

DEED OF TRUST

AUCKLAND FUTURE FUND



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OF
AUCKLAND FUTURE FUND**

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**DEED OF TRUST
OF
AUCKLAND FUTURE FUND**

EXECUTED BY

AUCKLAND COUNCIL, a unitary authority established under the Local Government (Auckland Council) Act 2009, as settlor (**Auckland Council**);

AND

AUCKLAND FUTURE FUND TRUSTEE LIMITED, a company incorporated under the Companies Act 1993, registration number 9276872 and NZBN 9429052370014, with its registered office at Auckland, as trustee (**Initial Trustee**).

BACKGROUND

- A.** Auckland Council is establishing the Trust (and has established the Initial Trustee, a wholly owned subsidiary of Auckland Council, to act as trustee of the Trust) to create and own an investment fund (the Fund (as further defined in clause 1.1)).
- B.** The Fund is intended to be a long-term regional wealth fund, for the benefit of current and future communities of Auckland, with the following purposes:
 - i.** To maintain or increase the real value of assets that are put into the Fund over time, so they can continue to benefit future generations; and
 - ii.** To provide a strong return to Auckland Council to fund services and infrastructure.
- C.** Auckland Council consulted on the proposed establishment of the Trust, the Initial Trustee and the Fund as part of its Long-term Plan 2024-2034 consultation process, and establishment has been provided for, and related policies have been included in, the final Long-term Plan 2024-2034 adopted by Auckland Council on 27 June 2024.
- D.** The Trust will operate as a CCO of Auckland Council under the Local Government Act 2002 and as a Substantive CCO of Auckland Council under the Local Government (Auckland Council) Act 2009.
- E.** Following the establishment of the Trust, Auckland Council intends to settle its shares in Auckland International Airport Limited on the Trust, to enable the Trustee to manage that shareholding (which may include selling some or all of the shares, to diversify the Fund) to achieve the purposes of the Trust. The Council may also transfer additional property to the Trust from time to time.
- F.** Under the terms of the Trust as set out in this deed, the Trustee will be responsible for stewardship of the Fund, including overseeing the investment of the Fund and distributions from the Fund.
- G.** By way of initial settlement to establish the Trust, the Council has provided, or holds and will provide, to the Trustee the sum of \$100, which will form part of the Fund.

TRUST TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this deed, including the background, the following definitions apply unless the context requires otherwise:

"**Auckland**" has the meaning given to that term in section 4(1) of the Local Government (Auckland Council) Act 2009;

"**Auckland Council**" means the unitary authority established under the Local Government (Auckland Council) Act 2009, or its successor;

"**Auckland Council Group**" means, collectively, Auckland Council and all CCOs of Auckland Council;

"**Auckland Future Fund Distribution Policy**" means the policy of that name published by Auckland Council from time to time;

"**Auckland Future Fund Policy**" means the policy of that name published by Auckland Council from time to time;

"**Beneficiaries**" means Auckland Council and any other future beneficiary or beneficiaries of the Trust under clause 3.1;

"**Business Day**" means any day of the week (other than a Saturday or Sunday or any other day on which banks in Auckland are not open for ordinary business);

"**CCO**" means a "council-controlled organisation", as that term is defined in section 6(1) of the Local Government Act 2002;

"**CCTO**" means a "council-controlled trading organisation", as that term is defined in section 6(1) of the Local Government Act 2002;

"**Entrenched Terms**" has the meaning given to that term in clause 14.2;

"**Exceptional Distributions**" has the meaning given to that term in clause 7.1;

"**Financial Year**" means a financial year of Auckland Council and the Trust (and the Trust's financial year must match Auckland Council's financial year), except the first Financial Year which will be deemed to commence on the date of this deed and end on 30 June 2025;

"**Fund**" means:

(a) **Initial Settlement:** the initial settlement made by Auckland Council on the terms of this deed; and

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

"**Governing Body**" means the governing body of Auckland Council established under the Local Government (Auckland Council) Act 2009;

"**Interested**" has the meaning given to that term in clause 12.2;

"**Local Government Acts**" means the Local Government Act 1974, the Local Government Act 2002, the Local Government (Auckland Transitional Provisions) Act 2010, the Local Government (Auckland Council) Act 2009 and the Local Government Official Information and Meetings Act 1987;

"**LTP**" means Auckland Council's long-term plan under section 93 of the Local Government Act 2002;

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

"**property**" means real or personal property of any kind and includes any right or interest in such property and any thing in action and anything else capable of being held on trust;

"**Responsible Investment Policy**" means the policy of that name published by Auckland Council from time to time;

"**Statement of Intent**" means the statement of intent of the Trust as required under section 64 of the Local Government Act 2002 and, where the context so requires, means the most recent statement of intent (including any modification thereof);

"**Substantive CCO**" means a "substantive council-controlled organisation", as that term is defined in section 4(1) of the Local Government (Auckland Council) Act 2009;

"**this deed**" includes this deed and any modification of the terms of the Trust under clause 14;

"**Tax CCO**" means a "council-controlled organisation", as that term is defined in section YA 1 of the Income Tax Act 2007;

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

"**Trustee**" means:

- (a) **Initial Trustee:** Auckland Future Fund Trustee Limited, a company incorporated under the Companies Act 1993, having registration number 9276872 and NZBN 9429052370014, acting (in accordance with its constitution) in its capacity as trustee of the Trust; and
- (b) **Subsequent Appointees:** any person appointed by Auckland Council to act as trustee of the Trust under clause 10.

1.2 Interpretation: In this deed, including the background, the following rules of interpretation apply unless the context requires otherwise:

- (a) **Clauses:** a reference to a clause is a reference to a clause of this deed;
- (b) **Headings:** section, clause and other headings are for ease of reference only and do not affect the interpretation of this deed;
- (c) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (d) **Particular References:** a reference to anything of a particular nature either before or after a general statement does not limit the general statement;
- (e) **Plural and Singular:** singular words include the plural and vice versa; and
- (f) **Legislation:** a reference to any legislation or to any provision of any legislation includes:
 - (i) **Legislative Amendments:** that legislation or provision as from time to time amended or re-enacted and any corresponding replacement legislation or provision; and
 - (ii) **Subordinate Legislation:** any statutory instrument, regulation, rule or order issued under that legislation or provision (as from time to time amended or re-enacted) or under any corresponding replacement legislation or provision.

2. NAME OF THE TRUST

- 2.1 **Name of the Trust:** The name of the Trust is **AUCKLAND FUTURE FUND**.
- 2.2 **Trustee Power to Change Name:** The Trustee may change the name of the Trust to any other name, by deed, provided that the name change will not be effective unless and until it is approved in writing by Auckland Council.
- 2.3 **Auckland Council Power to Direct Change:** Auckland Council may direct the Trustee, in writing, to change the name of the Trust in accordance with clause 2.2 to a name proposed by Auckland Council.

3. BENEFICIARIES AND PURPOSES OF THE TRUST

- 3.1 **Beneficiaries of the Trust:** The Beneficiaries of the Trust are:
 - (a) **Auckland Council:** Auckland Council; and
 - (b) **Future Beneficiaries:** any future, principal local authority or local authorities established for Auckland, in place of Auckland Council, throughout the duration of the Trust.
- 3.2 **Purposes of the Trust:** The Trust has been settled by Auckland Council with the intention of benefitting current and future communities of Auckland by advancing and

achieving the following purposes (the **Purposes of the Trust**), in each case subject to the Auckland Future Fund Policy and the Auckland Future Fund Distribution Policy:

- (a) **Intergenerational Benefit:** to maintain or increase the real value of the Fund over time, so that the Fund can continue to benefit future generations; and
- (b) **Funding Services/Infrastructure:** to provide a strong return to Auckland Council to fund services and infrastructure.

3.3 Trustee Advancement of Purposes: The Fund, including both capital and income, is to be held and administered by the Trustee on trust, and applied and distributed by the Trustee:

- (a) **Beneficiaries:** for the benefit of Auckland Council and any other Beneficiaries;
- (b) **Purposes:** with a view to advancing and achieving the Purposes of the Trust; and
- (c) **Policy and Terms:** in accordance with the Auckland Future Fund Policy, the Auckland Future Fund Distribution Policy, and the terms set out in this deed.

4. TRUSTEE AND AUCKLAND COUNCIL ROLES

4.1 Role of Trustee: Subject to the terms set out in this deed, the Trustee will have overall control of, and responsibility for, the Fund and the administration of the Trust, and the affairs and activities of the Trust will be managed by, or under the direction or supervision of, the Trustee.

4.2 Role of Auckland Council: Acting in accordance with its role as local authority for Auckland and its position as beneficiary of the Trust, the role of Auckland Council in relation to the Trust is to oversee the conduct of the Trustee and to exercise its powers under the terms of this deed (in addition to any rights and obligations of Auckland Council under any of the Local Government Acts or otherwise) to protect Auckland Council's interest and the public interest, and in particular the interests of Auckland and its communities, in relation to the Fund and the proper control and administration of the Trust.

5. TRUSTEE POWERS AND DUTIES

5.1 Trustee Powers: In order to advance the Purposes of the Trust and carry out its role, in addition to all other powers conferred by law but subject to the terms of this deed (and any other applicable law), the Trustee has the widest possible powers, as if it were the absolute owner of, and beneficially entitled to, the Fund, including:

- (a) **General Powers:** all powers necessary to manage the Fund, and all powers necessary to carry out the Trust;
- (b) **Full Capacity:** full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and

- (c) **Full Rights, Powers and Privileges:** for the purposes of clause 5.1(b), full rights, powers, and privileges.

5.2 Delegation of Powers: Subject to sections 67 and 68 of the Trusts Act 2019 and any other applicable law, the Trustee will have, to the extent permitted by law, full power to delegate any power or discretion exercisable by the Trustee, in writing and on such terms as the Trustee thinks fit, to any officer, employee, manager, investment manager, agent, committee, attorney or other person nominated or appointed by the Trustee, provided that:

- (a) **Exercise of Delegated Powers:** any delegated power or discretion must be exercised in accordance with the terms of this deed and any terms set, or directions given by, the Trustee;
- (b) **Review of Delegation:** the Trustee must keep any such delegation under review and, if the circumstances make it appropriate to do so, consider whether to intervene in any way (by way of giving directions, amending or revoking the delegation or any of its terms/directions, or otherwise);
- (c) **Amendment/Revocation:** the Trustee may wholly or partly revoke or modify any such delegation at any time; and
- (d) **Trustee Responsibility:** no such delegation will release the Trustee from its responsibilities as trustee of the Trust.

5.3 Non-delegable Powers: In accordance with, and without limiting the application of, sections 67 and 68 of the Trusts Act 2019, the Trustee must not delegate:

- (a) **Use of Trust Fund:** any power or function that is, or relates to, the final determination of whether, when or in what way any of the Fund should be distributed, applied or otherwise used;
- (b) **Resettlement/Variation/Winding Up:** the Trustee's powers in relation to resettling all or any part of the Fund, modifying the terms of the Trust, and winding up the Trust; and
- (c) **Court Applications:** any right of the Trustee to make any application to the Court in connection with the Trust.

5.4 Trustee Duties: The Trustee must comply with all applicable trustee duties under the Trusts Act 2019, including (as at the date of this deed):

- (a) **Mandatory Duties:** the following mandatory duties under the Act:
 - (i) **Knowledge of Terms:** to know the terms of the Trust as set out in this deed;
 - (ii) **Compliance with Terms:** to act in accordance with the Trust's terms;
 - (iii) **Honesty/Good Faith:** to act honestly and in good faith;

- (iv) **Focus on Beneficiary and Purposes:** to hold and deal with the Fund and otherwise act for the benefit of the Beneficiaries and to further the Purposes of the Trust, in accordance with the Trust's terms; and
 - (v) **Proper Use of Powers:** to exercise all Trustee powers for a proper purpose; and
- (b) **Default Duties:** the following default duties under the Act, which are not excluded by, but apply only to the extent that they are consistent with, the terms set out in this deed:
- (i) **Proper Consideration of Powers:** to consider actively and regularly whether to exercise Trustee powers;
 - (ii) **No Fettering of Discretion:** not to bind or commit themselves to any future exercise or non-exercise of any discretion;
 - (iii) **General Duty of Care:** when administering the Trust, to exercise care and skill that is reasonable in the circumstances;
 - (iv) **Prudent Investment:** when exercising any power to invest any part of the Fund, to exercise the care and skill that a prudent person of business would exercise in managing the affairs of others; and
 - (v) **No Private Benefit, Profit or Reward:** not to exercise any Trustee power directly or indirectly for the Trustee's own benefit, or to make a profit from trusteeship, or to take any reward for acting as Trustee, except as provided for under the terms set out in this deed or permitted under the Trusts Act 2019.

5.5 Performance of Duties: The Trustee must perform all of its trustee duties having regard to the context and the objectives of the Trust, and in particular the Purposes of the Trust.

5.6 Trustee/Auckland Council Group Dealings: Subject to clause 6.4 and any Auckland Council requirement to participate in any shared services or similar arrangements for the Auckland Council Group, the Trustee will not be required to enter into arrangements with any member of the Auckland Council Group in relation to the Fund or otherwise. Trustee entry into any such arrangements will be a decision for the Trustee, to be exercised by the Trustee in its sole discretion.

6. MANAGEMENT OF THE FUND

6.1 Investment Policies and Objectives:

- (a) **Guidance from Council:** Auckland Council may, at any time, indicate its high level investment principles applicable to the Fund (including any requirements relating to a benchmark return and to ethical investment principles), which must be consistent with the terms set out in this deed (**Council Guidance**).
- (b) **Draft Statement of Investment Policies and Objectives:** The Trustee will, in respect of each Financial Year (the **Relevant Financial Year**), prepare and

deliver to Auckland Council a draft statement of investment policies and objectives designed to further the Purposes of the Trust, which must be based on any Council Guidance received prior to preparation of the draft statement, have regard to the Responsible Investment Policy and, in form and substance, be consistent with this deed (**Draft SIPO**). A Draft SIPO must be delivered:

- (i) in respect of the first Financial Year, not later than 30 Business Days following the date of this deed; and
 - (ii) in respect of each subsequent Financial Year, not later than 60 Business Days prior to the commencement of the Relevant Financial Year.
- (c) **Auckland Council Consideration of Draft SIPO:** Auckland Council will consider and, if thought fit, provide comments on or propose amendments to the Draft SIPO. Any comments on or proposed amendments to a Draft SIPO must be notified to the Trustee:
- (i) in respect of the Draft SIPO for the first Financial Year, not later than 30 Business Days after receipt of the Draft SIPO; and
 - (ii) in respect of the Draft SIPO for each subsequent Financial Year, not later than 30 Business Days prior to the commencement of the Relevant Financial Year.
- (d) **Trustee Confirmation of Final SIPO:** The final statement of investment policies and objectives for a Relevant Financial Year (**SIPO**) must be approved by the Trustee, after taking into account Auckland Council's comments on or proposed amendments to the Draft SIPO for the Relevant Financial Year. A SIPO must be approved by the Trustee:
- (i) in respect of the first Financial Year, within 75 Business Days after the date of this deed; and
 - (ii) in respect of each subsequent Financial Year, prior to the commencement of the Relevant Financial Year.

For the avoidance of doubt, the SIPO approved by the Trustee may be the Draft SIPO as delivered to Auckland Council, or the Draft SIPO with amendments proposed by Auckland Council, or an amended version of the Draft SIPO, as determined by the Trustee in its sole discretion.

- (e) **Agreed Extension of Timeframes:** Auckland Council and the Trustee, each acting reasonably, may agree to extend any of the timeframes set out in this clause 6.1.

6.2 Investment Management: The Trustee will, for the duration of the Relevant Financial Year, ensure that the Fund is invested in accordance with the SIPO. It is specifically acknowledged that, without prejudice to the generality of clause 5.2 above, the Trustee shall be entitled to delegate its obligations under this clause 6.2 to such qualified professional fund managers (and on such terms) as the Trustee shall, in its sole discretion, determine. For the avoidance of doubt, except as specifically

contemplated by clause 6.1, Auckland Council shall not direct the Trustee as to the investments or activities of the Fund, including any related party transactions or investments.

- 6.3 Distributions:** The Trustee shall procure that distributions are made from the Fund to Auckland Council, from time to time, in accordance with the Auckland Future Fund Distribution Policy. In respect of the first Financial Year, Auckland Council and the Trustee, each acting reasonably, will agree the distribution date(s); in respect of each subsequent year, distributions dates will be agreed as part of the Statement of Intent.
- 6.4 Liquidity Support to Auckland Council:** Notwithstanding clause 5.6, if so instructed by Auckland Council from time to time, the Trustee will enter into arrangements with any member of the Auckland Council Group provided that those arrangements are consistent with the "Liquidity Support" provisions set out in the Auckland Future Fund Policy and with the "Guiding Principle" set out in the Auckland Future Fund Distribution Policy.

7. EXCEPTIONAL DISTRIBUTIONS

- 7.1 Meaning of Exceptional Distributions:** For the purpose of this clause 7, "Exceptional Distribution" means any distribution from the Fund that is not permitted under the initial Auckland Future Fund Distribution Policy (as at the date of establishment of the Trust), any resettlement of all or any part of the Fund (clause 15), or the winding up of the Trust (clause 16).
- 7.2 Exceptional Distributions Restricted:** The Trustee may make, and Auckland Council may request the Trustee, in writing, to make, an Exceptional Distribution, provided that any such distribution must comply and be implemented in accordance with clause 7.3.
- 7.3 Restrictions relating to Exceptional Distributions:** The Trustee shall not proceed with any Exceptional Distribution, and any purported Trustee approval of any such Exceptional Distribution shall not be effective, unless all of the following steps have been taken:
- (a) Report to Auckland Council:** the Trustee has provided a written report to Auckland Council in relation to the proposed Exceptional Distribution, including the Trustee's advice regarding the impact of the proposed Exceptional Distribution on the Fund's balance and future performance and on the advancement and achievement of the Purposes of the Trust;
 - (b) Auckland Council Consultation:** Auckland Council has consulted on the proposed Exceptional Distribution, using the special consultative procedure under the Local Government Act 2002 (and in the case of a resettlement or winding up only, as an amendment to the LTP), and that consultation has incorporated the advice from the Trustee referred to in clause 7.3(a);
 - (c) Governing Body Approval:** the proposed Exceptional Distribution has been approved by the Governing Body of Auckland Council; and
 - (d) Trustee Assessment of Proposal:** the Trustee is satisfied, in each case in its sole discretion, that the proposed Exceptional Distribution:

- (i) **Level of Approval:** was approved by at least 75% of the Governing Body members who were entitled to vote and voted on the matter, for which purpose the Trustee must obtain, and may rely upon, written certification from the Mayor and the Deputy Mayor of Auckland Council that the 75% approval threshold has been met;
- (ii) **Benefit of Proposal:** will achieve a benefit that is better for current and future communities of Auckland compared with not proceeding with the proposed Exceptional Distribution;
- (iii) **Best Available Means:** is the best available means of achieving that benefit; and
- (iv) **Other Funding Options:** is not being sought by Auckland Council in lieu of other viable funding sources or options that Auckland Council might, in the view of the Trustee, reasonably be expected to use or pursue before seeking any Exceptional Distribution.

8. COMPLIANCE WITH LOCAL GOVERNMENT ACTS

8.1 General Requirement: Without limiting the Trustee's obligation to comply with this deed, the Trustee must comply, and co-operate with Auckland Council to enable Auckland Council to comply, with all applicable requirements under any of the Local Government Acts.

8.2 Specific Requirements: Without limiting the generality of clause 8.1 the requirements referred to in that clause include (as at the date of this deed):

(a) **Standard CCO Requirements:** Under the Local Government Act 2002:

(i) **Statutory Objectives:** without derogating from the Purposes of the Trust, in advancing those purposes and carrying out its role the Trustee must, in accordance with section 58 of the Act, assist the Trust to meet its objectives and any other requirements in its Statement of Intent, and the Trustee must, in accordance with section 59 of the Act, aim to:

(A) **Council Objectives:** achieve the objectives of Auckland Council, both commercial and non-commercial, as specified in the Statement of Intent;

(B) **Good Employer:** be a good employer (as defined in clause 36 of Schedule 7 of the Act); and

(C) **Social/Environmental Responsibility:** exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so;

(ii) **Decisions:** the Trustee must ensure that all decisions made in relation to the operation of the Trust are made by or under the authority of the Trustee in accordance with this deed and the

Statement of Intent, in accordance with section 60 of the Act, and in accordance with section 60A of the Act if applicable;

- (iii) **Statement of Intent:** the Trustee must prepare and deliver to Auckland Council, and make available to the public, each year a Statement of Intent for the Trust for the relevant Financial Year, in accordance with section 64 and Schedule 8 of the Act (with the first Statement of Intent under the Act being for the Financial Year commencing 1 July 2025);
 - (iv) **Additional Plans:** the Trustee must prepare and deliver to Auckland Council any additional plans required by Auckland Council under section 64A of the Act;
 - (v) **Statement of Expectations:** the Trustee must take into account, and conduct its relationships in accordance with, any Auckland Council statement of expectations prepared under section 64B of the Act;
 - (vi) **Reporting:** the Trustee must prepare, deliver and, if applicable, publicise, in accordance with sections 66 to 69 of the Act:
 - (A) **Half Yearly Report:** a report on the Trust's operations during the first half of each Financial Year (starting with the Financial Year commencing 1 July 2025), which must be delivered to Auckland Council within two months after the end of that half year and must include the information required to be included in the report by the Trust's Statement of Intent; and
 - (B) **Annual Report:** a report on the Trust's operations during each Financial Year (including the first Financial Year), which must, within three months after the end of that year, be delivered to Auckland Council and made available to the public and must include the information required to be included in the report by sections 68 and 69 of the Act and by the Trust's Statement of Intent; and
 - (vii) **LGOIMA:** the Trustee must comply with Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987, in accordance with section 74 of the Local Government Act 2002.
- (b) **Auckland Council CCO Requirement:** The Trustee must hold at least two meetings in each Financial Year (starting with the Financial Year commencing 1 July 2025) that are open to members of the public and must include all relevant details in relation to such meetings in the Trust's Statement of Intent, in accordance with the requirements set out in section 96 of the Local Government (Auckland Council) Act 2009.
- (c) **Auckland Council Substantive CCO Requirements:**
- (i) **Auckland Council Accountability Policy:** the Trustee must comply with any expectations and requirements relevant to the Trust set

out in Auckland Council's Substantive CCO Accountability Policy adopted by Auckland Council and included in the LTP in accordance with section 90 of the Local Government (Auckland Council) Act 2009;

(ii) **Additional Accountability Requirements:** if required by Auckland Council, the Trustee must comply with any additional accountability requirements, including (without limitation) any further requirements relating to the Trust's Statement of Intent and any additional reporting requirements, as set out in section 91 of the Local Government (Auckland Council) Act 2009; and

(iii) **Auckland Council Plans/Strategies:** in accordance with section 92 of the Local Government (Auckland Council) Act 2009, the Trustee must:

(A) **Long Term Plan:** give effect to the relevant aspects of the LTP; and

(B) **Other Plans/Strategies:** act consistently with relevant aspects of any other plan (including a local board plan) or strategy of Auckland Council to the extent specified in writing by the Governing Body.

(d) **Treaty of Waitangi:** The Trustee must comply with all applicable statutory and regulatory obligations relating to Māori and the Treaty of Waitangi, including those in the Local Government Act 2002.

8.3 **Protection from Disclosure of Sensitive Information:** Nothing in clause 8.2 requires the inclusion in any Statement of Intent, part-year or annual report, or financial statement required to be produced by the Trustee of any information that may be properly withheld if a request for that information were made under the Local Government Official Information and Meetings Act 1987.

9. TAX STATUS

9.1 **General Requirement:** In carrying out its role, exercising its powers, and performing its duties under this deed, the Trustee must take into account the tax status and treatment of the Trust and distributions to Auckland Council.

9.2 **Tax CCO Status:** Without limiting the generality of clause 9.1, the Trustee must not undertake any activity that would cause the Trust to become a Tax CCO (unless the Trustee is satisfied that Tax CCO status will not have any adverse impact on the tax status and treatment of the Trust and any distribution to Auckland Council), and for this purpose (as at the date of this deed):

(a) **No Trading Undertaking for Profit:** the Trust must not become a CCTO, and for that purpose the Trustee must not operate a trading undertaking for the purpose of making a profit that would cause the Trust to become a CCTO; and

(b) **No Controlling Interest in a Tax CCO:** the Trustee must not knowingly acquire or receive or have transferred to it an interest which results in the

Trustee having, in relation to any company that is a CCO under paragraph (a)(i) of the "council-controlled organisation" definition in the Local Government Act 2002 or in relation to any organisation other than a company that is CCTO:

- (i) **Control of Votes:** control of 50% or more of the votes at any meeting of the members of the controlling body of that company or organisation; or
- (ii) **Appointment Rights:** the right to appoint at least 50% of the directors, managers or trustees of that company or organisation (however the positions are described).

9.3 Tax CCO Interests Held on Bare Trust: If and to the extent that the Trustee, in any way whatsoever, acquires or receives or has transferred to it an interest which results in the Trustee having an interest in a company or organisation as referred to in clause 9.2(b)(i) or 9.2(b)(ii) (**Tax CCO Interest**), immediately upon the acquisition or receipt or transfer of the Tax CCO Interest the Trustee will hold the Tax CCO Interest on bare trust for the Auckland Council and the Trustee will not, in any circumstance, hold the Tax CCO Interest pursuant to the terms of the Trust.

10. TRUSTEE APPOINTMENT AND REMOVAL

10.1 Responsible Trustees: Without derogating from the rights and obligations of Auckland Council under any of the Local Government Acts or other applicable legislation in relation to appointing directors or trustees of its CCOs and Substantive CCOs (including any trustee of the Trust and any director or officer of any corporate trustee of the Trust), Auckland Council has the power, at any time, to appoint any person (other than itself) as a trustee of the Trust and to remove a person from holding office as Trustee, provided that:

- (a) **Single Corporate Trustee:** unless Auckland Council determines otherwise, the Trust will have a single corporate trustee and the corporate trustee must be a CCO wholly owned or controlled by Auckland Council, or another entity wholly owned or controlled, directly or indirectly, by Auckland Council; and
- (b) **Two or More Trustees:** Auckland Council may determine that the Trust will have two or more trustees (including natural person trustees) and appoint two or more persons to act as trustees of the Trust, in which case the terms of the Trust must be reviewed and, if necessary or expedient, modified in accordance with clause 14 to provide for the control and administration of the Trust by two or more trustees (including natural person trustees, if applicable).

10.2 Special Trust Advisers: Auckland Council has the power, at any time, to appoint any person (other than itself) to act as a special trust adviser in accordance with the Trusts Act 2019, and to revoke any such appointment. The Trustee also has the power, at any time, to appoint any person to act as a special trust adviser in accordance with that section and to revoke any such appointment, provided that any exercise of such power by the Trustee must be approved in writing by Auckland Council.

11. TRUSTEE REMUNERATION AND REIMBURSEMENT

- 11.1 Remuneration Permitted:** Subject to clause 11.2, a Trustee is permitted to be remunerated out of the Fund for services provided by or on behalf of the Trustee in connection with the control and administration of the Trust, having regard to the duties and responsibilities of the Trustee and the services provided.
- 11.2 Remuneration Restrictions:** In relation to any remuneration to be provided under clause 11.1:
- (a) Fair Market Value:** the remuneration must not exceed fair market value for the services provided; and
 - (b) Auckland Council Approval:** the amount of any remuneration and the circumstances in which the remuneration is to be provided will be determined by Auckland Council or by a person appointed by Auckland Council, and must be approved in writing by Auckland Council.
- 11.3 Reimbursement of Expenses:** Without limiting the generality of clause 13.3, the Trustee is entitled to be reimbursed out of the Fund for all expenses properly incurred by or on behalf of the Trustee in connection with the control and administration of the Trust (including, without limitation, the fees, costs and expenses of any investment manager appointed pursuant to clause 6.2).

12. TRUST TRANSACTIONS INVOLVING SELF-INTEREST

- 12.1 Officers Interested in Trust Transactions:** The Trustee may enter into a transaction in respect of which any officer of the Trustee (including any director) is Interested, provided that if an officer of the Trustee is Interested in a transaction entered into, or to be entered into, by the Trustee:
- (a) Disclosure Requirements:** immediately after the officer becoming aware of the fact that they are interested in the transaction or proposed transaction, the officer must disclose to the Trustee:
 - (i) Disclosure of Interest:** the fact of their interest in the transaction; and
 - (ii) Disclosure of Nature/Extent of Interest:** the nature of their interest and either the monetary value of the interest or, if the monetary value of the interest cannot be quantified, the extent of their interest;
 - (b) Record of Interest:** the Trustee must keep a record of the officer's interest in the transaction, such record to be made available to Auckland Council upon request; and
 - (c) Officer Involvement in Transaction:** the officer must not do any of the following:
 - (i) Voting:** vote on any matter relating to that transaction;

- (ii) **Deliberations:** be in attendance for the portion of a Trustee meeting at which any matter relating to that transaction arises and be included among the attendees at the meeting for the purposes of establishing a quorum;
- (iii) **Signing:** sign a document relating to that transaction on behalf of the Trustee; or
- (iv) **Other Matters:** do any other thing in their capacity as an officer of the Trustee in relation to that transaction.

12.2 "Interested": For the purpose of clause 12.1, an officer of the Trustee is interested in a transaction if the officer:

- (a) **Party or Direct Financial Interest:** is a party to, or will or may derive a material financial benefit from, the transaction; or
- (b) **Indirect Financial Interest:** has a material financial interest in another party to the transaction, or is a director, officer or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction (not being Auckland Council or a party or person that is wholly owned or controlled, directly or indirectly, by the Trustee or Auckland Council), or is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, the transaction; or
- (c) **Other Material Interest:** is otherwise directly or indirectly materially interested in the transaction.

13. LIMITATION OF LIABILITY AND INDEMNIFICATION

13.1 Limited Liability of Trustees and Officers/Employees: No Trustee (including any former Trustee) and no current or former officer, agent, representative or employee of any Trustee (including a director) will be liable for any loss to the Fund arising from the relevant person's conduct unless such loss is attributable to:

- (a) **Dishonesty/Bad Faith:** dishonesty or lack of good faith on the part of the Trustee, officer, agent, representative or employee (as the case may be); or
- (b) **Wilful Breach of Trust:** any wilful conduct of the Trustee, officer, agent, representative or employee (as the case may be) known by that person to be a breach of trust or a breach of any other obligation of that person in connection with the Trust; or
- (c) **Gross Negligence:** gross negligence on the part of the Trustee, officer, agent, representative or employee (as the case may be),

and no Trustee (including any former Trustee) will be liable for any negligence, fraud or delay on the part of any agent engaged by the Trustee in connection with the control and administration of the Trust.

- 13.2 Proceedings against Trustees:** No Trustee will be bound to take proceedings against any other Trustee (including any former Trustee) in relation to any actual or alleged breach of trust.
- 13.3 Indemnification of Trustees and Officers/Employees:** A Trustee (including any former Trustee) and any current or former officer, agent, representative or employee of any Trustee (including a director) is entitled to be indemnified out of the Fund in relation to all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together called **Liabilities**) suffered or incurred by the Trustee, officer, agent, representative or employee (as the case may be) in connection with the Trust, except to the extent that such Liabilities are attributable to:
- (a) Dishonesty/Bad Faith:** dishonesty or lack of good faith on the part of the Trustee, officer, agent, representative or employee (as the case may be); or
 - (b) Wilful Breach of Trust:** any wilful conduct of the Trustee, officer, agent, representative or employee (as the case may be) known by that person to be a breach of trust or a breach of any other obligation of that person in connection with the Trust; or
 - (c) Gross Negligence:** gross negligence on the part of the Trustee, officer, agent, representative or employee (as the case may be).
- 13.4 Auckland Council:** Auckland Council will not be liable for any loss to the Fund in relation to carrying out its role in relation to the Trust as set out in clause 4.2 and, in relation to carrying out that role, is entitled to the benefit of indemnification under clause 13.3 as if it were a Trustee.

14. REVIEW AND MODIFICATION OF TRUST TERMS

- 14.1 Review of Trust Terms:** The terms of the Trust must be reviewed from time to time by the Trustee and may also be reviewed by Auckland Council at any time.
- 14.2 Meaning of Entrenched Terms:** Specific requirements apply in relation to any modification affecting any Entrenched Terms, under clause 14.3(b). For this purpose, “**Entrenched Terms**” means the terms of this deed relating to the Beneficiaries of the Trust (clause 3.1), the Purposes of the Trust (clause 3.2), compliance with the Purposes of the Trust, the Auckland Future Fund Policy and Auckland Future Fund Distribution Policy (clauses 3.3(c), 6.3 and 6.4), restriction of Exceptional Distributions (clause 7), restrictions relating to modification of the terms of the Trust (clause 14), and the duration of the Trust (clause 17).
- 14.3 Trustee Power to Modify:** The Trustee may, by deed, modify the terms of the Trust, including by way of amending, deleting or replacing any of the terms set out in this deed, provided that:
- (a) Requirements relating to All Modifications:** in relation to all proposed modifications (including, without limitation, those referenced in clauses 14.2 and 14.3(b)):
 - (i) Consistency with LTP:** the relevant modification must be consistent with all aspects of the LTP relating to the Trust at the relevant time;

- (ii) **Report to Auckland Council:** the Trustee must provide a written report to Auckland Council in relation to the proposed modification and the effect of the proposed modification, including the Trustee's assessment of whether, and if so how, the proposed modification would impact on:

 - (A) **Fund and Purposes:** the future of the Fund and the Purposes of the Trust;
 - (B) **Auckland Council Interests/Rights:** any interest or right of Auckland Council in relation to the Trust, including any power of Auckland Council under the terms of this deed;
 - (C) **Compliance with Local Government Acts:** the ability of the Trustee and Auckland Council to comply with the Local Government Acts;
 - (D) **Tax Status and Treatment:** the tax status and treatment of the Trust and distributions to Auckland Council; and
 - (E) **Entrenched Terms:** any of the Entrenched Terms; and
- (iii) **Auckland Council Approval:** no modification will be effective unless Auckland Council has received the report required under paragraph (ii) in relation to the modification and the modification has been approved in writing by Auckland Council following its receipt of that report; and
- (b) **Additional Requirements relating to Entrenched Terms:** no modification that directly or indirectly affects or detracts from any of the Entrenched Terms shall be made, and any purported approval of any such modification shall not be effective, unless:

 - (i) **Auckland Council Consultation:** Auckland Council has consulted on the proposed modification, using the special consultative procedure under the Local Government Act 2002, and that consultation has incorporated the report from the Trustee in relation to the impact of the proposed modification on the Entrenched Terms referred to in clause 14.3(a)(ii);
 - (ii) **Governing Body Approval:** the relevant modification has been approved by the Governing Body of Auckland Council; and
 - (iii) **Trustee Assessment of Proposal:** the Trustee is satisfied, in each case in its sole discretion, that the relevant modification:
 - (A) **Level of Approval:** was approved by at least 75% of the Governing Body members who were entitled to vote and voted on the matter, for which purpose the Trustee must obtain, and may rely upon, written certification from the Mayor and the Deputy Mayor of Auckland Council that the 75% approval threshold has been met;

- (B) **Benefit of Proposal:** will achieve a benefit that is better for current and future communities of Auckland compared with not proceeding with the modification;
- (C) **Best Available Means:** is the best available means of achieving that benefit; and
- (D) **Other Options:** is not being sought by Auckland Council in lieu of other viable options that Auckland Council might reasonably be expected to use or pursue before seeking a modification to the Entrenched Terms; and

14.4 Auckland Council Power to Direct Modification: Auckland Council may direct the Trustee, in writing, to modify the terms of the Trust, provided that any modification must comply and be implemented in accordance with clause 14.3 as if it were a modification proposed by the Trustee.

15. RESETTLEMENT

15.1 Trustee Power to Resettle: Subject to prior compliance with clause 7, the Trustee may, by deed, resettle all or any part of the Fund (including by way of distribution to Auckland Council, any CCO of Auckland Council or any other entity owned or controlled, directly or indirectly, by Auckland Council) on trust directly or indirectly for the benefit of Auckland Council, on terms determined by the Trustee.

15.2 Auckland Council Power to Direct Resettlement: Auckland Council may direct the Trustee, in writing, to resettle all or any part of the Fund, provided that such resettlement must comply and be implemented in accordance with clause 15.1 as if it were a Trustee proposal to resettle all or part of the Trust Fund.

16. WINDING UP

16.1 Trustee Power to Wind Up: Subject to prior compliance with clause 7, the Trustee may wind up the Trust and direct the distribution or application of the Fund, provided that:

- (a) **Satisfaction of Debts/Liabilities:** the Trustee must ensure that all debts and liabilities of the Trust, including the costs of winding up the Trust, have been or will be satisfied out of the Fund or have been or will be assumed by another person; and
- (b) **Distribution/Application of Surplus:** the remainder of the Fund must be distributed or applied to or for the benefit of Auckland Council (which may include the distribution of all or any part of the Fund to Auckland Council, any CCO of Auckland Council, or any other entity owned or controlled, directly or indirectly, by Auckland Council).

16.2 Auckland Council Power to Direct Winding Up: Auckland Council may direct the Trustee, in writing, to wind up the Trust, provided that the winding up of the Trust must comply and be implemented in accordance with clause 16.1 as if it were a Trustee proposal to wind up the Trust.

17. DURATION AND FINAL VESTING

Subject to any prior resettlement or winding up in accordance with clause 15 or clause 16:

17.1 Duration of Trust: the Trust will continue for the maximum period permitted by law (as at the date of this deed, until the date that is 125 years after the creation of the Trust in accordance with section 16 of the Trusts Act 2019); and

17.2 Final Vesting: at the end of that period, the Fund will be held on bare trust for, and distributed to, the Beneficiaries.

18. GOVERNING LAW AND JURISDICTION

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

18.2 Jurisdiction: The Trustee submits to the non-exclusive jurisdiction of all courts having jurisdiction in New Zealand.

EXECUTED AND DELIVERED AS A DEED this 27th day of September 2024

SIGNED for and on behalf of **AUCKLAND COUNCIL**, as settlor, by:




Wayne Brown, Mayor of Auckland



Desley Simpson, Deputy Mayor of Auckland


SIGNED on behalf of **AUCKLAND FUTURE FUND TRUSTEE LIMITED** as trustee:



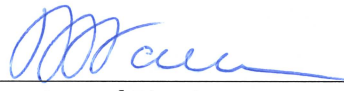
Name of Director




Signature of Director



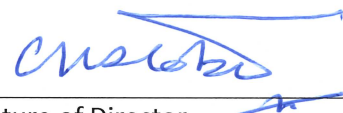
Name of Director



Signature of Director



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Signature of Director