



# 2013 ANNUAL REPORT

NEW ZEALAND LOCAL AUTHORITY  
PROTECTION PROGRAMME  
DISASTER FUND



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# CHAIRMAN'S REPORT

## I HAVE PLEASURE IN PRESENTING THE CHAIRMAN'S REPORT FOR THE 2012–13 FINANCIAL YEAR.

LAPP has settled its below-ground claims from the 2010 and 2011 Canterbury earthquakes. The amounts paid were \$15,427,778 to Waimakariri District Council and \$201,481,751 to Christchurch City Council. LAPP has met the purpose it was set up for and is preparing itself for when the next major event occurs. The following statement is from Jim Palmer, Chief Executive of Waimakariri District Council:

***Immediately following the September 2010 earthquake LAPP worked very closely with the Council to ensure we had the support in place to help us assess our claim. LAPP representatives showed flexibility and fairness in their policy interpretation to ensure the best possible repair strategies were developed. LAPP advanced money early to provide cashflow to assist with the initial repair work, which was appreciated as other funding facility providers were reluctant to advance funds until the earthquakes settled down and overall financial effect of the earthquakes could be assessed. The Council received a full and final settlement of \$15.4 million from LAPP which it received very quickly once the reinsurers met their obligations. Overall, the Council thought settlement was very fair and reasonable.***

Prior to the 4 September 2010 Darfield earthquake, LAPP's best estimate of Christchurch City Council's 40% exposure in a one in a thousand year earthquake for damage to its below-ground assets was \$17,000,000. Fortunately, because LAPP buys its reinsurance based on the whole of its membership, LAPP was able to pay Christchurch City Council more than ten times this amount. Modeling natural hazard disasters is not a precise science.

The cost of replacing Christchurch City Council's below-ground infrastructure will exceed \$2,000,000,000, so the cost to Christchurch City Council for their 40% will exceed \$800,000,000. Undoubtedly there has been betterment, with new for old, better materials, and sometimes improved capacity, but it has still left Christchurch City Council with a very large unfunded bill despite LAPP's contribution of \$201 million. What is more, this has occurred just when the Council faces reduced revenue and many other unfunded bills.

Christchurch City Council did everything it reasonably could be expected to have done regarding asset protection for its below-ground assets. The reason it was underfunded was not just because of the size of the disaster, but also because of the structure of the 40% / 60% split of costs between local and central government for repairing/replacing local government owned below-ground assets when they are damaged in a natural disaster. LAPP's view is that central government should use a graded relief scale and be contributing a much bigger percentage of the costs for the very large disasters.

Last year's annual report mentioned two Court cases that LAPP had instigated. One was with the reinsurer New India Assurance Company Ltd and the other against Auckland Council. LAPP won these cases and for both was awarded interest and costs. LAPP also provided above-ground covers for Christchurch City Council for 2010-11, for which it has insurance from Civic. Civic is in arbitration with two of its reinsurers concerning this insurance and has hearings scheduled for January and May 2014. Civic is confident it will win these disputes.

Most of the reinsurers on LAPP's 2010-11 reinsurance programme were not prepared to renew even though in the two years between June 2010 and June 2012 the cost of LAPP's reinsurance increased seven-fold. For LAPP's 2013 renewal, reinsurance rates halved, but that still means that they are 3.5 times more than what they were for 2010-11. Thus the Fund for 2013-14 is not buying as much reinsurance protection as it did for 2010-11, but it is buying more than it did for 2012-13. The gap between what LAPP can afford to fund itself and the reinsurance deductible is covered through a mutual self-insurance arrangement introduced in July 2012 and shown in the diagrams:

**MEMBER COVER FOR 2012-13 YEAR**

Central Government 60%	LAPP 40%	
<b>Funded by Central Government with no upper limit</b>	<b>Anything over \$100 million (40% of \$250 million) funded by affected members</b>	
	<b>\$33 million funded by reinsurance</b>	<b>\$17 million funded by affected members</b>
	<b>\$45 million funded by all members at 5 times members' contributions as "mutual self-insurance"</b>	
	<b>\$5 million funded by LAPP</b>	
<b>Govt. Threshold .0075% or 002% of NCV</b>	<b>LAPP member deductible – mostly same as Govt. Threshold</b>	

**MEMBER COVER FOR 2013–14 YEAR**

Central Government 60%	LAPP 40%
<b>Funded by Central Government with no upper limit</b>	Anything over \$100 million (40% of \$250 million) funded by affected members
	<b>\$60 million</b> funded by reinsurance
	\$34 million funded by all members at 4 times members' contributions as "mutual self-insurance"
	<b>\$6 million</b> funded by LAPP
Govt. Threshold .0075% or .002% of NCV	<b>LAPP member deductible –</b> mostly same as Govt. Threshold

As the fund grows and reinsurance rates continue to normalize, the amount covered by mutual self-insurance can reduce. At 30 June 2013 the fund had increased to \$8.8 million from \$2.6 million the year before, is projected to be \$14.8 million on 30 June 2014, and assuming no claims and the same membership will be over \$20 million on 1 July 2014.

Disappointingly LAPP lost 12 members on 30 June 2013, bringing the membership to 46 from a potential membership of 78. When reinsurance rates are at historical highs and LAPP is rebuilding it is understandable that members consider other options. However, the cheapest long-term option for councils should always be through LAPP.

Earthquake and funding issues aside, LAPP's other activities have continued. As a result of a number of queries raised on flood loss protection, work has been completed on issues that specifically affect the regional council and unitary council members. This has included the preparation of a generic business case showing the various options available to regional authorities to cover their 40 percent share of reinstatement costs following a natural disaster. The case for the LAPP Fund to be used for risk financing by regional authorities is clearly shown to be a strong and prudent option.

The Fund's risk management programme continued with our risk managers visiting a number of members in the North and South Islands. Each member is visited at least every three years for a review of their infrastructure assets covered by the LAPP Fund, asset management practices, and management of natural hazard exposures to these assets.

These visits have lately been an opportunity to explain the impact of the Canterbury earthquakes on the Fund to council staff provides valuable training, enhanced understanding of the purpose of the Fund, information on assets that can be covered by the Fund, and claim procedures following an event. This programme also helps ensure that the trustees and reinsurers have up-to-date information on the assets being declared for cover.

The Fund has a new website address, [www.lapp.org.nz](http://www.lapp.org.nz) and the website has been refreshed. It is an excellent resource, providing members with current information on the policies and procedures of the Fund. Each member can access the latest information it has provided on its infrastructure assets declared for cover by the Fund.

LAPP's website also carries information from the Ministry of Civil Defence and Emergency Management and other relevant authorities relating to natural hazard risk assessment and the reinstatement of assets following a major natural hazard event. Council staff that are unable to attend the member meetings can access presentations made at these meetings and associated materials for their information. Trustees' policies relating to claims, deductibles and assets coverage are also available on the website. There are now more than 1000 documents on the LAPP website relating to member information or more general information on the Fund.

A tremendous amount has been achieved this year with the support of many. I wish to thank the administration management staff, particularly Christopher Munden, Tim Sole and Roger Gyles along with Risk Management Partners, Bryan Whitefield and Marlene Kanga, for their work during the year. Special thanks must also go to the Fund's loss adjusters, Cunningham Lindsey and their co-opted experts. I also thank my fellow trustees for their strong participation and input into the Fund's affairs



Kinsley Sampson  
Chairman

# INDEPENDENT AUDITOR'S REPORT

## TO THE MEMBERS OF NEW ZEALAND LOCAL AUTHORITY PROTECTION PROGRAMME DISASTER FUND SPECIAL PURPOSE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2013

The Auditor-General is the auditor of New Zealand Local Authority Protection Programme Disaster Fund ("the Fund"). The Auditor-General has appointed me, Malcolm Bruce, using the staff and resources of KPMG, to carry out the audit of the special purpose financial statements of the Fund on her behalf.

We have audited the special purpose financial statements of the Fund on pages 8 to 19, that comprise the Statement of financial position as at 30 June 2013, the Statement of financial performance, Statement of changes in equity and Statement of cash flows for the year ended on that date and the notes to the special purpose financial statements that include accounting policies and other explanatory information.

### Opinion

In our opinion the special purpose financial statements of the Fund on pages 8 to 19:

- comply with the accounting policies of the Fund; and
- give a true and fair view of the Fund's:
  - financial position as at 30 June 2013; and
  - financial performance and cash flows for the year ended on that date.

### ***Basis of preparation of the special purpose financial statements***

Without modifying our opinion, we draw your attention to Note 1 to the special purpose financial statements, which describes the basis of accounting. The Trustees have prepared special purpose financial statements based on the Fund's applied accounting policies. The special purpose financial statements have been prepared to inform Fund members of the Fund's financial performance during the year. As a result, the special purpose financial statements may not be suitable for another purpose. We consider the disclosures in Note 1 to be adequate.

### ***Uncertainty associated with the gross claim liabilities and the related reinsurance recoveries***

Without modifying our opinion, we also draw your attention to Notes 4 and 5 to the special purpose financial statements, which disclose the considerable uncertainty that exists for measuring the gross claim liabilities and the related reinsurance recoveries arising from the Canterbury earthquakes during 2010 and 2011. We consider the disclosures in Notes 4 and 5 to be adequate.

Our audit was completed on 25 November 2013. This is the date at which our opinion is expressed.

The basis of our opinion is explained below. In addition, we outline the responsibilities of the Trustees and our responsibilities, and we explain our independence.

### Basis of opinion

We carried out our audit in accordance with the Auditor-General's Auditing Standards, which incorporate the International Standards on Auditing (New Zealand). Those standards require that we comply with ethical requirements and plan and carry out our audit to obtain reasonable assurance about whether the special purpose financial statements are free from material misstatement.

Material misstatements are differences or omissions of amounts and disclosures that, in our judgement, are likely to influence readers' overall understanding of the special purpose financial statements. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

An audit involves carrying out procedures to obtain audit evidence about the amounts and disclosures in the special purpose financial statements. The procedures selected depend on our judgement, including our assessment of risks of material misstatement of the special purpose



financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the preparation of the Fund's special purpose financial statements that comply with the accounting policies of the Fund. We consider internal control in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Fund's internal control.

An audit also involves evaluating:

- the appropriateness of accounting policies used and whether they have been consistently applied;
- the reasonableness of the significant accounting estimates and judgements made by the Trustees;
- the adequacy of all disclosures in the special purpose financial statements; and
- the overall presentation of the special purpose financial statements.

We did not examine every transaction, nor do we guarantee complete accuracy of the special purpose financial statements. We have obtained all the information and explanations we have required and we believe we have obtained sufficient and appropriate audit evidence to provide a basis for our audit opinion.

### ***Distribution and use of this report***

This report has been prepared solely for members of the Fund and should not be distributed to or used by any parties other than members of the Fund.

### **Responsibilities of the Trustees**

The Trustees are responsible for preparing financial statements that give a true and fair view of the Fund's financial affairs. To fulfil this responsibility the Trustees have chosen to present special purpose financial statements that comply with the accounting policies of the Fund.

The Trustees are also responsible for such internal control as they determine is necessary to enable the preparation of the special purpose financial statements that are free from material misstatement, whether due to fraud or error. The Trustees are also responsible for the publication of the special purpose financial statements, whether in printed or electronic form.

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

### **Responsibilities of the Auditor**

We are responsible for expressing an independent opinion on the special purpose financial statements and reporting that opinion to you based on our audit. Our responsibility arises from section 15 of the Public Audit Act 2001 and clause 4.4.1 of the Trust Deed of the Trust.

### **Independence**

When carrying out the audit, we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the External Reporting Board.

Other than the audit, we have no relationship with or interests in the Fund.



Malcolm Bruce

KPMG

On behalf of the Auditor-General

Wellington, New Zealand

**STATEMENT OF FINANCIAL PERFORMANCE**

FOR THE YEAR ENDED 30 JUNE 2013

	Note	2013 \$	2012 \$
<b>INCOME</b>			
Members' Below-Ground Contributions		9,007,386	14,117,872
Members' Above-Ground Contributions		-	35,579
Interest		1,519,106	1,457,388
<b>TOTAL INCOME</b>		<b>10,526,492</b>	<b>15,610,839</b>
<b>EXPENDITURE</b>			
<b>Direct Expenses</b>			
Claims Expense	4	(188,245,827)	298,281,611
Reinsurance Recoveries	4	188,428,769	(296,639,596)
Net Claims Expense		182,942	1,642,015
Risk Management Programme		286,358	327,454
Excess of Loss Insurance Premium		2,895,750	8,162,492
Reinstatement Premium		7,783	558,674
		<b>3,372,833</b>	<b>10,690,634</b>
<b>Other Expenses</b>			
Administration Fees	7	515,379	394,423
Audit Fees-Financial Statements		30,951	39,750
Consultancy		71,727	51,560
Legal Fees		229,216	16,486
Marketing		2,700	-
Meeting/Travel Expenses		23,676	33,351
Printing and Stationery		9,088	8,750
Trustees' Liability Insurance		70,000	44,960
Trustees' Remuneration		27,550	45,600
Sundry Expenses		1,573	629
		<b>981,860</b>	<b>635,509</b>
<b>TOTAL EXPENDITURE</b>		<b>4,354,693</b>	<b>11,326,143</b>
Net Surplus before tax		6,171,799	4,284,696
Tax Expense		-	-
<b>NET SURPLUS</b>		<b>6,171,799</b>	<b>4,284,696</b>

The notes to the Special Purpose Financial Statements form part of and are to be read in conjunction with this Statement of Financial Performance.

## STATEMENT OF MOVEMENTS IN EQUITY

FOR THE YEAR ENDED 30 JUNE 2013

	2013	2012
	\$	\$
Net Surplus for the Year	6,171,799	4,284,696
<b>TOTAL RECOGNISED REVENUES AND EXPENSES</b>	<b>6,171,799</b>	<b>4,284,696</b>
Equity at beginning of the Year	2,629,303	(1,655,393)
<b>EQUITY AT END OF THE YEAR</b>	<b>8,801,102</b>	<b>2,629,303</b>

The notes to the Special Purpose Financial Statements form part of and are to be read in conjunction with this Statement of Movements in Equity.

**STATEMENT OF FINANCIAL POSITION**

AS AT 30 JUNE 2013

	Note	2013 \$	2012* \$
<b>TOTAL EQUITY</b>		<b>8,801,102</b>	<b>2,629,303</b>
Represented By:			
<b>Current Assets</b>			
Bank – ANZ National Bank Ltd		3,602,911	3,475,621
Short Term Deposits – Bank Deposits		3,724,453	-
Accrued Interest		1,162,369	106,648
Accounts Receivable	10	18,697,475	1,397,917
Reinsurance Recoveries Receivable	5	641,176,090	856,168,885
GST Receivable		(1,582,468)	24,995,465
<b>Total Current Assets</b>		<b>666,780,830</b>	<b>886,144,536</b>
<b>TOTAL ASSETS</b>		<b>666,780,830</b>	<b>886,144,536</b>
<b>Current Liabilities</b>			
Accounts Payable		1,330,088	3,068,124
Reinstatement Premiums Payable		-	126,068
Deferred Income		8,500,000	-
Provision for Claims	6	648,149,640	880,321,041
<b>Total Current Liabilities</b>		<b>657,979,728</b>	<b>883,515,233</b>
<b>TOTAL LIABILITIES</b>		<b>657,979,728</b>	<b>883,515,233</b>
<b>EXCESS OF ASSETS OVER LIABILITIES</b>		<b>8,801,102</b>	<b>2,629,303</b>

\*Restated to total Outstanding Claims and Reinsurance Recoveries Receivable:

Approved for and on behalf of the Board on 25 November 2013:



KN SAMPSON – CHAIRMAN



LA YULE – TRUSTEE

The notes to the Special Purpose Financial Statements form part of and are to be read in conjunction with this Statement of Financial Position.

**STATEMENT OF CASH FLOWS**

FOR THE YEAR ENDED 30 JUNE 2013

	Note	2013 \$	2012 \$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Cash was Provided from:			
Members' Contributions		9,397,586	21,310,560
Interest Received – Bank		463,385	1,369,152
Sundry Income		(815)	8,531
		<b>9,860,156</b>	<b>22,688,243</b>
Cash was Applied to:			
Net Claims		26,081,481	14,314,808
Risk Management Programme		278,919	334,736
Excess of Loss Insurance		3,029,601	10,325,098
Administration Fees		554,573	452,803
Meeting/Travel Expenses		25,494	31,533
Trustees' Remuneration		27,550	45,600
Other Expenses		355,960	197,896
Net GST Paid		(24,345,165)	22,231,574
		<b>6,008,413</b>	<b>47,934,048</b>
<b>NET CASH FLOW FROM OPERATING ACTIVITIES</b>	<b>3</b>	<b>3,851,743</b>	<b>(25,245,805)</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Cash was Provided from:			
Maturity of Investments – Short term Bank Deposits		-	26,305,000
		<b>-</b>	<b>26,305,000</b>
Cash was Provided to:			
Investments – Short term Bank Deposits		(3,724,453)	-
		<b>(3,724,453)</b>	<b>-</b>
<b>NET CASH FLOW FROM INVESTING ACTIVITIES</b>		<b>(3,724,453)</b>	<b>26,305,000</b>
Net Increase / (Decrease) in Cash Held		127,290	1,059,195
Opening Cash Balance		3,475,621	2,416,426
<b>CLOSING CASH BALANCE</b>		<b>3,602,911</b>	<b>3,475,621</b>
Represented by:			
Bank – ANZ National Bank Ltd		3,602,911	3,475,621
		<b>3,602,911</b>	<b>3,475,621</b>

The notes to the Special Purpose Financial Statements form part of and are to be read in conjunction with this Statement of Cash Flows.

# NOTES TO THE SPECIAL PURPOSE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 30 JUNE 2013

## NOTE 1. SIGNIFICANT ACCOUNTING POLICIES

### Reporting Entity and Basis of Preparation

These special purpose financial statements for the New Zealand Local Authority Protection Programme Disaster Fund, ("The Fund") have been prepared in accordance with the accounting policies set out below and the Charitable Trusts Act 1957.

Special purpose financial statements have been prepared so that the Fund could continue to apply the same accounting policies it used in prior years. Those accounting policies are based on New Zealand Financial Reporting Standards (FRSs) and Statements of Standards Accounting Practice (SSAPs). For many years the Fund was able to apply FRSs and SSAPs in its general purpose financial statements because the Fund met the criteria to be able to do so, which was mainly due to its size. As a result of claims and reinsurance transactions relating to the Canterbury earthquakes during 2010 and 2011, the Fund has increased in size such that FRSs and SSAPs are not deemed suitable for general purpose financial statements of the Fund.

The special purpose financial statements have been prepared to inform Fund members of the Fund's financial performance during the year on a basis that is consistent with the past. As a result, the special purpose financial statements may not be suitable for another purpose.

The special purpose financial statements for the year ended 30 June 2013 were authorised for issue by the Board of Trustees on 25 November 2013.

### Basis of Measurement

The measurement base adopted is that of historical cost, except for investments which are at market value.

### Currency

These special purpose financial statements are presented in New Zealand Dollars.

### Particular Accounting Policies

The following particular accounting policies which materially affect the measurement of financial performance and financial position have been applied:

#### TAXATION

The Fund has been granted charitable status under section CW 34(1) of the Income Tax Act 2004 by the Inland Revenue Department, hence no taxation has been provided for in the financial statements.

#### GOODS AND SERVICES TAX

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

#### PROVISION FOR CLAIMS

A provision for claims is recognised when:

- a claim has been received;
- a potential obligation has been recognised by the Board of Trustees;
- it is probable that an outflow of resources will be required to settle the obligation;
- a reliable estimate can be made of the amount of the obligation; and
- the claim is based on the approved discretionary payment from the trustees.

## NOTES TO THE SPECIAL PURPOSE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 30 JUNE 2013 (*continued*)

### INCOME RECOGNITION

Interest income is accounted for on an accruals basis. Any unrealised gains or losses arising from the revaluation of investments and realised gains or losses from the sale of investments during the year are included in the Statement of Financial Performance. Contributions are recorded in the Statement of Financial Performance in the year in which they relate.

### FINANCIAL INSTRUMENTS

#### ***Non-derivative financial instruments***

Non-derivative financial instruments comprise investments in shares, trade and other receivables, cash and cash equivalents, loans and borrowings, and trade and other payables.

Non-derivative financial instruments are recognised initially at fair value plus, for instruments not at fair value through profit or loss, any directly attributable transaction costs. Subsequent to initial recognition, non-derivative financial instruments are measured as described below.

A financial instrument is recognised if the Fund becomes a party to the contractual provisions of the instrument. Financial assets are derecognised if the Fund's contractual rights to the cash flows from the financial assets expire or if the Fund transfers the financial asset to another party without retaining control or substantially all risks and rewards of the asset.

#### ***Fair value through profit or loss***

An instrument is classified as at fair value through profit or loss if it is held for trading or designated as such upon initial recognition. Shares are designated at fair value through profit or loss if the Fund manages such investments and makes purchase and sale decisions based on their fair value. Shares held for trading are classified as current assets. Upon initial recognition, attributable transaction costs are recognised in profit or loss when incurred. Subsequent to initial recognition, financial instruments at fair value through profit or loss are measured at fair value, and changes therein are recognised in the Statement of Financial Performance.

### OTHER

Subsequent to initial recognition, other non-derivative financial instruments are measured at amortised cost using the effective interest method, less any impairment losses.

### STATEMENT OF CASH FLOWS

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

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

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

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

### Critical Accounting Policies

The critical estimates and judgements taken in respect of the accounts for the year ended 30 June 2013 have been in respect to the quantification of the losses arising from the Canterbury earthquakes and the subsequent reinsurance recoveries. The uncertainties are set out in Note 5 and Note 6 of the financial statements but include such matters as the level of certainty as to the extent of losses. Loss assessors have performed assessments on all claims, however the extent of these assessments ranges from initial visual assessments, to full details reviews including structural engineering considerations. As such, the final extent of claims that would be subject to consideration by LAPP is still being quantified.

**NOTES TO THE SPECIAL PURPOSE FINANCIAL STATEMENTS**FOR THE YEAR ENDED 30 June 2013 (*continued*)**Changes in Accounting Policies**

There have been no changes in accounting policies during the year. All policies have been applied on a basis consistent with previous years.

**NOTE 2. NATURE OF ACTIVITIES**

The primary purpose of the Fund is to provide cover to member local governments for losses or damage to infrastructure assets resulting from flooding, earthquakes and other damaging events.

**NOTE 3. RECONCILIATION OF NET SURPLUS TO NET CASH FLOW FROM OPERATING ACTIVITIES**

	Note	2013 \$	2012 \$
<b>Net Surplus</b>		6,171,799	4,284,696
<b>Add/(less) movements in other working capital items</b>			
Accrued Interest		(1,055,721)	(88,235)
GST Receivable		26,577,933	(23,810,170)
Accounts Receivable	13	197,693,238	192,683,613
Accounts Payable & Provisions	13	(225,535,506)	(198,315,709)
		(2,320,056)	(29,530,501)
<b>NET CASH FLOW FROM OPERATING ACTIVITIES</b>		<b>3,851,743</b>	<b>(25,245,805)</b>

**NOTE 4. CLAIMS AND REINSURANCE RECOVERIES**

There are considerable uncertainties surrounding the measurement of gross claim liabilities and the related reinsurance recoveries arising from the Canterbury earthquakes. These arise from a number of factors including longer than normal claim development periods and the extent of damage.

Gross outstanding claims liabilities total \$649 million (2012: \$880 million) of which the majority is the estimate of outstanding claims liabilities arising from the Canterbury earthquakes. This estimate represents loss assessors' estimates as at 30 June 2013 of what LAPP will ultimately pay, prior to receiving any reinsurance recoveries, in relation to these claims. The estimates or projections are based on the known facts and circumstances and assumptions regarding future events and key variables as detailed in Note 1.

Given the nature and number of uncertainties associated with the Canterbury earthquakes, the actual claims experience may deviate, perhaps substantially, from the gross outstanding claims liabilities as at 30 June 2013. Any changes to estimates will be recorded in the accounting period when they become known.

After reinsurance and other recoveries, the net outstanding claims liabilities in relation to the Canterbury earthquakes amounts to \$7.0 million as at 30 June 2013 (\$24.2 million as at 30 June 2012).



**NOTES TO THE SPECIAL PURPOSE FINANCIAL STATEMENTS**FOR THE YEAR ENDED 30 June 2013 (*continued*)**NOTE 4. CLAIMS AND REINSURANCE RECOVERIES (*continued*)**

	Note	2013 \$	2012 \$
Gross Claims	13	(188,245,827)	298,281,611
Reinsurance Recoveries	13	188,428,769	(296,639,596)
Net Claims Expense		182,942	1,642,015

**NOTE 5. REINSURANCE RECOVERIES RECEIVABLE**

	Note	2013 \$	2012 \$
Reinsurance Recoveries	13	641,176,090	856,168,885

Details of the uncertainties that exist in measuring reinsurance recoveries arising from the Canterbury earthquakes are explained in Note 4.

The Fund's reinsurers have not unanimously agreed to meet the claims made by the Fund. The Fund, through Civic Assurance, is currently in arbitration with two reinsurers relating to the limits of cover under the above ground reinsurance programme to expedite the settlement of outstanding reinsurance recoveries receivable. Both these reinsurers have very favourable credit ratings which endorses their ability to pay. The Fund has sought professional legal advice which confirms that the Fund has a strong legal position.

On the basis of this advice, the Trustees have assessed that no provision is required against the material amounts of recorded reinsurance receivables on these claims as they believe that the cases against these two reinsurers are sound and that the amounts accounted for as receivable are legally and contractually payable. The arbitration proceedings with each reinsurer are expected to be finalised during the 2014 financial year. In the event of the Fund being unsuccessful with the actions listed above, the Fund believes it has a number of other alternatives to seek redress. Accordingly the financial statements do not include any adjustments to the Reinsurance Recoveries receivable, that would result should the aforementioned recoveries not materialise.

**NOTES TO THE SPECIAL PURPOSE FINANCIAL STATEMENTS**FOR THE YEAR ENDED 30 JUNE 2013 (*continued*)**NOTE 6. PROVISION FOR CLAIMS**

	Note	2013 \$	2012 \$
<b>Opening Balance</b>	13	880,321,041	829,879,984
<i>Less: Claims Paid</i>			
Below ground (Chch EQ 4 Sept 2010)	(10,199,799)		(79,557,188)
Below ground (Chch EQ 22 Feb 2011)	(11,795,853)		(79,010,273)
Below ground (Other)	(1,936,755)		(812,750)
Above ground (Chch EQ 4 Sept 2010)	(2,062,301)		(4,800,807)
Above ground (Chch EQ 26 Dec 2010)	(479,884)		(8,904)
Above ground (Chch EQ 22 Feb 2011)	(21,397,320)		(75,767,097)
Above ground (Chch EQ 13 June 2011)	5,047,144		(8,485,728)
Above ground (Other)	(143,560)		(315,966)
		(42,968,328)	(248,758,713)
<i>Plus: New Claims Received and Agreed</i>			
Below ground (Chch EQ 4 Sept 2010)	-		-
Below ground (Chch EQ 22 Feb 2011)	-		-
Below ground (Other)	(596,002)		1,110,319
Above ground (Chch EQ 4 Sept 2010)	(3,022,060)		(12,811,048)
Above ground (Chch EQ 26 Dec 2010)	(290,518)		1,306,039
Above ground (Chch EQ 22 Feb 2011)	(175,985,854)		304,900,882
Above ground (Chch EQ 13 June 2011)	(9,306,603)		4,644,752
Above ground (Other)	(2,037)		48,827
		(189,203,074)	299,199,770
<b>CLOSING BALANCE</b>		648,149,640	880,321,041

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

## NOTES TO THE SPECIAL PURPOSE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 30 JUNE 2013 (*continued*)

### NOTE 7. RELATED PARTIES

Administration fees of \$515,379 (2012: \$394,423) relate to the New Zealand Local Government Insurance Corporation Limited, trading as Civic Assurance (Civic). Civic is the Administration Manager of the Fund. A portion of this increased fee relates to the extra work Civic performed for the Auckland Council case. As part of the judgement from the Court Auckland Council has, since balance date, made a payment which largely offsets the increased fee.

### NOTE 8. FINANCIAL INSTRUMENTS

The Fund is involved with a number of financial instruments in the course of its normal activities.

#### Fair Value

The carrying amounts of all financial assets and liabilities are considered to be equivalent to their fair value.

#### Credit Risk

Financial instruments which potentially expose the Fund to credit risk consist of cash, short term deposits and receivables.

The maximum exposure to credit risk is the carrying value of these financial instruments.

All investments and short term deposits are with high credit quality counterparties.

#### Interest Rate Risk

The Fund is exposed to interest rate risk in that future interest rate movements will affect cash flows and net market values of fixed interest assets. The intention of the Trustees is not necessarily to hold these assets to maturity, but to realise and purchase similar assets as part of the on going management of the investments of the Fund. There is no maturity period for unitised investments.

**NOTES TO THE SPECIAL PURPOSE FINANCIAL STATEMENTS**FOR THE YEAR ENDED 30 JUNE 2013 (*continued*)**NOTE 8. FINANCIAL INSTRUMENTS (*continued*)**

	Effective Interest Rate 2013	2013 \$	6 months or less \$	6 – 12 months \$	1 – 2 years \$	Non-Interest Bearing \$
<b>Financial Assets</b>						
Bank	3.0%	7,327,364	7,327,364	-	-	-
Receivables	-	659,873,565	-	-	-	659,873,565
<b>Total financial assets</b>		<b>667,200,929</b>	<b>7,327,364</b>	-	-	<b>659,873,565</b>
<b>Financial Liabilities</b>						
Payables	-	1,330,088	-	-	-	1,330,088
Provision for Claims	-	648,149,640	-	-	-	648,149,640
<b>Total financial liabilities</b>		<b>649,479,728</b>	-	-	-	<b>649,479,728</b>
<b>NET FINANCIAL POSITION</b>		<b>17,721,201</b>	<b>7,327,364</b>	-	-	<b>10,393,837</b>

	Effective Interest Rate 2012	2012 \$	6 months or less \$	6 – 12 months \$	1 – 2 years \$	Non-Interest Bearing \$
<b>Financial Assets</b>						
Bank	3.0%	3,475,621	3,475,621	-	-	-
Receivables	-	857,566,802	-	-	-	857,566,802
<b>Total financial assets</b>		<b>861,042,423</b>	<b>3,475,621</b>	-	-	<b>857,566,802</b>
<b>Financial Liabilities</b>						
Payables	-	3,068,124	-	-	-	3,068,124
Provision for Claims	-	880,321,041	-	-	-	880,321,041
<b>Total financial liabilities</b>		<b>883,389,165</b>	-	-	-	<b>883,389,165</b>
<b>NET FINANCIAL POSITION</b>		<b>(22,346,742)</b>	<b>3,475,621</b>	-	-	<b>(25,822,362)</b>

**Liquidity Risk**

Liquidity risk is the risk that the Fund will encounter difficulty in meeting obligations from its financial liabilities.

**Management of liquidity risk**

The Fund's approach to managing liquidity is to ensure, as far as possible, that it will always have sufficient liquidity to meet its liabilities when due, under both normal and stressed conditions, without incurring unacceptable losses or risking damage to the Fund's reputation. The Fund manages this risk as they have discretion in the total amount of claims paid, in accordance with the Trust Deed. This Deed enables the Trustees to ensure sufficient liquidity and reserves are retained by the Fund. Additionally, cash and short term deposit reserves are maintained at sufficient levels to ensure all claims determined as payable by the Trustees can be met.

## NOTES TO THE SPECIAL PURPOSE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 30 JUNE 2013 (*continued*)

### NOTE 9. COMMITMENTS AND CONTINGENT LIABILITIES

The Fund has the ability to provide support to Members based on its reserves and its ability to make reinsurance recoveries. For the period from 30 June 2013 to 30 June 2014, proportional reinsurance is in place for an event that falls between \$100 million and \$250 million. Neither the fund nor the reinsurance will provide cover for Waimakariri District Council or Christchurch City Council's assets that are damaged as a result of an earthquake. The reinsurance contract has one automatic reinstatement, so in the event of a reinsurance claim there would be further cover for a second reinsurance claim, but the cost of up to \$3.14 million for putting this cover in place might be deducted from this claim. Protection is only available to Members at the discretion of the Trustees exercised in accordance with the provisions of the Trust Deed.

### NOTE 10. ACCOUNTS RECEIVABLE

The Fund was, subsequent to balance date, successful in the High Court in a claim against the Auckland Council in respect to the settlement of the 2011 Contribution for the full amount of \$1,068,283.30 plus interest and recovery costs. The Fund has recognised the revenue and receivable due from Auckland Council in this respect.

### NOTE 11. ONGOING OPERATIONS

Following consultation with its members, from 1 July 2012 LAPP has opted for a mix of self reinsurance and reinsurance cover. This option was adopted as a means of speeding up the rebuild of the LAPP fund while keeping the LAPP contributions manageable for the members.

### NOTE 12. GOING CONCERN

The financial statements have been prepared on a going concern basis. The Trustees determined that as a result of a meeting of members held in May 2011 and October 2012 at which the members gave strong support for the continuance of the Trust, the Trust is a going concern. Furthermore the Trustees believe that while members have the right to give preliminary notice of their desire to leave the fund (some have done so effective 1 July 2014), the increased equity (\$8.8m) and discretionary nature of all payments made from the Fund provide a solid basis to conclude that the Fund will continue as a going concern.

### NOTE 13. PRIOR PERIOD RESTATEMENT

The comparative figures for the 2012 Statement of Financial Position have been restated to reflect 100% of the total outstanding reserves in respect of the Christchurch City Council earthquake claims. Previously this was recorded as LAPP's 45% share of the total outstanding reserve, with 55% of each claim being reinsured. The effect of this restatement is the Claims Provision, Reinsurance Recoveries Receivable, Gross Claims and Reinsurance Recoveries have been grossed up by \$449,749,552. In the Reconciliation of Net Surplus to Net Cashflows from Operating Activities, Accounts Receivable, Accounts Payable and Provisions have been grossed up by \$115,950,678. The 2012 opening balances for the Claims Provision and Reinsurance Recoveries Receivable have been grossed up by \$333,798,874. Claims not related to the Christchurch City Council earthquake claims of 4 September 2010, 22 February 2011 and 13 June 2011 are recorded as 45% of the Total Reserve, being LAPP's total exposure for those claims.

### NOTE 14. EVENTS AFTER BALANCE DATE

There have been no material events subsequent to balance date, other than that outlined in Note 10.

## TRUSTEE INFORMATION

The Trustees and their nominating bodies are:

LD Cavers	SOLGM	CEO, Hauraki District Council
JH McFarlane	SOLGM	Manager, Legal and Corporate, Waipa District Council
DA Lott	Civic Assurance	Company Director
KN Sampson MNZM	Civic Assurance	Former Chairman, Civic Assurance
LA Yule	LGNZ	Mayor, Hastings District Council and President, Local Government New Zealand
Vacant	LGNZ	

During the year, the Trustees met for formal meetings on 5 occasions.

Attendance was:

LD Cavers	5
DA Lott	5
JH McFarlane	5
KN Sampson	5
LA Yule	4

## 2012 – 2013 FUND YEAR MEMBERSHIP

Ashburton District Council	Invercargill City Council	South Wairarapa District Council
Auckland Council	Kaikoura District Council	Stratford District Council
Bay of Plenty Regional Council	Kapiti Coast District Council	Tararua District Council
Buller District Council	Kawerau District Council	Tasman District Council
Carterton District Council	Manawatu District Council	Tauranga City Council
Central Hawke's Bay District Council	Marlborough District Council	Thames Coromandel District Council
Christchurch City Council	Masterton District Council	Timaru District Council
Clutha District Council	Matamata-Piako District Council	Upper Hutt City Council
Environment Southland	Nelson City Council	Waikato Regional Council
Gisborne District Council	New Plymouth District Council	Waimakariri District Council
Gore District Council	Opotiki District Council	Waimate District Council
Grey District Council	Otorohanga District Council	Waipa District Council
Hastings District Council	Palmerston North City Council	Wairoa District Council
Hauraki District Council	Porirua City Council	Waitaki District Council
Hawke's Bay Regional Council	Rangitikei District Council	Waitomo District Council
Horizons Regional Council	Rotorua District Council	Wanganui District Council
Horowhenua District Council	Ruapehu District Council	Westland District Council
Hurunui District Council	South Taranaki District Council	Whakatane District Council
Hutt City Council	South Waikato District Council	Whangarei District Council

# DIRECTORY

## ADMINISTRATION MANAGER

Civic Assurance  
PO Box 5521  
Wellington 6145

## REINSURANCE MANAGER

Aon Benfield  
Sydney  
Australia

## RISK MANAGER

Risk Management Partners Pty Ltd  
Beacon Hill  
Sydney  
Australia

## THE ADDRESS FOR CORRESPONDENCE IS

Alistair Hanning  
Administration Manager  
NZ Local Authority Protection Programme Disaster Fund  
PO Box 5521  
Wellington 6145

Phone: 04 978 1267

Facsimile: 04 978 1260

Email: [alistairhanning@civicassurance.co.nz](mailto:alistairhanning@civicassurance.co.nz)



New Zealand Local Authority  
Protection Programme Disaster Fund

**TRUST DEED**

Burrowes and Company  
Barristers and Solicitors  
PO Box 24515, Wellington 6142  
Ph. 04 473 7733: Fax. 04 471 1121

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## THIS DEED is made the 14th day of December 2007

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

**AND** **ROBERT DAVID RENNIE ELLIOTT** of Gisborne, formerly Chief Executive Officer now retired, **WYNNE ARCHDALL RAYMOND**, formerly Mayor now retired, **IAN ROBERT FLOCKHART MCKELVIE**, Mayor of Manawatu, **KINSLEY NEVILLE SAMPSON** of New Plymouth, formerly General Manager now Company Director, **DALE ALWYN LOTT** of North Shore City, Auckland, Accountant, and **LANGLEY DAVID CAVERS** of Hauraki District, District Manager (together "the Trustees")

### WHEREAS

- A The Settlor established a fund for the reinstatement of lost or damaged generally uninsurable local government infrastructure known as the New Zealand Local Authority Protection Programme Disaster Fund, by Deed of Trust dated 29 June 1993 ("the Establishment Trust Deed")
- B Only those Local Authorities that are contributing to the fund are to be eligible for distributions in the event of loss or damage to their infrastructure.
- C The Fund is to be accumulated and applied for the purpose by the Trustees in accordance with this Trust Deed.
- D The Trust Deed provides that the Trustees may amend the Trust Deed by unanimous resolution of the Trustees present at any validly convened meeting, provided such amendment is not inconsistent with the charitable scope of the trusts contained in the Trust Deed.
- E The Trust Deed was amended by Deeds of Variation dated 14 February 1997 and 5 June 2003, both times with the consent of the Settlor as required by the Establishment Trust Deed.
- F At a meeting of the Trustees held on 9 November 2007 the Trustees resolved that:
- (a) the Trust Deed would be further amended, and
  - (b) such amendments would be incorporated into this deed once the consent of the Settlor had been obtained.

## NOW THIS DEED WITNESSES AND IT IS AGREED AND DECLARED AS FOLLOWS:

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

"the Act" means the Charitable Trusts Act 1957;

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

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

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

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

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

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

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

"Commencement Date" means 1 July 1993;

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

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

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

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

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

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

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

"Fund Year" means each year of the Fund commencing on 1 July and ending on 30 June in the calendar year following;

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

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

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

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

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

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

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

"written" or "in writing" includes printing, engraving, lithography, telegraphy, facsimile or any other communication by written word.

#### 1.2 Interpretation

1.2.1 Words importing any one gender shall include the other.

1.2.2 Plurals shall include the singular and vice versa.

1.2.3 Reference to persons shall include body corporates.

- 1.2.4 Reference to any Act of Parliament shall be deemed to include every amendment or re-enactment of it and every Act of Parliament substituted for it, and any regulations made under the Act.
- 1.2.5 All references in this Trust Deed, or to provisions or clauses of this Trust Deed, shall be deemed to be references to this Trust Deed and to those provisions or clauses as altered from time to time pursuant to the provisions of this Trust Deed.
- 1.2.6 Except as otherwise defined in this Trust Deed, the terms used in this Trust Deed which have been defined in the Act shall have the same meaning as ascribed to those terms in the Act.

## 2 CONSTITUTION OF THE FUND

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

- 2.1.1 A fund is hereby established by the New Zealand Local Government Association Incorporated, with the charitable purposes set out in clause 2.1.3.
- 2.1.2 The name of the fund shall be the New Zealand Local Authority Protection Programme Disaster Fund.
- 2.1.3 The charitable purposes of the Fund shall be:
- (a) To assist New Zealand local government to carry out its responsibilities under central government's disaster recovery policies and plans; and
  - (b) To provide funds for Members for the purpose of reinstatement of lost or damaged Infrastructure as a result of Damaging Events; and
  - (c) To facilitate effective programmes to enable New Zealand local government to identify and manage risks to their Infrastructure by minimising and reducing the exposure, limiting the risks and diminishing the potential for loss or damage; and
  - (d) To provide Members with the capacity for self-help to recover from consequences of Damaging Events; and
  - (e) To do anything else which the Trustees may think is conducive or incidental to the attainment of the above charitable purposes.
- 2.1.4 There are no non-charitable purposes for the Fund.
- 2.1.5 The Fund shall consist of all property for the time being held by or on behalf of the Trustees, derived from:
- (a) Any gifts or donations;
  - (b) Extraordinary Contributions;
  - (c) Annual Contributions;
  - (d) Income from investments;
  - (e) Proceeds of realisation of investments;
  - (f) Any policies or contracts of re-insurance;
  - (g) Any recoveries;
  - (h) Any other source.
- 2.1.6 The Fund shall be held in trust by the Trustees upon the trusts and for the charitable purposes contained in this Trust Deed and shall be managed, administered and applied by the Trustees, in accordance with the powers contained in this Trust Deed, in order to attain those charitable purposes.
- 2.1.7 The Trustees are and shall remain responsible for the safe custody of all money, policies, certificates and other documents of title and value in connection with the Fund and for the safe custody, realisation and distribution of all of the assets from the Fund, from time to time vested in them.

## 3 TRUSTEES

### 3.1 Appointment and Removal of Trustees

- 3.1.1 The number of Trustees shall be not less than four nor more than six. The Trustees shall be one or two appointees of the Settlor; one or two appointees of the New Zealand Local Government Insurance Corporation Limited; and one or two appointees of the NZ Society of Local Government Managers Incorporated (together called the "Appointors").
- 3.1.2 The power of appointing new Trustees shall be vested in the Appointors each of which shall have the power to appoint two persons as Trustees and they having been appointed as Trustees to remove and/or replace them, by notice in writing given to the Administration Manager.
- 3.1.3 The Appointors shall be entitled to appoint any person as an Alternative Trustee in place of any Trustee appointed by them, by notice in writing given to the Administration Manager, either for a specified period, or for a specified meeting or any part of a meeting, or for any particular subject matter at any meeting, or generally during the absence of any such Trustee, and from time to time, in the same manner, to remove any Alternate Trustee.
- 3.1.4 An Alternate Trustee appointed pursuant to clause 3.1.3 shall:
- (a) not be remunerated otherwise than out of the remuneration of the Trustee in whose place the Alternate Trustee acts;
  - (b) be deemed to have automatically vacated office when the Trustee in whose place the Alternate Trustee acts vacates office;
  - (c) unless otherwise provided by the terms of appointment of the Alternate Trustee, have the same rights, powers and privileges (including without limitation, the right to receive notice of meetings of Trustees, the power to sign resolutions of Trustees and the power to witness the affixing of the common seal) as the Trustee in whose place the Alternate Trustee is appointed;
  - (d) discharge all the duties of, and be subject to the same provisions in this Trust Deed as the Trustee in whose place the Alternate Trustee acts.
- 3.1.5 The Administration Manager shall within seven days of it being notified in writing of the appointment, removal or resignation of a Trustee give to every Member and Appointor (other than an Appointor exercising its powers of appointment or removal) written notice of the appointment, removal or resignation of the Trustee.
- 3.1.6 Notwithstanding the provisions of clause 3.1.2 of this Trust Deed, if any Appointor shall fail at any time to exercise its power of appointment and notify the Administration Manager in writing accordingly, within fourteen days of:
- (a) it being notified in writing of the removal or resignation of their appointee; or
  - (b) it becoming aware of the occurrence of another event which creates a vacancy (as provided for in clause 3.1.7); and
  - (c) the number of Trustees falls below four – then the Trustees shall forthwith appoint further or additional Trustees on behalf of any Appointors so failing, so as to ensure there are not less than four nor more than six Trustees and every Trustee then appointed may thereafter only be removed by unanimous resolution of the Trustees.
- 3.1.7 A vacancy in the office of Trustee shall arise if:
- (a) a Trustee is adjudged bankrupt; or
  - (b) a Trustee resigns by notice in writing to the Administration Manager; or
  - (c) a Trustee refuses to act; or

- (d) a Trustee becomes of unsound mind; or becomes subject to a property order under the Protection of Personal and Property Rights Act, 1988; or
  - (e) a Trustee is removed by their Appointor in accordance with the provisions of this Trust Deed; or
  - (f) a Trustee is otherwise removed by operation of law.
- 3.1.8 The Trustees shall have power to appoint any person at any time as an Advisory Trustee to the Fund, and to prescribe the function of such Advisory Trustee. An Advisory Trustee shall not be counted in the number of Trustees required by clause 3.1.1, or in the quorum required for meetings of the Trustees, nor be entitled to vote thereat.
- 3.2 Meetings of Trustees**
- 3.2.1 The Trustees shall from time to time meet for the despatch of business of the Fund, and subject to the provisions of this Trust Deed and particularly this clause 3.2 shall have the power to adjourn or otherwise regulate their meetings and proceedings, and vary the regulation and procedure of such meetings and proceedings, as the Trustees think fit.
- 3.2.2 Questions arising at any meeting of the Trustees shall be determined by a majority of the votes of those present and voting.
- 3.2.3 (a) The Trustees shall at their inaugural meeting and again before the end of each Fund Year elect one of their number to be the chairman of Trustees for the ensuing Fund Year. The person so elected shall hold office as chairman of Trustees during the ensuing Fund Year, and shall be eligible for re-appointment.
- (b) The person so appointed shall chair all meetings of the Trustees at which they are present. If at any meeting the chairman is not present within fifteen minutes of the appointed time for holding the meeting the Trustees present shall then choose one of their number to be the chairman of that meeting.
- (c) A chairman shall not be entitled to a second or casting vote.
- 3.2.4 Every meeting of the Trustees shall be called by giving not less than seven days notice in writing to the Trustees provided that a meeting of the Trustees shall be deemed to have been duly called if it is so agreed by all the Trustees entitled to attend and vote thereat.
- 3.2.5 Upon the written request of three Trustees giving notice of the subject matter of that meeting, the Administration Manager shall summon a special meeting of the Trustees, within seven days of that request.
- 3.2.6 Every notice of a meeting of the Trustees shall;
- (a) be given in writing by the Administration Manager to each Trustee at their last known address;
  - (b) be exclusive of the day on which it is served and of the day of the meeting;
  - (c) specify the place, day and hour of the meeting;
  - (d) specify, in the case of special business, the general nature of that business.
- 3.2.7 The accidental omission to give notice of a meeting to, or the non receipt of notice of a meeting by, any Trustee shall not invalidate the proceedings at the meeting.
- 3.2.8 (a) No business shall be transacted at any meeting of the Trustees unless a quorum is present at the time when the meeting proceeds to business. The quorum for meetings of the Trustees shall be as fixed by resolution of the Trustees and until so fixed any number of the Trustees more than one-half of the total number of the Trustees entitled to vote thereat shall constitute a quorum. Where one-half in number of the Trustees so entitled to vote is a fraction it shall be rounded-up to the next whole number and such number shall be the quorum for a meeting of the Trustees.
- (b) If within half an hour from the time appointed for a meeting of the Trustees a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Trustees present shall constitute a quorum.
- (c) Every Trustee present shall, notwithstanding their conflict between interest and duty (if any), be counted in a quorum present.
- 3.2.9 A validly called meeting of the Trustees at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Deed vested in or exercisable by the Trustees.
- 3.2.10 Any Trustee who is in any way, whether directly or indirectly;
- (a) personally interested in a contract or arrangement or any proposed contract or arrangement with the Trustees or with any Member; or
  - (b) is an elected member, office or employee of any Member or proposed Member which is interested –
- shall declare the nature of the interest and unless the interest is no greater than or any different from –
- (c) in the case of an interest to which subclause (a) of this clause applies, that of the other Trustees present; or
  - (d) on the case of an interest to which subclause (b) of this clause applies, that of the Members generally, they shall thereafter take no further part in the deliberations in respect of that matter.
- 3.2.11 The foregoing rule shall not operate to prevent any Trustee taking part in discussions and decisions regarding rules, guidelines, or policies regarding Annual Contributions.
- 3.2.12 All disclosures of interest by any Trustee, and whether or not they took part in discussion on or voted on the matter before the meeting, shall be recorded in the minutes of the meeting.
- 3.2.13 (a) The Trustees may meet by means of a Telephone Meeting, the Trustees having been given notice of the meeting as required by the provisions of this Trust Deed.
- (b) In this clause:  
“Telephone Meeting” means the contemporaneous linking together by telephone of Trustees comprising a quorum (whether or not any one or more of those persons is outside New Zealand);  
“Telephone” means and indicates any instant electronic means of communication.
- (c) Before a Telephone Meeting proceeds to business:
- (i) each of the Trustees taking part must be able to hear each of the other Trustees taking part;
  - (ii) the chairman shall ask each Trustee taking part in turn to respond by way of confirmation that they are in fact linked to and are taking part in the Telephone Meeting;
  - (iii) the chairman shall thereupon announce to the Telephone Meeting the names of those Trustees who have so responded.
- (d) The Trustees so named by the chairman shall be conclusively deemed to be present at the Telephone Meeting and, unless given permission to leave under subclause (e) of this clause, to have been present all the time during the Telephone Meeting.
- (e) No Trustee may leave a Telephone Meeting by disconnecting their telephone unless the chairman has first granted that Trustee permission to leave.
- (f) A minute of the proceedings at a Telephone Meeting shall be conclusive evidence of the proceedings and the regularity of the meeting if certified as a correct minute by the chairman.

### 3.3 Subcommittees

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

### 3.4 Validity of Acts of Trustees

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

### 3.5 Resolutions in Writing

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

### 3.6 Remuneration of Trustees

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

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

- 3.7.1 The Trustees shall be indemnified and shall be entitled to reimburse themselves out of the Fund in respect of all costs, charges and expenses which they incur in or about management or administration of the Fund.
- 3.7.2 No Trustee acting or purporting to act in execution of the trusts created by this Trust Deed shall be liable for any loss not attributable to their own dishonesty or their wilful commission of or omission to do any act known by them to be a breach of trust, and in particular (without limitation) no Trustee shall incur any liability in respect of:
- (a) Any act done or not done in the exercise of or in respect of any discretion vested in them.
  - (b) Anything done or suffered by them in good faith in reliance upon any advice or opinion (whether or not obtained by the Trustees)

of any professional person, or upon any advice the Trustees may obtain directly or indirectly from any company, firm or person as shall, in the opinion of the Trustees, be qualified to provide advice.

- (c) Any failure or refusal to perform or do any act or thing which by reason or provision of any law of New Zealand they are hindered or prevented from doing or performing.

- 3.7.3 No Trustee shall be bound to or be liable for any failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by the co-Trustee.

## 4 POWERS OF TRUSTEES

### 4.1 General Powers

- 4.1.1 In addition to the powers conferred by law and elsewhere in this Trust Deed the Trustees shall have the power:
- (a) Subject to clause 5.1.3, from time to time to appoint and remove the Administration Manager and, subject to the specific duties imposed on the Administration Manager by this Trust Deed, define the duties and responsibilities of the Administration Manager, on terms to be agreed in writing between the Trustees and the Administration Manager.
  - (b) From time to time to appoint and remove one or more investment managers. The Investment Managers shall have such powers and duties in relation to the investment of the fund as the Trustees shall determine and agree in writing between the Trustees and the Investment Managers.
  - (c) To appoint and remove a custodian trustee to hold in safe custody all policies, certificates and other documents of title in connection with the whole or any part of the Fund, on terms to be agreed in writing between the Trustees and the custodian trustee.
  - (d) To otherwise retain the services of professional advisors and managers in relation to the management, administration and investment of the Fund, to delegate powers and discretions to professional advisors and managers as the Trustees see fit, and to determine and to pay out of the Fund, any fees payable to those professional advisors and managers.
  - (e) To make rules or guidelines, and to adopt procedures, consistent with the provisions of this Trust Deed, including, without limitation, in relation to membership; calculating and fixing Asset Values, Deductibles, Extraordinary Contributions, Annual Contributions and Distributions; determining from time to time which of a Member's assets can be registered with the Trustees as Infrastructure; and to make rules or guidelines and to adopt procedures as shall be appropriate for the convenient administration of the Fund.
  - (f) To borrow money for the purpose of providing Distributions where the assets of the Fund are not immediately realizable, or if realizable are only realizable at a material loss to the Fund, and to secure the repayment of such moneys in any manner and upon any terms the Trustees consider advisable, whether by charge over all or any portion of the Fund or any particular property or otherwise, provided however the Trustees shall first have had and obtained the consent in writing of the Settlor thereto and provided further that in no event shall the amount borrowed exceed the then estimated values of the assets of the Fund, less any existing liabilities of the Fund, contingent or otherwise.
  - (g) To seek reinsurance protection in support of the Fund.
  - (h) Generally to do all such acts and things as the Trustees may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in performance of their obligations under this Trust Deed.

## **4.2 Investments Authorised**

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

## **4.3 Exercise of Discretion**

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

## **4.4 Appointment of Auditor**

4.4.1 The Trustees shall from time to time appoint an Auditor (being the holder of a certificate of public practice issued by the Institute of Chartered Accountants of New Zealand) of the Fund at a remuneration to be fixed, and payable, by the Administration Manager, out of the Fund.

# **5 MANAGEMENT AND ADMINISTRATION**

## **5.1 Appointment of Administration Manager**

5.1.1 The Trustees shall appoint an Administration Manager which shall, in addition to other duties or responsibilities conferred on the Administration Manager elsewhere in this Trust Deed, and as from time to time agreed by the Administration Manager with the Trustees:

- (a) Receive applications for membership of the Fund;
- (b) Ascertain and audit the infrastructural assets of Members;
- (c) Issue debit notes for and maintain records of all Annual Contributions and Extraordinary Contributions paid to the Fund;
- (d) Use its best endeavours to secure economic reinsurance support of the Fund;
- (e) Facilitate effective programmes to enable Members to identify and manage risks to their Infrastructure by minimising and reducing the exposure, limiting the risks and diminishing the potential for damage by Damaging Events;
- (f) Receive and process applications for Distributions, within the scope of guidelines laid down by the Trustees;
- (g) Furnish the Trustees with full and complete reports of all losses by and of all payments made out of the Fund;
- (h) Liaise with local government agencies with respect to the application of their appropriate disaster recovery and emergency plans;
- (i) Make recommendations to the Trustees regarding any matters pertaining to the administration and management of the Fund;
- (j) Undertake such services as may be required by the Trustees or as may be reasonably necessary for the management, administration and investment of the Fund, and the operation of the trusts contained in this Trust Deed.

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

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

## **5.2 Records to be Kept**

5.2.1 The Administration Manager shall keep or cause to be kept a complete record of:

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

## **5.3 Accounts**

5.3.1 The Administration Manager shall ensure that:

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

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

5.4.1 The Administration Manager shall within six months after the end of each Fund Year:

- (a) Prepare an Annual Report for the Fund for the previous Fund Year.
- (b) Provide each Member with a copy of the Annual Report.

5.4.2 The following matters shall be contained in the Annual Report:

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

## **5.5 Delegation**

5.5.1 Subject to this clause, the Administration Manager may at any time with the consent of the Trustees and from time to time, delegate any of its powers to any person.

5.5.2 A delegation pursuant to this clause may be:

- (a) Subject to such conditions and on such terms for the protection and convenience of persons dealing with the delegate as the person making the delegation thinks fit; and
- (b) Amended or revoked at any time.

5.5.3 If the Trustees or the Administration Manager exercise a power that is for the time being delegated that shall not revoke the delegation.

5.5.4 The Trustees shall not be liable for any act or defaults of any delegatee of the Administration Manager.

## 5.6 Expenses of Administration

5.6.1 The Administration Manager may pay from the Fund such costs, charges and expenses of management, administration and investment of the Fund as are properly payable by the Administration Manager on behalf of the Fund.

5.6.2 The Administration Manager shall be paid from the Fund such fees or charges for its administration of the Fund and the trusts contained in this Trust Deed, as shall from time to time be authorised by the Trustees.

## 5.7 Indemnity of Administration Manager

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

## 5.8 Execution of Deeds

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

# 6 MEMBERSHIP COVERAGE

## 6.1 Admission of Members

6.1.1 Only Local Authorities shall be eligible for admission as Members of the Fund.

6.1.2 A Local Authority shall not be admitted to membership without first entering into a Participation Deed with the Fund in the form and on the terms acceptable to the Trustees.

6.1.3 In executing a Participation Deed the Local Authority shall agree to be bound by the terms of this Trust Deed.

## 6.2 Withdrawal from Membership

6.2.1 Any Member may withdraw from membership of the Fund by giving notice in writing to the Trustees of its desire to withdraw from membership, on or before the end of any Fund Year, and their membership shall terminate at the end of the Fund Year following.

6.2.2 Any notice in writing of a Member's desire to withdraw from membership may itself be withdrawn at any time prior to the termination of its membership.

6.2.3 Members who have given notice of their desire to withdraw from the Fund shall pay their Annual Contributions due for the following Fund Year.

## 6.3 Suspension or Termination of Membership

6.3.1 Membership of the Fund may be terminated or membership rights suspended, by resolution of the Trustees, in the event that a Member:

- (a) Refuses or fails to comply with the reasonable directions of the Trustees given for the purpose of minimizing or reducing the exposure, limiting the risks and diminishing the potential for loss or damage to its Infrastructure; or
- (b) Refuses or fails to allow an audit of the Member's management of the risk to its Infrastructure; or

(c) Omits to make or unduly delays payment of its Annual Contribution; or

(d) Commits any breach of the provisions of this Trust Deed or its Participation Deed which in the opinion of the Trustees warrants the termination or suspension of membership.

6.3.2 A former Member may if so desiring re-apply for membership, but if successful shall not thereby gain any benefit credit or entitlement accruing consequent upon their former membership.

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

## 6.4 Coverage

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

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

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

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

# 7 GENERAL PROVISIONS RELATING TO CONTRIBUTIONS

## 7.1 Annual Contributions

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

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

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



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

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

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

## 7.2 Method of Payment

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

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

## 7.3 Disputes regarding Quantum of Annual Contributions

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

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

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

## 7.4 Extraordinary Contributions

7.4.1 The Trustees may fix Extraordinary Contributions.

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

- (a) The number of Fund Years completed since the Commencement Date;
- (b) The net value of the assets of the Fund had there been no Distributions from the Fund;
- (c) The current value of the assets, and the amount of any liabilities of the Fund;
- (d) Any other factors which seem relevant to the Trustees.

7.4.3 In determining the quantum of any Extraordinary Contribution being fixed for Coverage of a part or portion of a Fund Year the Trustees shall have regard to the Annual Contribution that would have been payable by the Member for Coverage for the full Fund Year and, that part or portion of the Fund Year for which Coverage is being provided.

7.4.4 Any decision of the Trustees regarding the quantum of any Extraordinary Contribution shall be final and binding.

7.4.5 Any Extraordinary Contribution fixed by the Trustees that is not paid may be recovered in the same way as an Annual Contribution including associated interest and recovery costs.

## 8 DISTRIBUTIONS FROM THE FUND

8.1 A Member may at any time within nine calendar months (time being of the essence) of a Damaging Event apply to the Trustees for a Distribution from the Fund in respect of any loss or damage caused to the Member's Infrastructure by that Damaging Event.

8.2 Upon receiving an application for a Distribution in respect of a Damaging Event, the Trustees shall satisfy themselves that:

- (a) the loss or damage is to Infrastructure;
- (b) the loss or damage was caused by the Damaging Event.

8.3 Once the Trustees have satisfied themselves as to the matters specified in clause 8.2, they may make a Distribution to the Member in respect of its application, subject to:

- (a) any Asset Value or Stated Value of the Member's Infrastructure;
- (b) the state of repair, maintenance and condition generally of the Infrastructure or of any particular parts of the Infrastructure before and after the Damaging Event for which the Distribution is claimed;
- (c) the Member's Deductible;
- (d) the expected availability when the Annual Contribution was set and the actual availability to the Member of other monies by way of compensation, indemnity, replacement or subsidy for the loss or damage to its Infrastructure, including any payment from central government, from insurance claims, and any rights against persons not party to this Trust Deed;
- (e) the desirability of the Fund maintaining reserves for future Damaging Events;
- (f) the length of time that the Member has been a Member of the Fund;
- (g) any other factors which seem relevant to the Trustees.

The Trustees at their sole discretion will determine what if any Distribution will be made in any situation where in the Trustees' opinion the damage is a consequence of an act of war or terrorism.

8.4 Without being bound to see or being liable for not seeing to the application of any Distributions from the Fund, the Trustees shall take reasonable steps to ensure each Distribution from the Fund is applied by its Members for the reinstatement of their Infrastructure, and for that purpose, the Trustees may require from the Member reasonable evidences of the expenditure, and may make progress payments.

8.5 The Trustees may also pay the whole or any part of the Fund to any other charity that is charitable under New Zealand law and has purposes similar or related to those of the Fund.

## 9 ALTERATION

### 9.1 Alteration of the Trust Deed

9.1.1 The Trustees may amend this Trust Deed in any way, subject to this clause 9.

9.1.2 The Trustees may by unanimous resolution of the Trustees present at any validly convened meeting revoke, vary or add to any of the provisions of this Trust Deed provided no such revocation, variation or addition may be made if it would result in the Fund ceasing to qualify for registration as a charitable entity under the Charities Act 2005 or would vary the terms of this proviso or would otherwise be inconsistent with the general charitable scope of the trusts contained in this Trust Deed.

9.1.3 Every amendment shall be conditional upon and come into effect upon the Settlor giving its consent in writing.

9.1.4 Amendments shall not be retrospective in effect.

## **9.2 Notice to Members**

9.2.1 The Trustees shall notify Members forthwith in writing of every amendment to this Trust Deed made pursuant to these provisions.

9.2.2 Any accidental failure or omission on the part of the Trustees to give a Member notice as required by this clause, or its non-receipt by a Member, shall not affect the validity of the amendment.

## **9.3 Alteration of Participation Deeds**

9.3.1 The Trustees, with the agreement of a Member, may from time to time:

- (a) Amend any of the provisions of the Participation Deed relating to the Member; or
- (b) Cancel any Participation Deed and in substitution, enter into a new Participation Deed with a Member.

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

### **10.1 Procedures**

10.1.1 The Trustees shall wind up the Fund and shall apply the provisions of this Clause in relation to every Member:

- (a) If the Trustees unanimously resolve that the Fund shall be wound up, and advise the Settlor accordingly, and the Settlor consents thereto; or
- (b) Upon the determination of the trusts hereof; or
- (c) Upon any insolvency of the Fund; or
- (d) Upon any order of the Court that the Fund be wound up.

10.1.2 The Trustees shall within fourteen days after they have resolved to wind up the Fund, lodge a copy of that resolution with the Settlor and (the Settlor consenting thereto) with the Registrar of Incorporated Societies.

10.1.3 The Trustees shall for the purpose of winding up the Fund:

- (a) Ensure that final accounts of the Fund are prepared showing the financial position of the Fund as at the date on which the winding up commenced; and
- (b) Ensure that those final accounts are audited; and
- (c) As soon as practicable after the final accounts have been audited send a copy of those accounts to the Settlor and all the Members as at the date the winding up commenced.

### **10.2 Allocation of Proceeds**

10.2.1 Members shall have no right or claim against the Fund on winding up except in respect of any application for a Distribution made prior to the commencement of the winding up.

10.2.2 The Trustee shall apply the proceeds of the Fund in accordance with the following priority:

- (a) First, in providing for the payment of the costs of the winding up;
- (b) Secondly, in providing for the payment of all liabilities and debts of the Fund;

(c) Thirdly, paying any outstanding Distributions which the Trustees have resolved to pay any Member prior to the commencement of the winding up and remain unpaid at that date;

(d) Fourthly, in providing for payment of any Distributions for which applications have been made immediately prior to the commencement of the winding up;

(e) Finally, payment of any balance in the Fund is to be made or transferred to another organisation as decided by the Trustees that is charitable under New Zealand law and has purposes similar or related to those of the Fund, or in default of a decision by the Trustees, as directed by the Court pursuant to section 27 of the Act.

## **11 MISCELLANEOUS**

### **11.1 Notices**

11.1.1 Any notice or document shall be deemed to have been served upon the Trustees if left at the registered office of the Fund or if sent through the post in a registered letter addressed to the Administration Manager at that office. Any notice or document shall be deemed to have been duly given to a Member, if given generally or sent to the Member at the address of the Member last known to the Administration Manager.

11.1.2 Any notice or document delivered by post shall be deemed to have been delivered in the ordinary course of post and in proving such service it shall be sufficient to prove that the envelope or wrapper containing it was properly addressed and posted. A statement signed by the Administration Manager that a notice was so addressed and posted to a Member and when, shall be conclusive evidence of those facts.

### **11.2 Succession**

11.2.1 If the activities of any of the Appointors are assigned to or succeeded by any other undertaking (whether a corporation, association partnership or natural person) then that other undertaking may, with the written approval of the Trustees as from the date of the assignment or succession, take the place of that Appointor for the purposes of the Fund, and assume all rights and obligations of that Appointor under the Trust Deed.

11.2.2 If the Trustees do not give their written approval of such other undertaking taking the place of that Appointor, then the Fund shall either be wound up in accordance with the provisions of this Trust Deed, or the Trustees may appoint another body to take over the role of that Appointor.

### **11.3 Waiver and Precedent**

11.3.1 No failure by the Trustees to enforce any breach of any obligation or provision contained or implied in by this Trust, in one, or more instances shall constitute a waiver of the right of the Trustees to enforce any other provision, or any subsequent breach, whether against the same Member or another.

11.3.2 No action on the part of the Trustees or the Administration Manager whether taken in accordance with any specific provisions contained in this Trust Deed or otherwise shall be taken as a precedent for any like or similar action on either part and neither the Trustees nor the Administration Manager may thereafter be compelled to take similar or identical action consequent thereupon.

### **11.4 Office**

11.4.1 The office of the Fund shall be at the offices of the New Zealand Local Government Insurance Corporation Limited, 9th Floor, Civic Assurance House, 114 Lambton Quay, Wellington, or at such other place as the Trustees may from time to time by resolution determine.

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

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

**Signed by** )  
**ROBERT DAVID RENNIE ELLIOTT** )  
in the presence of: )

**Signed by** )  
**WYNNE ARCHDALL RAYMOND** )  
in the presence of: )

**Signed by** )  
**DALE ALWYN LOTT** )  
in the presence of: )

**Signed by** )  
**KINSLEY NEVILLE SAMPSON** )  
in the presence of: )

**Signed by** )  
**IAN ROBERT FLOCKHART MCKELVIE** )  
in the presence of: )

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

# PARTICIPATION DEED

## ADMITTING

.....

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

THIS DEED is made the \_\_\_ day of \_\_\_\_\_ 201\_\_.

**BETWEEN** **NEW ZEALAND LOCAL AUTHORITY PROTECTION PROGRAMME DISASTER FUND** ("the Fund") and **NEW ZEALAND LOCAL GOVERNMENT INSURANCE CORPORATION LIMITED** ("the Administration Manager") (together called "the Administration")

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

#### BACKGROUND

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

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

as follows:

### 1 MEMBERSHIP

#### Admission to Membership

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

#### Withdrawal, Suspension or Termination of Membership

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

### 2 COVERAGE AND DEDUCTIBLE

#### Coverage

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

#### Deductible

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

### 3 CONTRIBUTIONS AND DISTRIBUTIONS

#### Payment of Annual Contributions

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

#### Payment of Extraordinary Contributions

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

#### Distributions

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

### 4 ASSET VALUES

#### Information Regarding Assets

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

### 5 RISK MANAGEMENT AND AUDIT

#### Risk Management

The Member agrees to:

- (a) introduce and maintain such programs to identify, assess and control risks applicable to its Infrastructure, as may from time to time be reasonably required by the Administration; and

- (b) notify the Administration of any matters, events or things which might be reasonably considered relevant to the assessment and management of the risk or exposure of the Member's Infrastructure to Natural Disasters and Emergencies.

**Audit of Infrastructure**

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

**6 ALTERATION**

**Alteration of the Trust Deed**

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

**7 MISCELLANEOUS**

**Co-operation**

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

**No Assignment**

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

**Notices**

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

**8 DEFINITIONS AND INTERPRETATION**

**Definitions**

- 1 Each of the following words and expressions shall, unless the context otherwise requires, have the following meanings:  
 "the Trust Deed" means the consolidated Trust Deed dated 14 December 2007;  
 "the Board" means the Trustees of the Fund and vice versa.
- 2 The words and expressions used in this Participation Deed shall unless the context otherwise requires have the same definitions as given them in the Trust Deed.

**Interpretation**

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

**FIRST SCHEDULE**

**Annual Contribution:**

The Annual Contribution for the period 30 June 201\_ to 30 June 201\_ is assessed at \$\_\_\_\_\_ plus GST, less full member discount. This is the Member's first annual contribution.

**Extraordinary Contribution:**

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

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

**Deductible:**

The Deductible shall be .....

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

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

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

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

