

**AGREEMENT IN RESPECT OF ST MARY'S BAY  
/ MASEFIELD BEACH WATER QUALITY  
IMPROVEMENT PROJECT**

**between**

**ST MARY'S BAY ASSOCIATION INCORPORATED  
HERNE BAY RESIDENTS ASSOCIATION INCORPORATED  
DARK HORSE TRUST**

**and**

**AUCKLAND COUNCIL (HEALTHY WATERS DEPARTMENT)**

**and**

**WATERCARE SERVICES LIMITED**

THIS AGREEMENT dated the November 2019.

**BETWEEN** St Mary's Bay Association Incorporated  
Herne Bay Residents Association Incorporated  
Dark Horse Trust  
("Appellants")

**AND** Healthy Waters department of Auckland Council ("Healthy Waters")

**AND** Watercare Services Limited ("Watercare")

## BACKGROUND

- A. Healthy Waters is developing the St Mary's Bay / Masefield Beach Water Quality Improvement Project ("**Project**") which seeks to construct and operate wastewater and stormwater infrastructure to deliver water quality improvements in St Mary's Bay / Westhaven and Masefield Beach.
- B. Consent was granted for the Project on 9 November 2018 and amended on 22 November 2018 pursuant to s133A of the Resource Management Act 1991.
- C. The resource consent is subject to the following appeals to the Environment Court:
- *Jeanette Raynish and Carol Anne Campbell as Trustees of the Dark Horse Trust v Auckland Council* [ENV-2018-AKL-000355];
  - *The St Mary's Bay Association Inc and Herne Bay Residents Association Inc v Auckland Council* [ENV-2018-AKL-000357].
- ("Appeals")
- D. Since the granting of consent and lodging of appeals it has been agreed that separation of the combined wastewater and stormwater infrastructure will occur.
- E. This Agreement sets out the parties' agreement that the stormwater and wastewater infrastructure located in the St Mary's Bay and the Herne Bay catchments will be separated, and an indicative timeframe for separation to occur. Whilst the timeframe for separation set out below is not binding on the parties for the reasons set out in paragraph 3 below, Watercare and Healthy Waters wish to record their good faith intention to abide by the timeframe.

## THE PARTIES AGREE:

### Separation

1. Watercare and Healthy Waters agree to separate the stormwater and wastewater infrastructure located in the St Mary's Bay catchment in a timely manner by establishing physically separated networks for stormwater and wastewater ("**Separation**"), and to use all reasonable endeavours to deliver Separation in full, by the end of April 2024. Watercare and Healthy Waters agree to begin Separation at St Mary's College then move to the lower part of London Street, and to thereafter progressively work through the balance of the catchment generally in accordance with the indicative programme and timetable set out in Appendix B.

2. Watercare and Healthy Waters agree that there shall be no combined sewer overflows into the shaft at London and New Streets that is part of the consent granted for the Project. Only stormwater flows shall enter this shaft, however, in extreme rain events, there may be wastewater overflows >2 times per year that discharge into the shaft.
3. The parties acknowledge that the ability of Watercare and Healthy Waters to carry out Separation is dependent on those parties acquiring the necessary resource and building consents, private property owner approvals, corridor access requests and traffic management approvals.
4. Watercare and Healthy Waters also agree to separate the stormwater and wastewater infrastructure located in the Herne Bay catchment in a timely manner by establishing physically separated networks for stormwater and wastewater, and to use all reasonable endeavours to deliver those works generally in accordance with the indicative programme and timetable set out in Appendix C. The parties acknowledge that the ability of Watercare and Healthy Waters to deliver the aforementioned works in Herne Bay is also dependent on the elements described in paragraph 3 above.

#### **Other**

5. Subject to Dr Wallis accepting the engagement, the parties acknowledge that the intention is that Healthy Waters will engage Dr Ian Wallis to:
  - (a) contribute to the design of the diffusers for the Project;
  - (b) certify that the pump out operational design of the tunnel achieves the following objective. The objective of the pump-out design is to: (a) avoid surcharging the Hackett St stormwater pipe; and (b) achieve the maximum environmental benefit of the tunnel storage and pump wastewater back to Watercare's Branch 5 sewer;
  - (c) certify that the design of the odour and air vent facilities for St Mary's Park and Pt Erin Park (to be provided to the consent authority for certification under the resource consent conditions) meet the conditions of consent.
6. Save as set out in this clause, Watercare and Healthy Waters confirm that the works on public and private properties required to achieve Separation will be funded by Watercare and Healthy Waters. The parties acknowledge that works on private property will be funded by Watercare and Healthy Waters to the extent that such works are undertaken as part of the Separation project timeline and that works undertaken as part of a private property owner's redevelopment in advance of the Separation project timeline will need to be privately funded.

#### **Resolution of the Appeals**

7. The parties agree to settle the Appeals by way of consent order in accordance with the consent documentation attached to this agreement as Appendix A.
8. The Appellants agree to support Watercare and Healthy Waters in carrying out Separation and shall not directly or indirectly oppose, object to, or otherwise inhibit, the reasonable efforts of Watercare and Healthy Waters to carry out Separation.

#### **Dispute resolution**

9. If any dispute arises under or in connection with this Agreement, the parties agree to comply with the following clauses. For the avoidance of doubt, the scope of any dispute under or in connection with this Agreement shall not extend to the methodology used to effect Separation.

10. Any party claiming that a dispute has arisen under this Agreement shall give written notice to the other parties of the dispute and require the parties' representatives (as set out in clause 14, or their nominated replacement as the case may be) to meet together to attempt to settle the dispute. The other parties shall, upon receipt of such notice, promptly ensure that their representatives attend such meeting and attempt to resolve the dispute.
11. Following a notice being given under clause 10, the parties (through the persons designated in clause 14 of this Agreement, or alternatively the chair of the associations from time to time) shall seek to resolve the dispute within 10 business days after the giving of the notice. In the event that the dispute is not able to be resolved, the parties may elect to pursue any other remedies available to it or them at law.

#### **Contacts**

12. The parties have each appointed a contact person(s) (as noted in clause 14 below or alternatively the chair of the associations from time to time) who is the first point of contact for the other party.
13. Each party agrees that the nominated contact person will keep themselves well informed of the Project, and have a sufficient level of authority to represent their party's view to the other contact persons.
14. The parties' contacts are:

**Watercare**  
Anin Nama  
Watercare Services Limited

**Healthy Waters**  
Nicholas Vigar  
Auckland Council, Healthy Waters

#### **Appellants**

St Mary's Bay Association Incorporated:  
David Abbott

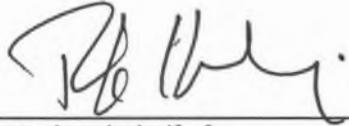
Herne Bay Residents Association  
Incorporated: Dirk Hudig

Dark Horse Trust: Jenni Raynish and  
Steve Rosenbaum

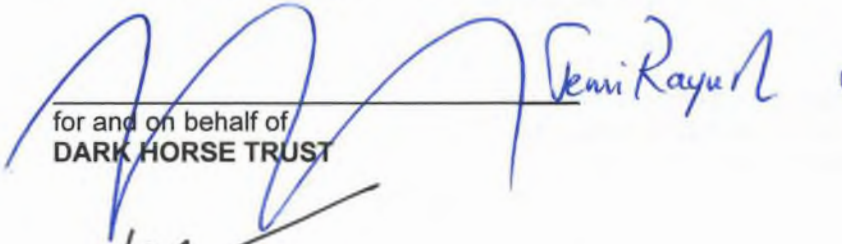
**DATED** at Auckland this      day of November 2019

 (Chair)

for and on behalf of  
**ST MARY'S BAY ASSOCIATION INCORPORATED**



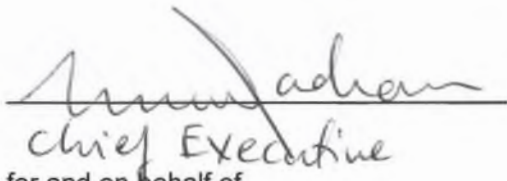
for and on behalf of  
**HERNE BAY RESIDENTS ASSOCIATION INCORPORATED**



for and on behalf of  
**DARK HORSE TRUST**



for and on behalf of  
**HEALTHY WATERS DEPARTMENT OF AUCKLAND COUNCIL UNDER DELEGATED  
AUTHORITY**



for and on behalf of  
**WATERCARE SERVICES LTD**