



# N E Wells & Associates

16 DEC 1998

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*David Lyvel*

*Please discuss with me*

15 December, 1998

Barry O'Neil  
Chief Veterinary Officer  
MAF Reg  
Ministry of Agriculture and Forestry  
P O Box 2526  
WELLINGTON

Dear Barry

## ANIMAL WELFARE INSTITUTE OF NEW ZEALAND

Enclosed is a formal proposal based on our discussions in September and the policy contained in the Animal Welfare Bill.

The training of the additional officers is now completed pending final assessments.

There has been some slippage on my part in finalising this proposal.

Would you be able to make a decision by 22 December. This will then enable me to work on detailed issues over the break.

*Neil Wells*  
Sincerely

*Neil Wells*

Neil Wells

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# ANIMAL WELFARE INSTITUTE OF NEW ZEALAND

## *Proposal to MAF Regulatory Authority re fulfilling the criteria of an "approved organisation" under the Animal Welfare Bill and providing for a transitional programme*

### **1. Introduction**

This proposal to the Chief Veterinary Officer of MAF Regulatory Authority provides a transitional approach towards fulfilling the criteria of an approved organisation under the Animal Welfare Bill.

In September 1998 it became apparent that territorial authorities would not be specifically recognised in the Animal Welfare Bill (No.2). It was agreed with the Chief Veterinary Officer that current Waitakere City officers would have their warrants renewed on 11 December 1998 and additional officers being trained to cover the extended area of North Shore City would be considered for appointment (subject of their suitability) provided:

1. A detailed proposal is submitted clarifying issues surrounding the establishment of the Animal Welfare Institute of New Zealand and that these are consistent with the policy of the No.2 Bill;
2. The proposals are still consistent with the Act as it is finally passed;
3. If the trust does not proceed or cannot meet the criteria or the Act precludes AWINZ being involved as an "approved organisation" any interim arrangement for the Waitakere City programme would be discontinued.

This paper sets out the background to the issues, details for a transitional programme, operational options and a timeline.

### **2. Waitakere City Pilot Programme**

In 1995 a pilot programme between MAF Regulatory Authority and Waitakere City Council resulted in 10 officers being trained to standards equal to the training standards of the RNZSPCA.

After the training course 2 officers left the employ of Waitakere City and one did not seek a warrant due to ill health. The other 7 officers were warranted. It is testimony to the stable environment that exists in Animal Welfare Services that every Inspector trained and warranted 3 years ago is still employed.

In the following 3 years Animal Welfare Services of Waitakere City has been audited 3 times by MAF's compliance unit. Each audit was reported favourably.

Because the policy development leading up to the proposed Animal Welfare Bill was evolving and required further consultation with stakeholders, MAF Reg has rolled over the Waitakere City Inspector appointments on a quarterly basis pending final agreement on the content of the Animal Welfare Bill.

In order that the programme can move on now that policy has been determined in the interim through the consultative process of the Animal Welfare Bill it has been necessary to reassess the nature of the programme.

It is now clear that Waitakere City cannot meet the criteria of "approved organisation" as set out in the Bill as a territorial authority is not an organisation that has the promotion of animal welfare as its principal purpose.

The Animal Welfare Institute of New Zealand does have the promotion of animal welfare as its principal purpose

The Chief Veterinary Officer has indicated that, provided the Institute can meet the criteria of an "approved organisation", a transitional programme may continue.

### **3. Waitakere City's Strategic Plan**

Animal Welfare Services is a business unit that operates within the infrastructure of Waitakere City.

In September 1997 Waitakere City Council commenced consideration of strategic options for its various business units including Animal Welfare Services

Animal Welfare Services considered a number of strategic options:

- No change
- Change to a local authority trading enterprise (LATE)
- Formation of a charitable trust to act as the interface between community and service delivery

It was the third option that gained favour – the formation of a charitable trust.

Over the past 12 months the City Business Advisory Unit and Animal Welfare Services have been developing the concept of forming a charitable trust. This process commenced well before the policy of "approved organisations" in the No.2 Bill had been formulated.

### **4. Function of the Institute**

The charitable trust will be known as the "Animal Welfare Institute of New Zealand" (AWINZ). It will be registered under the Charitable Trusts Act 1957. The Waitakere City Council is underwriting the establishment of the Institute.

The principal purpose of the Institute is to promote the welfare of animals.

The Institute will function as a quality assurance body and will be responsible to MAF Reg for:

- the integrity of the system,
- the performance of employer groups (linked organisations), and
- the performance of each individual Inspector.

This will be achieved in a number of ways.

At the commencement of the pilot programme in 1995 Waitakere City Animal Welfare Services activated a quality assurance system. The system is robust and it is against this quality system that MAF Reg Compliance Group has carried out its audits.

It is proposed that this system will be taken up and adapted by AWINZ and will form the basis of any contractual arrangement with any other employer group (linked organisation).

The integrity of the system will be maintained by:

- a memorandum of understanding between AWINZ and MAF Reg,
- a performance contract between AWINZ and each Inspector, and
- a contract between the Inspector's employer (the linked organisation) and AWINZ.

As well as a Board of Trustees responsible for the overall functioning of the Institute, the Board will form advisory committees for specialist functions such as:

- training and operational standards
- fundraising
- financial policy
- animal welfare policies
- strategic planning.

## 5. Linked organisations

In the short term Animal Welfare Services (AWS) of Waitakere City Council will continue to operate as a business unit of Waitakere City Council. AWS and its Inspectors will interface with AWINZ through performance contracts. As such Animal Welfare Services will be a linked organisation of AWINZ.

Medium term strategy is that the business unit of Animal Welfare Services will be vested in AWINZ. All the assets of the AWS (the animal refuge, plant and equipment) will be transferred to the Institute. This transfer cannot take place until it has been through the Annual Plan process (about May 1999). However, the general formation and development of the Institute is not dependent on the Annual Plan process.

Animal Welfare Services has in the last month taken over animal care and control for North Shore City. One single integrated compliance unit provides the services for both Waitakere City and North Shore City. Waitakere City will be able to assign its contract to the Institute if that is beneficial to the stakeholders. Animal welfare and control will then operate as a business unit of the Institute.

Territorial authorities prepared to accept the terms and conditions of a linked organisation will be able to connect to AWINZ as linked organisations and any officers who become Inspectors will do so under the systems and procedures of AWINZ.

Longer term the Institute will compete for territorial authority animal control contracts anywhere in New Zealand.

As a basic axiom the Trustees of AWINZ believe that animal welfare and animal control are inextricably linked. AWINZ will not tender for any animal control contract with a territorial authority if it is exclusively animal control and precludes the promotion of animal welfare.

## 6. Other links

It is not intended that animal welfare compliance services operated by or for AWINZ will be delivered exclusively through officers employed by territorial authorities.

Over the past few years other groups have indicated an interest in animal welfare compliance activities. For instance, the New Zealand Veterinary Association has expressed an interest in some individual veterinarians becoming Inspectors.

At one time the NZVA had proposed that every veterinarian should be an Inspector by virtue of the veterinarian's registration. However, now that veterinarians will have the power to euthanase sick and injured animals under the Animal Welfare Bill, that proposal is no longer being promoted. Nevertheless, the NZVA is still interested in the idea that particular veterinarians, perhaps those no longer or not currently in practice, may wish to become Inspectors.

Some preliminary discussions with officers of the NZVA have explored the possibility of those veterinarians becoming Inspectors under the auspices of the Institute. If this were to be a possibility it would be feasible to operate a system whereby individual veterinarians contracted directly to AWINZ and the quality systems and procedures could be varied for that eventuality.

Other occupational groups that could also be considered for inclusion might include:

- Regional park rangers
- Volunteer and career firemen
- Ambulance officers
- Police officers with a particular interest in animal welfare wishing to operate off duty
- Animal welfare organisations (but not animal rights organisations) not wishing to become approved organisations in their own right.

While this list is not exhaustive, it shows a range of occupations that can have significant day-to-day animal contact in the community and be "ears and eyes". Operating under AWINZ systems and procedures these individuals could be a cost-effective means of delivering animal welfare compliance services.

However, it is proposed that no new grouping would be added without prior consultation with and approval of MAF Reg.

## 7. Implications of the Animal Welfare Bill

Clause 105 of the Bill provides for the Gazetting of an "approved organisation" based on the following criteria:

- (a) The principal purpose of the organisation is to promote the welfare of animals; and
- (b) The accountability arrangements, financial arrangements and management of the organisation are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
- (c) The functions and powers of the organisation are not such that the organisation could face a conflict of interest if it were to have both those functions and powers and the functions and powers of an approved organisation; and
- (d) The employment contracts or arrangements between the organisation and the organisation's Inspectors and auxiliary officers are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
- (e) The employees, members, or volunteers of the organisation as the case may be, have the relevant technical expertise and experience to be able to exercise competently the powers, duties, and functions conferred or imposed on Inspectors and auxiliary officers.

## **8. The Institute's compliance with clause 105**

On the assumption that this clause will pass into law, possibly with some minor changes, the Institute proposes to meet those criteria in the following manner:

### **8.1 Principal purpose**

The objects and purposes of the Institute will be to promote principally in New Zealand effective means for the welfare of animals, for the protection, control and conservation of animals, for the prevention of ill treatment of and the relief of suffering to animals.

### **8.2 Accountability arrangements**

A Board of Trustees will control the Institute:

The founding trustees are:

- Nuala Grove
- Sarah Giltrap
- Graeme Coutts
- Neil Wells

The Deed provides for the appointment of further trustees up to a maximum of 7. The draft Deed is attached as Appendix I.

The Deed provides that the Institute Board will prepare a report on the administration, performance and affairs of the Institute in respect of each 6-month period. The report will contain the matters specified from time to time and will be prepared within 6 weeks of the conclusion of each 6-month period to which the report relates.

Further, the Institute Board will prepare an annual report on the administration, performance and affairs of the Institute within 3 months after the conclusion of each financial year. The report will include the annual business plan and operating budget.

These reports will be available as part of the MAF Compliance Group audit process.

### **8.3 Financial arrangements**

The Institute Board will keep true and fair accounts of all money received or expended. The accounts will be audited by an accountant appointed for that purpose.

The Waitakere City Council is providing seed funding for the Institute. Future funding for the Institute will be derived from:

- Profits from business activities related to animal welfare and control
- Fees for providing quality assurance services
- Corporate sponsorships
- Charitable donations
- Grants from philanthropic trusts and funding bodies
- Bequests
- Fundraising activities
- Council grants.

### **8.4 Management**

A small administration unit headed up by a Chief Executive Officer will manage the Institute. The CEO will be accountable to the Institute Board.

### **8.5 Conflict of interest**

While the Bill does not specify what circumstances would constitute a conflict of interest, it is likely that the main area of concern for a conflict of interest would be where an organisation seeking to be an approved organisation has policies and confrontational activities that are aligned more with animal rights organisations.

The Institute accepts that as a major statutory role of an approved organisation will involve compliance activities of animal welfare legislation and the employment of inspectors, it would be entirely inappropriate for the Institute to adopt policies on animal welfare issues that are aligned with animal rights strategies and the use of confrontational tactics commonly employed by animal rights organisations.

Because the Institute will be registered under the Charitable Trusts Act 1957 and not the Incorporated Societies Act 1908 it will have no ordinary members. Thus the Board of Trustees are always in control.

It is important to emphasize that the purposes of the Institute are as follows (none of which relate to animal rights):

- (a) To provide animal welfare and control services;
- (b) To encourage and develop by humane education individual responsibility for the welfare, protection, control and conservation of animals, and the promotion of humane societal attitudes to animals and people in society;



- (c) To establish a quality assurance body for the enhancement of quality assured standards in animal welfare and control compliance activities, animal care and animal utilisation;
- (d) To support and encourage operational research into animal welfare, protection, control and conservation issues;
- (e) To co-operate with Government agencies in the reform of laws for the welfare, protection, control and conservation of animals, and the promotion of humane societal attitudes to animals and people;
- (f) To advance the aims of the Institute by seeking the support and advice of all available moral, educational, legislative and scientific institutions, and strategic partners;
- (g) To maintain effective liaison and to seek co-operation with organisations in New Zealand and elsewhere in the world having similar objectives.

### **8.6 Employment contracts**

In the model being proposed by the Institute each Inspector will be contracted to the AWINZ through a performance contract (see Appendix VI). In addition there will be Memorandum of Understanding between the linked organisation (the Inspector's employer) (see Appendix V). A separate Memorandum of understanding will cover the responsibility of AWINZ to MAF Reg (see Appendix IV).

### **8.7 Technical expertise and experience**

The minimum training standard will be the National Certificate in Compliance and Regulatory Control (Animal Welfare), a qualification developed by the Public Sector Training Organisation and registered with the NZQA.

As a transitional standard all inspectors will be required to be qualified in the following unit standards in order to be able to hold warrants in the interim:

- 5181 Provide emergency first aid care to companion animals;
- 5183 Handle and transport injured companion animals;
- 14234 Demonstrate knowledge of animal welfare legislation as it applies to appointed inspectors;
- 4223 Describe the powers of a compliance officer;
- 4235 Plan and prepare for an investigation;
- 4236 Conduct an investigation;
- 4239 Search premises;
- 4241 Seize property.

These unit standards represent 35 credits of the total number of 83 credits required for the full National Certificate.

A block course just completed under the auspices of UNITEC had 17 students of which 13 were Waitakere City animal welfare officers.

Seven are the original officers who were warranted in 1995 and whose warrants now expire on 11 March 1999. A further 6 are additional officers employed now that Animal Welfare Services of Waitakere City is responsible for North Shore City. The remainder are 3 from Manukau City and 1 from Auckland City.



It is proposed that under the minimum standards to be established by the Institute:

- an officer will need the 8 unit standards specified above before the issue of an interim 12-month warrant will be considered
- all Inspectors will be required to work progressively towards completion of the National Certificate no later than 3 years from the time a warrant is first issued.

## **9. Animal welfare policies**

A draft of the animal welfare policies of AWINZ can be found in Appendix II.

## **10. Operational research**

One of the objects of the Institute is

*To support and encourage operational research into animal welfare, protection, control and conservation issues;*

This will not be scientific research per se but rather operational research to test systems, attitudes, and ways in which animal welfare issues can be enhanced. This would include liaison with existing institutions such as the Animal Behaviour and Welfare Research Centre, Meat Industry Research Institute and the Chair in Animal Welfare Science.

## **11. Quality Systems and Audit**

### **11.1 Quality Systems**

AWINZ will establish a quality system certified to ISO 9002, which will include objective evidence of compliance with the programme that can be audited.

### **11.2 Internal Audits**

AWINZ will carry out an internal audit of the performance of Inspectors and compliance with the terms of the contract with AWINZ and MAF Reg each 6 months during the programme.

This internal audit may be contracted to a suitably qualified consultant.

### **11.3 Extrinsic Audits**

MAF Reg Compliance Group will conduct an extrinsic audit of AWINZ annually or at such other intervals as are agreed between MAF Reg and AWINZ. As part of this audit MAF Reg may carry out random audits of linked organisations.

## **12. Transitional arrangements**

It is submitted that AWINZ meets the criteria of an "approved organisation" as it is currently set out in the No.2 Bill.

Unless there is a major shift in these criteria that AWINZ cannot meet, it is assumed that by 1 October 1999 (the day the Act comes into force) the Animal Welfare

Institute of New Zealand will have fulfilled all the requirements of an approved organisation,

It is proposed that in the meantime there will need to be a transitional programme. It is proposed that:

- The current Waitakere City programme continues until 12 June 1999 by which time the criteria for an approved organisation will be contained in the Act.
- Leading up to 12 June 1999 AWINZ will be able to put together the systems and procedures necessary based on the current criteria for an approved organisation as contained in the Bill. Should there be any last minute variations when the Bill is reported back to Parliament the systems and procedures can be modified.
- Assuming that by 12 June 1999 draft systems and procedures will be in place, the warrants can be reissued to expire on the day before the Act comes into force (30 September 1999).
- If MAF Reg is satisfied that the systems and procedures are such that there can be a reasonable expectation that AWINZ will be an approved organisation when the Act comes into force it might be possible to consider issuing warrants on 12 March 1999 for a longer period.
- Sometime in August 1999 MAF Reg will want to schedule a compliance audit of AWINZ to support or otherwise a recommendation that AWINZ becomes an approved organisation.

### **13. Timeline**

#### **22 December 1998**

CVO decision to approve (or not) interim proposal contained in this submission.

#### **12 March 1998**

Current warrants renewed to 12 June 1999.

#### **22 December 1998**

Applications for new warrants for S Miller, M Fuller, M Goddard, D Exler, L Exler, J Charles submitted to MAF Reg for approval, subject to each being assessed "competent" against the unit standards.

#### **23 December 1998**

Warrants issued to new Inspectors (subject to MAF Reg being able to complete Police checks. An advanced Police check form might be able to be submitted earlier, say by 18 December, to enable MAF Reg to process that before the formal application is completed.) These warrants to be issued to expire on 12 March 1999.

#### **30 April 1999**

This transitional programme is reviewed to align with the final criteria for "approved organisations" contained in the Animal Welfare Act 1999. (This assumes the Act has been passed by that time).

#### **15 May 1999**

The Animal Welfare Institute of New Zealand gives formal notice of its intention to apply to be an approved organisation on the day the Act comes into force (1 October 1999).

**August 1999**

MAF Reg Compliance Group conducts extrinsic audit of AWINZ and Waitakere City Animal Welfare Services.

**1 October 1999**

Minister approves AWINZ as an approved organisation.

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# APPENDIX I

## Animal Welfare Institute of New Zealand

### Charitable Trust Deed

**DEED** dated the            day of            199

#### PARTIES

The Waitakere City Council ("the Council")

**AND**

Nuala Grove, of Auckland

**AND**

Sarah Giltrap, company executive, of Auckland

**AND**

Graeme Coufts, management consultant, of Auckland

**AND**

Neil Wells, barrister, of Auckland

(collectively referred to as the "Trust Board").

#### BACKGROUND

- A. The Council wishes to establish a trust for charitable purposes by creating the trust provided for in this Deed.
- B. The Council has accordingly paid or caused to be paid into the joint names of the Trustees the sum of ten dollars (\$10.00) (the receipt of which is acknowledged by the Trustees) to be held by the Trustees together with any further sums or other assets acquired or vested in the Trustees upon the trusts and with and subject to the powers and discretions set out or implied in this Deed.
- C. The Trustees have agreed to act as Trustees of the Trust and constitute the initial Trust Board of the Trust.
- D. The parties have agreed to enter into this Deed specifying the purposes of the Trust and providing for its control and government.

# COVENANTS

## 1. Establishment of Trust

The Council DIRECTS AND DECLARES and the Trustees ACKNOWLEDGE AND DECLARE that the Trustees shall stand possessed of the Trust Fund upon trust to apply the same for the objects and purposes set out in clause 4 and with the powers and discretions set out or implied in this Deed.

## 2. Name of Trust

The name of the Trust shall be "The Animal Welfare Institute of New Zealand" or such other name as the Board determines from time to time.

## 3. Declaration of Trust

It is hereby irrevocably covenanted agreed and declared that the Trustees shall hold the sum paid to them by the Council, together with any future assets which may at any time or times be paid given or transferred to the Trustees by any other organisation, company, body or person to be held by the Trustees upon the Trusts and subject to and with the powers and provisions expressed and declared in this Deed.

## 4. Objects and purposes

The objects and purposes of the Trust are to promote principally in New Zealand the welfare of animals, the protection, control and conservation of animals, the prevention of ill treatment to and the relief of suffering of animals, and in furtherance of these purposes:

- (a) To provide animal welfare and control services;
- (b) To encourage and develop by humane education individual responsibility for the welfare, protection, control and conservation of animals, and the promotion of humane attitudes in society to animals and people;
- (c) To establish a quality assurance body for the enhancement of quality assured standards in animal welfare and control compliance activities, animal care and animal utilisation;
- (d) To support and encourage the study of animal welfare, protection, control and conservation issues;
- (e) To co-operate with Government agencies in the reform of laws for the welfare, protection, control and conservation of animals, and the promotion of humane attitudes in society to people and animals;
- (f) To advance the aims of the Trust by seeking the support and advice of all available moral, educational, legislative and scientific institutions, and strategic partners;
- (g) To maintain effective liaison and to seek co-operation with organisations in New Zealand and elsewhere in the world having similar objectives.

## 5. Tangata Whenua

In attaining its purpose the Trust Board shall have regard to the views and expectations of the tangata whenua.

## 6. Powers

In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956 the powers that the Board may exercise in order to carry out its charitable objects are as follows:

- (a) To incorporate as a Trust Board under the Charitable Trust Act 1957;
- (b) To become an "approved organisation" under the provisions of the Animal Welfare Act 1999 (when that Act has been enacted); and
- (c) To use the funds of the Trust as necessary or expedient for the purpose of attaining the objects of Trust and in payment of the costs and expenses of the Trust; and
- (d) To purchase, take on lease or licence, or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges as necessary or expedient for the purpose of attaining the objects of the Trust, and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; and
- (e) To carry on any business; and
- (f) To invest surplus funds in any way permitted by law for the investment of trust funds; and
- (g) To seek any declaration or Court order or promote any Act of Parliament or initiate or participate in any similar proceedings for the enabling of the Board to carry any of its objects into effect or to better achieve its objectives and to oppose any proceedings or application which may seem likely directly or indirectly to prejudice the interests of the Trust; and
- (h) To provide funds for the Trust's objects, or any of them and for that purpose to borrow or raise money from time to time without security and upon such terms as to priority and otherwise as the Board thinks fit, to give security by way of mortgage, debenture guarantee or otherwise over the whole or part of the property of the Trust; and
- (i) To employ staff or enter into contracts for the provision of services, for any purpose as necessary or expedient for the purpose of attaining the objects of the Trust and to manage, dismiss or terminate such contracts. The Board may employ as professional advisers, agents, officers and staff persons who are members of the Board; and
- (j) To effect insurances of whatever nature in respect of any property, by whatever means, for whatever consideration and upon terms and conditions as the Board thinks fit; and
- (k) To do all things as may from time to time appear desirable to enable the Board to give effect to and to attain the charitable purposes of the Trust.

## 7. Trust Board

7.1 A Trust Board shall administer the Trust.

## **7.1 Name of the Board**

The name of the Board shall be "The Animal Welfare Institute of New Zealand Trust Board" or such other name as the Board determines from time to time.

## **7.2 Appointment to the Board**

- 7.2.1 The Board shall consist of not less than 4 nor more than 7 members, provided that where a vacancy occurs the remaining trustees may act until a replacement Trustee is appointed. The initial members of the Board shall be the four signatories who signed this Deed as Trustees.
- 7.2.2 The Trustees may appoint up to three additional Trustees. Before appointing additional Trustees under this clause the Board will consult with the Council and shall have regard to the needs of the Trust having regard to the Trust's activities and the skills required by the Board and the extent to which the appointee will enhance the balance of those skills.
- 7.2.3 No person who is a Councillor, a Community Board member or an employee of the Council may be appointed to be a Trustee or an alternate Trustee
- 7.2.4 A Trustee may, with the consent of the Board, appoint any person to be an alternate Trustee in the Trustee's place but such appointment shall have effect only during such period as the Trustee shall be absent from New Zealand, and the Trustee may by written notice to the Board revoke or alter any such appointment of an alternate Trustee.

## **7.3 Term of Office and Vacancies**

- 7.3.1 The term of appointment of each Trustee shall be 3 years provided that upon the expiry of any term of any term of appointment each Trustee, unless a person to whom any of the provisions of clause 7.3.2(a), (c), (d), (e) or (f) applies, shall be eligible for reappointment.
- 7.3.2 The office of a Trustee shall become vacant if a Trustee:
- (a) Dies or is found to be a mentally disordered person within the meaning of the Mental Health Compulsory Assessment and Treatment Act 1992; or
  - (b) Resigns office as a Trustee by giving 30 days notice in writing to the Board; or
  - (c) If removed from office by unanimous resolution of the Council notified in writing to the Board, in the case of a Trustee appointed by the Council; or
  - (d) If removed from office by unanimous resolution of the other Trustees, in the case of a Trustee appointed by the Board; or
  - (e) Is declared bankrupt or makes an assignment to creditors; or
  - (f) Fails to attend 3 consecutive meetings; or
  - (g) If an event occurs as specified in section 43 of the Trustee Act 1956.
  - (h) Every vacancy occurring among the Trustees shall be filled as soon as is convenient. The Board may appoint any suitable person to be a Trustee to fill any vacancy in the office of Trustee.



## **7.4 Payments to Trustees**

- 7.4.1 Trustees shall be honorary provided that Trustees may be reimbursed for reasonable expenses incurred while on Board business at the sole discretion of the Board.
- 7.4.2 Any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved where that Trustee has acted in any capacity whatever, notwithstanding that the Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

## **7.5 Duties of the Board**

- 7.5.1 The Board shall be responsible for furthering the objects of the Trust and for declaring general policy relating to the implementation of the objects of the Trust
- 7.5.2 The Board shall:
- (a) Prepare strategic and annual business plans and an annual operating budget with specific strategies and operational objectives and performance targets.
  - (b) Implement the necessary transparent processes, systems, structures and resources to support the proper operation of the Trust, including an appropriate accounting system and systems of performance measurement and reporting.
  - (c) Provide for accountability arrangements, financial arrangements and management of the trust required by the Animal Welfare Act 1999 (when that Act has been enacted), and
  - (d) Regularly review the administration, performance and affairs of the Trust and prepare the reports required by clause 12.3.
  - (e) Implement sound management and risk management practices consistent with prudent and commercial business and the objects of the Trust.

## **8. Office**

The office of the Trust shall be such place in Waitakere City as the Board may determine.

## **9. Officers of the Board**

The officers of the Board shall consist of the following:

- (a) A Chairperson who shall be a Trustee and who shall be appointed by the Board. The Chairperson shall retire from that office at each annual meeting of the Trust and shall be eligible for reappointment by the Board;
- (b) A Deputy Chairperson who shall be a Trustee and who shall be appointed by the Board. The Deputy Chairperson shall retire from that office at each annual meeting of the Trust and shall be eligible for reappointment by the Board;
- (c) A Secretary who shall be appointed by the Board and whose duties shall be to give notices of all meetings, to keep minutes and records of all meetings of the Board and of any committees, and perform such other duties as the Board may direct and as are normally incidental to the office of secretary. The Secretary may also carry out

the duties of Treasurer. The Secretary shall attend all meetings of the Board, unless the Trustees otherwise direct but shall not be entitled to vote;

- (d) A Treasurer who shall be appointed by the Board and who shall have custody of the books of account and financial records and, subject to the directions of the Board, shall be responsible for the funds of the Trust. It shall be the duty of the Treasurer to see that all statutory and other requirements with reference to the financial affairs of the Trust are complied with and that the provisions of this Deed as to such matters are carried out within the Treasurer's powers, and perform such other duties as the Board may determine and as are normally incidental to the office of treasurer. The Treasurer may attend all meetings of the Board unless the Trustees otherwise direct but shall not be entitled to vote.

## 10. Chief Executive Officer

- 10.1 The Board may appoint a Chief Executive Officer upon such terms and for such period and with such duties and at such remuneration as the Trustees shall determine. Such person may by virtue of this appointment, also act as Secretary and/or Treasurer of the Trust responsible to the Board but directly responsible to the Chairperson of the Board.
- 10.2 The Chief Executive Officer shall:
- (a) Attend and participate in all meetings of the Board unless the Trustees otherwise direct;
  - (b) Be responsible to the Board for the day to day functioning of the Trust and the Board may delegate to the Chief Executive Officer any of the duties and powers of the Board either subject to later confirmation by the Board or in a manner which does not require subsequent confirmation by the Board. The Board shall have the right to revoke the delegation to the Chief Executive Officer of any duty or power of the Board.
  - (c) Be responsible for day to day management of the Trust and shall take every lawful means to secure the due observance of the objects of the Trust and to protect the Trust Fund for rightful administration,

## 11. Proceedings of the Board

### 11.1 Meetings

The Board shall meet not less than 6 times per year, including the annual meeting, at such places and times as the Board shall determine. Meetings other than the annual meeting and a special meeting shall be convened on no less than 14 days' notice in writing to each Trustee who is in New Zealand.

### 11.2 Annual Meeting

The Board shall in each year convene an annual meeting to be held within 3 months of the end of the Financial Year at a time and place to be fixed by the Board. Not less than 28 days prior notice in writing of the annual meeting shall be given to each Trustee who is in New Zealand and such other persons as the Board shall determine from time to time.

### **11.3 Special Meeting**

Upon the written request of 4 Trustees specifying the purpose of the meeting, the Chairperson shall convene a special meeting within 21 days of the request at such place and time as fixed by the Chairperson. A special meeting shall be convened on no less than 14 days notice in writing to each Trustee who is in New Zealand and such other persons as the Board shall determine from time to time specifying the business to be transacted at the meeting.

### **11.4 Telephone meetings**

11.4.1 The contemporaneous linking together by telephone of a number of the Trustees not less than the quorum, whether or not any one or more of the Trustees is out of New Zealand, shall be deemed to constitute a meeting of the Board if:

- (a) All the Trustees for the time being entitled to receive notice of a meeting of the Board receive notice of a telephone meeting and are linked by telephone for the purposes of such meeting. Notice of such meeting may be given on the telephone;
- (b) Each of the Trustees taking part in the meeting by telephone is able to hear each of the other Trustees taking part at the commencement of the meeting; and
- (c) At the commencement of the meeting and at or about the closure of the meeting each Trustee acknowledges his or her presence for the purpose of a meeting of Trustees to all the other Trustees taking part.

11.4.2 No Trustee may leave the meeting by disconnecting his or her telephone unless he or she has previously obtained the express consent of the chairperson of the meeting. A Trustee shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless he or she has previously obtained the express consent of the chairperson of the meeting.

11.4.3 A minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting. For the purposes of this clause "telephone" shall include television or any other audio and visual device which permits instantaneous communication.

### **11.5 Chairperson**

At every meeting of the Board, the Chairperson or in the Chairperson's absence, the Deputy Chairperson shall preside as chairperson. If at any meeting the Chairperson or Deputy Chairperson is not present within 10 minutes after the time appointed for the holding of such meeting or is present but unwilling or unable to act as chairperson, the Trustees present shall appoint one of their number to act as chairperson of the meeting.

## **11.6 Quorum**

- 11.6.1 At any meeting of the Board a majority of members shall form a quorum and no business shall be transacted unless a quorum is present.
- 11.6.2 For the purpose of determining whether there is a quorum, the absence of a Trustee at some point during the meeting shall not affect the quorum, if there was a quorum at the commencement of the meeting.

## **11.7 Voting**

- 11.7.1 All questions before the Board shall be decided by consensus. However, where a consensus decision cannot be reached on a question, it shall, unless otherwise specified in this Deed, be put as a motion to be decided by a majority of votes. Subject to clause 11.8 every Trustee personally present at a meeting shall have one vote. In the case of an equality of votes, the chairperson shall not have a casting vote.

## **11.8 Trustee's Interests**

Any Trustee who is or may be in any other capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the Trust is or may be in any way concerned or involved shall be counted in the quorum and shall disclose the nature and extent of that Trustee's interest to the other Trustees, and shall not take any part whatever in any deliberations or voting of the Trustees concerning any matter in which that Trustee is or may be interested other than as a Trustee of the Trust.

## **11.9 Absences**

Whenever a Trustee is absent from a meeting, the Secretary shall record the fact of and any reason given for the absence of that Trustee.

## **11.10 Resolution in Writing**

A resolution in writing signed by all the Trustees for the purpose of becoming an entry in the minute book of the Trust shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted for that purpose. Any resolution may be contained in one document or in several documents in like form signed by one or more Trustees.

## **11.11 Minutes of Meetings:**

Minutes of all resolutions and proceedings of all meetings of the Trustees shall be prepared by the Secretary and, if confirmed at a subsequent meeting of the Trustees, shall be signed by the chairperson of the meeting as a true and correct record of those proceedings.

## **12. Accounts and Reporting**

### **12.1 True and fair accounts**

The Board shall keep true and fair accounts of all money received or expended.

## **12.2 Audit**

The Board shall as soon as practicable after the end of every financial year of the Board cause the accounts of the Trust for that financial year to be audited by an accountant appointed by the Board for that purpose.

## **12.3 Reporting**

- 12.3.1 The Board shall prepare a report on the administration, performance and affairs of the Trust in respect of each 6-month period. The report will contain the matters specified from time to time by the Council and will be prepared within 6 weeks of the conclusion of the 6-month period to which the report relates.
- 12.3.2 The Board shall prepare an annual report on the administration, performance and affairs of the Trust within 3 months after the conclusion of each Financial Year. The report shall include the annual business plan and operating budget required by clause 7.5.2 (a) prepared for the current Financial Year.

## **13. Delegation Powers**

### **13.1 Power to delegate**

The Board may from time to time appoint any committee and may delegate in writing any of its powers and duties to any such committee or to any person, and the committee or person as the case may be, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them.

### **13.2 Delegate bound**

Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the Trust.

### **13.3 Delegation revocable**

Every such delegation shall be revocable at will and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

### **13.4 Delegate need not be a Trustee**

It shall not be necessary that any person who is appointed to be a member of any committee or to whom any delegation is made be a member of the Board.

## **14. No Private Pecuniary Profit for any Individual, and Exceptions**

- 14.1 Nothing expressed or implied in this Deed shall permit the activities of the Trustees or any business carried on by or on behalf of or for the benefit of the Trustees to be carried on for the private pecuniary profit of any individual except that:
- (a) Any Trustee may receive full reimbursement for all expenses properly incurred by that Trustee in connection with the affairs of the Trust;
  - (b) The Trust may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;

- (c) Any Trustee may be paid all usual professional business or trade charges for services rendered, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust;
- (d) Any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved where that Trustee has acted in any capacity whatever, notwithstanding that the Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

14.2 Notwithstanding anything to the contrary expressed or implied in this Deed, where any income is derived directly or indirectly from any business carried on by or on behalf of or for the benefit of the Trust and where pursuant to this Deed any benefit or advantage, whether or not convertible into money, or any income of any of the kind referred to in the Income Tax Act 1994 is able to be afforded to, or received, or achieved or derived by:

- (a) A settlor of the Trust or any Trustee,
- (b) Any shareholder or director of a company carrying on the business of the Trust; or
- (c) Any person where that person and the settlor of the Trust, Trustee or shareholder or director referred to in any of the foregoing paragraphs of this clause are "associated persons" (as that term is defined in the Income Tax Act 1994);

then no such person shall by virtue of that capacity in any way (whether directly or indirectly) determine or materially influence in any way the determination of the nature or the amount of that benefit or advantage or that income or the circumstances in which it is or is to be so received, gained, achieved, afforded or derived by that person provided that a person who in the course of and as part of the carrying on of his or her business of a professional public practice shall not, by reason only of his or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause.

## 15. Limitation of Liability

15.1 No Trustee shall be liable for any loss suffered to the Trust Fund arising from any act or omission of the Trustee or any of the Trustees if that act or omission is not attributable to the Trustee's or any Trustee's own dishonesty or to the wilful commission or omission by them or any of them of an act when that commission or omission is known by the Trustees or the relevant Trustee to be a breach of trust. No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

15.2 Subject to clause 15.1, the Trustees shall be completely indemnified out of the Trust Fund for any liability they may incur arising in any way out of or in connection with acting or purporting to act as Trustees.

## 16. Alteration of Deed

The Board may by consensus or pursuant to a motion decided by a two-thirds majority of votes by supplemental Deed make alterations or additions to the terms and provisions of this Deed provided that no such amendment shall:

- (a) Take effect unless it is confirmed in writing by the Board;
- (b) Detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.
- (c) Be made to clause 14 unless the Inland Revenue Department first approves it in writing.

## 17. Common Seal

The Board shall have a Common Seal which shall be kept in the custody of the Secretary, or such other officer as shall be appointed by the Board and shall be used only as directed by the Board. It shall be affixed to documents only in the presence of and accompanied by the signatures of two members of the Board.

## 18. Winding Up and Distribution of Surplus Assets

On the winding up of the Trust or on its dissolution by the Registrar, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisation or organisations within New Zealand of a similar nature to the Trust as the Board decides or, if the Board is unable to make such a decision, shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957.

## 19. Interpretation

In this Deed, the following terms have the following meanings except to the extent that they may be inconsistent with the context:

**"Auditor"** means either a person who is a holder of a certificate of public practice as an auditor issued by the Institute of Chartered Accountants of New Zealand and who is a principal in a firm of chartered accountants in public practice or a firm of chartered accountants in public practice.

**"Board"** and **"Trust Board"** means the Trust Board of the Trust constituted in accordance with this Deed.

**"Chairperson"** means the person appointed by the Board as chairperson pursuant to clause 9(a) or the person appointed to act as chairperson at a meeting of the Board.

**"Charitable Purpose"** means and includes that term as defined by the Charitable Trusts Act 1957 and the Income Tax Act 1994 and also means and includes every charitable purpose (whether religious, educational or otherwise) within New Zealand and which shall be regarded as charitable by the law for the time being in New Zealand, provided that any such charitable purpose shall also be regarded as charitable under any statute, regulation or ordinance of New Zealand relating to income tax, estate duty, gift duty or any other relevant statute for the time being in force in New Zealand.

**"Chief Executive Officer"** means the person appointed by the Board as Chief Executive Officer pursuant to clause 10.1.

**"Council"** means The Waitakere City Council,

**"Deputy Chairperson"** means the person appointed by the Board as Deputy Chairperson pursuant to clause 9(b).



**"Deed"** means this Deed of trust as amended from time to time in accordance with clause 16 or as amended in any other manner permitted by law.

**"Financial Year"** means the year ending on 30 June or any other date adopted by the Trustees as the date up to which accounts shall be made in each year for the Trust.

**"Secretary"** means the person appointed by the Board as Secretary pursuant to clause 9(c).

**"Treasurer"** means the person appointed by the Board as Treasurer pursuant to clause 9(d).

**"Trust"** means the Animal Welfare Institute of New Zealand as constituted by this Deed.

**"Trustees"** means the Trustees for the time being of the Trust whether original, additional or substituted.

**"Trust Fund"** means:

- (a) All property of any kind, including any right, claim or interest, contingent or vested, future or present, legal or equitable
- (b) All moneys, investments and property, both real and personal, which may be received and accepted by the Trustees as part of the Trust Fund; and
- (c) The investments and properties from time to time representing the above and accretions to those investments and properties.

## EXECUTION

THE COMMON SEAL of THE  
WAITAKERE CITY COUNCIL was  
hereunto affixed in the presence of:

.....  
Chief Executive

.....  
Manager, Corporate Services

