the remuneration of the Trustee and of any Receiver,

the Trustee shall, at the request and cost of the Council, surrender, release or transfer to the Council, or as it may direct, the Charged Assets or such part thereof as may remain charged in the Trustee's favour freed and discharged from the security created by this Deed and from the Secured Money and release and discharge the Council from the Secured Obligations. Nothing in this clause shall limit or prejudicially affect the rights of the Council to any release of the Charged Assets pursuant to clause 9.

17.5 Partial Invalidity: A provision of this Deed has no effect in respect of any Stock to the extent it contravenes, or is inconsistent with, the FMC Act, the FMC Regulations or any term implied into this Deed by the FMC Act or the FMC Regulations to the extent that Act and those regulations are applicable to the relevant Stock. Without limiting the foregoing, if any provision of this Deed or of any Stock Certificate shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.6 Absence of Crown Guarantee: Neither the Secured Money nor the Secured Obligations are guaranteed by the Crown.

17.7 Governing Law and Submission to Jurisdiction: This Deed, and each Stock Certificate, is governed by and to be construed in accordance with, the laws of New Zealand and the Council, the Trustee and each Stockholder submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters or disputes arising in respect of this Deed or any Stock Certificate.

- 17.8 Governance Requirements:** The Council must comply with:
- 17.8.1** all applicable laws relating to governance matters;
 - 17.8.2** the Act; and
 - 17.8.3** the applicable terms of this Deed from time to time.
- 17.9 Delivery:** For the purposes of Section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by each of the parties hereto (each a **Delivering Party**) immediately on the earlier of:
- 17.9.1** physical delivery of an original of this Deed executed by the relevant Delivering Party into the custody of the other party or other party's solicitors; or
 - 17.9.2** transmission by the relevant Delivering Party or its solicitors (or any other persons authorised in writing by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the relevant Delivering Party, to the other party or other party's solicitors.
- 17.10 Counterparts:** This deed may be signed in any number of counterparts, all of which, when taken together, will constitute one and the same deed.

IN WITNESS OF WHICH this Deed has been executed and delivered.

SIGNED for and on behalf of **KAWERAU DISTRICT COUNCIL** by:

Elected Member/Councillor

Elected Member/Councillor

Address:
Kawerau District Council
2 Ranfurly Court
KAWERAU 3169
Facsimile: 07 323 8072
For: Peter Christophers

SIGNED
by

COVENANT TRUSTEE SERVICES LIMITED under its common seal by

Authorised Signatory

Sign

Print name in full

Authorised Signatory

Sign

Print name in full

Witness to Authorised Signatory's signature:

Witness to Authorised Signatory's signature:

Signature: _____
Print name in full

Signature: _____
Print name in full

Occupation: _____

Occupation: _____

Address: _____

Address: _____

Address: Level 6, 191 Queen Street, Crombie Lockwood Tower, Auckland 1010

Issue Date: []

Redemption Date: []

GIVEN by or on behalf of the Council this [] day of []

[Execution Block]

NOTES:

- (1) The Holder is entitled to the benefit of, is bound by, and is deemed to have notice of, all the provisions of the Trust Deed (including the Conditions) (which may be inspected at the Principal Office of the Council).
- (2) This Certificate must be surrendered to the Council or the Registrar before transfer of the whole or any part of the Stock can be registered, and prior to redemption of the whole or any part of the Stock.
- (3) All sums specified in this Certificate relate to New Zealand currency.
- (4) No interest coupons are issued in respect of the Stock.
- (5) Words and expressions used in this Certificate and in the Conditions shall have the same definition as in the Trust Deed unless otherwise defined or the context otherwise requires.

CONDITIONS

1. **THE** Holder of the Stock is entitled *pari passu* and rateably with the holders of all other Stock constituted by the Trust Deed to the benefit of, and is subject to, the provisions of the Trust Deed (including the Conditions).
2. **THE** Principal Money and interest then payable in respect of the Stock will be paid, in accordance with the Trust Deed, on the Redemption Date or on such earlier date as the Stock becomes due and payable in accordance with the Trust Deed.
3. **EVERY** Holder shall, as a condition precedent to receiving payment of the amount of Stock evidenced by a Stock Certificate produce, in the case of part payment, and surrender, in the case of payment in full, such Certificate to the Council or the Registrar or, in case of contemplated payment by the Trustee or the Paying Agent on behalf of the Council, to the Trustee or the Paying Agent as the case may require **PROVIDED ALWAYS** that this Condition shall not preclude payment by the Council, the Trustee or the Paying Agent, on behalf of the Council with the consent of the Council, without production of such Certificate if the Council or the Trustee so elects. Upon payment in part, the Certificate shall be, or be deemed to be, endorsed accordingly and returned to the Holder, and upon payment in full, the Certificate shall be deemed to have been cancelled and surrendered to the Council. This Condition shall not apply if the Trustee requires payment to it of the Principal Money in respect of any Stock in accordance with the provisions of the Trust Deed.
4. **EXCEPT** where otherwise agreed between the Council and the Holder, the Stock bears interest from the issue date set out in this Certificate (the **Issue Date**) and shall be paid at the frequency, and as at the dates in each year following the Issue Date, as set out in this Certificate on the basis of a 365 day year and deemed equal *part-year* periods.
5. **INTEREST** shall, where it has not earlier ceased to accrue, cease to accrue on any Stock from the Redemption Date unless upon production of this Certificate the Council wrongfully fails to make payment, in which case interest shall run until actual redemption or payment. This Condition shall not apply if the Trustee requires payment to it of the Principal Money or interest in respect of any Stock in accordance with the provisions of the Trust Deed.
6. **EVERY** Holder will be recognised by the Council, the Paying Agent and the Registrar as entitled to its Stock and to the Principal Money and interest payable thereon free from any equity, security interest, set-off, cross-claim or counter-claim between the Council and the original or any intermediate holder of the Stock (not being the Holder).
7. **THE** Stock may be transferred in accordance with the Trust Deed, provided that:
 - (a) the transfer must be effected in accordance with the FMC Act, and the transferor shall be deemed to remain the owner of the Stock until the name of the transferee is entered in the Register (as defined in the Trust Deed) in respect thereof;
 - (b) every instrument of transfer must be left at, or delivered to, the registered office of the Registrar for registration accompanied by any Certificate in respect of the Stock to be transferred and such other evidence as the Council or the Registrar may require to prove the title of the transferor or its right to transfer the Stock. Upon being satisfied as to the due execution of the transfer, and the due compliance with the provisions of any Act relating to stamp duties, the Registrar will register the transfer in accordance with the Registrar and Paying Agency Agreement (as defined in the Trust Deed) and will recognise the transferee as the Holder entitled to the amount of Stock comprised in the transfer;

- (c) all instruments of transfer which are registered will be retained by the Council or the Registrar, but any instrument of transfer which the Registrar may decline (on reasonable grounds) to register shall be returned to the person who has delivered the same together with the reasons for non-registration;
- (d) the Registrar shall not be obliged to, but may, register any transfer of Stock during the period between the Registrar's close of business on the Record Date immediately preceding the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest and the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest, or the period between the Registrar's close of business on the date 14 days before any meeting (inclusive of the date on which such meeting is held) of Stockholders is convened in accordance with the Trust Deed and the date of such meeting. For the purposes of these Conditions, **Record Date** means the tenth day before the relevant date for payment of any Principal and/or interest in respect of any Stock or, if such day is not a business day then such day as determined by the Paying Agent in accordance with its usual practice;
- (e) no fee shall be charged by the Council for the registration of a transfer;
- (f) the Council, the Trustee, the Paying Agent and the Registrar will recognise only the Holder as the absolute owner thereof and, except as ordered by a court of competent jurisdiction or by statute, shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Stock may be subject. The receipt of such Holder, or in the case of joint Holders the receipt of any of them, of the Principal Money and the interest from time to time accruing due in respect thereof or for any other money payable in respect thereof, or the compliance with the payment directions of the Holder or any one of joint Holders, shall be a good discharge to the Council, the Trustee, the Paying Agent or the Registrar, as the case may be, notwithstanding any notice it may have whether express or otherwise of the right, title, interest (including security interest) or claim of any other person to or in respect of such Stock, interest or money. No notice of any trust express, implied or constructive, nor of any security interest, shall be entered on the Register in respect of any Stock,

provided that the requirements for transfer in paragraphs (b), (c) and (d) shall not apply to the extent that the Council and the Registrar agree a different method of transfer either with the Trustee or, in respect of a particular transfer, with the relevant transferor and transferee.

FIRST SCHEDULE

PART II

Stock Certificate No: []

KAWERAU DISTRICT COUNCIL
(the Council)

Principal Office: Kawerau District Council
2 Ranfurly Court
KAWERAU 3169

Stock Transfer Office: Link Market Services Limited
Level 11
Deloitte Centre
80 Queen Street
AUCKLAND 1010
(the Registrar and Paying Agent)

{Description of Stock Issue}

Security Stock Certificate

The Security Stock referred to in this Certificate is Security Stock constituted and secured by a debenture trust deed (**Trust Deed**) dated on or about [] between the Council and Covenant Trustee Services Limited and is issued with the benefit and subject to the provisions of the Trust Deed, the conditions endorsed on and/or otherwise applicable to such Stock and this Certificate, including the further conditions (included in the term **Conditions**).

THIS IS TO CERTIFY THAT

1. *[name of holder]* (**Holder**) will, upon registration of the Stock pursuant to the Trust Deed, be the registered Holder of \$ [] in nominal amount of Security Stock (**Stock**);
2. **SUBJECT** to the provisions of clause 3 of this Certificate, the Stock is issued by way of continuing security for **[the due payment and satisfaction to the Holder of all liabilities of the Council to the Holder **[in respect of [insert details of specific agreement(s)] (Agreement(s))]* whether incurred before or after the issue of the Stock and whether matured or not and whether incurred by the Council alone or jointly with others and whether as principal or surety and whether absolute or contingent and whether incurred within or outside the scope of the relationship of banker and customer and shall include, but not by way of limitation, liabilities in respect of advances and in respect of cheques, bills, notes and other negotiable or non-negotiable instruments drawn, accepted, endorsed or guaranteed and in respect of interest (whether capitalised or otherwise compounded or current) and as regards current interest including interest on capitalised interest or on interest otherwise compounded to accrue from day to day at the rate or respective rates from time to time without prior or other notice to the Council determined upon by the Holder or otherwise agreed with the Holder and in respect of fees, commissions, exchanges, re-exchanges, legal expenses and other usual and proper banking and/or commercial charges];

[The words in the above brackets may be varied to suit the particular circumstances for which Security Stock is issued.]

*[**This bracketed wording to be used where the security is only for obligations under one or more specified agreements.]*

3. THE Stock is issued on the special condition that at any date (**Relevant Date**) the Priority Total Amount relating to the Stock is not more than:

(a) as principal the lesser of:

(i) the aggregate amount (as finally determined) of all the liabilities, advances and other accommodation or obligations referred to in clause 2 of this Certificate at the Relevant Date, including capitalised interest owing at the Relevant Date but excluding any uncapitalised interest owing at the Relevant Date; and

(ii) the nominal amount of the Stock,

(such lesser amount being referred to in this Certificate as the **Priority Principal Amount**); and

(b) as interest, all interest payable to the Holder on the principal referred to in paragraph (a)(i) above (up to the Priority Principal Amount) but excluding any interest (except to the extent that it is capitalised into the Priority Principal Amount) which has been due and owing since a date more than six months prior to the Date of Enforcement, and if the amount referred to in paragraph (a)(i) above exceeds the amount referred to in paragraph (a)(ii) above, the Holder may, in its sole discretion, determine which of the liabilities, advances, accommodation and obligations secured by the Stock the Priority Principal Amount is applied to the payment of, and the interest referred to in this paragraph will be calculated on that basis,

AND upon any distribution of the money available to Stockholders pursuant to the provisions of clause 15 of the Trust Deed the Stock shall entitle the Holder to payment *pari passu* with the other Stockholders in respect only of their Priority Principal Amount together with interest calculated pursuant to the provisions of paragraph (b) above **PROVIDED ALWAYS** in the event of the amount referred to in paragraph (a)(i) above exceeding the Priority Principal Amount then the aggregate of the following amounts:

(i) such excess (if any);

(ii) the interest owing in respect of such excess; and

(iii) any other interest as Secured Money but excluded pursuant to paragraph (b) above,

shall rank for payment subsequent to the Priority Total Amounts of the other Stockholders but *pari passu* with any amounts as referred to in the equivalent to this proviso in Security Stock Certificates held by other Stockholders (and as consistent with clause 6.3.1(c) of the Trust Deed);

all in accordance with the Trust Deed (including the Conditions).

GIVEN by or on behalf of the Council this [] day of []

[Execution Block]

NOTES:

- (1) The Holder is entitled to the benefit of, is bound by, and is deemed to have notice of, all the provisions of the Trust Deed (including the Conditions) (which may be inspected at the Principal Office of the Council).
- (2) This Certificate must be surrendered to the Council or the Registrar before transfer of the whole or any part of the Stock can be registered.
- (3) All sums specified in this Certificate relate to New Zealand currency.
- (4) Words and expressions used in this Certificate and in the Conditions shall have the same definition as in the Trust Deed unless otherwise defined or the context otherwise requires.

CONDITIONS

1. **SUBJECT** as herein provided, the Holder of the Stock is entitled *pari passu* and rateably with the holders of all other Stock constituted by the Trust Deed to the benefit of, and is subject to, the provisions of the Trust Deed (including the Conditions).
2. **EVERY** Holder shall, as a condition precedent to receiving payment of the amount of Stock comprised in the Holder's Stock Certificate produce, in the case of part payment, and surrender, in the case of payment in full, such Stock Certificate to the Council or the Registrar or, in case of contemplated payment by the Trustee or the Paying Agent on behalf of the Council, to the Trustee or the Paying Agent as the case may require **PROVIDED ALWAYS** that this Condition shall not preclude payment by the Council, the Trustee or the Paying Agent, on behalf of the Council with the consent of the Council, without production of such Certificate if the Council or the Trustee so elects. Upon payment in part, the Certificate shall be, or be deemed to be, endorsed accordingly and returned to the Holder, and upon payment in full, the Certificate shall be deemed to have been cancelled and surrendered to the Council. This Condition shall not apply if the Trustee requires payment to it of the Principal Money in respect of any Stock in accordance with the provisions of the Trust Deed.
3. **INTEREST** payable shall, where it has not earlier ceased to accrue, cease to accrue on the money secured by any Stock from the date fixed for payment of the Principal Money unless upon production of this Certificate the Council wrongfully fails to make payment in which case interest shall run until actual redemption or payment. This condition shall not apply if the Trustee requires payment to it of the Principal Money or interest in respect of any Stock in accordance with the provisions of the Trust Deed.
4. **EVERY** Holder will be recognised by the Council, the Paying Agent and the Registrar as entitled to its Stock and to the Principal Money and interest payable thereon free from any equity, security interest, set-off or cross-claim or counter-claim between the Council and the original or any intermediate holder of the Stock (not being the Holder).
5. **THE** Stock may, to the same extent as the debts, liabilities, advances or other accommodation or obligations to which it relates, be transferred in accordance with the Trust Deed by an instrument in writing in the usual or common form, and the following provisions shall apply:
 - (a) every instrument of transfer must be executed by the transferor in the manner required by the Council or the Registrar or as required by the FMC Act and the transferor shall be deemed to remain the owner of the Stock until the name of the transferee is entered in the Register (as defined in the Trust Deed) in respect thereof;
 - (b) every instrument of transfer must be left at the registered office of the Registrar for registration accompanied by any Certificate in respect of the Stock to be transferred and such other evidence as the Council or the Registrar may require to prove the title of the transferor or its right to transfer the Stock. Upon being satisfied as to the due execution of the transfer, and the due compliance with the provisions of any Act relating to stamp duties, the Registrar will register the transfer in accordance with the Registrar and Paying Agency Agreement (as defined in the Trust Deed) and will recognise the transferee as the Holder entitled to the amount of Stock comprised in the transfer;
 - (c) all instruments of transfer which shall be registered will be retained by the Council or the Registrar, but any instrument of transfer which the Registrar may decline (on reasonable grounds) to register shall be returned to the person who has delivered the same together with the reasons for such non-registration;

- (d) the Registrar shall not be obliged to, but may, register any transfer of Stock during the period between the Registrar's close of business on the Record Date immediately preceding the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest and the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest, or the period between the Registrar's close of business on the date 14 days before any meeting (inclusive of the date on which such meeting is held) of Holders is convened in accordance with the Trust Deed and the date of such meeting. For the purposes of these Conditions, **Record Date** means the tenth day before the relevant date for payment of any Principal and/or interest in respect of any Stock or, if such day is not a business day then such day as determined by the Paying Agent in accordance with its usual practice;
- (e) no fee shall be charged by the Council for the registration of a transfer;
- (f) the Council, the Trustee, the Paying Agent and the Registrar will recognise only the Holder as the absolute owner thereof and, except as ordered by a court of competent jurisdiction or by statute, shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Stock may be subject. The receipt of such Holder, or in the case of joint Holders the receipt of any of them, of the Principal Money and the interest from time to time accruing due in respect thereof or for any other money payable in respect thereof, or the compliance with the payment directions of the Holders or any one of joint Holders, shall be a good discharge to the Council, the Trustee, the Paying Agent or to the Registrar, as the case may be, notwithstanding any notice it may have whether express or otherwise of the right, title, interest (including security interest) or claim of any other person to or in respect of such Stock, interest or money. No notice of any trust express, implied or constructive, nor of any security interest, shall be entered on the Register in respect of any Stock,

provided that the requirements for transfer in paragraphs (b), (c) and (d) shall not apply to the extent that the Council and the Registrar agree a different method of transfer either with the Trustee or, in respect of a particular transfer, with the relevant transferor and transferee.

FIRST SCHEDULE

PART III

Stock Certificate No: []

KAWERAU DISTRICT COUNCIL
(the Council)

Principal Office: Kawerau District Council
2 Ranfurly Court
KAWERAU 3169

Stock Transfer Office: Link Market Services Limited
Level 11
Deloitte Centre
80 Queen Street
AUCKLAND 1010
(the Registrar and Paying Agent)

[Description of Stock Issue]

Security Stock Certificate

The Security Stock referred to in this Certificate is Security Stock constituted and secured by a debenture trust deed (Trust Deed) dated on or about [] between the Council and Covenant Trustee Services Limited and is issued with the benefit and subject to the provisions of the Trust Deed, the conditions endorsed on and/or otherwise applicable to such Stock and this Certificate, including the further conditions (included in the term **Conditions**).

THIS IS TO CERTIFY THAT

1. [name of holder] (Holder) will, upon registration of the Stock pursuant to the Trust Deed, be the registered Holder of Security Stock (Stock) in a nominal amount equal to the aggregate amount, from time to time, of the liabilities, advances and other accommodation or obligations referred to in clause 2 of this Certificate;
2. **SUBJECT** to the provisions of clause 3 of this Certificate, the Stock is issued by way of continuing security for **[the due payment and satisfaction to the Holder of all liabilities of the Council to the Holder **[in respect of [insert details of specific agreement(s)] (Agreement(s))] whether incurred before or after the issue of the Stock and whether matured or not and whether incurred by the Council alone, or jointly, or jointly and severally with others and whether as principal or surety and whether absolute or contingent and whether incurred within or outside the scope of the relationship of banker and customer and shall include, but not by way of limitation, liabilities in respect of advances and in respect of cheques, bills, notes and other negotiable or non-negotiable instruments drawn, accepted, endorsed or guaranteed and as regards current interest (whether capitalised or otherwise compounded or current) and as regards current interest including interest on capitalised interest or on interest otherwise compounded to accrue from day to day at the rate or respective rates from*

time to time without prior or other notice to the Council determined upon by the Holder or otherwise agreed with the Holder and in respect of fees, commissions, exchanges, re-exchanges, legal expenses and other usual and proper banking and/or commercial charges];

[The words in the above brackets may be varied to suit the particular circumstances for which Security Stock is issued.]

*[**This bracketed wording to be used where the security is only for obligations under one or more specified agreements.]*

3. **THE** Stock is issued on the special condition that at any date (**Relevant Date**) the Priority Total Amount relating to the Stock is not more than:
- (a) the lesser of:
 - (i) the aggregate amount (as finally determined) of all the liabilities, advances and other accommodation or obligations referred to in clause 2 of this Certificate at the Relevant Date, including capitalised interest owing at the Relevant Date but excluding any interest accrued pursuant to the terms of the [Agreement(s)] and owing at the Relevant Date; and
 - (ii) the nominal amount of the Stock,(such lesser amount being referred to in this Certificate as the **Priority Principal Amount**); and
 - (b) as interest, all interest (for the avoidance of doubt excluding capitalised interest) accrued pursuant to the terms of the [Agreement(s)] and payable to the Holder on the amount referred to in paragraph 3(a)(i) above (up to the Priority Principal Amount) but excluding any interest accrued pursuant to the [Agreement(s)] which has been due and owing since a date more than six months prior to the Date of Enforcement,

AND upon any distribution of the money available to Stockholders pursuant to the provisions of clause 15 of the Trust Deed the Stock shall entitle the Holder to payment *pari passu* with the other Stockholders in respect only of their Priority Principal Amount together with interest calculated pursuant to the provisions of paragraph (b) above **PROVIDED ALWAYS** that any amounts owing to the Holder in respect of which this Stock is issued but which do not form part of the Priority Total Amount shall rank for payment subsequent to the Priority Total Amounts of the other Stockholders but *pari passu* with any amounts referred to in the equivalent to this proviso in Security Stock Certificates held by other Stockholders (and as consistent with clause 6.3.1(c) of the Trust Deed);

all in accordance with the Trust Deed (including the Conditions).

GIVEN by or on behalf of the Council this [] day of []

[Execution Block]

NOTES:

- (1) The Holder is entitled to the benefit of, is bound by, and is deemed to have notice of, all the provisions of the Trust Deed (including the Conditions) (which may be inspected at the Principal Office of the Council).
- (2) This Certificate must be surrendered to the Council or the Registrar before transfer of the whole or any part of the Stock can be registered.
- [(3) All sums specified in this Certificate relate to New Zealand currency.]
- (4) Words and expressions used in this Certificate and in the Conditions shall have the same definition as in the Trust Deed unless otherwise defined or the context otherwise requires.

CONDITIONS

- 1. SUBJECT** as herein provided, the Holder of the Stock is entitled *pari passu* and rateably with the holders of all other Stock constituted by the Trust Deed to the benefit of, and is subject to, the provisions of the Trust Deed (including the Conditions).
- 2. EVERY** Holder will be recognised by the Council, the Paying Agent and the Registrar as entitled to its Stock and to the Principal Money and interest payable thereon free from any equity, security interest, set-off or cross-claim or counter-claim between the Council and the original or any intermediate holder of the Stock (not being the Holder).
- 3. THE** Stock may, to the same extent as the debts, liabilities, advances or other accommodation or obligations to which it relates, be transferred in accordance with the Trust Deed by an instrument in writing in the usual or common form, and the following provisions shall apply:
 - (a) every instrument of transfer must be executed by the transferor in the manner required by the Council or the Registrar or as required by the FMC Act and the transferor shall be deemed to remain the owner of the Stock until the name of the transferee is entered in the Register (as defined in the Trust Deed) in respect thereof;
 - (b) every instrument of transfer must be left at the registered office of the Registrar for registration accompanied by any Certificate in respect of the Stock to be transferred and such other evidence as the Council or the Registrar may require to prove the title of the transferor or its right to transfer the Stock. Upon being satisfied as to the due execution of the transfer, and the due compliance with the provisions of any Act relating to stamp duties, the Registrar will register the transfer in accordance with the Registrar and Paying Agency Agreement (as defined in the Trust Deed) and will recognise the transferee as the Holder entitled to the amount of Stock comprised in the transfer;
 - (c) all instruments of transfer which shall be registered will be retained by the Council or the Registrar, but any instrument of transfer which the Registrar may decline (on reasonable grounds) to register shall be returned to the person who has delivered the same together with the reasons for such non-registration;
 - (d) the Registrar shall not be obliged to, but may, register any transfer of Stock during the period between the Registrar's close of business on the Record Date immediately preceding the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest and the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest, or the period between the Registrar's close of business on the date 14 days before any meeting (inclusive of the date on which such meeting is held) of Holders is convened in accordance with the Trust Deed and the date of such meeting. For the purposes of these Conditions, **Record Date** means the tenth day before the relevant date for payment of any Principal and/or interest in respect of any Stock or, if such day is not a business day then such day as determined by the Paying Agent in accordance with its usual practice;
 - (e) no fee shall be charged by the Council for the registration of a transfer;
 - (f) the Council, the Trustee, the Paying Agent and the Registrar will recognise only the Holder as the absolute owner thereof and, except as ordered by a court of competent jurisdiction or by statute, shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Stock may be subject. The receipt of such Holder, or in the case of joint Holders

the receipt of any of them, of the Principal Money and the interest from time to time accruing due in respect thereof or for any other money payable in respect thereof, or the compliance with the payment directions of the Holders or any one of joint Holders, shall be a good discharge to the Council, the Trustee, the Paying Agent or to the Registrar, as the case may be, notwithstanding any notice it may have whether express or otherwise of the right, title, interest (including security interest) or claim of any other person to or in respect of such Stock, interest or money. No notice of any trust express, implied or constructive, nor of any security interest, shall be entered on the Register in respect of any Stock,

provided that the requirements for transfer in paragraphs (b), (c) and (d) shall not apply to the extent that the Council and the Registrar agree a different method of transfer either with the Trustee or, in respect of a particular transfer, with the relevant transferor and transferee.

FIRST SCHEDULE

PART IV

FURTHER CONDITIONS

1. **EVERY** Stockholder (other than a Holder of Security Stock) shall on payment in full for the Stockholder's Stock, and every Holder of Security Stock issued pursuant to the provisions of the Trust Deed, shall be entitled to receive free of charge a Certificate or Certificates for its Stock **PROVIDED THAT** joint Holders of Stock shall not be entitled to duplicate Certificates in respect of the Stock held by them jointly and the Certificate in respect of a joint holding may be delivered to such one of the joint Holders as the Council may select.
2. **ON** production to the Council or the Registrar of a damaged Certificate, the Council or the Registrar may cancel such and issue a replacement, and if any Certificate is lost or destroyed then, upon proof thereof to the satisfaction of the Council or the Registrar and on such indemnity if any as it may require being given, and upon payment of out-of-pocket expenses of the Council or the Registrar in investigating evidence as the Council or the Registrar may deem adequate, a replacement may be given to the person apparently entitled thereto. An entry as to the issue of the new Certificate and the indemnity (if any) shall be made in the Register.
3. **THE** executors or administrators of a deceased Stockholder (not being one of several joint Stockholders), and in the case of the deceased of one or more of several joint Stockholders the survivor or survivors of such joint Stockholders, shall be the only persons recognised by the Council, the Registrar or the Trustee as having any title or interest in such Stock **PROVIDED ALWAYS** that if such Stockholder having sold any or all of its Stock had delivered to the transferee, or to a Market Participant (as defined in the "NZX Participant Rules") acting in connection with that sale, a transfer of the Stock so sold signed by him or her but which had not been registered before his or her death the Council may, subject to compliance by the transferee with the conditions as to transfer applicable to the Stock, register that transfer notwithstanding that the Council has notice of that Stockholder's death.
4. **ANY** person becoming entitled to Stock as a result of the death, bankruptcy or liquidation of any Stockholder may (subject to the conditions as to transfer applicable to the Stock), upon producing such evidence of such person's entitlement as the Council shall think sufficient, be registered as the Holder of such Stock. This condition shall include any case in which a person becomes entitled as a survivor of persons registered as joint Holders.
5. **ALL** payments of principal or interest on the Stock will be made (subject to condition 6 below) in New Zealand to the person entered in the Register as the Holder of the Stock on the Record Date immediately preceding the payment date upon which such payment is due and payable, and otherwise in accordance with the provisions of the Trust Deed. For the purposes of these conditions, **Record Date** means the tenth day before the relevant date for payment of any Principal and/or interest in respect of the Stock, or, if such day is not a business day, then such day as determined by the Paying Agent in accordance with its usual practice.
6. **PAYMENTS** in respect of the Stock will be made, after deduction of applicable withholding or other taxes in accordance with the Trust Deed by the Paying Agent posting a cheque to the Registered Address, as at the applicable Record Date, of the Stockholder or, in terms of any agreement between the Council and the Stockholder, by direct credit or other payment means as notified in writing to the Paying Agent by

the Council or the Stockholder. Any such notice shall be deemed to be automatically cancelled on transfer of the Stock.

7. IF several persons are entered in the Register as joint Holders of any Stock then without prejudice to condition 6 above the receipt, or compliance with the payment directions, of any one of such persons for any Principal Money (or any part of the Principal Money) or interest or other sums from time to time payable on or in respect of such Stock shall be as effective a discharge to the Council, the Registrar, the Paying Agent and the Trustee as if the person signing such receipt or giving such payment directions were the sole registered Holder of such Stock.
8. IF the date for any payment in respect of the Stock is not a business day, payment shall be made on the next succeeding business day and no additional interest or other sum shall be paid in respect of any period during which payment is so delayed.
9. THE Stockholder must at all times comply with, and not expose the Council or the Trustee to any immediate or possible liability under or in respect of, the FMC Act or any other law applicable to the advertising, offering, sale or transferring of Stock.
10. THE obligations of the Council in respect of the Stock may only be enforced in the circumstances provided for, and in accordance with the terms of, the Trust Deed.

Words and expressions in these further conditions shall have the same meaning as in the Trust Deed unless otherwise defined or the context otherwise requires.

SECOND SCHEDULE

MEETINGS OF STOCKHOLDERS

1. **Definitions:** In this Schedule the expression **Extraordinary Resolution** means a resolution:
 - 1.1 passed at a properly convened and held meeting (including an adjourned meeting) of Stockholders by a majority consisting of not less than three-fourths of the persons who are entitled to vote and voted upon a show of hands or, if a poll is properly demanded, by a majority consisting of not less than three-fourths of the votes given on such poll by those who are entitled to vote; or
 - 1.2 in writing pursuant to clause 19.
2. **Convening of Meetings:**
 - 2.1 The Trustee or the Council may at any time of their own volition convene a meeting of the Stockholders.
 - 2.2 The Council shall whenever required to do so by law convene a meeting of the Stockholders.
 - 2.3
 - (a) The Trustee shall at the request in writing of any Holders of Security Stock or of Stockholders holding not less than 5% in nominal amount of the Stock (other than Security Stock) convene a meeting of the Stockholders.
 - (b) Any such request shall state the nature of the business proposed to be dealt with at the meeting.
 - 2.4 Notwithstanding the provisions of paragraph 2.3(a), the Trustee shall not be obliged to convene a meeting of Stockholders pursuant to such provisions until it has been indemnified (subject to section 105 of the FMC Act if applicable) to its reasonable satisfaction against all reasonable costs and expenses to be thereby incurred.
 - 2.5 For the purpose of enabling the Trustee to satisfy itself as to the validity of a request by the Stockholders pursuant to paragraph 2.3(a) the Council will ensure that the Trustee has full access to the Register whether such Register shall for the time being be closed or not.
3. **Place of Meetings:** Each meeting shall be held in Whakatane or at such other place as the Trustee determines or approves with the consent of the Council.
4. **Notice of Meetings:**
 - 4.1 At least five business days before the Council gives notice of a meeting it shall advise the Trustee in writing of the intended place, day and hour thereof and the precise nature of the business to be transacted thereat and shall obtain the prior approval in writing of the Trustee to the documents it proposes to send to Stockholders. If the Trustee so requires the documents shall include any statement which the Trustee wishes to make in relation to the meeting and the matters to be considered thereat.

- 4.2** (a) Notice of every meeting of Stockholders shall be given in the manner provided herein and in clause 17 of the Trust Deed to:
- (i) every Holder of Stock who is entered on the Register on the day two working days before the notice is sent; and
 - (ii) every legal personal representative or an assignee in bankruptcy or liquidator of a deceased or bankrupt Stockholder or Stockholder in liquidation who, but for the Stockholder's death or bankruptcy or liquidation would have been entitled to receive notice of the meeting.
- (b) Notice of every meeting shall be given to:
- (i) each Holder of Registered Stock whose Registered Address is in New Zealand, by ordinary post;
 - (ii) each Holder of Registered Stock whose Registered Address is outside New Zealand, by airmail post;
 - (iii) each Holder of Bearer Stock in such manner as may be provided in the Trust Deed or the conditions of such Bearer Stock;
 - (iv) every councillor of the Council;
 - (v) each other person required to be given notice by law.
- 4.3** In the case of any Extraordinary Resolution to be proposed at a meeting, the Council shall, at least 10 working days (or any lesser period approved by the Trustee) before Council gives notice of the meeting, provide to the Trustee a draft of the proposed notice of the meeting.
- 4.4** At least fifteen working days' notice (or such shorter period as the Trustee and Council shall otherwise agree) of every meeting shall be given to the Stockholders entitled to receive notice of the meeting. The notice shall be exclusive of the day on which it is given or deemed to be given and of the day for which it is given. The notice shall specify the place, day and hour of the meeting and the general nature of the business to be transacted (in sufficient detail to enable a Holder to form a reasoned judgment in relation to it) thereat but it shall not be necessary to specify in the notice the terms of any resolution to be proposed at the meeting except in the case of a resolution proposed to be passed as an Extraordinary Resolution in which case (except in respect of any notice to Holders of Bearer Stock) the text of the proposed resolution shall be set out (together with any of the Trustee's comments on the Extraordinary Resolution). The notice must also set out the right of a Holder to appoint a proxy and any authorised person with respect to voting under clause 14.10.
- 4.5** The accidental omission to give notice to, or the non-receipt of notice by, any persons entitled thereto shall not invalidate the proceedings at any meeting.
- 4.6** If the meeting is convened by the Council a copy of the notice shall be sent to the Trustee. If the meeting is convened by the Trustee a copy of the

notice shall be sent to the Council. If any of the Stock is listed for quotation on the NZX a copy of the notice shall also be sent to the NZX at the same time as notices are sent to the Stockholders.

- 4.7 An irregularity in a notice of a meeting is waived if all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Holders agree to the waiver or the Trustee indicates at the meeting that it is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the relevant Holders.

5. Quorum:

- 5.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business. A Holder is present at a meeting for the purposes of this schedule and part of the quorum if that Holder is present in person or by representative or is participating in a meeting by means of audio, audio and visual, or electronic communications.
- 5.2 The quorum for passing an Extraordinary Resolution shall be Stockholders present in person or by representative holding Stock with a combined nominal amount of no less than 25% of the nominal amount of Stock held by Stockholders who are entitled to vote.
- 5.3 The quorum for the transaction of any business at a meeting of Stockholders other than the passing of an Extraordinary Resolution shall be the Holders present in person or by representative of at least 10% in nominal amount of the Stock.
- 5.4 If within 30 minutes after the appointed time for the meeting a quorum is not present the meeting, if convened at the request of Holders, will be dissolved. In any other case it will be adjourned to the day that is 10 working days later at the same time and place or to such other date, time and place as may be appointed by the chairman, or the Trustee. At such adjourned meeting, if a quorum is not present within 30 minutes after the appointed time for the meeting all the Holders present at the meeting will be a quorum for the transaction of business including the passing of Extraordinary Resolutions.
- 5.5 Notice of any such adjourned meeting of Stockholders at which an Extraordinary Resolution is to be submitted shall be given in the same manner (except in respect of the period of notice as to which a period of five days' notice shall be given) as of an original meeting and such notice shall state that the Stockholders present in person or by representative at the adjourned meeting, whatever their number and whatever the amount of Stock held by them, shall form a quorum and shall have the power to pass any resolution (including an Extraordinary Resolution) and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place.

6. **Right to Speak:** Any director, officer or solicitor for, the Trustee or any other person authorised in that behalf by the Trustee and any officer of, or solicitor for, the Council or any other person authorised in that behalf by the Council, may attend any meeting and all such persons shall have the right to speak at the meeting.

7. **Chairman:** A person nominated in writing by the Trustee shall preside at every meeting and if no such person is appointed, or if at any meeting the person nominated is not present within fifteen minutes after the time appointed for holding the meeting, the Stockholders present shall choose one of their number to be chairman.
8. **Adjournment:**
- 8.1 The chairman may, with the consent of any meeting at which a quorum is present and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- 8.2 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.
9. **Authority to Vote:** The person registered as a Stockholder in the Register shall be exclusively entitled to vote in respect of the Stock recorded as owned by that person provided however that a Stockholder who is an individual may vote personally or by his or her representative (being, for the purposes of this Schedule, a person either appointed by way of proxy or by power of attorney) and a Stockholder which is a company may vote by its representative (being, for the purposes of this Schedule, a person appointed either by way of proxy or by power of attorney or being a person authorised by the relevant provisions of the Companies Act).
10. **Proxies:**
- 10.1 The instrument appointing a proxy shall be in writing signed by or, in the case of an electronic notice, sent by the appointor or by the appointor's attorney duly authorised in writing or, if the appointor is a company, either under its seal or signed by an officer or attorney so authorised or by any director, secretary, general manager, investment manager or other person who has actual authority to appoint a proxy on behalf of such company.
- 10.2 A person appointed to act as a proxy need not be a Stockholder and has the right to speak at a meeting of Stockholders.
- 10.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a solicitor or Notary Public or in such other manner as the Trustee shall approve, shall be either deposited at such place as the Trustee, or the Council with the approval of the Trustee, may in the notice convening the meeting direct or (if no such place is appointed) then at the principal office of the Council not less than forty-eight hours (or such shorter period as the Council may nominate in the notice convening the meeting) before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid **PROVIDED ALWAYS** that the Trustee may in its discretion at any time:
- (a) waive any of the foregoing requirements in relation to any power of attorney or other authority;
- (b) approve and elect to treat as valid any instrument of proxy notwithstanding that it is received or produced at a place other than that specified in the notice or out of time; and

- (c) subject to such conditions (if any) as it may think fit, accept facsimile transmitted copies of any document appointing, or evidencing the appointment of, any representative.

10.4 An instrument of proxy may be in any usual or common form or in any other form which the Trustee may approve and may make provision for directions to be given by the appointee to vote in favour of or against any proposed resolution.

10.5 A proxy, whether in a usual or common form or not, shall, unless the contrary is stated thereon, be valid for the meeting to which it relates and for any adjournment thereof and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy shall be valid after the expiration of twelve months from the date of its execution but this provision shall not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.

10.6 An instrument of proxy which is expressed to be in favour of:

- (a) the Council; or
- (b) the chairman; or
- (c) the chairman of the meeting;

shall be valid and effectual as though it were in favour of a named person and shall in the case of sub-paragraph (a) constitute the Chief Executive and in the case of sub-paragraphs (b) and (c) constitute the person who chairs the meeting for which the proxy is used, whether on adjournment or not, as the case may be, the lawful proxy of the appointee.

11. **Appointment of Attorney:** Any Stockholder may by power of attorney duly executed as a deed appoint an attorney (who need not be a Stockholder) to vote and act on that Stockholder's behalf at any meeting. An attorney shall be entitled to produce evidence of that attorney's appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting or for the taking of a poll at which the attorney proposes to vote. An attorney, if so empowered, may appoint a proxy for the Stockholder granting the power of attorney.

12. **Corporate Representative:** A person authorised pursuant to the relevant provisions of the Companies Act, or pursuant to any other enactment or applicable empowering provision, by a Stockholder being a company, to act for it at any meeting shall in accordance with that person's authority until that person's authority is revoked by the company concerned be entitled to exercise the same powers on behalf of the company as that company could exercise if it were an individual Stockholder and shall be entitled to produce evidence of that person's authority to act at any time before the time appointed for the holding of, or at the meeting or adjourned meeting or for the taking of a poll at which that person proposes to vote.

13. **Rights of Representatives:**

13.1 A representative shall have the right to speak at the meeting and to demand or join in demanding a poll and shall (except when and to the extent to which the representative is specially directed to vote for or against any proposal) have power generally to act at the meeting (or adjourned meeting) for the Stockholder concerned.

- 13.2 The Trustee and any officer of the Trustee may be appointed a representative.

14. Voting Procedure:

- 14.1 A resolution put to the vote at a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, the Council or by the Trustee or any person acting on behalf of the Trustee or by any Stockholder. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried, carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The chairman must take account of votes made pursuant to clause 14.10 in compliance with clause 11(6) of Schedule 11 of the FMC Regulations (if applicable).
- 14.2 If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll is demanded.
- 14.3 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to any other votes to which the chairman may be entitled.
- 14.4 A poll demanded on the election of a chairman other than the nominee of the Trustee or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time (not being more than thirty days after the date of the meeting) and place as the chairman may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 14.5 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 14.6 On a poll votes may be given either personally or by representative. On a poll a person entitled to more than one vote need not use all its votes or cast all the votes it uses in the same way.
- 14.7 Every Stockholder who is present at a meeting and entitled to vote (whether personally or by representative) shall, on a show of hands, be entitled to one vote only and on a poll, be entitled to one vote for every \$1.00 of nominal amount of the Stock of which it is the Holder **PROVIDED ALWAYS** that any Stock for the time being held by the Council shall not, whilst so held, confer any right to vote. The certificate of any Holder of Security Stock may be relied upon by the Council and the Trustee for the purposes of calculating the voting entitlement of such Holder of Security Stock.
- 14.8 In the case of joint Stockholders the vote of the senior who tenders a vote, whether in person or by representative, shall be accepted to the exclusion of the votes of the other joint Stockholders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

- 14.9** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form of appointment shall be valid notwithstanding the previous death, insanity or (in the case of a company) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or of the authority under which the proxy or power of attorney was executed or the transfer of the Stock in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Trustee or the Council at its registered office, in the case of the Trustee, or principal office, in the case of the Council, before the commencement of the meeting or adjourned meeting at which the proxy or power of attorney or other form of appointment is used.
- 14.10** A Holder may:
- (a) exercise the right to vote at any meeting by casting a postal vote, a vote by email or a vote using any electronic means permitted by the Trustee;
 - (b) cast a vote using the above means on all or any of the matters to be voted on at a meeting by sending a notice of the manner in which that Holder's Stock are to be voted on to Council or any appropriately authorised person for that meeting. Such notice must reach that person before 48 hours before the start of the meeting unless Council or any appropriately authorised person (as the case may be), in its absolute discretion, elects to accept any notice notwithstanding that that notice is received or produced at a place other than that specified above or out of time.
- 14.11** The Council or any appropriately authorised person for that meeting (as applicable) must:
- (a) collect together all of those votes received by it;
 - (b) in relation to each resolution to be voted on at that meeting, count the number of Holders (entitled to vote and) voting for and against the resolution and the number of votes cast for and against the resolution;
 - (c) sign a certificate that it has carried out the duties set out in paragraphs 14.11(a) and (b) above and that sets out the results of the counts required by paragraph 14.11(b); and
 - (d) ensure that the certificate required by paragraph 14.11(c) above is presented to the chairman.
- 15. Disqualification:** No Stockholder shall be entitled to be present or to vote on any question, either personally or by representative, and no person shall be entitled to be present or to vote by representative for any Stockholder at any meeting or upon a poll or be reckoned in a quorum in respect of any Stock held by such Stockholder, whether alone or jointly, whilst any call or other sum shall be due and payable to the Council in respect of any such Stock.
- 16. Powers Exercisable by Extraordinary Resolution:** Without limiting the rights conferred on the Trustee by the Trust Deed, and subject to the proviso to this paragraph 16, a meeting of the Stockholders shall, in addition to all other rights

which by the Trust Deed are specified as exercisable by Extraordinary Resolution, have the following rights exercisable by Extraordinary Resolution, namely right to:

- (a) sanction either unconditionally or upon any conditions:
 - (i) the release of the Council from the payment of all or any part of the money secured by the Trust Deed; or
 - (ii) the surrender or release of the whole or any part of the Charged Assets;
- (b) sanction the exchange of Stock for, or the conversion of Stock into shares, stock, debentures, debenture stock or other obligations or securities of the Council or any company or entity formed or to be formed;
- (c) postpone, or with the concurrence of the Council accelerate, the day when the Principal Money of the Stock shall become payable and suspend or postpone for a time the payment of interest on the Stock;
- (d) sanction any variation, release, waiver or compromise or any arrangement in respect of the rights of the Stockholders against the Council or against its assets howsoever such rights shall arise;
- (e) assent to any variation or addition to or waiver of the provisions contained in the Trust Deed or any deed or other instrument collateral or supplemental thereto, or the conditions attaching to the Stock, proposed or agreed to by the Council;
- (f) give any sanction, assent, release or waiver of any breach or default by the Council under any of the provisions of the Trust Deed;
- (g) authorise the Trustee or any Receiver, where it shall have entered into possession of the Charged Assets or any part thereof, to give up possession of the same to the Council either unconditionally or upon any condition;
- (h) discharge, release or exonerate the Trustee from all liability in respect of any act or omission for which the Trustee has or may become responsible under the Trust Deed;
- (i) sanction any scheme for the reconstruction of the Council or for the amalgamation of the Council with any other person or entity where such sanction is necessary;
- (j) authorise or direct the Trustee to concur in and execute any supplemental deed or other document embodying any such sanction, authority, approval, assent, variation, release, waiver, compromise, direction or request;

PROVIDED ALWAYS that no variation or addition shall be made to the terms and conditions of issue of any Security Stock without the consent in writing of the Holder of that Security Stock.

17. **Extraordinary Resolution Binds Stockholders:** An Extraordinary Resolution passed at a meeting (including an adjourned meeting) of the Stockholders duly convened and held in accordance with this Schedule shall be binding upon all the Stockholders, whether present or not or entitled to be present or not at the meeting,

and each of the Stockholders and the Trustee (subject to the provisions of its indemnity contained in the Trust Deed) shall be bound to give effect thereto accordingly and the passing of any such resolution shall, as between the Trustee and the Stockholders, be conclusive evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

18. **Minutes of Meetings:** Minutes of all resolutions and proceedings at every meeting of Stockholders shall be made by the Council, or if the Council shall not be present at such meeting by some person appointed by the chairman of such meeting, and duly entered in books from time to time provided for that purpose by the Council at the expense of the Council and any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting of Stockholders shall be prima facie evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had. Copies of such minutes shall be furnished by the Council to the Trustee as early as possible after the holding of the meeting to which they refer.
19. **Written Resolutions:** Anything that may be done by the Stockholders by resolution or Extraordinary Resolution passed at a meeting of such Stockholders may, without prejudice to paragraph 1.1, also be done, without a meeting, by written resolution signed by at least 75% of Stockholders entitled to vote in respect of such resolution and holding in aggregate at least 75% of the aggregate nominal amount of Stock provided that the Stockholder or Stockholders promoting such a resolution have given the Trustee, the Council and all other Stockholders at least three business days' prior notice of the proposed resolution. Any such resolution may consist of several documents in similar form (including letters, electronic mail or similar means of communication), each signed by one or more Stockholders.
20. **Only Persons on Register Recognised by Council:** The persons registered as Stockholders in the Register, and no other person or persons, shall be recognised and treated as the legal holders of the Stock therein mentioned whether such persons are or are not in fact the owners thereof. For the purpose of establishing voting entitlements at a meeting the Register shall be closed as of close of business one day prior to the final date proxies may be received pursuant to paragraph 10.3.
21. **Classes of Stock:**
- 21.1 In addition to meetings of Stockholders in general, meetings of Classes of Stockholders may be held, and the provisions of this Second Schedule shall apply to any meeting of a Class of Stockholders as if references to "Stockholders" or "Holders" were references to Stockholders in that Class of Stockholders only and references to "Stock" were references to the relevant Class of Stock only.
- 21.2 A power which may be exercised by Stockholders by Extraordinary Resolution may only be exercised by an Extraordinary Resolution of a Class of Stockholders if the Trustee agrees, acting reasonably, that the exercise of that power only affects that Class of Stockholders, unless each affected Class of Stockholders passes the same, or substantially the same, Extraordinary Resolution.

- 21.3** The references to Extraordinary Resolution in clauses 11.10, 11.12.1, 11.12.2, 13.1 and 14.1 shall be read as references to an Extraordinary Resolution passed by Stockholders generally and not by one or more Classes of Stockholders only.

THIRD SCHEDULE

STOCK ISSUANCE CERTIFICATE

I, **[name]**, the Chief Executive of Kawerau District Council (the Council) hereby certify that:

1. the issue of **[type of Stock]** with a **[maximum aggregate nominal amount of \$[]]** **[nominal amount equal to the aggregate amount, from time to time, of the liabilities, advances and other accommodation or obligations referred to in the Stock Certificate for that Stock¹]** (the **New Stock**) under the terms of the Debenture Trust Deed dated on or about **[]** (the **Trust Deed**) has been duly authorised by the Council, or has been authorised by a person or persons within the delegated authorities approved by the Council;
2. as at the date of this certificate (but prior to the issuance of the New Stock if it is to be issued on the date of this certificate) the total nominal amount of Stock issued and outstanding under the Trust Deed (showing separately the respective total nominal amounts) is as follows:
 - (i) Debenture Stock of: \$
 - (ii) Security Stock (issued with a fixed nominal amount) of: \$
 - [(iii) Bearer Stock of: \$]

[together with:

 - (iv) Security Stock (issued with a floating nominal amount),² which as at **[date]** amounted to:
[specify for each currency]
3. no Enforcement Event has occurred and remains unremedied;
4. for the purposes of section 115(3) of the Act, the loans or obligations secured by the New Stock have been raised for the benefit of **[all/defined part]** of the Council's district;
5. for the purposes of section 118 of the Act, the Council has complied with the Act in entering into and the performance of its obligations under the Trust Deed, the Registrar and Paying Agency Agreement and all other obligations entered into by the Council in connection with the Council's borrowing and granting security under the Trust Deed, including in respect of the New Stock.

This Certificate is given by me as Chief Executive of the Council in good faith on behalf of the Council and I shall have no personal liability in connection with the issuing of this Certificate.

¹ [The initial nominal amount of the Security Stock issued with a floating nominal amount under this Certificate is [].]

² [Council LGFA existing borrowing [] (excluding any contingent liability under the Council LGFA guarantee). Council LGFA guarantee [].]

Unless otherwise defined or the context otherwise requires, terms with a defined meaning in the Trust Deed shall have the same meaning where used in this Certificate.

Dated:

Chief Executive
Kawerau District Council

**FOURTH SCHEDULE
REPORTING CERTIFICATE**

I, **[name]** the Chief Executive of Kawerau District Council (the **Council**) hereby certify to the best of my knowledge and belief for the purposes of the Debenture Trust Deed dated on or about [] (the **Trust Deed**):

- *1. Since the date on which the last Reporting Certificate containing this certification was given [or in the case of the first Reporting Certificate, since the date of the Trust Deed]:
- (a) all interest due on the Stock [has/has not] been paid;
 - (b) all Stock which has fallen due for repayment [has/has not] been repaid:
[details of any non-payment];
 - (c) [no/the following] Enforcement Event has occurred and remains unremedied:
[details of any Enforcement Event].
- *2. As at [the end of the financial year of the Council or other date in respect of which the Reporting Certificate is being given] the total amount of Stock issued and outstanding under the Trust Deed (showing separately the respective nominal amounts) is as follows:²
- | | | |
|---------|---|------|
| (i) | Debenture Stock of: | \$ |
| (ii) | Security Stock (issued with a fixed nominal amount) of: | \$ |
| [(iii)] | Bearer Stock of: | \$] |
- [together with:
- (iv) Security Stock (issued with a floating nominal amount), which as at [the end of the financial year of the Council or other date in respect of which the Reporting Certificate is being given] amounted to:
[specify for each currency]
- *3. The Council [has/has not] complied with the Act in connection with the Trust Deed, the Registrar and Paying Agreement, and any borrowing documentation which the Council has entered into under, in accordance with or secured by the Trust Deed.
- [detail of any non-compliance]
4. On the basis of such information as to the financial position and prospects of the Council as is generally received by me in my capacity as Chief Executive (including reports from the Council's financial managers), I am not aware of any reason why the Council will not be able to meet its liabilities in relation to Stock and interest

² The aggregate principal amount owing under bank facilities is []. The sum of the amounts owing to New Zealand Local Government Funding Agency Limited (LGFA) (excluding contingent liabilities) is []. [The aggregate amount of borrowed money owed by LGFA that is guaranteed by the Council is [].]

thereon which are anticipated to fall due or to become payable during the twelve months from the date of this Certificate.

5. [For the purposes of paragraph [4] of this Certificate, I have considered in particular:

- (a) the liability of the Council under the Security Stock Certificate(s) issued with a floating nominal amount;
- (b) the likelihood of the liabilities secured by those Security Stock Certificates being called on; and
- (c) the ability of the Council to recover or recoup from other parties in relation to any payments that the Council would be required to make in respect of those Security Stock Certificates.]

[delete this paragraph if no Security Stock Certificate has been issued with a floating nominal amount]

*6. Since the date on which the last Reporting Certificate containing this certification was given [or on the case of the first Reporting Certificate, since the date of the Trust Deed] the Council has complied in all material respects with all the material provisions, covenants and obligations under the Trust Deed, and I am not aware of any reason [am aware of the following reasons/of reasons which have already been advised to the Trustee] why in the period of twelve months from the date of this Certificate the Council will not so comply with such provisions, covenants and obligations.

This Certificate is given by me as Chief Executive of the Council in good faith on behalf of the Council and I shall have no personal liability in connection with the issuing of this Certificate.

Dated:

 Chief Executive
 Kawerau District Council

[These paragraphs are not required in a Reporting Certificate provided to the Trustee in respect of the end of the first and third quarters of the Council's financial year. Paragraph numbering should be updated accordingly.]*

SECURITY STOCK CERTIFICATE

Stock Certificate No: 1

KAWERAU DISTRICT COUNCIL (the Council)

Principal Office: Kawerau District Council
2 Ranfurly Court
KAWERAU 3169

Stock Transfer Office: Link Market Services Limited
Level 11
Deloitte Centre
80 Queen Street
AUCKLAND 1010
(the Registrar and Paying Agent)

Obligations under the Multi-Issuer Deed and related Accession Deed Security Stock Certificate

The Security Stock referred to in this Certificate is Security Stock constituted and secured by a debenture trust deed (**Trust Deed**) dated on or about the date of this Certificate between the Council and Covenant Trustee Services Limited and is issued with the benefit and subject to the provisions of the Trust Deed, the conditions endorsed on and/or otherwise applicable to such Stock and this Certificate, including the further conditions (included in the term **Conditions**).

THIS IS TO CERTIFY THAT

1. New Zealand Local Government Funding Agency Limited (**Holder**) will, upon registration of the Stock pursuant to the Trust Deed, be the registered Holder of Security Stock (**Stock**) in a nominal amount equal to the aggregate amount, from time to time, of the liabilities, advances and other accommodation or obligations referred to in clause 2 of this Certificate;
2. **SUBJECT** to the provisions of clause 3 of this Certificate, the Stock is issued by way of continuing security for the due payment and satisfaction to the Holder of all liabilities of the Council to the Holder in respect of:
 - (a) the Accession Deed to Multi-Issuer Deed between the Council and the Holder dated on or about the date of this Certificate; and
 - (b) the Multi-Issuer Deed between various local authorities and the Holder dated 7 December 2011 (as amended, supplemented or restated from time to time),(each an **Agreement** and together the **Agreements**) whether incurred before or after the issue of the Stock and whether matured or not and whether incurred by the Council alone, or jointly, or jointly and severally with others and whether as principal or surety and whether absolute or contingent and shall include, but not by way of limitation, obligations and liabilities in respect of any indemnities granted by the Council pursuant to the Agreements;

3. **THE** Stock is issued on the special condition that at any date (**Relevant Date**) the Priority Total Amount relating to the Stock is not more than:

(a) the lesser of:

(i) the aggregate amount (as finally determined) of all the liabilities, advances and other accommodation or obligations referred to in clause 2 of this Certificate at the Relevant Date, including capitalised interest owing at the Relevant Date but excluding any interest accrued pursuant to the terms of the Agreements and owing at the Relevant Date; and

(ii) the nominal amount of the Stock,

(such lesser amount being referred to in this Certificate as the **Priority Principal Amount**); and

(b) as interest, all interest (for the avoidance of doubt excluding capitalised interest) accrued pursuant to the terms of the Agreements and payable to the Holder on the amount referred to in paragraph 3(a)(i) above (up to the Priority Principal Amount) but excluding any interest accrued pursuant to the Agreements which has been due and owing since a date more than six months prior to the Date of Enforcement,

AND upon any distribution of the money available to Stockholders pursuant to the provisions of clause 15 of the Trust Deed the Stock shall entitle the Holder to payment *pari passu* with the other Stockholders in respect only of their Priority Principal Amount together with interest calculated pursuant to the provisions of paragraph (b) above **PROVIDED ALWAYS** that any amounts owing to the Holder in respect of which this Stock is issued but which do not form part of the Priority Total Amount shall rank for payment subsequent to the Priority Total Amounts of the other Stockholders but *pari passu* with any amounts referred to in the equivalent to this proviso in Security Stock Certificates held by other Stockholders (and as consistent with clause 6.3.1(c) of the Trust Deed);

all in accordance with the Trust Deed (including the Conditions).

GIVEN by or on behalf of the Council this day of 2020

SIGNED for and on behalf of
KAWERAU DISTRICT COUNCIL

Russell George
Chief Executive

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

NOTES:

- (1) The Holder is entitled to the benefit of, is bound by, and is deemed to have notice of, all the provisions of the Trust Deed (including the Conditions) (which may be inspected at the Principal Office of the Council).
- (2) This Certificate must be surrendered to the Council or the Registrar before transfer of the whole or any part of the Stock can be registered.
- (3) All sums specified in this Certificate relate to New Zealand currency.
- (4) Words and expressions used in this Certificate and in the Conditions shall have the same definition as in the Trust Deed unless otherwise defined or the context otherwise requires.

CONDITIONS

1. **SUBJECT** as herein provided, the Holder of the Stock is entitled *pari passu* and rateably with the holders of all other Stock constituted by the Trust Deed to the benefit of, and is subject to, the provisions of the Trust Deed (including the Conditions).
2. **EVERY** Holder will be recognised by the Council, the Paying Agent and the Registrar as entitled to its Stock and to the Principal Money and interest payable thereon free from any equity, security interest, set-off or cross-claim or counter-claim between the Council and the original or any intermediate holder of the Stock (not being the Holder).
3. **THE** Stock may, to the same extent as the debts, liabilities, advances or other accommodation or obligations to which it relates, be transferred in accordance with the Trust Deed by an instrument in writing in the usual or common form, and the following provisions shall apply:
 - (a) every instrument of transfer must be executed by the transferor in the manner required by the Council or the Registrar or as required by the FMC Act and the transferor shall be deemed to remain the owner of the Stock until the name of the transferee is entered in the Register (as defined in the Trust Deed) in respect thereof;
 - (b) every instrument of transfer must be left at the registered office of the Registrar for registration accompanied by any Certificate in respect of the Stock to be transferred and such other evidence as the Council or the Registrar may require to prove the title of the transferor or its right to transfer the Stock. Upon being satisfied as to the due execution of the transfer, and the due compliance with the provisions of any Act relating to stamp duties, the Registrar will register the transfer in accordance with the Registrar and Paying Agency Agreement (as defined in the Trust Deed) and will recognise the transferee as the Holder entitled to the amount of Stock comprised in the transfer;
 - (c) all instruments of transfer which shall be registered will be retained by the Council or the Registrar, but any instrument of transfer which the Registrar may decline (on reasonable grounds) to register shall be returned to the person who has delivered the same together with the reasons for such non-registration;
 - (d) the Registrar shall not be obliged to, but may, register any transfer of Stock during the period between the Registrar's close of business on the Record Date immediately preceding the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest and the date for repayment of the Principal Money (or any part of the Principal Money) or payment of interest, or the period between the Registrar's close of business on the date 14 days before any meeting (inclusive of the date on which such meeting is held) of Holders is convened in accordance with the Trust Deed and the date of such meeting. For the purposes of these Conditions, Record Date means the tenth day before the relevant date for payment of any Principal and/or interest in respect of any Stock or, if such day is not a business day then such day as determined by the Paying Agent in accordance with its usual practice;
 - (e) no fee shall be charged by the Council for the registration of a transfer;
 - (f) the Council, the Trustee, the Paying Agent and the Registrar will recognise only the Holder as the absolute owner thereof and, except as ordered by a court of competent jurisdiction or by statute, shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Stock may be subject. The receipt of such Holder, or in the case of joint Holders

the receipt of any of them, of the Principal Money and the interest from time to time accruing due in respect thereof or for any other money payable in respect thereof, or the compliance with the payment directions of the Holders or any one of joint Holders, shall be a good discharge to the Council, the Trustee, the Paying Agent or to the Registrar, as the case may be, notwithstanding any notice it may have whether express or otherwise of the right, title, interest (including security interest) or claim of any other person to or in respect of such Stock, interest or money. No notice of any trust express, implied or constructive, nor of any security interest, shall be entered on the Register in respect of any Stock,

provided that the requirements for transfer in paragraphs (b), (c) and (d) shall not apply to the extent that the Council and the Registrar agree a different method of transfer either with the Trustee or, in respect of a particular transfer, with the relevant transferor and transferee.

Officer's Certificate

TO: New Zealand Local Government Funding Agency Limited

I, Russell George, a duly authorised officer of Kawerau District Council (**Council**), hereby certify that all necessary regulatory or statutory authorisations, consents, approvals and licences in relation to:

- a) the Council's entry into the Accession Deed to Multi-Issuer Deed (**MID Accession Deed**) dated on or about the date of this certificate between the Council and New Zealand Local Government Funding Agency Limited (**LGFA**) and the Multi-Issuer Deed dated 7 December 2011 (as amended and restated on 6 July 2020) between LGFA and various local authorities (**Multi-Issuer Deed**);
- b) the Council's entry into the Accession Deed to Notes Subscription Agreement dated on or about the date of this certificate between the Council and LGFA and the Notes Subscription Agreement (as amended and restated on 6 July 2020); and
- c) the issuance of Security Stock and a Security Stock Certificate in respect of the Council's obligations under the MID Accession Deed and the Multi-Issuer Deed,

have been obtained and are current and satisfactory.

Words and expressions defined in the Multi-Issuer Deed have the same meanings in this certificate.

DATED:

SIGNED:

Russell George
Chief Executive
Kawerau District Council



Dated:

REGISTRY CUSTOMER AGREEMENT

between

KAWERAU DISTRICT COUNCIL

and

LINK MARKET SERVICES LIMITED

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REGISTRY CUSTOMER AGREEMENT

AGREEMENT dated 2020

KAWERAU DISTRICT COUNCIL ('the Council') of 2 Ranfurly Court, Kawerau 3169

AND

LINK MARKET SERVICES LIMITED ('Link') of Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010

RECITALS

The Council has requested that Link provides, and Link has agreed to provide, the Services to the Council on the terms and conditions of this agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement, the following words and phrases have the meanings as set out below unless a contrary intention appears:

'Amounts Payable' means, on any date, the amount of interest (if any), principal or any other amount due to be paid to Holders of the Securities on that date under the Issue Documentation.

'Approved Issuer Levy' means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Security, the levy payable by the Council in accordance with section 86J of the Stamp and Cheque Duties Act 1971 to enable the payment of that interest to be made to any non-resident for tax purposes with a deduction for New Zealand non-resident withholding tax at the rate of zero percent pursuant to section RF 12 of the Income Tax Act 2007.

'Authorised Signatory' means, subject to clause 14, a person appointed by the Council and specified in Schedule B.

'Business Day' means a day (other than a Saturday or Sunday) that the NZX is open for trading.

'Computer Systems' means the computer systems required by clause 9.1.

'Conditions' means the terms and conditions applicable to any Securities as set out in the relevant Issue Documentation.

'Confidential Information' means the databases, computer programs, screen formats, screen designs, report formats, interactive design techniques, and other related information furnished to

a party by the other party, for the purposes of this agreement, but does not include information that has already come into the public domain for any reason other than by virtue of a breach by a party or its employees of any obligation of confidentiality imposed in relation to the information.

'Council Liabilities' includes:

- (a) any sum or amount in respect of which the Council is entitled to be indemnified for under clause 11; and
- (b) any amount the Council is entitled to be paid or reimbursed under clause 11.

'Debenture Trust Deed' means the Debenture Trust Deed between the Council and Covenant Trustee Services Limited dated on or about the date of this agreement.

'Effective Date' means the date of this agreement.

'Force Majeure' means any:

- (a) act of God, fire, earthquake, storm, flood, or landslide;
- (b) explosion, public mains electrical supply failure, or nuclear accident;
- (c) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or in law) or act of war (whether declared or not);
- (d) requirement or restriction of, or failure to act by, any government, semi-government or judicial entity;
- (e) unavoidable accident, or inability to obtain or delay in obtaining adequate labour, contracts, equipment, materials, transport or supplies; and
- (f) any other similar cause beyond the reasonable control of the party claiming the benefit of clause 11.2 and which that party is unable to overcome by the exercise of reasonable diligence and at reasonable cost;

but does not include:

- (g) any event which the party affected could have prevented or overcome by exercising a standard of reasonable care; or
- (h) a lack of funds for any reason.

'GST' means goods and services tax which is or may be levied or become payable in connection with the supply of goods and services under the Goods and Services Tax Act 1985 and any other legislation.

'Holder' means a person or, as the case may be, persons in whose name Securities are or were inscribed in the Register and 'Holding' has a corresponding meaning.

'Issue Documentation' means:

- (a) the Debenture Trust Deed;
- (b) the Multi-Issuer Deed (from the date on which the Council accedes to it);
- (c) the Issue Notices for any securities; and
- (d) any other agreement entered into by the Council pursuant to which Securities are able to be constituted and issued by the Council and which the Council and Link agree to be 'Issue Documentation'.

'Issue Notice' means a notice in the form set out in Schedule F or any other substantially similar form or any other form agreed between the parties.

'LGFA' means New Zealand Local Government Funding Agency Limited (3677052).

'Liabilities' means Link Liabilities and/or the Council Liabilities as the case may be.

'Link' includes, where the context permits, any delegate or agent that Link appoints in accordance with this agreement.

'Link Liabilities' includes:

- (a) Taxes, costs, expenses, liabilities, fees or any other amount incurred or payable by Link under this agreement;
- (b) the disbursements set out in Schedule D;
- (c) Link's fees payable pursuant to clause 6;
- (d) any sum or amount in respect of which Link is entitled to be indemnified for under clause 11; and
- (e) any amount Link is entitled to be paid or reimbursed under clause 11.

'Link Liability Limit' means the greater of:

- (a) \$200,000; or
- (b) the amount of fees paid by the Council to Link under this agreement during the past 12-month period.

'Multi-issuer Deed' means the multi-issuer deed between LGFA and various local authorities dated 7 December 2011 (as amended, supplemented or restated from time to time).

'Non-standard Services' means the services not specified in Schedule A.

'NZClear' means the system operated by the Reserve Bank of New Zealand for holding securities and electronic recording and settling of transactions in those securities between members of that system.

'NZClear Account' means the NZClear New Zealand trust account opened and maintained by Link, into which payments are made by the Council in respect of the Amounts Payable.

'NZX' means NZX Limited.

'Payment Date' means each date on which any Amounts Payable are due to be paid under the terms of the Issue Documentation.

'Performance Standards' means the performance standards set out in Schedule E.

'Program Documentation' means, in relation to the Programs, all written information, flow charts, manuals, loading diagrams, listings, drawings, source codes, object codes, drawings and other documents or material contained, reproduced or otherwise incorporated, including any copies, duplicates, extracts or reproductions of such information, charts, manuals, diagrams, listing codes, documents or material forms.

'Programs' means computer programs used by Link for the supply of the Services.

'Record Date' has the meaning set out in the Conditions, and, if the Conditions do not contain a definition of 'Record Date' means the tenth day before the relevant date for payment of any principal and/or interest in respect of the Security, or, if such day is not a Business Day, then such day determined by Link in accordance with its usual practice.

'Records' means all information produced by, or by agreement with the Council relating to:

- (a) Securities;
- (b) any person who is at any time a Holder;
- (c) any provision of this agreement; or
- (d) the performance by Link or the Council of this agreement,

and includes all discs, microfilm, drawings, documents and materials of any kind whatsoever and by whomsoever produced in which that information is constituted, recorded, contained or reproduced or otherwise incorporated and any copies, duplicates, extracts or reproductions of any such discs, microfilm, drawings, documents or materials but excludes all other information and materials held by Link.

'Register' means each register and index of Holders for each class of Security, established pursuant to clause 3.1 of this agreement. For the avoidance of doubt, this excludes program

documentation, software, computer programs and underlying source and object codes of the said software and computer programs.

'**RWT Exempt Status**' means the exempt status of a person in relation to payments of resident passive income derived by the person as provided under section RE 27 of the Income Tax Act 2007.

'**Security**' means those securities issued by the Council under the Issue Documentation, including:

- (a) "Stock" as defined in the Debenture Trust Deed; and
- (b) "Securities" as defined in the Multi-Issuer Deed.

'**Services**' means the Standard Services and the Non-standard Services.

'**Standard Services**' means the services set out in clause 2.3 and more specifically set out in Schedule A.

'**Taxes**' includes any present or future tax, levy, impost, rate, duty, charge, fee, deduction or withholding of any nature and whatever called (including for the avoidance of doubt Approved Issuer Levy), imposed or levied by any governmental agency and any interest, penalty, charge, fee, or other amount imposed or made on or in respect of any of the foregoing.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) headings have been inserted only for convenience and do not affect the interpretation of this agreement;
- (b) a reference to any document includes reference to that document's attachments and schedules, the whole as amended from time to time;
- (c) a reference to a statute, ordinance, code or other law includes reference to the corresponding regulations, instruments, class orders and policy statements in all instances as amended, consolidated, re-enacted, replaced or re-written;
- (d) a reference to the parties, where relevant, includes their respective successors or permitted assigns;
- (e) the singular includes the plural and vice-versa;
- (f) words and expressions importing one gender include all other genders;
- (g) 'include' and any variation of it means including without limitation and does not exclude a reference to other items, whether of the same class or genus or not;

- (h) 'month' and any variation of it means a calendar month (whether or not beginning on the first day of the month);
- (i) 'person' includes a natural person, a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (j) where a word or phrase is given a defined meaning in this agreement, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning; and
- (k) if under this agreement the day on or by which any act, matter or thing is required to be done is a day other than a Business Day, such act, matter or thing must be done on the next succeeding Business Day.

1.3 Issue Documentation

If there is any inconsistency between the Issue Documentation and this Agreement the Issue Documentation shall prevail.

2. APPOINTMENT OF LINK

2.1 Appointment

On and from the Effective Date, the Council appoints Link to perform the Services as the registrar of the Register on the terms and conditions of this agreement. Link accepts that appointment.

2.2 Link Duties

Link agrees to perform the Services, in accordance with the Performance Standards where applicable.

2.3 Services

Link shall perform the following services as agent for the Council (as more specifically set out in Schedule A):

- (a) calculation of any Amounts Payable;
- (b) payment of any Amounts Payable in relation to the Securities on the relevant Payment Dates;
- (c) keeping of the Register;
- (d) receipt of any instrument of transfer of Securities and the recording of transfers of Securities;

- (e) keeping of accounting records in respect of all money received and paid by Link pursuant to this agreement;
- (f) participating in issuing and settling the purchase of Securities as contemplated in the Issue Documentation;
- (g) all services which are expressed in the Issue Documentation to be services which are to be performed by Link, provided that the consent of Link (not to be unreasonably withheld or delayed) shall be required for any amendment of the Issue Documentation that alters the services to be performed by Link; and
- (h) checking the electronic register maintained by Inland Revenue and recording whether a Holder has RWT Exempt Status.

2.4 Other services

Link shall also perform such other services for the Council, whether or not of a similar nature to those referred to in clause 2.3 or Schedule A, as Link may agree to perform from time to time, on such terms and conditions as Link may agree.

3. THE REGISTER

3.1 Establish Register

From the Effective Date, Link establishes and maintains the Register on behalf of the Council.

3.2 Location of Register

Link must keep the Register at its principal place of business in Auckland or at such other place in New Zealand as may be agreed by the Council and Link (such agreement not to be unreasonably withheld).

3.3 Different Issue Documentation

Link must ensure that the Register records which Issue Documentation any Securities are issued under so that a separate Register can be constructed in relation to separate Issue Documentation if required.

4. USE OF EXTERNAL SERVICE PROVIDERS

4.1 Use of Service Providers

- (a) In performing the Services, Link may in its discretion appoint and use the services of external service providers where Link considers the appointment to be necessary or expedient to assist Link in carrying out its obligations under this agreement.

- (b) The Council's consent is not required in relation to Link's use of any services provided by a holding company or subsidiary of Link, as defined in the Companies Act 1993.
- (c) Link will be responsible to the Council for the acts, omission or defaults of any external service provider appointed by Link, unless directed to use a particular service provider by the Council.

5. CORRECT INFORMATION

- (a) The Council must use its best endeavours to supply Link with accurate and complete information to enable Link to perform the Services.
- (b) Link has no obligation to question or confirm the accuracy or completeness of any information provided to it by the Council or any other person including but not limited to Holders.

6. FEES

6.1 Amount of fees for Standard Services

Link is entitled to the fees set out in Schedule D. These fees are payable by the Council in the manner set out in Schedule D.

6.2 Amount of fees for Non-Standard Services

Link is entitled to fees for Non-standard Services in an amount as agreed to by both parties.

6.3 Variation of fees

Any variation of fees must be agreed to by the parties to this agreement in writing and will not take effect less than 30 days (or such other period as agreed between the parties) after such variation has been agreed.

6.4 Taxes

The parties agree that:

- (a) unless otherwise specified, all payments under this agreement have been calculated exclusive of any taxes, levies or duties, including GST (if any);
- (b) if the whole or any part of any payment under or in connection with this agreement is the subject of any taxes, levies or duties that may be payable on Link's fees, the payer must pay to the payee an additional amount equal to the amount referable to that or those taxes, levies or duties, either concurrently with that payment or as otherwise agreed in writing; and

(c) the payee will provide to the payer a valid tax invoice.

7. PAYMENT OF LIABILITIES

7.1 The Council must pay or reimburse

The Council must on demand pay or reimburse Link for all Link Liabilities, which are payable by the Council in relation to this agreement.

7.2 Link must pay or reimburse

Link must on demand pay or reimburse the Council for all Council Liabilities, which are payable by Link in relation to this agreement.

7.3 Notice of payment required

The party seeking reimbursement under clause 7.1 or 7.2 must advise the other party by written notice of the amount required to satisfy any Liabilities which are due in accordance with this agreement.

8. PAYMENTS ON BEHALF OF COUNCIL

8.1 Payment of Amounts Payable

Link shall pay, or cause to be paid, (subject to the provisions of clause 18) on behalf of the Council all payments of Amounts Payable on Securities on the relevant Payment Date in New Zealand and otherwise in accordance with the written instructions of the Holders appearing in the Register at the relevant Record Date.

8.2 Notice of Amounts Payable

Not less than five days before a Payment Date for any Securities, Link shall give the Council written notice of the Amounts Payable on that Payment Date.

8.3 Council Payment

By no later than 12.00 noon (New Zealand time) on a Payment Date for any Security, the Council shall arrange for payment to be made, or make payment of, the Amounts Payable in respect of that Security to the NZClear Account. Link acknowledges that any payments from the Council of the Amounts Payable shall not constitute the property of Link for any purpose other than the payment to the Holders as herein contemplated, shall at all times be held on trust for that purpose, and, in the event of frustration of that purpose for any reason, shall be returned immediately and in full to the Council.

8.4 No Set-Off

Link shall not exercise any lien, or right of set-off over any moneys received by it pursuant to clause 8.3, or combine or consolidate those moneys with any other money or account.

8.5 Notice of Payment Date

In setting the corporate financial calendar, the Council will ensure that there is a minimum of 10 calendar days between the Record Date for a payment and the date that payment is required to be made by Link under clause 8.1.

9. RECORDS AND INFORMATION

9.1 Computer Systems

Link agrees to formulate, install, implement, maintain and keep on-line computerised systems recording the transactions and matters contemplated by this agreement.

9.2 Full details of transactions

The Records, including those maintained on the Computer Systems, must include details of any transaction or matter to be recorded in the Register by Link and must show each payment or receipt made by Link on behalf of the Council pursuant to this agreement in such terms and manner as are reasonably required by the Council.

9.3 Content of Register

The Register must include the following information about each Security:

- (a) the principal amount of the Security for the time being issued and outstanding (which, in the case of Security Stock (as defined in the Debenture Trust Deed), shall be its nominal amount);
- (b) the date or dates of payment for Security (when applicable);
- (c) the rate of interest applicable;
- (d) when interest is payable;
- (e) the redemption date;
- (f) the number and date of each Stock Certificate (as defined in the Debenture Trust Deed) (if any);
- (g) (except for Bearer Stock (as defined in the Debenture Trust Deed)) all subsequent transfers or changes of ownership of the Security;

- (h) (except for Bearer Stock) the name and address of the holder of the Security and the date at which such name was entered on the Register;
- (i) where a Security is no longer outstanding, particulars of its redemption, purchase, cancellation or forfeiture by the Council;
- (j) any other additional matters to be entered in the Register in accordance with the Issue Documentation; and
- (k) any other particulars as are agreed between the Council and Link,

provided that the information specified in paragraphs (b), (c), (d) and (e) will not be required for Security Stock.

9.4 Computer Storage

Link must ensure that the computer system on which the Register is maintained is "backed-up" at least once each working day and that at least two "back-up" copies of the Register are held at all times. At least one "back-up" copy of the Register must be stored on premises separate from the premises where the Register is kept. In the event of any computer or other technical failure, Link must promptly reconstitute the Register.

9.5 Inspection of Register

Link shall, at all reasonable times during office hours, subject to any applicable laws or regulations, make the Register available to the Council and the Holders and any person authorised by the Council, in each case for inspection and for taking copies. Link shall deliver to the Council or any person authorised by the Council on request, any list of Holders, their addresses and holdings, as may be requested. Without limitation, Link must disclose to a Holder, as soon as practicable following any request by that Holder, such particulars on the Register relating to Securities registered in the name of that Holder as the Holder has requested.

10. TERM AND TERMINATION

10.1 Initial Term

This agreement commences on the Effective Date for a period to and including a date 7 years from that date ('Initial Term').

10.2 Renewal

At the expiry of the Initial Term and each succeeding year, the agreement is automatically renewed for a further year ('Renewal Term') unless terminated in accordance with clause 10.3.

10.3 Time of Termination

Either party may terminate this agreement at any time by giving at least 60 days' notice (or such other period as the parties agree) in writing. No such termination may take effect within 15 days of any Payment Date and unless and until a new registrar is appointed.

10.4 Events on Termination

Upon any termination of this agreement for any reason (including default of either party), Link must provide to the new registrar all Records (other than copies of this agreement) and use its reasonable endeavours to assist the new registrar promptly to take over all the functions of Link under this agreement in an orderly manner. Further, Link must provide to the new registrar all files, records, ledgers and documentation and all stationery or office materials particular to the Council or the operation of the Register, and all other material of any kind which are the property of the Council. Upon or prior to any termination of Link becoming effective, the Council must pay all Link Liabilities due but unpaid and all reasonable "out of pocket" fees (including legal fees) incurred by Link in transferring the Records and other materials as contemplated by this clause.

10.5 Obligations surviving Termination

Notwithstanding any other provision of this agreement, clauses 10.4, 11, 12 and 13 shall survive the termination of this agreement for any cause whatsoever.

11. LIABILITY

11.1 Debt due

The Council acknowledges that all moneys payable to a Holder in respect of Securities shall constitute a debt due to that Holder by the Council. Where Link fails to pay the Amounts Payable or any part thereof in respect of any Securities as a consequence of the failure by the Council to make a corresponding payment in accordance with clause 8.3, Link shall be under no liability to the Council or any Holder in respect of the failure.

11.2 Force Majeure

Notwithstanding any other provision of this agreement, non-performance by either of the parties of any of its obligations under this agreement will be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure. However:

- (a) The party claiming the benefit of this clause 11.2 must promptly give written notice to the other party specifying the cause and the extent of its inability to perform any of its obligations under this agreement and the likely duration of such non-performance. In the meantime, such party shall take all reasonable steps to remedy or abate the Force

Majeure, including in the case of Link by utilising other offices or facilities for performance of the Services if practicable.

(b) Performance of any obligation affected by Force Majeure must be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure. If by reason of Force Majeure a party is unable to perform any obligation under this agreement for a period of ninety (90) days, the other party may on giving thirty (30) days written notice to that party terminate this agreement.

(c) Termination of this agreement under clause 11.2 will not prejudice the rights of either party against the other in respect of any matter or thing occurring under this agreement before termination.

11.3 No liability for indirect loss

In no event is either party liable to the other party or any other person for indirect, special or consequential damages.

11.4 Limitation of liability

11.4.1 Subject to clause 11.4.2, the Council agrees that Link's liability for any loss or damage suffered by the Council in connection with this agreement, including liability for any negligent act or omission or misrepresentation of Link, shall be limited, for each 12-month period commencing from the Effective Date, to the Link Liability Limit. The Council agrees to release Link from all claims arising in connection with this agreement to the extent that Link's liability in respect of such claims would exceed the Link Liability Limit.

11.4.2 Any liability of Link arising as a result of its misapplication of the Council's funds, whether deliberate or accidental shall not be subject to the limitations contained in clause 11.4.1.

11.5 No liability to agents

Neither party is liable to an agent of the other party in any circumstances.

11.6 No liability to Holders of securities

Link is not liable in any way to the Holder of any Security or any person who holds a lien, charge or any other legal or equitable interest over such Security.

12. KEEPING RECORDS

12.1 Link will retain all Records for completed transactions:

(a) for a period of 7 years after the completion of the transactions to which the Records relate unless otherwise agreed between the parties; or

- (b) until the later of the date of termination of this agreement and the date on which it has complied with its obligations under clause 10.4,

whichever is the sooner.

12.2 Link may destroy hard copies of Records held by it after 6 years (or such lesser period as agreed between the parties) if it has produced legible microfilm records of those Records or other records in such other form as may be agreed by the Council.

12.3 Link must comply with all statutory obligations imposed upon it in relation to the retention of the Records and, to the extent that those obligations are inconsistent with the provisions of this agreement, it will comply with the statutory obligations.

12.4 Link must maintain data storage facilities for the Records.

13. DISCLOSURE AND CONFIDENTIALITY

13.1 Disclosure

Link must disclose to a Holder, as soon as practicable following any request by that Holder, such particulars on the Register relating to the Securities registered in the name of that Holder as the Holder has requested.

13.2 Confidential Information

Subject to clause 13.1, each of the Council and Link:

- (a) agrees that it will treat as confidential the terms and conditions of this agreement and acknowledges the Confidential Information is passed to and received by it in the strictest confidence;
- (b) must use the Confidential Information only for the purposes set out in this agreement;
- (c) must not disclose the Confidential Information to any person except as permitted by this agreement;
- (d) must use reasonable endeavours to ensure that any person who has access to Confidential Information does not make any unauthorised use, modification, reproduction or disclosure of that information and that Confidential Information is protected against loss;
- (e) must notify the other as soon as practicable after it becomes aware of a breach by it or its representatives of its obligations under this clause 13; and
- (f) must comply with all relevant laws, codes of practice or guidelines relating to confidential information including the Privacy Act 2020 to the extent applicable to it.

13.3 Permitted Disclosures

Each of the Council and Link may disclose Confidential Information:

- (a) on a need to know basis to any of its representatives or agents (including legal advisers) for the purposes set out in this agreement if it obtains a written undertaking from the representative or agent in a form acceptable to the other, imposing substantially the same obligations on the representative or agent as those imposed on it by this agreement; or
- (b) to the extent specifically required by law, and a party must immediately notify the other if it becomes aware that such disclosure may be required; or
- (c) with the prior written consent of the other provided that the person to whom the Confidential Information is to be disclosed, releases and indemnifies the other from all claims, actions, loss or liability arising out of or in connection with such disclosure or with the use by that person of that Confidential Information; or
- (d) in the case of any information contained on the Register, to the Council's legal advisers, the trustee under the Debenture Trust Deed and the Council's auditors.

14. AUTHORISED SIGNATORIES

14.1 Authorised Signatories

The Council acknowledges that Authorised Signatories are authorised to give instructions to Link on behalf of the Council for the purposes of this agreement and to sign on behalf of the Council all notices, communications, instructions, confirmations and other documents required by or contemplated under this agreement.

14.2 Link entitled to rely

Link is entitled to rely on the authenticity of the signatures and instructions given or purported to be given by the Council's Authorised Signatories and Link is not liable for any claim, damage, cost, expense, loss liability or demand arising from that reliance.

14.3 Additions and deletions to list

The Council must advise Link of any addition to, or deletion from, Schedule B by written notice signed by two Authorised Signatories who are not the subject of the variation or signed in such other manner as is satisfactory to Link in its reasonable discretion.

14.4 Date variation takes effect

Any variation of Schedule B takes effect on the date that Link provides written acknowledgment of receipt of the variation notice, which it must promptly provide.

15. LINK'S SERVICES NON EXCLUSIVE

The services and appointment of Link under this agreement are not exclusive. Link is free to provide similar services to others, and is not obliged to disclose to the Council anything which comes to its notice in the course of providing services to others, in its general business operations or otherwise than in the performance of this agreement. The Council is free to obtain from others, services similar to the services provided by Link under this agreement.

16. LINK'S REPRESENTATIONS AND WARRANTIES

Link represents and warrants to the Council as at the date of this agreement and during the term of this agreement that:

- (a) it will perform the Services in accordance with the Performance Standards;
- (b) it has the power, skill, facilities, financial ability and staff to enter into and perform its obligations under this agreement, and has duly executed this agreement so as to constitute the valid and binding obligations of Link;
- (c) it has all the power to enter into and perform this agreement and has obtained all necessary consents and corporate authorisations to enable it to do so;
- (d) it holds such licences and authorities as are necessary to lawfully perform its obligations under this agreement;
- (e) in the ordinary course of provision of the Services, it will comply with all applicable requirements specified by NZX; and
- (f) it will have in place from the date of signing by the parties of this agreement, and maintain at all times during the term of this agreement, policies of fidelity insurance and professional indemnity insurance either in its own name or ensure that it is covered pursuant to a company group insurance arrangement which are appropriate for a prudent company engaged in a similar business to that of Link.

17. REPRESENTATIONS AND WARRANTIES

Each of the Council and Link represents and warrants to the other party as at the date of this agreement and during the term of this agreement that:

- (a) it has all the power to enter into and perform this agreement and has obtained all necessary consents and corporate authorisations to enable it to do so;

- (b) it has duly executed this agreement so as to constitute the valid and binding obligations of the Council subject to applicable laws affecting creditors' rights generally and to equitable principles of general application; and
- (c) the entry into and performance of this agreement by the Council does not violate its constitution (in the case of Link), the Local Government Act 2002 (in the case of the Council) or any agreement or undertaking by which it is bound.

18. WITHHOLDING TAX

18.1 Deduction of tax

Where any deduction or withholding is required by law to be made for, or on account of, any Tax in respect of any payment of the Amounts Payable, Link shall, where applicable subject to clause 18.2 and in accordance with clauses 18.3 and 18.4, make that deduction or withholding from the payment and shall, within the time required by law, pay the amount so deducted or withheld to the relevant taxing authority.

18.2 Authority to Act

The Council nominates Link to act on the Council's behalf for withholding taxes and Approved Issuer Levy for income reporting requirements to Inland Revenue that apply from 1 April 2020. The Council agrees to complete the Authority to Act contained in Schedule G which once completed will be provided by Link to Inland Revenue.

18.3 Exemption

- (a) Each Holder who has RWT Exempt Status must provide evidence of that status to the reasonable satisfaction of Link.
- (b) Link may, when making any payment to a Holder that has provided it with evidence of RWT Exempt Status under clause 18.3(a), assume that such Holder still has RWT Exempt Status, provided Link has searched the electronic register maintained by the Commissioner of Inland Revenue (listing the persons with RWT Exempt Status), and has checked that that Holder is noted on the electronic register before making the payment.

18.4 Approved issuer Levy

If Link is satisfied that a Holder:

- (a) is not resident or is not deemed resident in New Zealand for tax purposes (as defined in the Income Tax Act 2007);
- (b) is not carrying on business in New Zealand through a fixed establishment (as defined in the Income Tax Act 2007) in New Zealand;

- (c) is not an associated person (as defined in the Income Tax Act 2007) in respect of the Council; and
- (d) is not (or, where the Holder is not the beneficial holder of the Securities, no person who beneficially derives interest under the Securities is) deriving interest under the Securities jointly with one or more persons, where, in either case, one or more of whom are resident in New Zealand for tax purposes (as defined in the Income Tax Act 2007) or carrying on business in New Zealand through a fixed establishment in New Zealand (as defined in the Income Tax Act 2007);

and the Holder has not otherwise agreed with the Council (or Link on its behalf), Link shall deduct Approved Issuer Levy from the part of each payment made to that Holder which comprises interest and will pay the net amount to the Holder. For the avoidance of doubt, if the Council (or Link on its behalf) is not entitled to deduct Approved Issuer Levy from any payment of interest to a Holder, clause 18.1 will apply.

18.5 Statement

Link shall send to a Holder at the same time as it makes payment of any Amounts Payable to that Holder, a statement advising the gross amount paid and the amount of any deduction or withholding made from that amount for, or on account of, New Zealand resident or non-resident withholding tax or Approved Issuer Levy. In the case of a deduction of New Zealand resident withholding tax, the statement shall be prepared so as to constitute a RWT withholding certificate in terms of the Income Tax Act 2007 and the Tax Administration Act 1994 and shall include (without limitation) the information set out in section 26C(6) of the Tax Administration Act 1994 or any replacement or amendment thereof. Such statement shall only be prepared in the manner immediately above described if the Holder has not provided Link with its tax file number (as that term is defined in the Income Tax Act 2007). Link shall provide to the Council a summary and reconciliation of all amounts paid and withheld.

19. AMENDMENT

This agreement cannot be amended except in writing executed by each party.

20. DISPUTE RESOLUTION

- 20.1** In the event of any dispute arising between the parties in relation to this agreement, no party may commence any proceedings (except where the party seeks urgent interlocutory relief from a court of competent jurisdiction) unless the parties have first made genuine efforts to resolve the dispute in accordance with this clause 20.

20.2 A party will give the other party a notice of dispute arising in connection with this agreement. The parties acknowledge and agree to make the best and genuine efforts to resolve all disputes promptly.

20.3 Any dispute will be referred to the CEO of Link and the Chief Executive of the Council. If the CEO of Link and the Chief Executive of the Council are unable to resolve the dispute within a further ten (10) Business Days, the dispute will be referred to arbitration under clause 20.4.

20.4 Any dispute or disagreement between the parties arising out of or in connection with this agreement that is referred to arbitration under clause 20.3 will be submitted to arbitration by notice given by one party to the other. The arbitration will be by a single arbitrator, if one can be agreed upon or, in the absence of agreement within 14 days of notice of the dispute, either party may request the President of the Arbitrators' and Mediators' Institute of New Zealand, or his or her nominee, to appoint an arbitrator, within 14 days of the request. The arbitration will be carried out in Auckland or Wellington and the language of the arbitration will be English. The Arbitration Act 1996 will apply, and the parties agree that the First and Second Schedules will apply with the following amendments:

(a) First Schedule:

- (i)** to the extent that the notice provisions in this agreement are inconsistent with article 3 of the First Schedule, the notice provisions of this agreement apply; and
- (ii)** the parties agree that either party may request the arbitral tribunal under article 33(1)(b) of the First Schedule to give an interpretation of a specific point or part of an award.

(b) Clauses 1(4) and 1(5) of the Second Schedule will not apply;

20.5 Nothing in this clause 20 will prevent any party from seeking urgent injunctive relief from a court of competent jurisdiction.

21. NOTICES

21.1 Address

All notices, correspondence, communications sent or delivered under this agreement must be sent or delivered to the addresses of the parties specified in Schedule C or if a written notice of change of address is given then to the new address.

21.2 Form of notice

Every notice to be given under, or in connection with, this agreement must be given in writing by:

- (a)** personal delivery; or

- (b) mailing by pre-paid post, and will be deemed to be given 4 Business Days after (but exclusive of) the date of mailing; or
- (c) electronic messaging system, and will be deemed to be given at the time the recipient of the notice has confirmed receipt of the notice by way of a telephone call or voice message, to the addresses specified in Schedule C or if a written notice of change of address is given then to the new address,

except in the case of notice given under clause 10, which must be given in the manner specified in paragraphs (a) or (b) above.

22. SEVERABILITY

Each part of this agreement is severable from the balance of this agreement and if any part of this agreement is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of this agreement.

23. GOVERNING LAW

This agreement is governed by and must be construed in accordance with the laws of New Zealand. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New Zealand.

24. ENTIRE AGREEMENT AND COUNTERPARTS

This agreement constitutes the complete and exclusive agreement between the parties. This agreement may be signed in two counterparts both of which when taken together shall constitute one and the same instrument.

EXECUTED as an agreement.

Signed for and on behalf of **KAWERAU DISTRICT COUNCIL**

Signature of Authorised person

Signature of Authorised Person

(Name of signature above)

(Name of signature above)

Witness to above signature:

Witness to above signature:

Name: _____

Name: _____

Signature: _____

Signature: _____

Signed for and on behalf of **LINK MARKET SERVICES LIMITED**

Signature of Director

Full name of Director

Witness to above signature:

Name: _____

Occupation: _____

Address: _____

Signature: _____

SCHEDULE A

STANDARD SERVICES FOR ALL REGISTERS UNDER MANAGEMENT

Debt registry issuance and paying agency services – Issuing an LGFA eligible security

- Input on planning of issue and tender notice if required
- Receipt of tender instructions and term sheet of LGFA borrowing for matching of trades on settlement day
- Set-up of Security Stock Certificate (as defined in the Debenture Trust Deed) and wholesale note/ bond (LGFA) security – commercial paper ('CP') or zero-rated note on Link's systems
- Set up of new issuer/ security codes on Link registry system and on-going maintenance of data such as: security code, minimum amount and multiples, coupon payment date, maturity date etc.
- Liaison with Reserve Bank of New Zealand (NZClear) on new issuance, set up of the Security, ISIN, initial lodgement and trades
- Creation of investors on Register, including all relevant data
- Facilitate settlement of the new issue via NZClear where required
- Payment of funds to the Council once settlement has occurred
- Confirmation register lists to legal advisers
- Facilitate uplifts via NZClear once Security is down-sold to other investors if required

Ongoing registry services

Ongoing registry service will include the maintenance of debt register(s) and would cover aspects of day-to-day activities such as:

- Updating and maintaining all investor records
- Attending to all investor inquiries via phone, correspondence, in person or, email
- NZClear uplifts and lodges
- IRD number and tax elections (where applicable)
- Provision of Issuer Service Centre ('ISC')

Payment Services (coupon and maturity) for note/bonds/CP

Services for payments over the Council's Register will include:

- Provision of bank account for the Council's exclusive use
- Managing of the Council's bank account
- Payment of principal (at maturity) of Security
- Calculation and payment of interest payments to investors
- Providing the Council with a funding letter stating amounts, withholding tax, etc, prior to interest

payments (if applicable)

- Preparation of data files relating to direct credit payment for lodging with the bank
- Preparation of data files to facilitate mailing of payment advice
- Full bank reconciliation services and reporting on outstanding payments
- Payment of New Zealand Central Securities Depository Limited payments through NZClear; and
- Calculation and payment of interest and deduction of withholding tax or Approved Issuer Levy to Inland Revenue on the Council's behalf (if applicable)

SCHEDULE B
AUTHORISED SIGNATORIES

The Council confirms that the persons specified below are authorised signatories on behalf of the Council for the purposes of this agreement.

Full Name	Responsibility (position)	Signature

SCHEDULE C

ADDRESS OF PARTIES

LINK MARKET SERVICES LIMITED:

Attention: Stan Malcolm

Address: P.O. Box 91976 Auckland 1142

Telephone: +64 9 375 5994

Email: stan.malcolm@linkmarketservices.com

KAWERAU DISTRICT COUNCIL:

Attention: Peter Christophers

Address: 2 Ranfurly Court, Kawerau 3169

Telephone: 07 306 9009

Email: Peter.Christophers@kaweraudc.govt.nz

SCHEDULE D

FEES

SET-UP OF SECURITY STOCK CERTIFICATE (or REGISTERED CERTIFICATE OF DEPOSIT)

Wholesale Issuance	Fee Basis	Fee
Issuance of new wholesale note/bond/ CP reflecting debt borrowing through LGFA (Includes set-up of note/bond/CP details, allotment of wholesale note/bond/CP, and provision of confirmation/ reporting to the Council and LGFA legal advisers where applicable)	One-off fee per wholesale note, bond, or CP.	\$250.00
Registration of initial security stock certificates for LGFA borrowing programme and existing security stock certificate (for non-LGFA borrowing)	One-off fee per stock certificate	\$250.00 If required
Amendment or cancellation of terms for wholesale note/bond/CP/security stock certificate (usually adjustment of amount after initial issue)	Per notification of adjustment	\$75.00 If required
Confirmation letter for audit purposes	Per confirmation	\$150.00 If required
Maturity and repayment of wholesale note/bond/ CP	One-off fee per wholesale note, bond or CP	\$250.00

ONGOING REGISTRY MAINTENANCE FEE FOR WHOLESALE NOTE / BOND, CP or SECURITY STOCK CERTIFICATE

Wholesale Issuance	Fee Basis	Fee
Registry monthly maintenance fee	Base monthly fee	\$50.00
Transfers out of NZClear Account	Per transfer	\$15.00 If required
Set up run for payment of quarterly interest coupon (if required) for wholesale note/ bond/CP- set-up of parameters, calculation, run processing and payment to bank account(s), provision of funding letter, and provision of confirmations and payment advice	Per run (for payments other than maturity payment)	\$250.00

Payment of resident withholding tax/non-resident withholding tax/Approved Issuer Levy if required for payment run and lodgement of IRD returns when due.	Per return	\$150.00 If required
Bank reconciliation	Hourly rate	\$85.00
Reports run by issuer on Issuer Service Centre (ISC)	Per report run	Waived
Reports & data files requested (not drawn down on ISC) or other ad-hoc files requested	Per report provided	\$100.00 If required
Collective Assurance Opinion – Audit of Register as required under Section 217 of Financial Markets Conduct Act 2013. Group audit carried out which can be used by the Council to meet compliance obligations. The Council can alternatively have its own auditors carry out a Register audit	Per report	Per arrangement with OAG If required

Note: All fees exclude:

1. NZClear recovery fees –will be on-charged as a disbursement.
2. Third party print, mail house, stationery, postage, photocopying and other external disbursements
3. Bank fees

Disbursements

All out-of-pocket expenses are charged to clients. The following are examples of disbursements that will be charged to the Council separately:

- printing costs, stationery
- mailing house services
- NZClear recovery fee charge (if applicable)
- postage and/or courier charges
- copying, or telephone calls related to maintenance of the register
- external storage costs.

Invoicing Method and information

Invoices will be submitted monthly in arrears and must be paid by the 20th of the month in which the invoice is received.

Goods and Services Tax

The fees above are exclusive of GST. Link will charge an additional amount in respect of GST payable on supply of its services when rendering invoices in accordance with this proposal. Link reserves the right to apply to the fees, any change in the rate of GST or any amendment to the GST law.

SCHEDULE E

PERFORMANCE STANDARD AND SERVICE LEVEL AGREEMENT

Description of Service	
General and Maintenance Services	Performance Standard
Maintain records of each Holding along with related name and address and other relevant details.	Maintain records and transaction histories of current and non-current Investors in accordance with legislation and, to the extent required for preparation of tax statements, and to enable response to enquiries.
Receive and respond to telephone enquiries and general correspondence from Investors.	All matters raised by telephone resolved within 3 Business Days of the call (or depending on investigation required).
The filing and storage of all transactions and related records after processing.	Storage at the Council's cost for the full 7 years as required by the Companies Act, 1993 or other such time as agreed.
Receipt of Off market transfer Forms	Processed within 2 days of receipt
Rejections of off-market transfers.	Within 2 Business Days of receipt.
NZClear uplifts and lodges	Within 1 hour of receipt
Name and address changes, and other maintenance transactions.	Within 3 Business Days excluding day of receipt of request.
Interest Payment Services	Performance Standard
Payment of coupon interest or principal repayment to Investors registered at Record Date/ maturity date.	Despatched by the due date, in accordance with the terms sheet/ terms of issuance.
Preparation and remittance of applicable withholding tax and returns (if applicable) to Inland Revenue	Payment made to Inland Revenue no later than 20 th day of the month following payment. Returns filed with Inland Revenue in the required timeframes
Provision of Bank Reconciliation (as at last business day of the month)	By the 10 th day of the month following
Reports	
ISC reports	Available 24/7
Ad-hoc reports.	Within 1 Business Day of request

SCHEDULE F

FORM OF ISSUE NOTICE & CONFIRMATION

ISSUE NOTICE

To: Link Market Services Limited
Attention: DCM Team

Email: debtteam@linkmarketservices.co.nz

Re: Security Issuance – Kawerau District Council

We confirm our instructions to you as Link to enter Securities on the Register as at the specified Issue Date with the details set out below:

Details of Notes:

Issue Date: [DATE]
Maturity Date: [DATE]
Interest Dates: [] (Modified Following Business Day Convention)
Record Date: [10 Calendar Days]
Interest Rate: []% per annum
First Interest Period: [Full coupon payable to Holder as at Record Date]
Face Value: \$[]
Minimum/Multiple: \$1 and \$1

Details of first registered Holder

Name: [NAME]
[ADDRESS]

Yours sincerely
KAWERAU DISTRICT COUNCIL

By:

.....
Authorised Officer

CONFIRMATION

To: Kawerau District Council
[]

Attention:

Email []

We confirm the registration of the Notes as described herein and confirm proceeds of NZ\$XX to your bank account <please enter> Kawerau District Council.

Yours sincerely

LINK MARKET SERVICES LIMITED

By:

.....
Authorised Officer
Link Market Services Limited

SCHEDULE G
AUTHORITY TO ACT

I, _____

(full name of person giving authority)

being duly authorised by Kawerau District Council

give authority to Link Market Services Limited to act on behalf of

Kawerau District Council.

.....

for the following tax types: Non-Resident Withholding Tax ('NRWT'), Resident Withholding Tax ('RWT') and Approved Issuer Levy ('AIL').

Authority is given for Link Market Services Limited to:

1. Complete and file NRWT, RWT and AIL returns; and
2. Obtain information from Inland Revenue about NRWT, RWT and AIL. This includes obtaining information through all Inland Revenue media and communication channels.

This Authority will continue until Kawerau District Council explicitly advises Inland Revenue to revoke the Authority.

Signature _____

Date _____

Accession Deed to Notes Subscription Agreement

PARTIES

Kawerau District Council

Acceding Party

New Zealand Local Government Funding Agency Limited

Issuer

DEED dated

PARTIES

Kawerau District Council

("Acceding Party")

New Zealand Local Government Funding Agency Limited

("Issuer")

pursuant to the Notes Subscription Agreement defined below.

INTRODUCTION

- A. The Issuer has agreed that the Acceding Party may accede to the Notes Subscription Agreement as a "Subscriber".
- B. This deed records the accession.

AGREEMENT

1. INTERPRETATION

1.1 Interpretation: In this deed:

"Local Authority" has the meaning given to it in the Local Government Act 2002.

"Notes Subscription Agreement" means the notes subscription agreement dated 7 December 2011 (as amended and restated on 6 July 2020) between the Issuer and various Local Authorities.

1.2 Notes Subscription Agreement: Terms defined in the Notes Subscription Agreement have the same meaning in this deed unless the context requires otherwise.

2. ACCESSION

2.1 Accession: The Acceding Party hereby agrees with the Issuer that with effect on and from the date this deed is counter-signed by the Issuer, it will be bound by the Notes Subscription Agreement as a Subscriber as if it had been an original party thereto and named therein as a Subscriber, and agrees to be bound by the terms of, and perform its obligations under, the Notes Subscription Agreement.

2.2 Acknowledgement: The Issuer acknowledges and agrees to the accession made under this deed.

2.3 **Implied provisions:** For the purposes of section 14 of the Property Law Act 2007, the Acceding Party acknowledges that this deed is, and for all purposes and at all times shall be construed as being, supplemental to the Notes Subscription Agreement.

3. NOTICE

3.1 The details for notices for the Acceding Party for the purposes of the Notes Subscription Agreement are:

Delivery Address: Kawerau District Council
2 Ranfurly Court
KAWERAU 3169

Attention: Peter Christophers

Email: Peter.Christophers@kaweraudc.govt.nz

Postal Address: Kawerau District Council
Private Bag 1004
KAWERAU 3169

4. GOVERNING LAW

This deed shall be governed by the laws of New Zealand.

5. NO CROWN GUARANTEE

The obligations and liabilities of the Acceding Party and Issuer under this deed and the Notes Subscription Agreement are not guaranteed by the Crown.

6. COUNTERPARTS

This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart.

EXECUTED AS A DEED

Acceding Party

KAWERAU DISTRICT COUNCIL by:

Signature of Elected Member

Signature of Elected Member

Name of Elected Member

Name of Elected Member

Issuer

**NEW ZEALAND LOCAL GOVERNMENT
FUNDING AGENCY LIMITED by:**

Signature of director

Signature of director

Name of director

Name of director

CHIEF EXECUTIVE CERTIFICATE

I, Russell George, the Chief Executive of Kawerau District Council (**Council**) certify as follows:

1. RESOLUTIONS

1.1 The Council has, by all necessary resolutions duly passed (**Resolutions**):

(a) approved the transactions contemplated by the:

- (i) Debenture Trust Deed dated on or about the date of this certificate between Covenant Trustee Services Limited and the Council; and
- (ii) Registry Customer Agreement dated on or about the date of this certificate between Link Market Services Limited and the Council,

(together, the **Documents**); and

(b) authorised execution of the Documents by the Council,

or has delegated sufficient authority to officers of the Council to provide the approval and authorisation referred to in paragraphs (a) and (b), and that approval and authorisation has been given in accordance with that delegated authority.

1.2 The Resolutions remain in full force and effect.

2. COMPLIANCE WITH THE ACT

For the purposes of section 118 of the Local Government Act 2002 (**Act**), in entering into the Documents and performing its obligations under the Documents, and all other documentation contemplated by or entered into in connection with the Documents, the Council has complied with the Act.

3. DUE EXECUTION

The Documents have been properly executed by the Council.

This certificate is given by me in my capacity as Chief Executive of the Council in good faith on behalf of the Council and I shall have no personal liability in connection with the issuing of this certificate.

Dated:

2020

Russell George
Chief Executive

CHIEF EXECUTIVE CERTIFICATE

I, Russell George, the Chief Executive of Kawerau District Council (**Council**) certify as follows:

1. RESOLUTIONS

1.1 The Council has, by all necessary resolutions duly passed (**Resolutions**):

- (a) approved the transactions contemplated by the documents referred to in the schedule to this certificate (**Documents**), or delegated sufficient authority to the person(s) who has approved those transactions to give that approval; and
- (b) authorised execution of the Documents by the Council, or delegated sufficient authority to the person(s) who authorised execution of the Documents to give that authorisation.

1.2 The Resolutions remain in full force and effect.

2. COMPLIANCE WITH THE ACT

For the purposes of section 118 of the Local Government Act 2002 (**Act**), in entering into the Documents and performing its obligations under the Documents, and all other documentation contemplated by or entered into in connection with the Documents, the Council has complied with the Act.

3. DUE EXECUTION

The Documents have been properly executed by the Council.

This certificate is given by me in my capacity as Chief Executive of the Council in good faith on behalf of the Council and I shall have no personal liability in connection with the issuing of this certificate.

Dated:

Russell George
Chief Executive
Kawerau District Council

SCHEDULE
"Documents"

Words and expressions defined in the Multi-Issuer Deed dated 7 December 2011 (as amended and restated on 6 July 2020) between New Zealand Local Government Funding Agency Limited and various local authorities ("**Multi-Issuer Deed**") have the same meanings in this certificate.

1. Accession Deed to Multi-Issuer Deed dated on or about the date of this certificate between the Council and New Zealand Local Government Funding Agency Limited and the Multi-Issuer Deed.
2. Accession Deed to Notes Subscription Agreement dated on or about the date of this certificate between the Council and New Zealand Local Government Funding Agency Limited and the Notes Subscription Agreement (as amended and restated on 6 July 2020).
3. Security Stock Certificate in favour of New Zealand Local Government Funding Agency Limited in relation to the Council's obligations under the Accession Deed to Multi-Issuer Deed and the Multi-Issuer Deed.
4. Stock Issuance Certificate in respect of the issue of Security Stock evidenced by the above Security Stock Certificate.

Meeting: Council

Meeting Date: 24 November 2020

Subject: Adoption of Annual Report and Summary for year ended 30 June 2020

File No: 201000

1 Purpose

The purpose of this report is to adopt the annual report and annual report summary for the year ended 30 June 2020 and provide a brief overview of Council's performance for the 2019/20 year.

2 Background

The Local Government Act 2002 requires that councils produce each year an annual report as well as annual report summary and these documents are audited.

The annual report must comply with generally accepted accounting practice which includes the public benefit entity accounting standards. Council, as a tier 2 entity (total expenses are less than \$30 million), has adopted the reduced disclosures regime for the preparation of the annual report.

The annual report and annual report summary must be adopted by Council within 4 months of the end of the financial year and within a month of adoption the reports must be available to the public. However, legislation has been passed that extended the period councils must adopt their annual report and summary by.

3 Performance for the year ended 30 June 2020

Council had an interrupted year with the COVID-19 lockdown impacting on the provision of non-essential services. As a result of this lockdown Council only achieved 55 out of 107 (51%) of its non-financial performance targets for 2019/20. At least 21 of those non achieved targets resulted from the lockdown, and for the other targets not achieved Council was very close to achieving most of them. Council achieved 76% of its targets for 2018/19.

In the Statement of Comprehensive Revenue and Expense, there was a deficit of \$764,132 compared to a budgeted deficit of \$457,920.

The increased deficit for the year was a result of:

- Increased depreciation costs and losses on the disposal of assets \$304k
- Less revenue from the sale of sections than budgeted \$200k

- Additional personnel costs due to Remuneration Authority determination \$92k
- Deferral of the district plan review \$70k

The Statement of Financial Position is close to budget apart from payables which are slightly higher than budget as a result of timing.

The funding impact statement for the whole of council shows that Council had a surplus from operating of \$2.5 mil (compared to a budget of \$1.8 mil) and there was a \$1.5 mil decrease in reserves.

The financial prudence disclosure statements (pages 49 – 54) show that for 2019/20 Council achieved its targets for:

- Rates affordability (income affordability)
- Rates increase affordability
- Debt affordability benchmark
- Debt servicing benchmark
- Operations control benchmark

The financial prudence targets not achieved were:

- **Balanced budget benchmark** – this displays Council's revenue as a proportion of operating expenses, which includes depreciation. As Council does not fund the depreciation on all its assets, it is unlikely that Council will achieve the balanced budget benchmark.
- **Essential services benchmark** – which compares the renewal expenditure on network assets to the annual depreciation of these assets. Kawerau is still a relatively young town and a lot of the network assets that were originally installed have yet to reach the end of their useful life. Consequently, the expenditure on renewals currently does not match the annual depreciation for these assets.
- **Debt control benchmark** – which shows actual net debt (financial assets less financial liabilities) compared to the planned net debt. Council's financial assets still exceed the financial liabilities however this figure is a lot lower than was budgeted in the Long Term Plan for 2019/20.

Overall and considering the impact of COVID-19, it was a fairly good result for 2019/20 with Council still delivering services to the community to a high standard.

Council still in a healthy financial position and its infrastructure continues to function well for the community with minimal interruption.

There are a number of capital projects that had to be deferred to the next financial year, mostly as a result of the lockdown.

NB: The 2019/20 Annual Report and Annual Report Summary will be circulated separately.

4 RECOMMENDATIONS

1. That the report "Adoption of Annual Report and Summary for the year ended 30 June 2020" be received.
2. That Council adopts the Annual Report and Annual Report Summary for the year ended 30 June 2020.
3. That the Mayor and Chief Executive Officer are delegated to sign the Annual Report for the year ended 30 June 2020 following the adoption by Council



Peter Christophers, BBS, ACA
Manager, Finance & Corporate Services

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**The Ordinary Meeting of the Kawerau District Council
will be held on Tuesday 24 November 2020
in the Council Chamber commencing at 9.00am**

A G E N D A

Apologies

Leave of Absence

Opening Prayer

Public Forum

A period of 30 minutes is set aside for public forum at the commencement of this meeting. Each speaker during the public forum section of the meeting may speak for 3 minutes.

Declarations of Conflict of Interest

Any member having a “conflict of interest” with an item on the Agenda should declare it, and when that item is being considered, abstain from any discussion or voting. The member may wish to remove himself or herself from the meeting while the item is being considered.

1 CONFIRMATION OF COUNCIL MINUTES

1.1 Ordinary Council – 27 October 2020

Pgs. 1 - 4

Recommendation

That the Minutes of the Ordinary Council meeting held on 27 October 2020 be confirmed as a true and accurate record.

2 RECEIPT OF COMMITTEE MINUTES

2.1 Regulatory and Services Committee – 10 November 2020

Pgs. 5 - 7

Recommendation

That the Minutes of the Regulatory & Services Committee meeting held on 10 November 2020 be confirmed as a true and accurate record.

2.2 Audit and Risk Committee – 17 November 2020

Recommendation

Pgs. 9- 10

That the Minutes of the Community Awards Committee meeting held on 17 November 2020 be confirmed as a true and accurate record.

2.3 Creative Communities Committee – 18 November 2020

Recommendation

Pgs. 11 - 12

That the Minutes of the Creative Communities Committee meeting held on 18 November 2020 be confirmed as a true and accurate record.

3 Action Schedule (101120)

Pgs. 13 - 16

Recommendation

That the updated Action Schedule of resolutions/actions requested by Council be received.

4 His Worship the Mayor's Report (101400)

Pg. 17

Recommendation

That His Worship the Mayor's report for the period Wednesday 21 October 2020 to Tuesday 17 November 2020 be received.

5 Annual Plan Performance for 3 Months ended 30 September 2020 (Manager, Finance and Corporate Services) (110400)

Pgs. 19 - 52

Attached is a report which summarises Council's financial and non-financial performance to 30 September 2020.

Recommendation

That the report "Annual Plan Performance for the 3 months ended 30 September 2020" be received.

6 Membership of Local Government Funding Agency (LGFA) (Manager, Finance and Corporate Services) (206700)

Pgs. 53 - 192

Attached is a report requesting Council approve membership to LGFA and authorising the necessary documents signed.

Recommendation

1. *That the report "Membership of Local Government Funding Agency" be received.*
2. *That Council confirms its intention to join LGFA as a borrower.*
3. *That Council approves the following documents in relation to Council's accession to LGFA:*
 - *Accession Deed to Multi-Issuer Deed*
 - *Stock Issuance Certificate*
 - *Debenture Trust Deed*
 - *Security Stock Certificate*

- *Officer's Certificate*
- *Registry Customer Agreement*
- *Accession Deed to Notes Subscription Agreement*
- *Chief Executive Certificate*
- *Chief Executive Certificate*

4. *That Council authorises the Mayor and Deputy Mayor to execute the following documents:*

- *Debenture Trust Deed*
- *Registry Customer Agreement*
- *Accession Deed to Multi-Issuer Deed and*
- *Accession Deed to Notes Subscription Agreement*

5. *That Council delegates the Chief Executive to execute the following documents:*

- *Security Stock Certificate – in relation to the Multi-Issuer Deed*
- *Stock Issuance Certificate – in relation to the Security Stock Certificate*

6. *That Council delegates the Chief Executive to execute such other documents and undertake such other steps as necessary to give effect to the above recommendations.*

7 Adoption of Annual Report and Summary for the year ended 30 June 2020 (Manager, Finance and Corporate Services) (201000)

Pgs. 193 - 195

Attached is a report requesting Council adopt the Annual Report and Summary for the year ended 30 June 2020.

Recommendation

1. *That the report "Adoption of Annual Report and Summary for the year ended 30 June 2020" be received.*
2. *That Council adopts the Annual Report and Annual Report Summary for the year ended 30 June 2020.*
3. *That the Mayor and Chief Executive Officer are delegated to sign the Annual Report for the year ended 30 June 2020 following the adoption by Council.*

R B George
Chief Executive Officer

