

Freshwater Improvement Fund Deed of Funding

between Ministry for the Environment

and

Rotorua Lakes Council

Contents

Execution	4
Part A: Specific and Special Terms	6
Part B: Reporting	43
Part C: General Terms:	46
Section 1: Definitions and Interpretation	46
Section 2: The Grant	48
Section 3: General Terms and Conditions	50
Section 4: Recipient's Rights and obligations	53
Section 5: Ministry's Rights and Obligations	57
Schedule 1: Reporting Templates	61
Schedule 2: Publications	62
Schedule 3: Audit	64
Schedule 4: Capital Assets	65
Schedule 5: Multiyear Projects	67
Schedule 6: Change Control Process	68

Execution

Parties	
Ministry	THE SOVEREIGN in right of New Zealand, acting by and through the Secretary for the Environment
Recipient	Full legal name: Rotorua Lakes Council
	Trading name (if different):
	NZ Business Number #: 9429041918388
Project title	Lake Tarawera Sewage Reticulation and Treatment
Deed number	

Agreement

The Recipient will complete the Project in accordance with the terms and conditions set out in the following Schedules:

Part A: Specific and Special Terms

Part B: Reporting

Part C: General Terms

SIGNED as a Deed on: 26 October 2022

[The date that the Deed is signed is the date at which both parties have signed the Deed, that is, the date the final party signed the Deed. This date must be added on both original copies of the Deed by the party who signs the Deed last.]

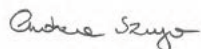
Signed and delivered as a deed by, Nadeine Dommissie, Deputy Secretary, Policy Implementation and Delivery on behalf of the **Ministry for the Environment**



On (date): 26 October 2022

Signature

In the presence of:



Witness Signature

Andrea Szujó

Witness Name

Executive Assistant

Witness Occupation

11 Tauhou Place, Waikanae 5036

Witness Address

Signed and delivered as a deed on behalf of
Rotorua Lakes Council

in the presence of:



Signature

18/10/2022

Date



Witness Signature

Kim McGrath

Witness Name

Exec Support officer

Witness Occupation

Rotorua

Witness Address

Stavros Michael

Print Full Name

(Authorised Signatory)



Signature

19/10/2022

Date

Geoff Williams

Print Full Name

(Authorised Signatory)

[Under the Local Government Act 2002, a Local Authority is a "body corporate" (section 12). The Property Law Act 2007 section 9(3)-(4) sets out the requirements for a body corporate to sign a Deed: This document must be executed in accordance with the enactment forming the Regional Council, District Council or any Constitution for that entity, or otherwise by two directors.]

Part A: Specific and Special Terms

1. Project details

Term	Commencement Date:	1 November 2022.
	Expiry Date:	31 December 2023.
Grant amount	The Ministry approves the Grant of up to \$6,500,000 (GST excl), subject to the conditions set out in this Deed.	
Project purpose	<p>The purpose for which the Grant is provided is:</p> <p>To target one of the most costly and intractable barriers to arresting and improving the ongoing decline of water quality in Lake Tarawera: eliminating the need to use poorly performing septic tanks that leak sewerage into the Lake causing health and water degradation risks.</p>	
Summary of key requirements	<p>Support for the long-term water quality improvements for Lake Tarawera by building a reticulated sewage system to replace all existing on-site wastewater systems (septic tanks and soil soakage) on every property, public facilities and commercial facilities within this service area. This new system will stop the leaching of septic tank untreated effluent into Lake Tarawera and will effectively address the public health risks posed by pathogens and EOCs originating from failing septic tanks.</p> <p>This project will install the reticulation sewer main, into which each dwelling will connect. The sewer main will collect and transfer wastewater from the Tarawera residential area to the Lake Okareka Pump Station. From here, existing infrastructure will transport the waste to the Rotorua City treatment plant.</p>	
Work Programme & Annual Work Plan	Attached	

Freshwater Improvement Fund

Work Programme for

Lake Tarawera Sewage Reticulation and Treatment

1 November 2022 – 31 December 2023

Including Year 1 Annual Work Plan

1 November 2022 – 31 December 2023

Undertaken by

Te Kaunihera o ngā Roto o Rotorua
Rotorua Lakes Council

Official information and privacy

Official Information Act 1982

Important: Information presented to the Minister for the Environment or the Ministry for the Environment is subject to disclosure under the Official Information Act 1982 (OIA). Certain information may be withheld in accordance with the grounds for withholding information under the OIA. Further information on the OIA is available at www.ombudsmen.parliament.nz.

Information held by the Minister or the Ministry may have to be released under the OIA in response to a request from a member of the public (or any other body) for that information. If you wish to provide sensitive information to the Minister or the Ministry which you do not want released, it is recommended you consult with the Ministry as to whether the information is necessary for the application, and whether there may be grounds in the OIA for withholding the information. For instance, if release of the information would disclose a trade secret, or be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information, then there may be grounds to withhold the information. If an OIA request relating to your application is received, the Ministry will endeavour to contact you to discuss it, and what the implications of releasing your information are.

The grounds for withholding information must always be balanced against consideration of public interest that may justify release. Although the Ministry does not give any guarantees as to whether information can be withheld under the OIA, it may be helpful to discuss OIA issues with the Ministry in advance, if information provided with an application is sensitive.

Privacy Act 2020

Important: The Ministry for the Environment (Environment House, 23 Kate Sheppard Place, Wellington 6011 temporarily located at Level 2, 3 The Terrace, Wellington 6011) may collect, use, hold or disclose personal information for the purpose of assessing eligibility and suitability for Public Waterways and Ecosystem Restoration Fund funding. Individuals have the right in accordance with the Privacy Act 2020 to request access to and correction of their personal information. While the provision of personal information is not mandatory, failure to provide requested information could lead to a delay in considering the application or a decline of the same.

Instructions

This Work Programme template is completed by the Freshwater Improvement Fund applicants who have been invited to proceed to Stage 2 (project planning).

This Work Programme gives an overview of the entire life of the project, including purpose, objectives, benefits and estimated costs. The Work Programme is accompanied by an Annual Work Plan, which more specifically details the budget and work to be undertaken for Year One. For each subsequent project year, a new Annual Work Plan will be developed and attached to the Work Programme. The Work Programmes and Annual Work Plans form part of your Deed of Funding.

Complete all sections of this Work Programme and Annual Work Plan. We recommend you refer to the *Freshwater Improvement Fund – Guide for Recipients* to assist.

This Work Programme template is pre-populated with some of the information you provided in your original project submission. Update this information as required to reflect:

- the current status of your project
- further information and details now be available that were not available previously
- any conditions on funding (refer to the letter you received inviting you to proceed to stage 2).

If you have a question, you can email or phone your assigned analyst at the Ministry.

Section A

Recipient details

1 Organisation details

Check that the information below about your organisation is correct, and update it as required

Organisation name	Rotorua Lakes Council (RLC)
Trading name (if different)	
Physical address <i>Include postcode.</i>	Civic Centre, 1061 Haupapa Street, Rotorua 3010
Postal address <i>Include postcode.</i>	Private Bag 3029, Rotorua Mail Centre, Rotorua 3046
Telephone	07 348 4199
Website address	http://www.rotorualakescouncil.nz/Pages/default.aspx
New Zealand Business Number (NZBN)	
Legal entity status (eg, regional council, charitable trust, incorporated society, Māori trust board)	Territorial Authority (TLA)

2 Contact details for this project

Recipient's main contact (name and organisation)	Stavros Michael	Ministry's main contact	Simon Ingram
Organisation	Deputy Chief Executive, Infrastructure & Environment		
Email address	stavros.michael@rotorualc.nz	Email address	s7(2)(a) LGOIMA
Phone	Landline 07 351 8148 Mobile 027 807 3847	Phone	Landline Mobile s7(2)(a) LGOIMA
Postal address	Private Bag 3029, Rotorua Mail Centre, Rotorua 3046	Postal address	PO Box 10362, Wellington 6143
Physical address	Civic Centre, 1061 Haupapa Street, Rotorua 3010	Physical address	Environment House, 23 Kate Sheppard Place, Wellington 6012

Section B

Project details

3 Project overview

Check that the information below about your project is correct, and update as required

Project name	Lake Tarawera Sewage Reticulation and Treatment
Project purpose	This project targets one of the most costly and intractable barriers to arresting and improving the ongoing decline of water quality in Lake Tarawera: eliminating the need to use poorly performing septic tanks that leak sewerage into the Lake causing health and water degradation risks.
Project summary <i>Max 100 word summary of the project. This is what will be used for public facing information</i>	<p>The project seeks to ensure support for the long-term water quality improvements for Lake Tarawera by building a reticulated sewage system to replace all existing on-site wastewater systems (septic tanks and soil soakage) on every property, public facilities and commercial facilities within this service area (Appendix 1.). This new system will stop the leaching of septic tank untreated effluent into Lake Tarawera and will effectively address the public health risks posed by pathogens and EOCs originating from failing septic tanks.</p> <p>This project will install the reticulation sewer main, into which each dwelling will connect. The sewer main will collect and transfer wastewater from the Tarawera residential area to the Lake Okareka Pump Station. From here, existing infrastructure will transport the waste to the Rotorua City treatment plant.</p>
How many years will this project run for?	13 months commencing 1 November 2022.
Total project cost	\$14,022,000
Total Freshwater Improvement Fund contribution	\$6,500,000

4 Details of your water body

Check that the information below about your water body is correct, and update it as required

Name and location of water body <i>If your project includes more than one water body, include details of each water body.</i>	Lake Tarawera, Rotorua District See Appendix 1.
Type of water body your project applies to <i>Select all that apply.</i>	<input checked="" type="checkbox"/> Lake <input type="checkbox"/> River <input type="checkbox"/> Wetland <input type="checkbox"/> Groundwater <input type="checkbox"/> Other <i>(Please specify)</i>
Please provide the GPS coordinates of your water body	South 38.188627 East 176.428853

Section C

Project objectives, activities, and budget

5 Project objectives

Provide between three and six concise statements which describe the **tangible results** your project will achieve. Note that some project outcomes will be achieved over a longer timeframe, however the objectives described here must be achievable within the duration of the funding. Please ensure that:

- Objectives are SMART (Specific, Measurable, Achievable, and Realistic within the Timeframe of the project). Refer to the Freshwater Improvement Fund Guide for Recipients for more information on setting SMART objectives.
- All objectives are clearly defined and achievable within the duration of the funding.
- You have a clear plan for measuring, evaluating and reporting whether your project objectives have been met.

An example has been provided to demonstrate the level of detail required.

Objective	Key performance indicators (KPIs)	Baseline information	Expected outcome
<p>Describe the tangible results your project is trying to achieve.</p> <p>1. Engagement with the community is undertaken throughout the course of the funded project.</p>	<p>KPIs are a measureable values that demonstrates progress towards objectives</p> <p>440 property owners have given formal approval under LGA 2002 for the construction and operation of LPGP units and appurtenances on each individual property.</p> <p>2 community engagement meetings are held</p>	<p>Describe the current situation, using the data you have available.</p> <p>Initial agreement with 260 property owners on the siting of LPGP units and appurtenant infrastructure has been obtained for each property.</p> <p>Following community engagement in early 2021 95% of the feedback indicates support for the scheme and its target benefits.</p>	<p>What will change as a result of the objective being met? What will be the benefit?</p> <p>The level of agreement with the scheme remains consistent with or is greater than the Baseline (all properties will be compelled to join the scheme regardless of agreement/approval status).</p> <p>The community is informed about the details of the project, the net costs to them and the impacts on their property and can be kept up to date on progress updates.</p> <p>The community feel a sense of inclusion and can be part of the decision-making process regarding works on their property.</p> <p>The community remain supportive of the projects water quality improvement objectives</p>

<p>2. Construction of the sewerage reticulation scheme is completed by end December 2023.</p>	<p>Construction contract has been signed and executed.</p> <p>On-site establishment of construction contractors in November 2022</p> <p>The scheme is commissioned and available for connection of first dwelling by end December 2023.</p> <p>All installations are certified as meeting legal requirements.</p>	<p>On-site wastewater systems of varying quality are currently used as there is no sewerage reticulation scheme.</p> <p>Baseline measurements are showing a persistent sewerage seepage and declining trend in the safety of drinking and bathing water.</p> <p>The crucial TLI indicator is already measured and reported annually by the BOPRC and the Strategy Group; and there is a sufficient existing baseline for ongoing monitoring to record any changes following implementation of the project.</p> <p>Lake Tarawera had a TLI value of 2.7 for the 2020/21 season which is 0.1 over the TLI target of 2.6. All TLI parameters were comparable to the 2019/20 season, with a slight improvement in SD and a minor increase in TP values. The 3 year rolling average TLI for Lake</p> <p>Tarawera is currently 2.7 and appears to be decreasing following a period of minor elevation between 2014/15 and 2017/18. There were no validated reports of cyanobacteria blooms on Lake Tarawera during the 2020/21 season</p>	<p>The long term expected collective impact outcome for this lake is that there will be no collapse in the lake's ecosystem into an algae-dominated state. If that is achieved, at least the present levels of activity in relation to recreational and tourism enjoyment should be maintained. This outcome may depend as well on comparable effort by the farming community and other factors.</p> <p>After the implementation of this project, there will be no measurable human sewerage caused contamination of the lake and drinking water sourced from the lake will be safe without further treatment and warning signs can be removed.</p> <p>The scheme will also remove the cultural affront to tangata whenua that arises from human waste entering the lake.</p>
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6 Funding Information

List all sources of income for the duration of your project, including cash contributions from your organisation, co-funding from external sources and the maximum amount approved from the Freshwater Improvement Fund. Please state where external funding is "in-kind".

	Year 1 (11/22 to 12/23)			Total
Your organisation's cash contribution to the project	\$825,000			\$825,000
Bay of Plenty Regional Council	\$750,000			\$750,000
Rotorua Lakes Council Debt (from Rates)	\$5,947,000			\$5,947,000
FIF contribution approved amount under this Deed of Funding	\$6,500,000			\$6,500,000
Total cost of project	\$14,022,000			\$14,022,000
FIF contribution under the Deed of Funding as % of total project costs	46.3%			46.3%

7 What is the status of external funding?

If any of the funding for your project is not yet confirmed, please provide a summary of how much is 'pending' and when you expect this to be secured. Where funding for multi-year projects is not confirmed, please describe a plausible pathway to securing the additional income required.

- The Bay of Plenty Regional Council, through their Long-Term Plan process, confirmed a funding subsidy of \$0.75M towards the proposed sewerage scheme.
- The Rotorua Lakes Council, through their Long-Term Plan process, confirmed a funding subsidy and debt funding of \$15.250 M towards the proposed sewerage scheme.

8 Consultant and/or sub-contractor details (if applicable)

Provide information about any third party you intend to sub-contract to undertake work on the project. The Ministry may request evidence of all contracts (and associated procurement process followed, for each sub-contractor) as part of the milestone reporting requirements. Please refer to the Guide for Grantees for guidance on the use of sub-contractors

Company name of consultant/sub-contractor	Work to be undertaken in the delivery of the project	Value of contract	Potential conflict of interest
Trility Rotorua Limited. NZBN 9429048502849	Detailed design, consultation.	\$1,367,830 (Estimate currently)	Nil
Fulton Hogan Limited. NZBN 9429040318080	Reticulation System Construction	\$13,333,536	Nil

Section D

Project management information

9 Partnership and collaboration

Provide details of organisations that you will be partnering with in the delivery of this project. Please outline the nature of each of the partner's involvement and what they will contribute to the successful delivery of the project.

Organisation name	Contact details <i>Name, phone number and email</i>	Details of involvement or collaboration <i>For example, contribution of funding or resources, involvement in decision-making, responsibility for delivering a component of the project.</i>
Bay of Plenty Regional Council	Helen Creagh s7(2)(a) LGOIMA And another appointment TBC	The regional council has committed a funding subsidy of \$750,000. The BOPRC will also support project oversight.
Tuhourangi Tribal Authority	TBA	This Authority has a recognised status as mana whenua in the area, and the Rotorua Lakes Council will be closely engaged in advancing this project to provide cultural oversight.
Te Arawa Lakes Trust	Karen Vercoe s7(2)(a) LGOIMA	The Trust is the governance entity which received and manages the redress conferred under the 2004 Te Arawa Lakes Settlement, which embraces Lake Tarawera. The Trust has been playing a pro-active engagement and mediating role among the various groups claiming mana whenua status at Lake Tarawera. The Trust advises that there may be other iwi and hapu who will need to be engage with the Te Arawa Lakes Trust in ensuring effective consultation of iwi and hapu, and in advancing this project.
Ngāti Rangitahi	Ken Raureti s7(2)(a) LGOIMA	Ngāti Rangitahi are about to proceed with a Treaty claim in the area, and the Rotorua Lakes Council will therefore be closely engaged with them in delivering the preferred option and in advancing this project.
Ngāti Tahu-Ngāti Whaoa Runanga Trust	Evelyn Forrest s7(2)(a) LGOIMA	This Trust has mana whenua interests in the extended catchment, which has groundwater connections to Lake Tarawera. The Rotorua Lakes Council recognises that the Trust could be affected by decisions to be made on the clean-up of Lake Tarawera.
Tarawera Ratepayers Association	Libby Fletcher s7(2)(a) LGOIMA	The Association represents ratepayers in the Lake Tarawera catchment who would be required to contribute to the net cost of the sewage reticulation. The Association has contributed financially over many years to the research work of the University of Waikato in the lake, and members have also been involved in gathering water quality data. The Rotorua Lakes Council will be closely engaged with the Association in delivering this project.
To Komiti Pūtaiki O Tarawera	Karen Walmsley s7(2)(a) LGOIMA	Te Komiti Pūtaiki holds mana whenua over key land blocks affected by the Tarawera scheme.

10 Project team

Provide details of your project team and confirmation of their availability for the duration of the project. Please provide details for your project manager in the first row.

Name	Organisation	Role in project	Phone	Email
Greg Manzano	Rotorua Lakes Council	Project Director	07 3518204	Greg.manzano@rotorualc.nz
Stavros Michael	Rotorua Lakes Council	Project Owner	07 351 8148	Stavros.michael@rotorualc.nz
Ian Stabler	Rotorua Lakes Council	Project Manager	07 351 8175	ian.stabler@rotorualc.nz
Eric Gurden	Rotorua Lakes Council	Construction Manager	07 351 8214	Eric.gurden@rotorualc.nz
RLC Comms	Rotorua Lakes Council	Comms	07 351 8110	Ingrid.tiriana@rotorualc.nz

11 Governance and management structure

<p>Project governance</p> <p><i>Describe the governance structure/s that will be implemented to ensure monitoring and management of performance and effective decision-making occurs. Include information on members of the governance group and their skills.</i></p>	<p>Strategic Governance</p> <p>The Rotorua Te Arawa Lakes Strategy Group (RTALSG), which provides strategic governance to the Rotorua Lake Water Quality Programme, will provide strategic oversight and governance to the Lake Tarawera Sewerage Reticulation and Treatment Project.</p> <p>The RTALSG includes representatives from BoPRC, RLC, TALT and MfE and meet quarterly.</p> <p>Operational Governance</p> <p>Appendix 2 (attached) is the proposed Lake Tarawera Sewerage Reticulation and Treatment Project Steering Group. It includes representatives from BoPRC, RLC, TALT and MfE.</p>
<p>Managing funds</p> <p><i>Provide information about how you will manage the project funds. Include information about how you will procure goods and services, approve payments, and monitor and address budget overspend.</i></p>	<p>The Council has an established procurement policy, available on its website, which will be followed. Budget for the project will be authorised through the Council's Annual Plan process, with expenditures then authorised consistent with the Plan through delegated authorities. Monthly financial monitoring, including forward projections against budget, will be implemented by the project operational governance group and this will be backed up by quarterly reporting to the council's finance committee to ensure that cash flows are managed effectively with the ability to apply timely corrective action if required.</p>

12 Health and safety

<p><i>It is important that you have the necessary health and safety policies, plans, resources and expertise to safely undertake and complete the project. You must comply at all times with the requirements and provisions of the Health and Safety at Work Act 2015 (HSWA).</i></p>	
<p>Does your organisation have a health and safety plan?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>If yes, state when this was last reviewed/updated.</i></p> <p>Attached as Appendix 3. Our contractor's health and safety plan for the project will be available once the tender/contract has been let. Contractual HSE responsibilities will be clearly novated with the PM monitoring performance.</p>
<p>Has your organisation been issued with any notices under health and safety legislation?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>If yes, please provide details.</i></p> <p>An Improvement Notice was issued by the Department of Labour in 2012 in relation to unsafe working by a contractor. Corrective action was taken, the notice was lifted, and no further action was taken</p>
<p>Who will be responsible for health and safety for the project?</p> <p><i>Please state name, organisation and job title</i></p>	<p>Ian Stabler, Rotorua Lakes Council, Project Manager.</p>

13 Risk management

Provide a brief description of the major risks to the project achieving the intended outcomes. Include consideration of potential barriers that may pose a risk to the success of the project. Where possible give an indication of the likelihood and consequence of the risk and any mitigation strategies to be included in the project.

Potential risk <i>Identify the potential risk to your project</i>	Likelihood of risk occurring <i>Low, medium or high.</i>	Consequence on project <i>Minor, moderate or severe.</i>	Impact on project <i>Describe the impact the risk would have on the project if it occurred</i>	Strategy to mitigate <i>Describe what will be done to minimise and/or manage the risk</i>
Project not completed within the target timeframe	Low	Moderate	Would require negotiation with funders to adjust cash-flows, and would create some difficulties for regulatory and practical transition from septic tanks to reticulation; Would cause some delay in desired environmental improvement. Would cause unfavourable community reaction.	Effective monitoring and reporting of project progress and sharing of this information with funders, regulators and community stakeholders to ensure there is plenty of advance notice of any transitional difficulties that might arise.
Loss of confidence and support for the project from the affected community	Low	Moderate	The Project's progress could be hindered through community non-collaboration.	Extensive community engagement has taken place and on-going timely and responsive culture in the project team as well as effective project communication will be undertaken to keep the community informed and relevant.
Some landowner potential objection to the requirement to connect to the constructed scheme	Low	Moderate	Local connection delays with some additional costs to resolve via hearing process and in accordance with Local Government Act	Only 3 properties have indicated sustained objection to an installation of a system. This will be managed via our powers under the LGA 2002. Behaviour will also be influenced as BOPRC seeks to enforce its OSET rule which means not connecting will become illegal.

Discovery of archaeological sites during construction	Low	Moderate	Additional time and costs to affect possible design changes	Through the effective involvement of mana whenua and undertaking of preliminary archaeological investigation prior to construction. All statutory and non-statutory permission and consents will be identified in Year 0, and approved in Year 1 prior to any construction taking place. Involve lwi with on-going construction monitoring.
Poor ground condition for reticulation construction	Medium	Moderate	Unforeseen adverse ground conditions has a high contractor risk threshold but it could cause some time delays and contested costs	Clear contractual risk clarity so contractor has to undertake geotechnical investigation on the full extent of reticulation to inform the price offer from the consultant/contractor
Substandard electrical systems at properties	Low	Low	Electrical upgrades required to properties for connection of pumps with some cost effects	All houses are operational but undertake electrical audits/inspections of properties within the scheme area. If significant electrical upgrades are required then this will be rectified at the early stages of the project.
Various health and safety related risks during construction	Low	Moderate	Personal injury, illness or death as a result of operations. Statutory investigations and possible time delays.	A detailed Health and Safety Plan is being developed for the project and will be provided by the successful contractor. This will outline the various roles and responsibilities in relation to the project, including contractors employed through the construction phase. Require robust contractor health and safety plans and methodologies and provide good construction supervision.
Poor contractor performances	Low	Moderate	Time and costs effects as well as community negativity.	Expect to engage only competent contractors and include scrutiny on non-price attributes.

Cost escalation of scheme equipment procured from overseas because of supply chain issues and inflation	High	Moderate	Additional delivery time and time and costs effects on the project.	Sufficient project progress payment retention to incentivise performance. The use of fixed rates/ price contract to avoid mid project escalations risks.
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Section F

Year 1 Annual Work Plan

(1 November 2022 to 31 December 2023)

14 Project key tasks/activities for 2022/2023

List the main tasks/activities that will be undertaken during this financial year (refer to your table 7). The achievement of these tasks and activities will be a primary measure for evaluating the project's success. Note that the costs detailed here will be transferred onto your budget spreadsheet for this financial year.

Objectives	YEAR 1 (Nov 2022 – Dec 2023) Project tasks/activities	Evidence of completed activity	YEAR 1 Estimated budget		
			FIF contribution	Contribution from external sources (including your organisation)	TOTAL Budget
1. Engagement with the community is undertaken throughout the course of the funded project.	1.1 Host two community engagement meetings.	1.1.1 Copy of associated minutes and associated records.	\$0.00	\$110,000	\$110,000
	1.2 Notify all stakeholder groups of the deployment plan, key phases of work, what to expect, who to contact etc. Q&A processes in place.	1.2.1 Copies of communication collateral.			
	1.3 Agree and adopt cultural monitoring / discovery protocols with Iwi / Hapu.	1.3.1 Sample of records of engagement and communications undertaken.			
2. Construction of the sewerage reticulation scheme is completed by end December 2023.	2.1 Finalise negotiations for construction of the reticulated system and execute the contract.	2.1.1 Copy of signed construction contract	\$0.00	\$10,000	\$10,000
	2.2 Complete on-site establishment of construction contractors and equipment (December 2022)	2.2.1 Copy of approved contract progress claim	\$0.00	\$2,822,255	\$2,822,255
	2.3 Execute construction works and complete by end December 2023	2.3.1 Copies of approved contract progress claims	\$6,500,000	\$3,992,745	\$10,492,745
	2.4 Complete inspections, certification and commissioning of system. Receive final	2.4.1 Copies of contractual certificates.	\$0.00	\$185,000	\$185,000

	certification that the installation meets all necessary standards and legal requirements				
3. Miscellaneous	3.1 Project management	3.1.1 Copies of contract(s) (if applicable), or evidence of paid project management staff	\$0.00	\$108,000	\$108,000
	3.2 Consenting application and consultant fees	3.2.1 Copies of approved consents	\$0.00	\$100,000	\$100,000
	3.3 Professional services (SME review; Construction observation; Sign off / approvals)	Not applicable.	\$0.00	\$100,000	\$100,000
	3.4 Legal and contractual support.	Not applicable	\$0.00	\$60,000	\$60,000
	3.5 Quarterly governance meetings	3.6.1 Copies of quarterly Governance Group meeting minutes	\$0.00	\$16,000	\$16,000
	3.7 Reporting to Ministry for the Environment	3.7.1 Quarterly Reports/Annual/Close-out submitted when due, including: <ul style="list-style-type: none"> • Budget Tracker • Tax Invoice • Deliverables 3.7.2 Close out report due 31 March 2024 ¹	\$0.00	\$3,000	\$3,000

¹ Note the Deed of Funding includes a \$50,000 retention clause for receiving audit and closure report.

	3.8 Independent project financial audit for November 2022 to December 2023, due 31 March 2024.	3.8.1 Copy of the completed independent project financial audit for 11/2022 to 12/2023.	\$0.00	\$15,000	\$15,000
			\$6,500,000	\$7,522,000	\$14,022,000

15 Quarterly budget breakdown

List all sources of income and expected breakdown of quarters for year 1 of your project, including cash contributions from your organisation, co-funding from external sources and the maximum amount approved from the Freshwater Improvement Fund.

	22/23 Q2 & Q3 <i>Nov-Mar 22</i>	22/23 Q4 <i>Apr-Jun 23</i>	23/24 Q1 <i>Jul-Sep 23</i>	23/24 Q2 <i>Oct-Dec 23</i>	Total budget for Year 1
Your organisation's cash contribution to the project	\$206,250	\$206,250	\$206,250	\$206,250	\$825,000
Bay of Plenty Regional Council	\$187,500	\$187,500	\$187,500	\$187,500	\$750,000
Rotorua Lakes Council Debt (from Rates)	\$2,600,254	\$611,921	\$1,655,844	\$1,078,981	\$5,947,000
FIF contribution for each quarter	\$0.00	\$1,509,209	\$3,018,419	\$1,972,372	\$6,500,000
Total budget for each quarter	\$2,994,004	\$2,514,880	\$5,068,013	\$3,445,103	\$14,022,000

16 Environmental compliance

Please complete this section for any statutory or non-statutory permissions or consents that you require in this financial year.

Do you require any statutory or non-statutory permissions to complete activities set out in this Annual Work Plan?

For example, resource consents, planning consents, or landowner permissions?

Yes No

If yes, which permission(s) are required? Have you applied for these? If so, when is a decision expected? (If date of decision is unknown, please provide a comment.)

No consents expected to be required, however the work plan has a budgeted contingency just in case that were to change.

Section H

Declaration

17 Conflicts of interest

Describe any known conflicts of interest (actual or potential) and steps you will take to manage them.


None to declare

18 Declaration

This declaration must be completed by a person with the organisation's signing authority, such as a chief executive or person with delegated authority. This person may be different to the primary contact person for the application.

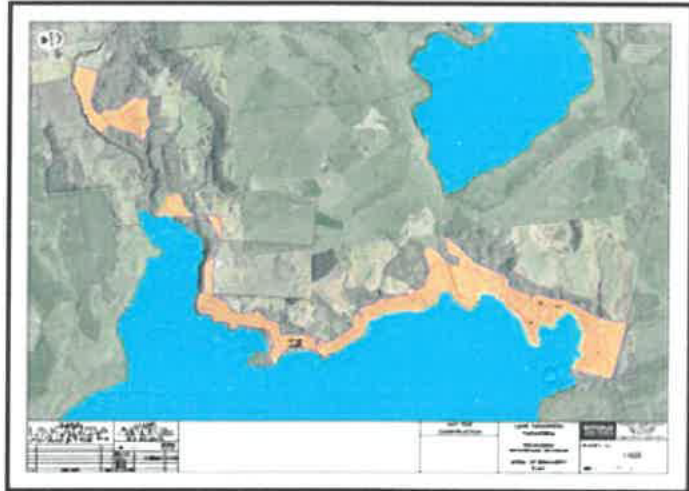
As a duly authorised representative of the organisation:

- I declare that to the best of my knowledge, the information contained in all sections of this Work Programme and Year 1 Annual Work Plan or supplied by us in support of our Work Programme is complete, true and correct.
- I declare that I have the authority to sign this Work Programme and Year 1 Annual Work Plan and to provide this information.
- I understand that information presented to the Minister for the Environment and the Ministry for the Environment is subject to disclosure under the Official Information Act 1982.

Name	Stavros Michael	
Position	DCE Infrastructure and Environment Rotorua Lakes Council	
Signature <i>By typing your name in the space provided you are electronically signing this Work Programme and Year 1 Annual Work Plan.</i>		Date 18/10/22

APPENDIX 1

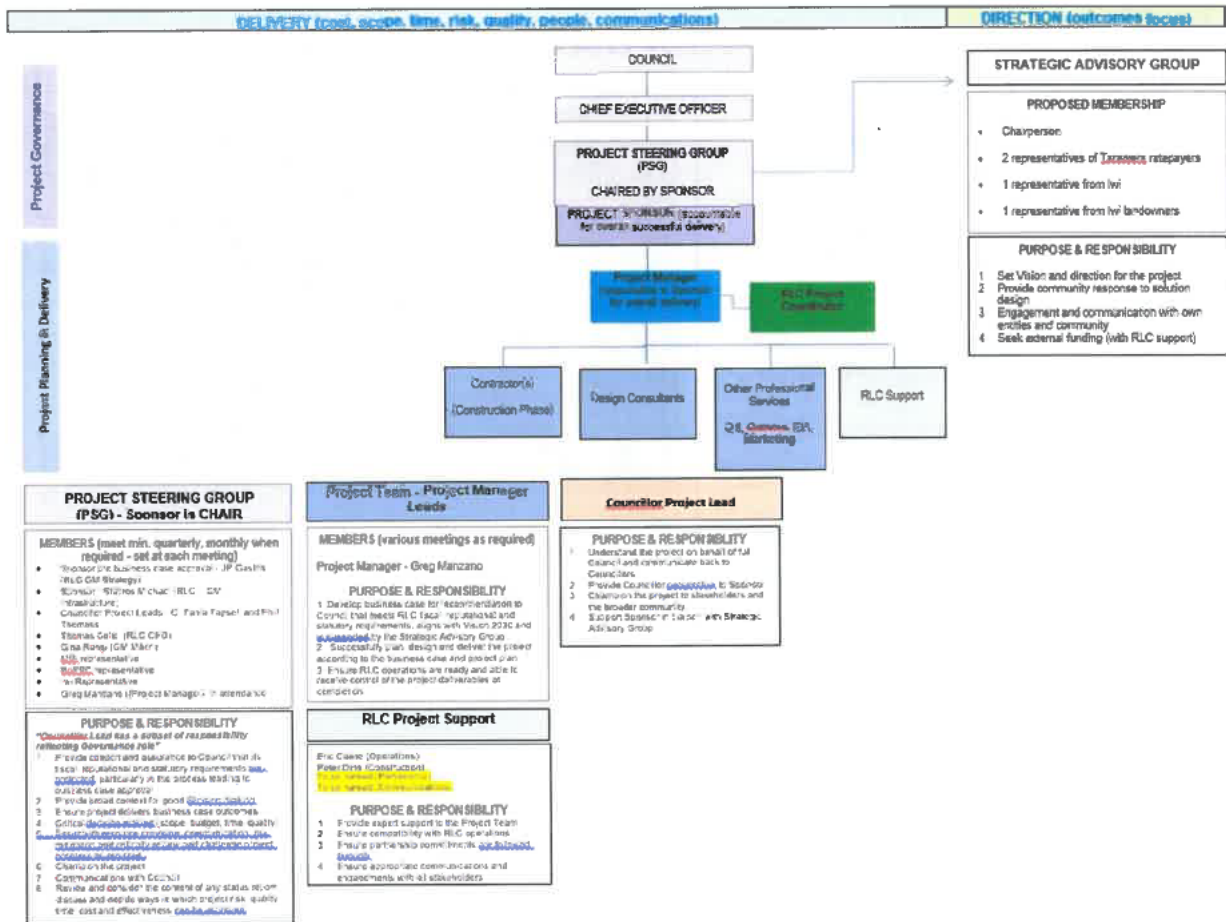
PROPOSED SERVICE AREA



Number of properties: Current - 423
Ultimate - 546

APPENDIX 2

TARAWERA SEWERAGE SCHEME - PROPOSED PROJECT STRUCTURE





Steve Chadwick; Mayor:
 April 2021

Steve Chadwick

Geoff Williams; Chief Executive:
 Next review April 2023

Geoff Williams

We're committed to managing our work environments to prevent harm to any person and promote wellbeing

2. Contact details

Party	Main contact person
Ministry	Simon Ingram Postal Address: PO Box 10362, Wellington Phone: s7(2)(a) Email: s7(2)(a) LGOIMA
Recipient	Name: Stavros Michael Postal address: Private Bag 3029, Rotorua Mail Centre, Rotorua 3046 Title: Deputy Chief Executive, Infrastructure & Environment Phone: 027 807 3847 Email: stavros.michael@rotorualc.nz

3. Recipient key personnel

Name	Title	Role or specialisation	Email
Ian Stabler		Project Manager	ian.stabler@rotorualc.nz
Greg Manzano		Project Director	Greg.manzano@rotorualc.nz
Stavros Michael		Project Owner	Stavros.michael@rotorualc.nz
Eric Gurden		Construction Manager	Eric.gurden@rotorualc.nz
Ingrid Tiriana		RLC Communications	Ingrid.tiriana@rotorualc.nz

4. Special terms

This Deed includes the following Special Terms:

1 Governance:

- (a) This Deed is conditional upon:
- (i) the Recipient maintaining the existing Rotorua Te Arawa Lakes Strategy Group;
 - (ii) establishing and maintaining the Lake Tarawera Sewerage Reticulation and Treatment Project Steering Group;
 - (iii) the signing of Terms of Reference for the Project where the Rotorua Te Arawa Lakes Strategy Group and Lake Tarawera Sewerage Reticulation and Treatment Project Steering Group assume the role as the Governance Group for the Project; and
 - (iv) with that Terms of Reference to be in a form that is acceptable to the Ministry in all respects in order to establish the Governance Group.
- (b) The condition in special term 1(a) is for the benefit of the Ministry and may only be waived by the Ministry on express notice in writing to the Recipient.

If the condition in special term 1(a) has not been satisfied (or waived by the Ministry) on or before 20 Working Days after this Deed is signed or such later date agreed by the Ministry, then this Deed is voidable at the election of the Ministry by notice in writing to the other parties to this Deed.

- (c) Upon this Deed becoming void, no Party to it will have any right or obligation to any other Party.

2 Terms of Reference:

- (a) The Parties must comply with the Terms of Reference.
- (b) The Terms of Reference for the Governance Group must include the functions, make-up and procedure of the Governance Group, including:
 - (i) the following functions of the Governance Group:
 - (A) providing overall guidance and direction to the Project;
 - (B) making recommendations to Project Executive to support any decision that will have a material impact on the Project;
 - (C) overseeing financial reporting and health and safety practices in relation to the Project;
 - (D) providing assistance or information to the Parties in relation to Ministerial and Parliamentary questions and requests under the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 as required;
 - (E) acting as a key professional forum to communicate appropriate Project information back to key stakeholders within or relevant to their own organisation; and
 - (F) managing high level risks;
 - (ii) how the Parties will interact with the Governance Group; and
 - (iii) how the Governance Group will be supplied sufficient information by the Recipient for it to fulfil its functions.

3 Project Management and Governance:

- (a) **Project Manager:** The Recipient will appoint for the duration of the Project an appropriately trained, qualified, and experienced Project Manager, to manage and supervise the Project and completion of the Project Activities. The Project Manager will:
 - (i) have the authority to run the Project on a day to day basis on behalf of the Recipient that complies with the terms and Schedules of this this Deed, the Work Programme and Annual Work Plan; and
 - (ii) ensure that the project management practices set out in the Work Programme and Annual Work Plan are followed.
- (b) **Project Executive:** The Recipient will appoint for the duration of the Project an appropriately trained, qualified, and experienced Project Executive who is authorised to represent the Recipient in communications under this Deed and to act for the Recipient under this Deed.
- (c) The Recipient may appoint an alternative or replacement Project Manager and/or Project Executive by written notice to the Ministry.
- (d) **Governance:** The Recipient shall establish for the duration of the Project a Governance Group of appropriately trained, qualified, and experienced personnel to provide overall guidance and direction to the Project. The Recipient shall ensure the relevant personnel, and their contact details, are specified in the Work Programme and Annual Work Plan.

- (e) **Ministry representative:** The Ministry may appoint a Ministry representative to be present at meetings of the Governance Group. The Recipient shall ensure the Ministry representative is provided with reasonable prior notice of, and any relevant documentation in relation to, Governance Group meetings.
- 4 **Annual Work Plans**
- (a) The Recipient shall prepare an Annual Work Plan for the Project in accordance with the following provisions.
 - (b) The Annual Work Plan for the Project will:
 - (i) use the form provided by the Ministry; and
 - (ii) be agreed by the Parties prior to execution of this Deed and incorporated into this Deed at the Commencement Date.
- 5 **Approval of Annual Work Plans**
- Not used.
- 6 **Remedial Plan:**
- (a) If at any time:
 - (i) the Ministry considers that the Recipient has breached, or will imminently breach, any of its obligations under this Deed;
 - (ii) the Recipient has given the Ministry notice of a breach or likely breach of any of its obligations under this Deed; or
 - (iii) in accordance with clause 4.25, the Parties agree to invoke the remedial plan process set out in this special term 6.

(in each case a “**Delivery Issue**”), the Ministry may give notice to the Recipient setting out the Delivery Issue (“**Delivery Notice**”).
 - (b) As soon as possible after receipt of a Delivery Notice (and in any event within three Working Days of receipt) the Recipient will consult with the main contact of the Ministry as set out in Part A of this Deed or otherwise notified by the Ministry in writing.
 - (c) As soon as possible after receipt of a Delivery Notice (and in any event within 10 Working Days of receipt) the Recipient will prepare and provide to the Ministry a proposed plan setting out (“**Remedial Plan**”):
 - (i) full details of the Delivery Issue (including its causes, expected duration and impact on the Project and the Recipient’s obligations under this Deed);
 - (ii) a plan (including milestones) setting out the steps it will take to eliminate, and mitigate the effect of, the Delivery Issue and prevent the Delivery Issue from recurring, as applicable; and
 - (iii) success criteria to determine whether the Delivery Issue has been rectified (“**Success Criteria**”).
 - (d) The Recipient will promptly (and, in any event, within five Working Days of a request by the Ministry) make such amendments to the proposed Remedial Plan as the Ministry may reasonably require and deliver the amended Remedial Plan to the Ministry for review.
 - (e) The Ministry will review the amended Remedial Plan and will promptly at its sole discretion (and, in any event, within five Working Days of receipt) either:
 - (i) approve the Remedial Plan by written notice to the Recipient;

- (ii) notify the Recipient of any further required amendments, to be made in accordance with special term 6(d); or
 - (iii) issue to the Recipient a further notice which specifies that the relevant Delivery Issue has not been remedied.
- (f) If the Ministry has approved the Remedial Plan in accordance with special term 6(e)(i), the Recipient will implement the Remedial Plan in accordance with its terms and this Deed.
- (g) The Ministry agrees to follow the process set out in this special term 6(a)-(e):
- (i) if the Ministry exercises its rights under clause 5.5(a) to withhold or suspend the Grant;
 - (ii) before exercising its rights under clause 5.5(a) to reduce or require repayment of the Grant; or
 - (iii) before exercising, in relation to clause 5.6(a), 5.6(b) or 5.6(h), its rights under clause 5.6(i) to suspend or terminate this Deed, unless the Ministry at its sole discretion considers the circumstances are a material breach of the Deed that is not capable of remedy.

For the avoidance of doubt, the fact that the Ministry follows the process in this special term 6(a)-(e) does not prevent it from subsequently exercising the rights referred to in (ii) and (iii) above, including where special term 6(e)(iii) applies or where the Recipient does not comply with special term 6(f).

- (h) The exercise, or deferral, by the Ministry of its rights in this special term 6 will be without prejudice to any other rights or remedies of the Ministry under this Deed or otherwise.

7 Requests for Payment (in arrears):

- (a) The Recipient will submit a request for payment of the Grant with each Quarterly Report via the Funds Management System Client Portal (if available). Subject to special term 7(b), each request for payment must include:
 - (i) a completed Payment Request; and
 - (ii) a correct tax invoice for the Grant for an amount based on the Project Activities successfully completed, priced in accordance with the Annual Work Plan and this Deed, and pro-rated as applicable for any partially completed Project Activities. The invoice must quote this Deed's deed number.
- (b) Payment of any Grant monies is subject to the Ministry's acceptance of the Quarterly Report in accordance with Part B clause 2.
- (c) For the final quarterly payment, \$50,000 (GST excl) of that year's total Fund contribution will be withheld until the Ministry receives and approves the Project Closure Report in accordance with Part C clause 4.9 and Audit Report at Part B clause 1 of the Deed. The Retention will be stated in the Annual Work Plan. The Recipient must claim the Retention in the last request for payment which must be submitted with the Project Closure Report and Audit Report.

8 Co-funding

- (a) In the event that the Recipient has or will obtain funding from any party other than the Ministry (**Co-Funding**) in respect of the Project, then the Recipient must:
 - (i) ensure that during the term of this Deed, that the Recipient does all that is reasonably necessary to obtain and secure any Co-Funding;

- (ii) ensure that it complies with the terms and conditions in respect of any Co-Funding;
and
- (iii) immediately notify the Ministry if it becomes aware of any circumstances that may result in some or all of the Co-Funding not being secured and available to the Recipient to be applied towards the Project.

9 Deed of Contribution

Before the Parties entered into this Deed, the Parties agreed a Deed of Contribution dated 2018 in respect of the Project under which the Ministry made an upfront payment to the Recipient. The Parties agree the Deed of Contribution has expired.

Part B: Reporting

1 Project Reporting

Annual Reports:

- (a) Prior to 31 January 2024 the Recipient will submit to the Ministry an annual report that relates to the 13 month duration of this Project (an “Annual Report”).
- (b) The Recipient will ensure the Annual Report:
 - (i) uses the template provided the template provided via the Funds Management System, or by the Ministry at Schedule 1;
 - (ii) includes a comparison of the Project Activities undertaken (including Project Activities achieved and not achieved) against those set out in the applicable Annual Work Plan and the Work Programme;
 - (iii) in relation to funding and expenditure, sets out:
 - (A) the amount spent on the Project Activities undertaken and a breakdown of the expenditure for the duration of the Project tracked against the applicable Annual Work Plan and Work Programme budgets;
 - (B) the amount spent on the Project Activities and a breakdown of the expenditure in aggregate for the period starting on the Commencement Date and ending the Expiry Date;
 - (C) confirmation and details of contributions made by the Recipient:
 - (i) for the term of this Deed; and
 - (ii) in aggregate for the period starting on the Commencement Date and ending the Expiry Date;
 - (D) the amount of Grant funding invoiced and received, the activities to which Grant funding was applied;
 - (E) the total aggregate amount of Grant funding received;
and
 - (F) the amount and details of funding contributions from any other source:
 - (i) applied to the Project activities; and
 - (ii) in aggregate of the period starting on the Commencement Date and ending the Expiry Date;
 - (iv) includes an assessment of progress against the Work Programme and the applicable Annual Work Plan including monitoring data and progress against the Project objectives;
 - (v) addresses any issues raised and provides any additional information requested by the Ministry;
 - (vi) provides an update of health and safety in relation to the Project activities;
 - (vii) provides the Change Control Register (in accordance with paragraph 2.7 of Schedule 6); and

- (viii) is prepared by the Recipient and submitted to the Ministry for approval at the cost of the Recipient.

Quarterly Reports:

- (a) The Recipient will submit a quarterly report to the Ministry for the periods ending 31 December, 31 March, 30 June, and 30 September by the end of the calendar month that follows of each year during the term of this Deed (each, a **"Quarterly Report"**).
- (b) The Recipient will ensure that each Quarterly Report:
 - (i) uses the template provided via the Funds Management System, or by the Ministry at Schedule 1;
 - (ii) updates progress on the Project Activities (including those Project Activities that were detailed in the immediately previous Quarterly Report) since the last Quarterly Report or Annual Report against the applicable Annual Work Plan and Work Programme;
 - (iii) provides an update on expenditure to date tracked against the Annual Work Plan budget;
 - (iv) raises any issues or risks that will require discussion or action;
 - (v) provides an update of health and safety in relation to the Project activities;
 - (vi) details the amount of funding invoiced and received from all funding sources for the relevant three month period and the Project Activities to which the Grant Funding was applied.

Audit Reports:

- (c) The Recipient will submit an audit report to the Ministry no later than three months after the Expiry Date, in respect of the Grant funding received by the Recipient for the term of this Deed (each, an **"Audit Report"**).
- (d) Each Audit Report must be prepared by an auditor (independent from the Recipient and the Recipient's related entities) who is a chartered accountant or equivalent.
- (e) The Recipient must instruct the auditor to conduct compliance engagement in accordance with the Ministry's guidance document "Audit Guidance for the Ministry Administered Funds", and specifically Standard on Assurance Engagements (SAE)3100 (Revised) Compliance Engagement (issued by the New Zealand Auditing and Assurance Standards Board) to obtain reasonable assurance.
- (f) The scope of the audit must include:
 - (i) compliance with the terms and schedules of this Deed (as may be varied during the term of the Deed);
 - (ii) appropriate use of the Grant funding and Project funding from other sources; and
 - (iii) any other matters raised by the Ministry in relation to the proposed audit.
- (g) In the event that an audit reveals any misappropriation of the Grant funding or material discrepancies, the Recipient will be liable for the repayment of any misappropriated Grant funding monies, in addition to any other rights or remedies that the Ministry may be entitled to under the terms of this Deed and at law.
- (h) The Recipient may claim reasonable and actual costs up to the annual amount stated in the Work Programme] it incurs from compliance with these audit report requirements as Project Costs.

Project Closure Report:

The Recipient will submit a Project Closure Report no later than three months after the Expiry Date and pursuant to Part C clause 4.9.

2 Approval of Reports

- (a) Any report under Part B, except for the Audit Report, must be approved by the Governance Group before being submitted to the Ministry.
- (b) The Ministry will consider any report submitted to it under Part B and notify the Recipient in writing within four weeks of receipt whether the Ministry:
 - (i) accepts the report, or
 - (ii) requests reasonable modifications to the report, or
 - (iii) rejects the report on reasonable grounds.
- (c) Where the Ministry requests reasonable modifications to the report, the Recipient will promptly (and within 20 Working Days) update the report accordingly and resubmit to the Ministry for its subsequent review in accordance with this Part B clause 2.
- (d) Where the Ministry rejects the report on reasonable grounds, either Party may request a meeting with the other Party's appointed representative to discuss matters related to the report.

Part C: General Terms

Section 1: Definitions and Interpretation

1.1 **Definitions:** In this Deed, unless the context requires otherwise, the following definitions shall apply:

“Annual Work Plan” means the annual plan prepared by the Recipient (and approved in accordance with this Deed), detailing budgets and funding sources, Project Activities and Objectives of the Project;

“Capital Assets” means those assets used in the production of goods or the rendering of services by the Recipient that are acquired, enhanced or brought to working order, by the Recipient using an amount of the Grant;

“Capital Costs” means costs incurred by the Recipient in acquiring an asset, enhancing an asset or in bringing an asset to working order or to a state in which it can produce the goods or render the services as required for the Project;

“Clawback Amount” means an amount calculated as follows:

$$\text{Clawback Amount} = G - (G \times (x/y)),$$

Where, for the relevant Capital Asset:

G = that amount of the Grant applied to Capital Costs

x = the number of whole calendar months since the first payment of that part of the Grant applied to Capital Costs

y = the number of months of the restriction period set out in Schedule 4;

“Client Portal” means the Recipient’s access point to the Funds Management System;

“Commencement Date” means the date specified in Part A of this Deed;

“Deed” means the legal agreement between the Ministry and the Recipient that comprises this Deed and any and all Schedules, Annexures, and Annual Work Plans attached or incorporated by reference;

“Expiry Date” means the date specified in Part A of this Deed;

“Financial Year” means any 12 calendar month period, or part period thereof, commencing on 1 July;

“Force Majeure Event” means:

- (a) fire, explosion, lightning, storm, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, epidemic or pandemic, riot and civil commotion;
- (b) failure by any utility company or other like body to carry out works or provide services;
- (c) any failure or shortage of fuel or transport;
- (d) war, civil war, armed conflict or terrorism;
- (e) any official or unofficial strike, lockout or other labour dispute;
- (f) governmental action; or

(g) such other substantially similar circumstances which prevents either or both Parties from performing its obligations under this Deed;

“Fund” means the Freshwater Investment Fund as administered by the Ministry;

“Funds Management System” means the Ministry’s electronic fund management system for the Fund, this system will be made available by the Ministry to the Recipient via its Client Portal;

“Governance Group” means the governance group established under Terms of Reference to oversee the governance and direction of the Project;

“Grant” means the sum of funding provided by the Ministry from the Fund pursuant to this Deed;

“Intellectual Property” means all manner of intellectual property rights including (without limitation) patents, trademarks and service marks, logos, copyright, design rights and know-how whether registrable or not in any country;

“Minister” means the Minister for the Environment;

“Objective” means any objective the Recipient shall complete as part of the Project as set out in the relevant Annual Work Plan;

“Parties” means the Ministry and the Recipient;

“Payment Request” means the Recipient’s request for payment of a sum of Grant monies in the template provided by the Ministry;

“Project” means the project to be completed by the Recipient in accordance with the Annual Work Plans;

“Project Activities” means those project tasks and activities the Recipient shall complete as part of the Project as set out in the relevant Annual Work Plan;

“Project Closure Report” means the project closure report prepared by the Recipient in accordance with Part C clause 4.9;

“Project Costs” means those costs that are reasonable and either;

- (a) directly attributable to the Project Activities; or
- (b) if they cannot be directly attributed to the Project Activities, can be allocated to the Project in accordance with a standard cost allocation system and cost drivers,

measured in standard accrual accounting terms and excluding:

- (c) any mark up or profit margin by the Recipient; and
- (d) any costs based on theoretical or perceived market rates;

“Project Executive” means the project executive appointed by the Recipient in accordance with special term 3 in Part A of this Deed;

“Project Manager” means the project manager appointed by the Recipient in accordance with special term 3 in Part A of this Deed;

“Restriction Period” means in respect of each Capital Asset, a period of 60 months from the date of first payment of any portion of the Grant applied to relevant Capital Costs;

“Security Interest” has the meaning given to that term in the Personal Property Securities Act 1999;

“Terms of Reference” means the terms of reference establishing, and describing the functions, make-up and procedure of, any Governance Group;

“Work Programme” means the work programme prepared by the Recipient covering the life of the Project and attached at Part A of this Deed; and

“Working Day” means any day on which banks are generally open for business in Wellington (other than Saturdays, Sundays or public holidays).

1.2 Interpretation: In the interpretation of this Deed, unless otherwise stated:

- (a) no executive or prerogative power or right, or any immunity, of the Crown is affected by this Deed;
- (b) “including” and similar words do not imply any limitation;
- (c) reference to the singular includes the plural and vice versa and references to any gender includes both genders;
- (d) headings are included for ease of reference only and shall not affect the interpretation of this Deed;
- (e) references to clauses and schedules are references to clauses of and schedules to this Deed;
- (f) amounts are in NZ\$ and exclude GST (if any);
- (g) if the Recipient comprises more than one person, each of those person’s liability to the Ministry is joint and several;
- (h) references to a party or a person includes any form of entity and their respective successors, assigns and representatives; and
- (i) any statutory reference includes any statutory extension, amendment, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

1.3 Precedence: In the event of a conflict between:

- (a) the terms of Part A and Part B of this Deed, Part A - 4 (Special Terms) shall take precedence; and
- (b) Parts A-C of this Deed, and any other Schedule or attachment (including the Annual Work Plans), Parts A–C of this Deed shall take precedence;

except to the extent the parties expressly agree in writing otherwise with reference to this clause 1.3.

Section 2: The Grant

2.1 Grant amount: The Ministry approves the Grant for the Project of the lesser of:

- (a) \$6,500,000 (GST excl); or
- (b) the maximum percentage of the actual total cost of the Project, assessed over the duration of the Project, approved by the Ministry and specified in the Annual Work Plan (if any); or
- (c) an amount equal to the difference between the actual total cost of the Project and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.

- 2.2 **Maximum:** Under no circumstances shall the Grant funding payable to the Recipient exceed the amount specified in 2.1(a).
- 2.3 **Multi-year Projects:** Not used.
- 2.4 **Capital Assets:** The terms in Schedule 4 (Capital Assets) shall apply to Capital Assets (if any).
- 2.5 **Full funding:** The Recipient warrants and represents that it will not require any further funding from the Ministry in order to complete the Project.
- 2.6 **Use of Grant:** The Recipient must only use the Grant for the purposes of the Project and in accordance with this Deed. The Ministry may recover any Grant monies which are misappropriated or not spent in accordance with this Deed. In particular, the Recipient shall:
- (a) ensure that the Grant is only used for costs that are Project Costs;
 - (b) ensure that expenses incurred in carrying out the Project are reasonable and in accordance with any Expense Policy issued by the Ministry as notified to the Recipient from time to time;
 - (c) not use any part of the Grant for Capital Costs, except with the prior written agreement of the Ministry;
 - (d) account for the Grant received under this Deed in accordance with generally accepted accounting practices, with appropriate internal controls to ensure that the Grant is applied for the purposes of this Deed;
 - (e) establish, and maintain for the period of the Project, cost codes that relate specifically to all costs incurred for the purposes of this Project so that the Project Costs can be categorised and reported by their nature;
 - (f) comply with any cost policies provided by the Ministry from time to time in relation to the accounting treatment of Project Costs and use of the Grant;
 - (g) ensure that the Grant is used to fund the Project Costs or subcontractor specified in the Annual Work Plans, when those costs are properly due and payable;
 - (h) follow appropriate procurement processes when buying goods or services for the Project so that only reasonable, open market costs are incurred on an arm's length basis avoiding any conflict of interest. If a conflict of interest is unavoidable the conflict must be declared to the Ministry and managed appropriately by the Recipient;
 - (i) not claim for costs or expenses that have been, or will be, claimed from other sources, except as expressly provided for in this Deed; and
 - (j) not claim or use any part of the Grant to support or assist activities which are political (e.g. supporting a political party or movement, running a political campaign, or lobbying against the Government).
- 2.7 **Eligibility:** Without prejudice to any other rights to which the Ministry may be entitled, the Recipient accepts that eligibility for payment of the Grant may, at the Ministry's sole discretion, be lost if:
- (a) claims for payment and related information are not given to the Ministry by sixty calendar days following the due date of the final Project Activity; or
 - (b) the Project is not completed by the Expiry Date; or

- (c) the Project is not completed by and claims for payment (and any required supporting documentation) are not given to the Ministry by the end of the Financial Year in which the Expiry Date falls.
- 2.8 **Public statements:** The Recipient shall ensure no public statement is made by or on behalf of the Recipient relating to the commencement of this Deed, the Grant or the Project before such a statement is made by the Ministry or Minister.
- 2.9 **No Retrospective Costs:** Without limiting any previous Deed of Contribution entered into by the Parties the Ministry will not be liable for any costs or liabilities incurred by the Recipient in relation to the delivery of the Project prior to the Commencement Date.

Section 3: General Terms and Conditions

- 3.1 **Entire Agreement:** This Deed (including the Annual Work Plans and attachments) contains everything the Parties have agreed on in relation to the Grant. In the event of any conflict, the terms of Parts A-C of this Deed shall prevail. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, save as permitted by law.
- 3.2 **Changes:** Any variation to this Deed (including the Annual Work Plans) must be in accordance with Schedule 6 (Change Control Process).
- 3.3 **Severability:** If any term of this Deed becomes or is declared by any court to be invalid or unenforceable in any way:
- (a) such invalidity or unenforceability shall in no way impair or affect the remainder of the Deed which will remain in full force and effect; and
 - (b) the invalid or unenforceable term will be replaced with a provision which as far as possible accomplishes the original purpose of the term.
- 3.4 **Waiver:** Any delay or failure by either Party at any time to exercise (in whole or in part) any right or remedy under this Deed shall not be construed as a waiver of any such right or remedy and shall not affect the validity of the Deed (in whole or in part). No waiver shall be effective unless it is expressly stated in writing to be a waiver and communicated to the other Party in writing. Any waiver will not constitute a waiver of any subsequent exercise of the same right or remedy in the future.
- 3.5 **Governing Law and Jurisdiction:** This Deed is governed by the law of New Zealand and the Parties submit to the exclusive jurisdiction of New Zealand's courts.
- 3.6 **Dispute Resolution Procedure:**
- (a) If any dispute arises out of or in connection with this Deed, the main contact persons of each Party shall use all reasonable endeavours to resolve it as promptly as possible within 15 Working Days of a Party notifying the other Party of the dispute (**Date of Notification**). Subject to such persons having met at least twice, either Party may at any time formally refer such dispute to their respective Chief Executives (or equivalent) for resolution within 10 Working Days of the date of referral.
 - (b) If a dispute is not settled in accordance with clause 3.6(a), either Party may refer the dispute to:

- (i) mediation or some other form of alternative dispute resolution (Mediation) conducted in New Zealand and governed by New Zealand law; or
 - (ii) the jurisdiction of the New Zealand courts.
- (c) If the Parties do not agree within 5 Working Days of reference of the dispute to Mediation (or such other period as agreed by the Parties in writing):
- (i) the resolution of the dispute;
 - (ii) the mediation procedures to be adopted;
 - (iii) the timetable for all steps in those procedures; and
 - (iv) the selection and compensation of the independent person required for the Mediation,

then the Parties shall mediate the dispute per the mediation rules of the Resolution Institute and the Chair of the Resolution Institute (or his or her nominee) shall select the mediator and determine the mediator's remuneration. The Parties shall make all reasonable efforts to resolve the dispute by Mediation within 3 months (or such other period as agreed by the Parties in writing) from the Date of Notification. If the dispute is not resolved by Mediation within such period, the Parties may seek any other remedies available to them.

- (d) Nothing contained in this clause 3.6 shall prevent either Party, in an emergency, seeking any interim or interlocutory relief from the court.
- (e) Except in respect of Mediation (the costs of which shall be paid as set out above), each Party shall pay their own costs for resolving any dispute.
- (f) Each Party will continue to perform its obligations under this Deed as far as practical given the nature of the dispute.

3.7 Intellectual Property Rights:

- (a) **Pre-existing Intellectual Property:** Intellectual Property owned by a Party or its licensors prior to the commencement of this Deed and Intellectual Property developed by a Party independently from this Deed, remains the property of that Party or its licensors as the case may be.
- (b) **New Intellectual Property:** Subject to clause 3.7(a) and the Recipient complying with the terms of this Deed, any Intellectual Property created or developed in the course of the Project shall become the property of the Recipient or its licensors.
- (c) **Recipient Intellectual Property:** The Recipient grants to the Ministry a non-exclusive, sublicensable, royalty free, perpetual and irrevocable licence to use, modify, develop, sublicense and disseminate for any purpose all Intellectual Property owned by the Recipient or its licensors that forms part of the Project Activities.
- (d) The Recipient warrants and represents that it is legally entitled to grant the licence stated in clause 3.7(c).

3.8 **Third Party Rights:** Unless expressly stated no part of this Deed shall create rights in favour of any third party pursuant to Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 (contractual privity).

3.9 **Term:** This Deed shall commence on the Commencement Date and shall, subject to either party's rights of termination under this Deed, continue in force until the Expiry Date or such other date as

the Parties may agree in writing. Clause 3.2 and Schedule 6 (Change Control Process) will apply to any change to the Expiry Date unless the Ministry otherwise requires (at its sole discretion).

- 3.10 **Consequences of Expiry / Termination:** Termination of this Deed shall be without prejudice to any rights or liabilities accrued at the date of termination, provided that the Ministry shall cease to have any obligation to pay the Grant to the Recipient (which may, at the Ministry's sole discretion, include payment of any overdue or outstanding invoices).
- 3.11 **Notices:** Any notice given under or pursuant to this Deed shall be in writing and signed by an authorised person and may be delivered personally by hand, post or email to the other party at the address stated in this Deed. Notices shall be deemed delivered as follows:
- (a) if delivered personally by hand, at the time of delivery;
 - (b) if posted, on the third Working Day after posting;
 - (c) if emailed, on the day of successful transmission as confirmed by the email system; and
 - (d) if delivered after 5pm, at 9am the next Working Day.
- 3.12 **Counterparts:** This Deed may be executed by the Parties in two or more counterparts (including emailed copies), each of which shall be deemed an original but when taken together will constitute a binding and enforceable agreement between the Parties.
- 3.13 **Force Majeure:** A Party ("the affected party") shall not be liable to the other Party for any delay or failure to perform any of their obligations under this Deed if such delay or failure results from a Force Majeure Event, provided that where a Party seeks to rely upon this clause:
- (a) As soon as the affected party becomes aware of the Force Majeure Event, it shall immediately notify the other Party and confirm the estimated period that the delay or failure shall continue.
 - (b) The affected party shall use its best endeavours to continue to perform its obligations under this Deed and minimise the effect of the event for the duration of any Force Majeure Event.
 - (c) Subject to clause 4.25 of this Part C, Section 4, if any Force Majeure Event prevents the affected party from performing all of its obligations under the Deed for a period in excess of 30 calendar days, either Party may terminate the Deed by notice in writing with immediate effect.

The affected party will not be entitled to relief under this clause in any circumstances to the extent it has directly or indirectly caused or substantially contributed to any delay or failure in the performance of its obligations.

- 3.14 **Survival:** The following clauses shall remain in full force and effect after expiry or termination: Part B (Reporting), clauses 2.9 (No Retrospective Costs), 3.5 (Governing Law and Jurisdiction), 3.6 (Dispute Resolution Procedure), 3.7 (Intellectual Property Rights), 3.11 (Notices), 4.5 (Endorsement), 4.6 (Publications), 4.7 (Project Information), 4.9 (Closure Report), 4.10 (Allow Access), 4.11 (Confidentiality), 4.12 (Recordkeeping), 4.13 (Official Information Requests), 4.14 (Reputations), 4.15 (Third Party Intellectual Property Rights), 4.20 (Insurance), 4.23 (Default Interest), 4.24 (Indemnity), 5.3 (Project Review), 5.4 (Ministry Publicity and Confidentiality), 5.5 (Recovery of Grant), 5.9 (Ministry Not Liable), Schedule 2 (Publications), Schedule 3 (Audit), Schedule 4 (Capital Assets), Schedule 5 (Multiyear Project), Schedule 6 (Change Control Process), this clause and any other clauses of this Deed which by their nature are intended to survive expiry or termination of this Deed.

Section 4: Recipient's rights and obligations

4.1 Project Delivery: The Recipient must carry out the Project and complete the Project Activities in accordance with the Annual Work Plans, the terms and conditions of the Deed. In particular the Recipient shall:

- (a) promptly and efficiently carry out the Project with due skill, care and diligence;
- (b) achieve successful, timely completion of the Project Activities on or before their due date;
- (c) to the extent reasonably possible and taking into consideration that the Recipient is a local authority with many competing priorities give the Project appropriate priority over other activities and not divert resources away from the Project which may cause delays in its completion;
- (d) efficiently and economically source and provide everything the Recipient needs to undertake the Project at the Recipient's risk and cost;
- (e) comply with all New Zealand laws, codes and standards and all applicable international conventions;
- (f) without limiting the generality of clause 4.1(e), comply at all times with the requirements and provisions of the Hazardous Substances and New Organisms Act 1996 (HSNO Act), Resource Management Act 1991 (RMA) and the Health and Safety at Work Act 2015 (HSWA) (and any amendments or replacements to those Acts) and any related regulations, codes of practice and industry best practice guidelines;
- (g) obtain every necessary and prudent authorisation in order to carry out the Project before any actions requiring the authorisations are commenced and comply with such consent or authorisation; and
- (h) maintain an appropriate governance structure, including compliance with any relevant legislative requirements.

4.2 Personnel: The Recipient shall:

- (a) carry out the Project only using appropriately trained, qualified, experienced, supervised personnel who have satisfactorily completed any vetting that may be required by the Ministry (including, for example, a criminal convictions check);
- (b) ensure that all of its employees and personnel (including sub-contractors) are trained in the relevant health and safety requirements applicable to the Project (confirmation of relevant training is to be provided to the Ministry if requested);
- (c) ensure that all of its employees and personnel and any other parties associated with the Project, including sub-contractors, service providers, the public, and any visitors, undergo appropriate safety briefings and health and safety inductions;
- (d) ensure that all of its employees and personnel (including sub-contractors) are aware of potential liabilities and obligations under the environmental laws and regulations relevant to the Project;
- (e) end the involvement with the delivery of the Project of any of the Recipient's personnel to the extent reasonably requested by the Ministry; and
- (f) ensure that any specified key personnel carry out the Project; and

4.3 Keep the Ministry Informed: The Recipient shall keep the Ministry properly informed in writing (and in electronic form if requested) about:

- (a) progress of any important issues in relation to the Project including notifying the Ministry immediately if it becomes aware of any issues that may affect delivery of the Project in accordance with an Annual Work Plan that may require any material changes to be made in relation to the Project, or that might give rise to liability or enforcement action under any laws and obligations;
 - (b) any enforcement action or enquiry commenced against the Recipient under the HSNO Act, RMA or HSWA, or any other laws, regulations, codes, standards or applicable International Convention, in any capacity;
 - (c) material health and safety information in relation to the Project including, but not limited to:
 - (i) reports of occurrences of safety incidents, details of damaged property, unsafe or hazardous acts or conditions (as soon as practicable);
 - (ii) details of non-compliances or any details of any new hazards or significant amendments to the Recipient's safety management plan; and
 - (iii) evidence if requested, that regular health and safety meetings are held and that scheduled audits have been completed. (The Recipient agrees that a representative of the Ministry may be present at such meetings or audits or inspections from time to time).
- 4.4 **Reports and meetings:** The Recipient shall provide the Ministry with reports, and attend meetings, as required by the Ministry from time to time.
- 4.5 **Endorsement:** The Recipient acknowledges and agrees that the Minister does not necessarily endorse the Project and accordingly the Recipient shall not represent that the Minister endorses the Project. However, the Recipient will appropriately acknowledge the Grant in all publications and publicity about the Project, and the form and content of such acknowledgement shall comply with Schedule 2 (Publications) and/or with any requirements that the Ministry may specify.
- 4.6 **Publications:** The Recipient shall comply with the requirements detailed in Schedule 2 (Publications) in respect of any publication (in any form) arising from this Deed or the Grant.
- 4.7 **Project Information:** The Recipient shall make information about the Project (particularly outcomes) freely available to any person who wishes to use it for any non-profit purpose. In each publication (in any form) which results from the Project, the Recipient shall comply with the copyright statement requirements in Schedule 2 (Publications) and shall state that the use and copying of the information for non-profit purposes is welcomed and allowed.
- 4.8 **Post-Project review:** The Recipient agrees that following the expiry or termination of this Deed, it shall provide access to its personnel and make information available as reasonably required by the Ministry for the purposes of reviewing the Project and/or the Fund.
- 4.9 **Project Closure Report:** At the completion of the Project the Recipient will prepare a Project Closure Report using the template provided by the Ministry and submit it to the Ministry no later than three months after the Expiry Date. The Project Closure Report:
- (a) shall cover the Term of the Project;
 - (b) must include an assessment of the extent to which the Project objectives (agreed in the Annual Work Plan) have been achieved;
 - (c) a comparison of the Project Activities undertaken during the Term against those set out in each of the Annual Work Plans;

- (d) identification of any lessons learned through the delivery of the Project;
 - (e) address any issues raised and include any additional information requested by the Ministry; and
 - (f) must be prepared by the Recipient and approved by the Ministry at the cost of the Recipient.
- 4.10 **Allow Access:** The Recipient agrees that upon the Ministry's request it shall provide, at all reasonable times and upon reasonable notice, access to their premises, personnel and records (physical files and electronic) for the purpose of audit and verification of work undertaken, use of the Grant and other reasonable purposes in connection with this Deed in accordance with clause 5.3 and Schedule 3 (Audit) and completion of the Post-Project review in accordance with clause 4.8.
- 4.11 **Confidentiality:** The Recipient must keep confidential and secure all information disclosed by the Ministry in connection with the negotiation or performance of this Deed, including the terms of this Deed (collectively "Confidential Information"). The Recipient must not disclose any Confidential Information except:
- (a) with the Ministry's prior written consent;
 - (b) as necessary to fulfil the Recipient's obligations in this Deed;
 - (c) to the extent the Confidential Information is in the public domain (other than through a breach by the Recipient of its obligations in this clause); or
 - (d) as otherwise required by law.
- 4.12 **Recordkeeping:** The Recipient shall keep accounts and other records, and have a system which enables prompt and accurate verification of any matter in relation to the Project, particularly about how the Grant has been or will be used, and what expenditure by item has been incurred. Records must be retained and available for review, audit, copying and use by the Ministry's representatives at any time during, and for at least 7 years after the Expiry Date.
- 4.13 **Official Information Requests:** The Recipient shall immediately inform the Ministry of any request received by it for information under the Official Information Act 1982 (OIA) or the Local Government Official Information and Meetings Act 1987 (LGOIMA).
- 4.14 **Reputations:** The Recipient shall not knowingly or recklessly, do, permit or omit, to do anything in relation to this Project that may attract adverse publicity or damage the reputation, good standing or goodwill of the Fund, the Minister, the Ministry or the New Zealand Government.
- 4.15 **Third Party Intellectual Property Rights:** The Recipient:
- (a) warrants that it has a legal entitlement to use the Intellectual Property provided as part of the Project Activities and that providing the Project Activities does not infringe the Intellectual Property of any third party; and
 - (b) indemnifies the Ministry against any claim arising from the Recipient's infringement or alleged infringement of any third party's Intellectual Property or the Ministry's claim of Intellectual Property developed under or in connection with this Deed.
- 4.16 **Representations and Warranties:** The Recipient represents and warrants to the Ministry that:
- (a) it has full power and authority to enter into and perform this Deed and this Deed has been executed by a duly authorised representative of the Recipient;
 - (b) all information, documents and accounts of the Recipient submitted to the Ministry for its appraisal of the Project for the purposes of this Deed are true and accurate and no change

has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Recipient since such information was provided; and

- (c) the Recipient has disclosed to the Ministry all information which would or might reasonably be thought to influence the Ministry in awarding the Grant to the Recipient or the amount thereof.

4.17 Assignment:

- (a) The Recipient's rights to the Grant pursuant to this Deed are exclusive to the Recipient and the Recipient must not assign or otherwise transfer any benefit or burden of this Deed without the prior approval in writing of the Ministry. No assignment releases or discharges the assignor from any obligation under this Deed.
- (b) The assignment by the Recipient of any of its rights or obligations under this Deed in whole or in part will not relieve the Recipient in any form whatsoever from its responsibility for due performance of this Deed in accordance with its terms.

4.18 Subcontracting: The Recipient may sub-contract any of its obligations under this Deed subject to the following conditions:

- (a) Even if aspects of the Project are sub-contracted the Recipient continues to be responsible for delivery of the Project and performance of this Deed and will remain wholly responsible for the work, acts and/or omissions of all subcontractors;
- (b) The Recipient is responsible for ensuring the suitability of any subcontractor and the subcontractor's capability and capacity to deliver the aspect of the Project being sub-contracted;
- (c) The Recipient must ensure each agreed key subcontractor is fully aware of the Recipient's obligations under the Deed and to the extent possible any subcontract it enters into is on terms consistent with this Deed (to the extent relevant to the subcontractors' performance);
- (d) The Recipient shall be responsible for any fees or expenses claimable by the subcontractors and for any costs incurred by the Recipient in employing the subcontractors;
- (e) The Recipient must inform the Ministry of the involvement of any subcontractors and disclose in writing to the Ministry all material interests (including all direct or indirect financial interests) in any subcontractor;
- (f) The Recipient must promptly end the involvement of any subcontractor (or any of their personnel) as may be reasonably requested by the Ministry; and

4.19 Relationship and Authority:

- (a) Nothing in this Deed shall constitute a partnership (being a relationship between persons carrying on a business in common with a view to profit), joint venture, principal/agent or employer/employee relationship between the Parties for any purposes. The relationship between the Parties is a relationship only for the supply of funding on the terms set out in this Deed.
- (b) The Recipient does not have the Ministry's (or the Minister's) authority to say or do anything on behalf of the Ministry (or the Minister).

4.20 Insurance: The Recipient must, at the Recipient's cost, have and maintain appropriate insurance cover with a reputable insurance company to cover its liabilities (including both public liability

and professional indemnity insurance) arising out of the Project for the term, and for a period of 24 months following the termination or expiry, of this Deed. The Recipient shall provide the Ministry with evidence to the Ministry's reasonable satisfaction of such cover upon demand.

- 4.21 **Health and safety systems:** At all times the Recipient will have in place, implement and operate safety management systems which comply with the HSWA (and any amendments or its replacements) and any applicable regulations, codes of practice and industry best practice guidelines. The Recipient is required to ensure that all safe work procedures and practices developed for the Project meet all statutory and regulatory requirements.
- 4.22 **Financing Statements:** The Recipient agrees to not register a financing statement against the Ministry, the Minister or the New Zealand Government on the Personal Property Securities Register in respect of the arrangements under this Deed.
- 4.23 **Default Interest:** If the Recipient fails to pay, when due, an amount payable by it under this Deed then, without prejudice to its other obligations, the Recipient will pay default interest on that overdue amount (including interest payable under this clause) calculated from its due date to the date of its receipt by the Ministry (after as well as before judgment) payable daily and to the extent not paid in any calendar month compounded on the first day of the next calendar month. This obligation to pay default interest will arise without the need for notice or demand. The rate of default interest in a calendar month will be 5 per cent per annum above the Ministry's cost of funds (expressed as an annual percentage rate) from whatever sources the Ministry may select, calculated on a daily basis.
- 4.24 **Indemnity:** The Recipient will, on demand, indemnify the Ministry against any cost, loss, expenses or liability (including all reasonable legal expenses on a full indemnity basis) incurred by the Ministry as a result of or in connection with the Project and /or use of the funds paid by the Ministry. This includes any amount payable by the Recipient to the Ministry not being paid when due.
- 4.25 **COVID-19 Pandemic:**
- (a) The Recipient confirms that it is able to meet its obligations as contained in this Deed, on the basis of the Government imposed restrictions in place as a result of the COVID-19 pandemic as at the Commencement Date.
 - (b) If, after the Commencement Date, the Government imposes increased restrictions in response to the COVID-19 pandemic, as a result of which the Recipient's obligations as contained in this Deed are suspended or delayed, then the Parties may agree to:
 - (i) vary this Deed in accordance with clause 3.2 and schedule 6 of this Deed; or
 - (ii) invoke the Remedial Plan process set out in special term 6 of this Deed.

Section 5: Ministry's Rights and Obligations

- 5.1 **Payment:** The Ministry shall pay the relevant portion of the Grant from the Fund in arrears to the Recipient upon receipt of a request for payment from the Recipient, subject to:
- (a) the Recipient's compliance with the terms of this Deed (including the Work Programme, Annual Work Plans and the special terms); and
 - (b) the availability of funds, or reductions, in the Fund due to changes in the appropriation of funding for activities of the type covered by this Deed as a result of an Act of Parliament.

5.2 Invoice:

- (a) Payment of any Grant monies is not due until the Ministry has received from the Recipient a request for payment in accordance with special term 7, all supporting documentation required by the Ministry (including evidence of completed Project Activities) and the relevant Project Activities to which the tax invoice relates has been progressed to the Ministry's reasonable satisfaction. Sufficient evidence of the costs incurred by the Recipient in undertaking the Project, requested by the Ministry from time to time, shall be provided promptly upon the Ministry's request.
- (b) Subject to clause 5.2(a) and special term 7, where the Ministry and Recipient have agreed in advance to the sum of funds to be invoiced, the Ministry will endeavour to pay the Grant amount within 20 Working Days of receipt of a correct invoice provided by the Recipient specifying that agreed sum.

5.3 **Project Review:** The Ministry may, in accordance with clause 4.10 (Allow Access), observe and inspect anything at any time in relation to the Project and for the purposes of audit in accordance with Schedule 3 (Audit).

5.4 **Ministry Publicity and Confidentiality:** The Ministry may disclose (including via the Ministry's website on the Internet) any information in relation to the Project to anyone at any time. However, the Ministry shall not publicly disclose information that is designated as commercially sensitive by the Recipient or any of its contractors or otherwise likely to be commercially sensitive except:

- (a) with the Recipient's prior written consent;
- (b) as necessary to fulfil the Ministry's obligations in this Deed or to use the Project Activities;
- (c) to the extent the information is in the public domain (other than through a breach by the Ministry of its obligations in this clause);
- (d) as otherwise required by law, including the Ministry's obligations under the Official Information Act 1982, the Privacy Act 2020 and any other legislation or regulations relevant to its operations and nothing in this agreement applies to any disclosure required under any such legislation or regulations; or
- (e) as required by a Select Committee or a Minister of the Crown, parliamentary convention or by procedures in relation to the appropriation of public money.

5.5 Recovery of Grant:

- (a) The Ministry may reduce, suspend, or withhold the Grant or require all or part of the Grant to be repaid, if:
 - (i) the Ministry (acting reasonably) judges the Recipient's performance of the Project to be unsatisfactory based on its assessment of the reports submitted under Part B;
 - (ii) the Recipient breaches clause 2.6 (Use of Grant) of this Deed or fails to comply with any other term or condition of this Deed that the Ministry considers to be material;
 - (iii) any enforcement action is commenced against the Recipient under laws, regulations, codes, standards or any applicable conventions in relation to the Project or in any other capacity;
 - (iv) this Deed is terminated in accordance with clause 5.6 (Termination);

- (v) there is a substantial change to the Project which the Ministry (acting reasonably) has not approved;
 - (vi) any information provided in the application for Grant funding, the Work Programme or Annual Work Plans, in a claim for payment, or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which the Ministry (acting reasonably) considers to be material;
 - (vii) if the Ministry (acting reasonably) judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory;
 - (viii) the Ministry has consented to a change in the Project under the Change Control Process at Schedule 6, which in its opinion (acting reasonably) reduces the amount of Grant needed;
 - (ix) at the Ministry's sole discretion, if all or any of the Grant monies are unspent in relation to a Project Activity, then the Ministry may direct that some or all of the Grant money for that Project Activity shall be payable for the following sequential Project Activity. Any unspent Grant monies held by the Recipient at the end of the term of the Deed shall be returned to the Ministry; or
- (b) The Recipient agrees that on receipt of notice requiring repayment of the Grant (or a portion thereof) it shall make such repayment within 20 Working Days of the date of the notice.

5.6 **Termination:** Without prejudice to any other rights to which the Ministry may be entitled, if:

- (a) the Recipient breaches, or fails to properly or promptly perform, any of the Recipient's obligations in a way that the Ministry (acting reasonably) considers to be material, including, for the avoidance of doubt, any misappropriation of all or part of the Grant;
- (b) the Recipient fails to achieve any Project activity in a way that the Ministry (acting reasonably) considers to be material;
- (c) the Ministry believes that the Recipient is generally in financial difficulty which, in the reasonable opinion of the Ministry (acting reasonably), reduces the Recipient's ability to perform its obligations under this Deed; and/or
- (d) the Ministry reasonably considers that the Recipient and/or any acts or omissions of the Recipient (whether or not related to the Project):
 - (i) is bringing the Fund, the Ministry, the Minister or the New Zealand Government into disrepute; and/or
 - (ii) has become undesirable in light of the Fund's objectives or those of the Minister,
- (e) any enforcement action against the Recipient is successful under laws, regulations, codes, standards or any applicable conventions in relation to the Project;
- (f) if the Ministry (acting reasonably) judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory,

then the Ministry may suspend or terminate (in whole or in part) this Deed by written notice to the Recipient with immediate effect.

5.7 **Termination on Expiry:** If the Recipient has not completed the Project Activities in accordance with the Deed by the Expiry Date, the Ministry may (acting reasonably) terminate this Deed at any time by written notice to the Recipient with immediate effect.

5.8 **Not Used:**

5.9 **Ministry Not Liable:** The Ministry will not be liable in contract, tort (including negligence) or otherwise to the Recipient or any other person for any direct or indirect damage, loss or cost whatsoever in relation to this Deed and the Recipient carrying out the Project.

Schedule 1: Reporting Templates

Schedule 2: Publications

Ministry for the Environment Jobs For Nature or Freshwater Improvement Fund Logo

The Ministry for the Environment or Jobs For Nature or Freshwater Improvement Fund logos may not be used in any publication without the prior and express written approval of the Ministry; any use must be consistent with the guide to using the logo provided by the Ministry.

Acknowledgments

All publications must acknowledge that financial support has been received from **“the Freshwater Improvement Fund, which is administered by the Ministry for the Environment.”**

Disclaimer Clause

The following disclaimer must appear on the inside front cover of all publications supported by the Freshwater Improvement Fund.

“The Ministry for the Environment does not necessarily endorse or support the content of the publication in any way.”

Copyright Clause

All publications supported by the Freshwater Improvement Fund must include the following clause relating to copyright:

“This work is copyright. The copying, adaptation, or issuing of this work to the public on a non-profit basis is welcomed. No other use of this work is permitted without the prior consent of the copyright holder(s).”

Or an alternative version is:

“Reproduction, adaptation, or issuing of this publication for educational or other non-commercial purposes is authorised without prior permission of the copyright holder(s). Reproduction, adaptation, or issuing of this publication for resale or other commercial purposes is prohibited without the prior permission of the copyright holder(s).”

Paper and Ink

You should consider using environmentally sound paper and inks when producing publications. Preferably use paper with a recycled content that is either elemental chlorine free or totally chlorine free. Specify vegetable inks or mineral-free inks wherever possible.

Electronic Copies of Written Material

On completion of the Project all written results must be provided in an electronic Word Format plus two printed copies. Where possible, please also publish electronic copies of written material to your website and provide us with the URL. We will link to these from our website.

Websites

It is recommended that any website, or content published on a website, developed using the Grant is developed in accordance with the NZ Government Web Guidelines to ensure it is accessible to a wide audience.

Information systems

It is recommended that any information system, including databases, developed using funds from this Deed observes the standards in the E-government Interoperability Framework (e-GIF). Following the e-GIF will allow the information system to more easily work together with systems in government agencies and other organisations that are following the e-GIF.

Any programmes, databases or spreadsheets must have instructions for their use, including the versions of software needed to run databases or spreadsheets, and the platforms on which the software will run. These instructions should be in the form of a short word file.

Schedule 3: Audit

Scope of audit

The Freshwater Improvement Fund projects may be randomly selected for an audit by the Ministry or its agent (separate from any audit requirements imposed on the Recipient in the special terms). Any Recipient that receives funding over one million dollars will be audited annually. The Ministry may also carry out an audit at its sole discretion. An audit may take the form of a full technical, financial, compliance and/or health & safety audit, or a more informal assessment, of the Recipient and/or sub-contractor(s). The purpose of an audit is to check compliance with the terms and schedules of this Deed, the appropriate use of the Grant and/or reviewing the Recipient's ability to perform any obligations under or in connection with this Deed.

Audit requirements

The Ministry will inform the Recipient if an audit is to be carried out (**Notification of Audit**) and will seek an appropriate date and time for both parties. The Recipient must within three Working Days of the Notification of Audit agree a date and time. The date of the audit must be within 10 Working Days of the Notification of Audit. Audits will usually be carried out either by a fully qualified accountant or technical specialist who is independent of the Ministry or by Ministry staff. In most cases, the Ministry's representative for the Project will accompany the auditor. The Recipient must promptly provide or ensure the provision of adequate access, assistance and facilities for audit personnel as required by the Ministry during the hours of 8:00am and 5:00pm on Working Days.

Audit report

A full report of the outcome of any audit may be available to the Recipient upon request.

Cost of audit

In the event that the audit reveals any misappropriation of the Grant or material discrepancies (particularly those related to Project Activities and Objectives), the Recipient will be liable for the costs of an audit, as well as the repayment of any misappropriated Grant monies.

Schedule 4: Capital Assets

1 Asset Register

Capital Asset	Capital Cost	Portion of Grant	Restriction Period
[description of asset, including any serial number, registration number or vehicle identification number]	[costs incurred by the Recipient in acquiring the Capital Assets or in bringing a Capital Asset to working order or to a state in which it can produce the goods or render the services as required for the Project – should be identified by the Recipient in the Annual Work Plan]	[Portion of Grant that is applied to the Capital Cost]	5 years from first payment of any portion of the Grant applied to Capital Costs.

2 Additional Terms and Conditions

- 2.1 All Capital Assets will be and remain the property of the Recipient and will at all times be at the risk of the Recipient. The Recipient will bear the risk of any loss, theft, damage or destruction of any Capital Assets and if Capital Assets require repair or replacement, the Recipient will bear the cost of such repair or replacement.
- 2.2 The Recipient will maintain an up to date register of Capital Assets in the form set out in section 1 of this Schedule 4. Any changes to the register shall be made in accordance with this Deed and promptly notified to the Ministry in writing.
- 2.3 In consideration of the Ministry consenting to the application of all or part of the Grant to pay for Capital Costs, the Recipient agrees that, during the Restriction Period, the Recipient's ability to deal with Capital Assets shall be restricted as set out in sections 2.4 to 2.9 below.
- 2.4 During the Restriction Period, the Recipient shall not, without the prior written consent of the Ministry:
- (a) sell, assign or pledge any Capital Asset; or
 - (b) underlet, lend or otherwise part with possession of any Capital Asset; or
 - (c) create, agree to create, allow to come into existence or permit to subsist any Security Interest, mortgage, charge (fixed or floating), encumbrance, hypothecation, lien, pledge, trust, finance lease, deferred purchase, sale and lease-back, sale and repurchase, flawed asset arrangement, title retention or any other arrangement which has the practical effect of securing payment or performance of an obligation over or affecting all or any part of any Capital Asset.
- 2.5 During the Restriction Period, the Recipient shall:
- (a) protect all Capital Assets against distress, execution and seizure;
 - (b) maintain all Capital Assets in a good state of repair and in good working order and condition; and
 - (c) upon request by the Ministry, notify the Ministry of the present location of any Capital Asset.

- 2.6 During the Restriction Period the Recipient shall maintain at its cost insurance for all Capital Assets against all such risks as it is prudent in accordance with best commercial practice to insure against and any other risks which the Ministry may from time to time reasonably require for their full replacement value or on such other basis as the Ministry may agree in writing, and shall provide evidence of such insurance as and when reasonably requested by the Ministry.
- 2.7 If any of the following events occurs (whether or not within the control of any party) at any time prior to the expiry of the Restriction Period:
- (a) the Recipient fails to perform or observe any obligation under this Deed regarded by the Ministry as material, including the obligations in sections 2.4 to 2.6 in this Schedule 4, and, in the case of a failure which is capable of remedy, that failure is not remedied within 10 calendar days after written notice thereof has been given to the Recipient by the Ministry;
 - (b) any representations or warranty made under or in connection with this Deed by the Recipient is false or misleading in any respect regarded by the Ministry as material,

then the Recipient must notify the Ministry, immediately on becoming aware of it, of the occurrence of such event and at any time (and notwithstanding the previous waiver of any default) the Ministry may by notice to the Recipient declare any or all of the Clawback Amount to be immediately due and payable.

- 2.8 In order to secure the Recipient's obligations under this Deed in respect of the Clawback Amount, the Recipient hereby grants to the Ministry a Purchase Money Security Interest (as that term is defined in the Personal Property Securities Act 1999) in each Capital Asset. The Recipient will take all necessary steps (including as required by the Ministry from time to time) to ensure that the Security Interest becomes a "Perfected Security Interest" (as that term is defined in the Personal Property Securities Act 1999) including:
- (a) giving the Ministry written notice immediately following (and in any case, within two Working Days) the Recipient taking possession, or a person taking possession on the Recipient's behalf, of a Capital Asset;
 - (b) giving the Ministry all necessary information for the Ministry to effect a registration to perfect a Security Interest; and
 - (c) signing and delivering any necessary documentation.

The Recipient waives its right to receive a copy of any verification statement in relation to any Security Interest created by this Deed.

- 2.9 The Ministry will, at the expiry of the Restriction Period, register a release of any relevant financing statement on the Personal Property Securities Register.

Schedule 5: Multiyear Projects

Not used.

Schedule 6: Change Control Process

1 Definitions:

1.1 For the purposes of this Schedule, the following words shall have these definitions unless the context requires otherwise:

Change means any amendment, deletion or addition to the Work Programme, Annual Work Plans or this Deed;

Change Control Register has the meaning given to it in paragraph 2.7 of this Schedule;

Change Request means a written request for a Change which shall be substantially in the form provided by the Ministry;

Minor Change means any Change (including the reallocation of Grant from one Project Activity to another) and the Change does not:

- (i) result in a change in Project Costs;
- (ii) result in any change to a Project Activity which would be likely to prevent the Project from substantially achieving its Objectives;
- (iii) affect or likely affect the total Grant;
- (iv) materially affect the Objectives;
- (v) affect or likely affect the Expiry Date; or
- (vi) amend the terms of the Deed (including to any Schedule); and

Objectives mean the main goals of the Project to be achieved by and as specified in the Work Programme.

2 Change Requests

2.1 The Recipient or the Ministry must notify the other Party, through a Change Request form, of any Changes it proposes to make to the Deed, the Work Programme or an Annual Work Plan. Any Change must be submitted to the other Party for prior written approval in accordance with this Schedule.

2.2 **Change Request Form:** The Recipient, the Ministry, the Governance Group may issue a Change Request form at any time. The Change Request shall:

- (a) be substantially in the form provided by the Ministry;
- (b) if issued by the Recipient, include an impact assessment (being an analysis of the effect of the proposed Change, including on costs and timelines); and
- (c) if issued by the Ministry or the Governance Group, require the Recipient to complete the impact assessment in the Change Request form and return to the Ministry, the Governance Group as soon as reasonably practicable and in any event within 10 Working Days of receiving the relevant Change Request.

2.3 **Further Information:** If the Ministry or the Governance Group reasonably considers it requires further information regarding a proposed Change, then the Ministry, the Governance Group (as applicable) shall notify the Recipient and detail the further information required. The Recipient

shall then re-issue the relevant impact assessment to the Ministry, the Governance Group (as applicable) as soon as reasonably practicable and in any event within 10 Working Days of receiving such a request. The Parties may repeat the process described in this paragraph until the Ministry, the Governance Group (as applicable) is satisfied that it has sufficient information to properly evaluate the proposed Change ("Further Information").

- 2.4 **Right of approval:** Within 10 Working Days of receiving an impact assessment in a Change Request or within 5 Working Days of receiving Further Information under paragraph 2.3, the Ministry shall, at its sole discretion:
- (a) approve the proposed Change, and the Change may come into effect in accordance with paragraph 2.5 of this Schedule; or
 - (b) reject the proposed Change, and the Ministry shall notify the Recipient in writing. The Ministry shall explain its reasons for rejection in writing, as soon as reasonably practicable following such rejection.
- 2.5 **Change authorisation:** Any Change proposed in a Change Request will not be authorised and the Recipient shall not implement any proposed Change until:
- (a) the Change Request is signed in accordance with the Ministry's Change authorisation and sign off procedure, as notified by the Ministry to the Recipient in writing from time to time; and
 - (b) if the Change is not a Minor Change, or the Ministry otherwise requires (at its sole discretion), it is signed and delivered as a deed by the duly authorised representatives of the Parties.
- 2.6 **Costs:** The Recipient shall bear its own costs in relation to the preparation and agreement of each Change Request (including each impact assessment). For the avoidance of doubt, the Grant may not be used to fund such costs unless expressly agreed in writing by the Ministry.
- 2.7 **Change Control Register:** The Project Manager shall, for the period of this Deed, maintain a change control register, substantially in a form provided by the Ministry, documenting any and all Changes (the "Change Control Register").

