

Supplemental Trust Deed (No. 2)

Dated 7 June 2018

**Mayne
Wetherell**

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Parties

Auckland Council a Council duly constituted as a territorial authority under the Local Government Act 2002 (**Council**)

Trustees Executors Limited (**Trustee**)

Background

This deed is a supplemental trust deed entered into pursuant to clause 2.4 of the Master Trust Deed in respect of the Bonds described in this deed.

Agreed terms

1. Interpretation

1.1 **Master Trust Deed:** The terms of the Master Trust Deed (including the definitions, the rules of construction and the miscellaneous provisions of clauses 1.1, 1.2 and 1.3 respectively of the Master Trust Deed) will apply in this deed and to each Series issued under this deed, except to the extent modified in this deed. To that extent, or in the event of any conflict between the provisions of this deed and those of the Master Trust Deed, the provisions of this deed will prevail over those of the Master Trust Deed.

1.2 **Additional or modified defined terms:** In this deed, unless the context otherwise requires:

Green Bond Framework means Council's green bond framework as amended from time to time which sets out how Council proposes to allocate and manage the proceeds of any Bonds subject to that framework as noted in the Offering Document.

Master Trust Deed means the master trust deed dated 27 September 2012 (as amended and restated and supplemented from time to time) and made between Council and the Trustee.

Offering Document means, in relation to a Series of Bonds, the current offering document prepared by, or on behalf and with approval of, Council in relation to that Series, together with all documents to be distributed with or which form part of that offering document. For the avoidance of doubt, this may include a product disclosure statement or other disclosure document required by the FMCA, an information memorandum and a terms sheet.

tax resident means any person to whom resident withholding tax applies in relation to the holding of the Bonds, in accordance with New Zealand tax legislation (or to whom resident

withholding tax would apply if that person was not exempted from resident withholding tax on payments of interest), and **non-tax resident** shall be construed accordingly.

this deed means this deed and, for the avoidance of doubt, includes the terms of the Master Trust Deed as applied in this deed in accordance with, and subject to, clause 1.1.

2. Form of Bonds

- 2.1 **Retail Bonds:** The Bonds of each Series or Tranche issued under this deed are Retail Bonds. The Bonds of each Series or Tranche may only be offered for sale or sold in New Zealand or any other jurisdiction in conformity with all applicable laws and regulations in New Zealand and the selling restrictions set out in the Offering Document for each Series or Tranche.
- 2.2 **General Conditions:** From time to time Council may offer Series or Tranches with the terms of each Series or Tranche specified in the Offering Document for that Series or Tranche.
- 2.3 **Indemnity:** By its subscription for or purchase of the Bonds in respect of a Series or Tranche, each Holder agrees to indemnify Council, any lead manager, any co-manager, any manager, the organising participant, the Trustee, the Security Trustee (as defined in the Debenture) and the Registrar and their respective directors, officers, employees and agents (each an **Indemnified Person**) for any loss, cost, claim, fine, damages, liability or expense sustained or incurred by that Indemnified Person as a result of the breach by that Holder of the selling restrictions set out in the Offering Document for that Series or Tranche.

3. Use of proceeds

- 3.1 For the avoidance of doubt, failure by Council to comply with the Green Bond Framework and any other matters set out in the Offering Document relating to the use of proceeds of the Bonds of any Series or Tranche is not an Event of Default or other default or breach of any obligation under the Master Trust Deed or this deed and does not have the result of requiring, or permitting Holders to require, the Bonds of any Series or Tranche to be repaid.

4. Tax

- 4.1 **Deductions or withholdings:** All sums payable under a Bond or under this deed and the Master Trust Deed must be paid:
- (a) free of any restriction or condition;
 - (b) free and clear of, and (except to the extent required by law or as provided for in this clause 4) without any deduction or withholding on account of, any taxes; and
 - (c) without deduction or withholding on account of any other amount whether by way of set-off or otherwise (except as provided in clauses 4.2, 4.3 and 4.5).

- 4.2 **Non-Resident Withholding Tax:** Subject to clauses 4.3 and 4.4, New Zealand non-resident withholding tax will be deducted from payments of interest (or payments deemed by the Income Tax Act to be interest for non-resident withholding tax purposes) to any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond) who is non-tax resident (**Non-Resident Holder**).
- 4.3 **Approved Issuer Levy:** Despite clause 4.2 and subject to clause 4.4, if, in respect of any payment of interest (or deemed interest) to a Non-Resident Holder, Council elects and is lawfully able to ensure that the payment is treated as paid by Council as an Approved Issuer in respect of a Registered Security by:
- (a) paying Approved Issuer Levy (in which case Council, or the Registrar on its behalf, will pay the Approved Issuer Levy and deduct an amount equal to that Approved Issuer Levy from the interest (or deemed interest) payable to that Non-Resident Holder); or
 - (b) providing a statement to the Commissioner of Inland Revenue for Approved Issuer Levy to be zero-rated (in the event that the Bonds otherwise meet the requirements for Approved Issuer Levy to be zero-rated),
- non-resident withholding tax will not be deducted from that payment.
- 4.4 **Resident Withholding Tax:** New Zealand resident withholding tax will be deducted from payments of interest (or payments deemed by the Income Tax Act to be interest for resident withholding tax purposes) to any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond) who is tax resident, unless an Exemption Certificate is produced to the Registrar on or before the Record Date for the relevant payment.
- 4.5 **No gross-up:** Council will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Bonds pursuant to clause 4.2, 4.3 or 4.4 or as otherwise required by law. If, in respect of any Bond, the Registrar or Council becomes liable to make any payment of, or on account of, tax payable by any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond), then the Registrar and Council will be indemnified by the relevant Holder in respect of such liability. Any moneys paid by the Registrar or Council in respect of such liability may be recovered from the Holder as a debt due to the Registrar or Council and may be withheld from any further payments (if any) to that Holder. Nothing in this clause 4.5 will prejudice or affect any other right or remedy of the Registrar or Council.
- 4.6 **Maximum rate:** Deductions of non-resident or resident withholding tax will be made at the maximum rates from time to time applicable unless a Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond) provides evidence to Council or the Registrar (acceptable to it) that a lesser rate is applicable.
- 4.7 **Tax status:** Council and the Registrar will be entitled for the purposes of this clause 4 to rely, without further enquiry, upon any document produced, or statement made, by or on behalf of

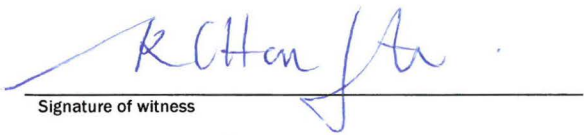
a Holder in relation to that Holder's tax status or residency, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the relevant Bonds. The Holder will indemnify Council and the Registrar for any loss or liability incurred by the Council or the Registrar as a result of the Council or the Registrar taking a tax position in reliance on such a document or statement which later proves to be false or misleading.

5. Miscellaneous

- 5.1 **Not guaranteed:** The Bonds are not guaranteed by the Crown, the Government of New Zealand or any other person.
- 5.2 **Counterparts:** This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart.
- 5.3 **Governing law:** This deed shall be governed by and construed in accordance with New Zealand law.
- 5.4 **Contract and Commercial Law Act:** The parties acknowledge and declare that clause 2.3 constitutes promises which are intended to confer benefits enforceable by the persons described in that clause pursuant to section 12, subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.
- 5.5 **Delivery:** For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by each party immediately on the earlier of:
- (a) physical delivery of an original of this deed (or a counterpart of it), executed by that party, into the custody of the other party or the other party's solicitors; and
 - (b) transmission by that party or its solicitors (or any other person authorised in writing by that party) of a facsimile, photocopied or scanned copy of an original of this deed (or a counterpart of it), executed by that party, to the other party or the other party's solicitors.
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Execution Page

Signed by **Auckland Council** by:



Signature of witness

KERRY HARRINGTON

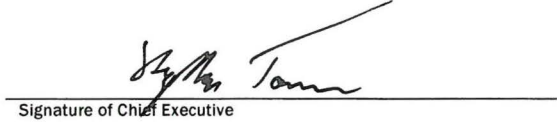
Name of witness

EXECUTIVE ASSISTANT

Occupation of witness

AUCKLAND

Address of witness



Signature of Chief Executive

STEPHEN TOWN

Name of Chief Executive

Signed on behalf of **Trustees Executors Limited** by:

Signature of authorised signatory

Name of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Witness to both signatures

Full name of witness

Occupation of witness

Address of witness

Execution Page

Signed by **Auckland Council** by:

Signature of Chief Executive

Name of Chief Executive

Signature of witness

Name of witness

Occupation of witness

Address of witness

Signed on behalf of **Trustees Executors Limited** by:

Signature of authorised signatory

Name of authorised signatory

Shahazad Contractor

Signature of authorised signatory

Name of authorised signatory

Matthew Joseph Band

Witness to both signatures

Full name of witness

Cindy Chan
Kiwisaver Administrator
Governance and Investor Oversight
Trustees Executors Limited
AUCKLAND

Occupation of witness

Address of witness



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