

MEMORANDUM OF UNDERSTANDING FOR THE COLLABORATIVE APPROACH FOR THE DELIVERY OF Te WHAU PATHWAY

Parties:


- A. Auckland Council ("Council")
- B. Whau Coastal Walkway Environmental Trust ("Trust")

This Memorandum of Understanding ("MOU") sets out the basis of the parties' agreement to collaborate together on the development of Te Whau Pathway ("Project"), as described in more detail below, and their respective roles and responsibilities in relation to the Project.

The parties will work with each other in good faith, and try to achieve the intended Project objectives. This does not bind either party to funding or resource allocation beyond the commitments expressly budgeted and agreed by each party for each stage of the Project. This MOU does not create any relationship of agency, partnership, joint venture, trust or employment between the parties.

The parties will communicate with each other regularly on a "no surprises" basis regarding the Project.

1. **Background:**
 - (a) The Trust has, in collaboration with Council, initiated a works programme to develop a new pathway from New Lynn to Te Atatu as a facility that better meets the future recreational needs of the community. Details of the Indicative Project works are attached to this MOU (subject to consents and feasibility). The Project has regional implications in that it contributes to current Council strategies relating to Greenways and Cycleway development.
 - (b) The Project will deliver a range of benefits that will encompass:
 - a. Stormwater and sustainable catchment management
 - b. Ecological enhancement and protection
 - c. Recreational opportunities and healthier communities
 - d. Community engagement and empowerment through volunteer programmes and activities
 - e. Educational programmes and ongoing learning opportunities
 - (c) Auckland Council has entered into this collaboration with the Trust as a unique partner in that Council has two distinct governance arrangements. One is as a Governing Body that makes decision making and budget allocation on regional issues and projects. The other is in a local context through the Local Boards who have delegation for local community decision making and budget allocation. The Project involves matters falling under the decision-making powers of both governance arrangements within Auckland Council.



- (d) Representatives from the local community have established the Trust for the purpose of raising funds to help complete the Project.
- (e) The Project comprises of thirteen (13) kilometres of concrete and boardwalk walkway which will be developed on Council land and on Crown land within the coastal marine area (CMA). The Project will be delivered on a staged basis, as funding and other conditions allow.
- (f) The walkway will be built to a common set of Project design guidelines that ensure a consistent theme and standard throughout the Project. The design guidelines process will be managed and collaboratively approved by Council and the Trust.
- (g) The physical works construction costs for the Project will be funded in the main part from funding sources external to Council, but these funds are expected to be insufficient on their own to complete the Project.
- (h) The Trust has an expectation of completing the entire project in a six year timeframe from commencement.
- (i) Council and the Trust have agreed to enter into this MOU to set out the principles under which they will work together on the Project.

2. Relationship management:

The parties will communicate regularly on material issues relating to the Project, including:

- Regular meetings for update on Project progress.
- Consultation on any changes to Project specifications or timeframes.
- Management of communications and fundraising activities.
- Financial transparency and disclosure of the Trust's financial records to Council as requested.
- Any public relations or other matters likely to be of concern to the other party or that affect the Project.

3. Fundraising plan:

The Trust will develop a fundraising plan, and consult with Council over it. The purpose of the plan is to ensure that the Trust and Council coordinate effectively to maximise third party funding opportunities (such as charitable grants) and avoid conflicts that might compromise effective fundraising.

It is understood that:

- Primary responsibility for the fundraising is with the Trust, but that Council will, where possible, assist the Trust in its fundraising activities.
- It is expected that fundraising efforts will focus on grants from other trusts and government agencies, donations from the general public and local businesses, and also submissions to Council's Long Term Plan 2015-



2025.

- The Trust and Council will work closely together on all grant applications.
- Funding and resourcing of different elements of the Project is expected to be provided from different sources:
 1. Council officer time and expense committed on co-ordinating the project – funded by Auckland Council operational budgets.
 2. Project design, consultation, consenting, construction project management, and Council officer time directly involved in project delivery – funded by Local Board capital budgets
 3. Construction of the walkway – funded by the Trust through grants, sponsorship, and externally sourced funding applications, and any successful funding submission to the LTP 2015-2025.

4. Procurement

For each stage of the Project the Trust and Council shall, acting reasonably, agree a Project Execution Plan covering all relevant issues for the work to ensure roles and responsibilities are clear, including:

- The scope, design details and specifications of the works.
- The method of contractor selection and engagement (which may involve Council conducting competitive contractor selection processes on the Trust's behalf, and/or providing technical and operational assistance if the Trust is principal of any contract where it is the main funding source).
- Funding sources for each aspect of the work (which may involve the Local Boards taking responsibility for design, consultation, consenting and project management expenses, while the Trust makes approved progress payments to the contractor).
- Risk management (including site risks and commercial risks).

In all cases, the Project Execution Plan for each stage must:

- Aim to achieve the best value for the procurement and Project.
- Ensure that probity issues are appropriately managed (including managing any conflicts of interest and ensuring that any related party contracts are strictly on arms-length competitive terms).
- Be fair and transparent as to the contractor selection process to be used (in the context of the nature and scale of the procurement).
- Be consistent with good industry practice appropriate in the local government context.



This does not limit the parties taking due account of "multiple win" outcomes when entering into procurements (for example, the ability of a contractor to deliver environmental or other non-price outcomes relevant to the Project).

- 5. Project Vision** To provide guidance to the overall Project, and ensure alignment of objectives and supporting activities, the Trust and Council shall develop jointly an overall Project Vision, in consultation with Mana Whenua and the community; this may include community objectives and aspirations for the Project and details of how the Project is expected to operate as each stage is completed.
- 6. Sponsorship** Council has a corporate partnerships programme that aims to develop alternative funding sources by leveraging Council assets and opportunities, and private sector and community sponsorships form a core part of that programme. Council works and services procurements may also have sponsorship sensitivities. The Trust will liaise closely with Council on any forms of "sponsor-based" fundraising (ie, other than ordinary donations or grants). Final decisions on any sponsor(s) or naming rights (and the like) for Te Whau Pathway will be agreed jointly between the Trust and Council.
- 7. Publicity** Council in collaboration with the Trust will implement public communications on the Project. Council and the Trust will consult on any proposed communications for the Project or the Trust's fundraising. Council staffing costs related to managing the communication process, project information signage, public events and publicity activities where these are organised and managed by Council will be funded from Council operating and capital budgets. Where the Trust is the lead on co-ordinating these activities the Trust shall meet the expenses incurred.
- 8. Council name** In fundraising for the Project, the Trust will be seen as working with Council on the Project and should take care around the "probity" standards expected of local government and the public sector, including appropriate management of any conflicts of interest (and perceptions of any conflicts). Any potential conflicts should be notified promptly to Council.
- 9. Representations** Both parties must not make any representation or commitment on behalf of the other party, nor accept funding on terms that might compromise the other party's position on the Project (in fact or as a perception) without first getting the other party's written approval.
- 10. Legal framework** Each stage of the Project is and will remain owned by Council on completion. Decision making which involves public funding, project specifications, and works schedules requires a consensus from all Project Steering Group



members. Relevant personnel of the Trust and the Council will be consulted and kept across such decisions as deemed necessary. Accountability for Te Whau Pathway (as completed) is through the democratic accountability processes of Council (including the Local Board framework in the Local Government (Auckland Council) Act 2009).

If the Trust is to be the Principal to any NZS 3910:2003 physical works contracts, then:

- The Engineer to the Contract will be an internal Council staff member.
- The NZS3910:2003 physical works tenders for the Project will be issued by Auckland Council acting in the capacity of agent to the Trust. The contracts entered into with physical works contractors will be in the name of the Trust.

11. Contact persons

Council:

John Dragicevich – Council Project Sponsor

Trust:

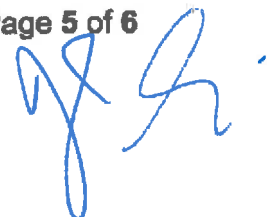
Iris Donoghue – Chair

12. Resourcing

Except as provided in this MOU, each party is responsible for meeting its own costs and expenses. This MOU does not bind Council to any minimum levels of capital or operating funding for the Whau Coastal Walkway Environment Trust and Te Whau Pathway. The Trust must ensure it does not make commitments exceeding its own secured funding.

Council will provide the internal staff resourcing to assist in the delivery of the following elements of each stage of the Project (as each stage is approved by consensus by the Project Steering Group):

- Scoping and feasibility of each stage
- Communication and consultation with stakeholders
- Engagement of professional services and consultant management
- Engagement of physical works and contractor management
- Engineer to the Contract role
- Stage and Project close out as appropriate
- Adherence to the relevant Council project, consenting, communication and procurement processes.



- Regular reporting to the Trust and stakeholders

The parties may enter into specific services agreements setting out their respective responsibilities for each stage of the Project, or for specific projects/activities/deliverables

13. **Escalation** In the event of a disputed matter between Council and the Trust escalating and requiring resolution, authority to settle the dispute rests solely with the Council Project Sponsor and the Chair of the Trust to make a joint final decision to progress the Project.
14. **General** This MOU:
- (a) Is governed by the law of New Zealand, and the parties submit to the exclusive jurisdiction of the New Zealand courts.
 - (b) May only be varied by agreement in writing between the parties (which be in correspondence of senior party representatives).
 - (c) Is the entire agreement between the parties regarding the Project, and supersedes any prior agreements, representations and correspondence except to the extent incorporated by reference in this MOU.
 - (d) May not be assigned or novated to any other person without the consent of both parties.
15. **MOU Review** The parties will meet once a year, in November, to review this MOU and make any amendments that the parties consider that are necessary for the on-going effective and efficient delivery of the Project.
16. **Limitation of liability** The Trustees of the Trust liability is limited to the assets of the Trust.


Executed as an agreement

Signed for and on behalf of Auckland Council by

Signed for and on behalf of Whau Coastal Walkway Environmental Trust by:



JOHN DRAGICEVICH
 [Print name and title of signatory]



IRIS DONOGHUE - Chair
 [Print name and title of signatory]

Dated: 27/6/15

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