



KENNEDY POINT MARINA
WAIHEKE ISLAND

KENNEDY POINT MARINA MARITIME TRUST

STATEMENT OF INTENT

SEPTEMBER 2016

Kennedy Point Boatharbour Limited
PO Box 42209, Orakei
Auckland 1071

TABLE OF CONTENTS

Contents

Purpose _____	1
Background _____	2
Establishment of Trust _____	3
Proposed Funding _____	4
Administration of Sub-Fund _____	5
Appendix A – Auckland Communities Foundation – Background Material _____	6
Appendix B – Confirmation of Auckland Communities Foundation _____	7

Purpose

As the proponent of a new marina at Kennedy Point, Waiheke Island, Kennedy Point Boatharbour Limited (KPBL), wishes to establish and annually fund a charitable trust to provide financial grants to advance maritime education.

The purpose of this document is to state KPBL's intentions, set out the background to and terms of the trust, identify the funding proposed and describe the establishment and administration of the fund.

Tony Mair
Director
Kennedy Point Boatharbour Limited
September 12, 2016

KPM MARITIME TRUST– STATEMENT OF INTENT

Background

If established the proposed Kennedy Point Marina would occupy seabed and coastal water space defined as ‘common marine and coastal area’ (CMCA) under the Marine and Coastal Area (Takutai Moana) Act 2011. Generally speaking, the public of New Zealand have protected rights of access and navigation within the CMCA under this act.

The Resource Management Act 1991 (RMA) entitles any person to apply for and obtain a right (a coastal permit) to locate structures and undertake activities in the CMCA for private purposes. The RMA entitles such rights to be sought (and obtained) on an exclusive basis, i.e., with an ability for the consent holder to exclude the public from their consented structures and adjacent coastal water space.

Appreciating the nationally important directive in section 6(d) of the RMA, and complementary provisions in the NZ Coastal Policy Statement, in practice the users of coastal space endeavor to minimize the extent to which the public are excluded. However, various degrees of exclusion are invariably necessary to ensure the activity proposed can reasonably function as intended.

Notably, section 64A of the RMA enables regional councils to establish and administer a system (within a regional coastal plan) providing for the charging of fees for the occupation of the CMCA. No such coastal occupation charging rules are currently operative or proposed in the Auckland region.

The CMCA occupation rights being sought by KPBL for the structures and water space comprising the proposed Kennedy Point Marina are detailed in the Marina Services & Operations Report (Mair & Associates, September 2016). KPBL has endeavored to design the marina to maintain and enhance public access to the coastal marine area of Kennedy Bay to the greatest extent practicable, and limit public access and navigation rights to the minimum necessary to enable it to develop and operate a successful boatharbour.

In addition, though, KPBL wishes to acknowledge that the marina will limit public rights of access and navigation in the area of the CMCA that it will occupy, and that in the absence of a coastal occupation charging regime, it effectively obtains that occupation without charge.

The proposed Kennedy Point Marina Maritime Trust described in this report is intended to provide mitigation for this aspect of the proposal.

Establishment of Trust

Rather than establish an entirely new charitable trust entity, KPBL proposes to utilise the charitable purposes fund management and distribution services of the Auckland Communities Foundation (ACF).

Relevant background to ACF is included in **Appendix A**.

ACF has advised that a charitable purpose fund that is conditional on the grant of a resource consent cannot be settled until the consents have been granted and commenced. Accordingly, a charitable purpose fund as intended by KPBL cannot be settled at this time.

However, KPBL has advanced discussions with ACF on the basis that it will undertake as a condition of any coastal permit it may be granted for the marina to establish the fund as a sub-fund to be held and administered by ACF, and to make annual contributions to it. Confirmation of these matters from ACF is included in **Appendix B**.

The sub-fund, to be named the Kennedy Point Marina Maritime Trust (KPMMT), would have the advancement of education as its primary charitable purpose, with a focus on maritime education initiatives by or for the benefit of the residents and mana whenua of Waiheke Island.

ACF would manage the annual calling for applications for grants from the fund for eligible activities and administer those successful grants in consultation with the nominated protectors of the sub-fund.

It is envisaged that eligible grants could be made for the following activities:

- Maritime environmental protection, safety and skills training for residents and mana whenua of Waiheke Island, including for equipment.
- Sailing courses and maritime education for Waiheke Island youth and mana whenua.
- Fees for maritime related study proposals by residents and mana whenua of Waiheke Island, or relating to the coastal environment of Waiheke Island.

KPM MARITIME TRUST– STATEMENT OF INTENT

Proposed Funding

The KPMMT sub-fund would be created with the settlement by KPBL of an initial fund amount of \$5000. It is proposed that the fund be in lawful existence prior to the completion of the marina and its occupation by new berth licence holders. This requirement would be secured by a condition of consent to be offered by KPBL.

KPBL proposes thereafter to settle annually (in advance) on the KPMMT sub-fund, no less than \$20,000, which amount would be CPI adjusted annually. This requirement would also be secured by a condition of consent.

The annual funding would be paid proportionately by berth licence holders in the marina as a component of their annual operating expenses, underwritten by KPBL as the marina owner and operator.

The amount is a minimum amount and could be increased at the discretion of KPBL with the agreement of the berth licence holders.

The funding would be payable annually for the term of the marina's coastal occupation permit (35 years has been sought).

Administration of Sub-Fund

Administration of the fund would be undertaken by ACF on its standard terms and conditions.

KPBL proposes that the sub-fund would be 'protected' by three independent 'trustees'.

One would be appointed by KPBL, and would be a person with suitable qualifications and experience in maritime safety and activities; the other two would be residents of Waiheke Island with local maritime associations to be appointed by the chair of the Local Community Board.

Annually, ACF would call for applications for funding from the KPMMT for eligible activities by reference to the purpose of the fund. The 'trustees' would meet, consider the applications received and determine the funding grants as they considered appropriate, bearing in mind the intent of the fund.

It is proposed that 50% of the annual funding to the KPMMT would be available for grants/distribution. The other 50% would be invested by ACF to build-up an endowment fund with the intention that the KPMMT would be self-sustaining by the expiry of the coastal occupation permit for the marina (expected to be 35 years).

Appendix A – Auckland Communities Foundation – Background Material

Identify the right giving option for you

Auckland Communities Foundation facilitates effective philanthropy for individuals, families, businesses and groups. You can give via the Foundation in the following ways:

Consider this if you are:

- Eager to help address Auckland's most challenging social issues as they emerge and evolve over time.
- Happy to let Auckland Communities Foundation's trustees decide how to most effectively use your donation(s).

This means:

You contribute to our Founding Trustees Fund, which supports a range of initiatives that address Auckland communities' social issues.

Your contribution can be one-off or ongoing.

Supporting our community response fund

You can give by

Starting your own named fund

This means:

We establish your own fund to support the communities or causes you care about.

A designated fund
Makes ongoing contributions to a specific charitable beneficiary chosen by you.

A donor-advised fund
Supports a range of initiatives and organisations over time.

Consider this if you are:

- Keen to support a particular community or area of interest.
- Interested in hands-on giving without administrative burden.
- Committed to giving long-term.
- Looking for expertise to help you achieve your philanthropic goals.

Types of donor-advised funds

Area Fund - focuses on supporting a particular geographic community.

Area of Interest Fund - focuses on making a difference within a particular range of issues or a specific demographic community.

Scholarship - provides financial support to help individuals achieve their own goals and dreams through education.

Consider this if you are:

- Looking to support a community or cause that is the focus of one of our existing funds.
- Happy to let the advisory board of an existing fund together with Auckland Communities Foundation's trustees decide how to most effectively use your donation(s).

This means:

You contribute to an existing fund that is already supporting a community or cause you care about.

Your contribution can be one-off or ongoing.

Contributing to an existing fund

Starting your own partnership fund

This means:

We start a special named fund for you in partnership with your current investment manager. Auckland Communities Foundation manages your grantmaking and provides philanthropic services whilst your investment manager oversees the financial aspects of the fund's operation. Terms and conditions apply.

Consider this if you are:

- Committed to your existing investment manager and also to philanthropic giving.
- Keen to support a particular community or area of interest.
- Looking for expertise to help you achieve your philanthropic goals.

[Name of delegated Trustee of the Board]

With the delegated authority to bind the Auckland Communities Foundation
(Trustees)

[Name and description of Sub-Fund Settlor]

(Sub-Fund Settlor)

[Name and description of any Advisory Trustee or Protector if applicable]

(Appointee)

**SUPPLEMENTARY DEED
RELATING TO A SUB-FUND OF
THE AUCKLAND COMMUNITIES FOUNDATION**

- 3.2 The Sub-Fund shall be applied to all or any of the charitable purposes set out in Part 3.2 of the First Schedule.
- 3.3 The Board appoints **[the Appointee's name]** as an Advisory Trustee in respect of the Sub-Fund in accordance with Part 3.3 of the First Schedule.
- 3.4 The Board shall appoint an Advisory Committee in respect of the Sub-Fund in accordance with Part 3.4 of the First Schedule.
- 3.5 The Sub-Fund Settlor appoints, and the Board acknowledges the appointment of, **[the Appointee's name]** as Protector in respect of the Sub-Fund in accordance with Part 3.4 of the First Schedule.
- 3.6 The Sub-Fund shall be administered and applied in accordance with the further terms set out in Part 3.5 of the First Schedule.

4. Supplementary deed to apply consistently with Foundation Deed

- 4.1 Notwithstanding anything to the contrary which is express or implied, this supplementary deed shall apply consistently with the Foundation Deed and, without limiting the foregoing, nothing in this supplementary deed shall apply in a manner or to a purpose which is inconsistent with the charitable object of the Foundation under the Foundation Deed, and any inconsistency of interpretation between the Foundation Deed and this supplementary deed shall be resolved by the Board (as to which its view shall be final) so as to give paramountcy to the meaning and application the Foundation Deed.

5. Delegate of the Board

- 5.1 This supplementary deed is signed by **[Name of delegated Trustee of the Board]** as the duly authorised delegate of the Board which comprises the Trustees of the Foundation at the date of signature. The written resolution conferring delegated authority in that respect, and confirming that the Board is bound by this supplementary deed, is attached as the second schedule.

EXECUTION

SIGNED by)
[Name of delegated Trustee of)
the Board])
in the presence of:) _____
[Name]

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

SIGNED by)
[Name of Sub-Fund Settlor])
in the presence of:) _____
[Name]

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

SIGNED by)
[Name of Advisory Trustee
or Protector if applicable])
in the presence of:) _____
[Name]

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

FIRST SCHEDULE

Part 1: Name of the Sub-Fund

Part 2: Money investments or other assets comprising the Sub-Fund Settlement

Here set out details of what is to be transferred to the Foundation to establish the Sub-Fund

Money:

Investments:

Other assets:

Together with such further or other transfers by way of addition to the Sub-Fund which may be made by the Sub-Fund Settlor and accepted by the Foundation at any time hereafter.

Part 3: Terms on which the Sub-Fund is established

Delete those that are inapplicable to the arrangements made by the parties.

3.1 Eligible Charities nominated to benefit

Together with such other Eligible charities as may be nominated in writing by the Sub-Fund Settlor and agreed to by the Foundation at any time hereafter.

3.2 Charitable purposes nominated to benefit

Together with such other charitable purposes as may be nominated in writing by the Sub-Fund Settlor and agreed to by the Foundation at any time hereafter.

3.3 Advisory Trustee

This will not normally be needed if an Advisory Committee is being appointed

If applicable, insert the name, address and contact details of the Appointee (who must complete the deed)

Name

Address

Contact details
(telephone and email)

Or such other person as the Sub-Fund Settlor recommends in writing to the Board from time to time in substitution for the named Appointee, upon that other person entering into a supplementary deed with the Foundation recording that substitution and their adherence to the terms of this supplementary deed.

3.4 Advisory Committee

This will not normally be needed if an Advisory Trustee is being appointed

The Board agrees to appoint the following persons to an advisory Committee in relation to the Sub-Fund:

List the nominees

_____	_____
_____	_____
_____	_____

3.5 Protector

If applicable, insert the name, address and contact details of the Appointee (who must complete this deed)

Name

Address

Contact details
(telephone and email)

Or such other person as the Sub-Fund Settlor nominates in writing to the Board from time to time in substitution for the named Appointee, upon that other person entering into a supplementary deed with the Foundation recording that substitution and their adherence to the terms of this supplementary deed.

3.6 Other terms of the Sub-Fund

If necessary attach as a separate document duly marked

SECOND SCHEDULE

Attach here the delegated authority from the Board for execution of this deed by its representative.



SECOND SCHEDULE

Memorandum of INVESTMENT MANAGEMENT for Fund [REDACTED]:

Conditions related directly to the management operation and activities of this fund managed by Auckland Communities Foundations (ACF) are:

1. The Fund is an Endowment Fund, with the capital being preserved and the income used for charitable distribution.
2. Distributions (grants) will be made annually, on advice from ACF to the Fund Settlor of the net income of the fund available after the end of the financial year.
3. The capital or corpus is to be invested (please indicate preference):
 - a. **Category 1 (less than 1 year) Held at ACF's Trust Account at ASB.**
 - b. **Category 2 (1 - 3 years) Fees: 0.4%**
 - c. **Category 3 (3+ years) Fees: 0.8%**

As per the investment information supplied and in line with the Statement of Investment Policies and Objectives of ACF.
4. ACF will deliver six monthly financial statements to the Settlor.
5. ACF will supply tax receipts (please indicate preference):
Annually after the 31st of March / On receipt of donations.

ACF Fees:

The fees for this fund at time of signing will be _____ % per annum.

Appendix B – Confirmation of Auckland Communities Foundation

19 September 2016

Tony Mair
Kennedy Point Boatharbour Limited
32 Audrey Street
Takapuna
AUCKLAND

Dear Mr Mair,

KENNEDY POINT MARINA – PROPOSED MARITIME TRUST

Thank-you for contacting Auckland Communities Foundation (ACF) to discuss your proposed new marina project at Kennedy Point on Waiheke Island and the prospects of establishing a charitable purpose fund associated with the marina (if it is developed), that could be held and administered by ACF.

I am writing to confirm that ACF is capable and willing to work with you and the marina in relation to this proposed sub-fund.

I have already provided details about ACF, how it operates and its services, to your adviser, Mr Littlejohn, and we have met to discuss the Statement of Intent that is to be included with the application to be lodged shortly with the Auckland Council. In relation to that document I confirm:

- (a) That a charitable purpose sub-fund cannot be settled until consents for the project (and the charitable purpose) are obtained, but once that milestone is reached, the establishment of the sub-fund can be concluded in a matter of weeks;
- (b) The proposed purpose of the sub-fund, to receive and distribute grants for:
 - *Maritime environmental protection, safety and skills training for residents and mana whenua of Waiheke Island, including for equipment.*
 - *Sailing courses and maritime education for Waiheke Island youth and mana whenua.*
 - *Fees for maritime related study proposals by residents and mana whenua of Waiheke Island, or relating to the coastal environment of Waiheke Island.*

is a charitable purpose within the Charities Act 2005.

- (c) The proposal to gift funds annually to the sub-fund for administration and distribution by ACF in consultation with the proposed protectors (appointed as you propose), is acceptable to ACF. In that regard, I note your proposal that 50% of the annual funding would be available for grants/distribution, while the other 50% would be invested by ACF to build-up an endowment fund. ACF endorses that proposal.

Fund management fees at this stage would be our standard 2% Management fee and an annual \$500 fee to administer the granting round.

We are basing the latter on about 10 hours of office work, but until we actually get underway we will not know the extent of the applications to administer on an annual basis. As such, we propose a fee review after the first year of granting to ensure administration costs are fair and reasonable.

I understand that it may be some months before the project is in a position where it can proceed, and possibly 2 years before it might be complete. I will be sure to let you know if anything arises in the meantime that might require us to change our advice to you. I would appreciate it if you could do the same.

I wish you all the best and a successful outcome with the project, and I look forward to working with you in due course to settle the Kennedy Point Marina Maritime Trust.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Dellwyn Stuart". The signature is fluid and cursive, with a small horizontal line at the end.

Dellwyn Stuart
Chief Executive Officer