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# TRUST ORDER

## Lake Taupō Forest Trust

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LAKE TAUPO *forest* TRUST



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# INTRODUCTION

- A. Lake Taupō Forest Trust (the “**Trust**”) is an ahu whenua trust constituted by the Māori Land Court (“**Court**”).
- B. The Trustees of the Trust hold the Trust Property subject to the powers, duties and obligations set out in this Trust order (“**Order**”).
- C. The Trustees have acknowledged that familiarity with this Order is critical to their role as trustee.
- D. The Court gives the Trustees control of the Trust Property so that the Trustees can deal with the Trust Property, for the benefit of the Beneficial Owners. How the Trustees may hold and deal with the Trust Property is subject to the terms of this Trust.
- E. It is likely that further property may from time to time be acquired by the Trustees for the purposes of the Trust and this property is also Trust Property.
- F. The Trustees recognise that they must make all decisions on behalf of the Trust and are not bound by resolutions of the Beneficial Owners.

# PART A - NAME AND PURPOSES

## 1. TRUST NAME

### Lake Taupō Forest Trust

- 1.1 The trust created by this Court order shall be known as **LAKE TAUPŌ FOREST TRUST** (“the Trust”).

### Trust not a separate legal entity

- 1.2 If the Trust is to enter into any legally binding agreements, arrangements or understandings with one or more third parties, it is the Trustees who are legally bound on behalf of the Trust. The Trust is not a separate legal entity. If the Trustees wish to avoid personal liability for the debts of the Trust, they will need to do so expressly by contract. See clause 15 for the Trustees’ rights to have the Trust pay for any costs and liability incurred by the Trustees on behalf of the Trust.
- 1.3 Any assets acquired, or contracts entered into by the Trustees on behalf of the Trust must be used and held for the benefit of the Trust and not for the personal benefit of the Trustees.

### Communications

- 1.4 All communications respecting the Trust may be directed to the attention of the Secretary at the address below or such other address as is notified by the Trustees to the Registrar of the Court at the **Aotea** Registry from time to time:

81 Town Centre

PO Box 102

Turangi 3353

New Zealand

### Trust definitions and interpretation

- 1.5 For a full list of definitions used throughout this Order and the interpretation principles, see clause 21.

## 2. PURPOSES OF THE TRUST (OBJECTS) AND GUIDING PRINCIPLE

- 2.1 All Trust Property, including any income that is derived from Trust Property, is held by the Trustees in trust for the Owners in proportion to the Owners’ several interests in the Corpus Land.



- 2.2 Subject to clause 2.1, and subject to any specific restrictions elsewhere in this Order (e.g. in respect of the alienation of Corpus Land), the Trustees hold the Trust Property in trust to use and dispose of as they see fit, provided that the use or disposition is made exclusively for one or more of the purposes of:
- (a) retaining and protecting the Corpus Land and the associated eco-systems;
  - (b) promoting and facilitating the effective management, use, and development of all Trust Property to best advance the interests and well-being of the Beneficial Owners;
  - (c) protecting and safeguarding any wāhi tapu, including urupā, historical sites and sites of significance in accordance with the relevant tikanga Māori;
  - (d) providing for use of Trust Land by, and enhancing the well-being of, the Beneficial Owners;
  - (e) exercising kaitiakitanga in relation to the Corpus Land;
  - (f) promoting, maintaining, supporting, or carrying on one or more businesses, undertakings or enterprises, or other commercial activities:
    - (i) on Trust Property or any part of it; and/or
    - (ii) in connection with a user or users of Trust Land or certain industries, whether they involve Beneficial Owners of the Trust or not;
  - (g) representing the Beneficial Owners on all Trust Land related matters such as matters relating to the use and enjoyment of Trust Land and its facilities by those Beneficial Owners; and
  - (h) advancing Māori community purposes as set out in section 218 of the Act.
- 2.3 In giving effect to the purposes (objects) of the Trust, the Trustees will be guided by ngā tikanga o te Ngahere o Taupō Moana.

# PART B - TRUSTEE DUTIES

## 3. TRUSTEE DUTIES

- 3.1 A Trustee must always comply with the trustee duties. The trustee duties are a set of general and specific obligations that both the law and the terms of this Order impose on the Trustees.
- 3.2 Failure of a Trustee to comply with and perform his or her trustee duties satisfactorily may lead to a Trustee being removed from his or her position as a Trustee.
- 3.3 A breach of trust occurs where a Trustee acts contrary to or fails to act consistently with a trustee duty. Where a Trustee breaches one or more of his or her trustee duties he or she can be liable for any damage, loss or other costs that the breach causes to the Trust, Trust Property and Trust interests.
- 3.4 The general and specific trustee duties are set out below at clauses 4 to 9.

## 4. GENERAL TRUSTEE DUTIES

- 4.1 The general trustee duties that the Trustees must comply with include the:
- (a) **duty to be thoroughly familiar with the terms of this Trust**, including this Order and all documents, deeds, contracts and papers that relate to or affect the Trust Property;
  - (b) **duty to comply with the terms of this Order**, regardless of what the Beneficial Owners or other Trustees ask them to do otherwise;
  - (c) **duty to act honestly and in good faith**;
  - (d) **duty to always act in the Beneficial Owners' best interests**, a duty which requires that the Trustees consider what is in the Beneficial Owners' best interests.
  - (e) **duty to act fairly and impartially**, a duty which requires that the Trustees act without undue favouritism;
  - (f) **duty not to profit from a position as a Trustee of this Trust**, (subject to a number of express exceptions);
  - (g) **duty to act for no reward**. Unless otherwise provided for in this Order, a Trustee must not take any reward for acting as a Trustee, but this does not affect the right of a Trustee to be reimbursed for the Trustees' legitimate expenses and disbursements in acting as a Trustee;



- (h) **duty to be active**, in attending to the performance of the Trust and trustee duties. Accordingly, each and every Trustee must actively participate in Trust-related decision making (unless conflicted). Each Trustee must think about each action and decision of the Trustees and cannot simply rely on the other Trustees to determine whether an action or decision should be undertaken;
- (i) **duty to comply with orders and directions of the Court**;
- (j) **duty to notify the Court of change to contact address**. The Trustees are required to notify the Court of any change to the contact address for the Trust.

## 5. DUTY TO AVOID CONFLICTS OF INTEREST

5.1 All Trustees have a duty to recognise and manage conflicts of interest and conflicts of duties (“**Conflict**”) in accordance with clause 5.2 below.

### What to do where there is a Conflict

5.2 Where a Trustee has a Conflict he or she must:

- (a) disclose the nature and extent of the Conflict to:
  - (i) the other Trustees; and
  - (ii) the Beneficial Owners where the Conflict touches on a matter discussed at a General Meeting or Special Meeting; and
- (b) cease to participate in any discussions and decisions that relate to the Conflict; and
- (c) leave and remain absent from any meeting of the Trustees where discussions and decisions relate to the Conflict.

5.3 Where the Conflict concerns either any matter that directly or indirectly:

- (a) affects a Trustee’s remuneration or the terms of the Trustee’s employment as a servant or officer of the Trust; or
- (b) affects any contract in which a Trustee may be interested or concerned other than as a trustee of another trust,

that Trustee must not vote or participate in the discussion of that matter.

5.4 Where a Trustee is aware that, or reasonably believes that, another Trustee has or may have a Conflict, he or she must require the other Trustee to comply with clause 5.2 or to demonstrate that he or she has no Conflict.

### **What constitutes a conflict**

5.5 A Trustee has a Conflict where the Trustee:

- (a) in a capacity other than as Trustee of this Trust is involved, interested, or concerned in (directly or indirectly), any property, undertaking, business or commercial activity; and
- (b) that property, undertaking, business or commercial activity is one in which the Trust is or may be involved (as Trust Property or otherwise), interested, or concerned in.

For the purposes of clause 5.5(a), a Conflict can arise indirectly where the person involved, interested or concerned in the property, undertaking, business or commercial activity is the Trustee's spouse, partner, child, parent or sibling.

5.6 The Trust and any Trust Entity are entitled to engage, contract or otherwise enter into an agreement or arrangement with any Trustee to provide goods and services to the Trust. However, the Trustees may only make the decision to enter into such an arrangement where:

- (a) doing so is commercially prudent, and in the best interests of the Beneficial Owners of this Trust; and
- (b) the Trustee concerned is not paid a fee for doing so but may claim actual or reasonable travel and accommodation costs.

5.7 The Trustees must keep an interests register that records any interest of the Trustees in Trust Property or any transaction or proposed transaction with the Trust.

## **6. GENERAL DUTY TO ACT PRUDENTLY**

6.1 When doing any act on behalf of the Trust, the Trustees must exercise the same diligence, care and prudence that would be expected of an ordinary and careful businessperson when looking after the affairs of others, and in doing so must:

- (a) actively ensure that they always understand and are aware of all Trust Property and any liabilities that are associated with the Trust Property;
- (b) actively seek out, identify and assess the risk associated with each decision (including a decision not to do anything), that the Trustees make;
- (c) take care to identify any situation where the Trustees do not have the necessary knowledge or expertise to properly assess the risk and consequences of any decision;



- (d) obtain the necessary advice (such as from a lawyer, accountant, or financial adviser), when the Trustees lack the necessary expertise; and
- (e) take steps to actively identify, consider and take into account all relevant things (including any cultural and commercial considerations) that the Trustees must and should consider, and ignore all irrelevant things when making any decisions or doing any act on behalf of the Trust.

### **Sustainability of the Trust**

- 6.2 The Trustees must actively promote and ensure the long-term sustainability and financial wellbeing of the Trust so as to ensure that the Trust can continue to operate and benefit both the current and future Beneficial Owners. This includes ensuring that the Trust's assets (and in particular its Corpus Land) are not subjected to any unreasonable level of risk.

### **Considering the views of Owners**

- 6.3 The Trustees must consider the support or opposition to a given matter concerning the Trust as expressed by the resolutions of the Owners at a General or Special Meeting. The Trustees are not bound by the Owners' resolutions at such meetings but must give consideration to the Owners' views.

### **Duties when distributing Trust assets**

- 6.4 The Trustees must pay all expenses, charges, rates and taxes that have been incurred on behalf of the Trust, which if properly incurred are to be met from income of the Trust.
- 6.5 These expenses, charges, rates and taxes must first be paid before any payments, distributions, reserves or other provision out of Trust funds can be made in favour of any Beneficial Owners for any of the purposes of the Trust.



## 7. FINANCIAL MANAGEMENT DUTIES

### Keeping accounts

- 7.1 The Trustees must keep proper accounts and prepare annual financial statements for each financial year which:
- (a) are to be audited where the Trust's gross annual income or gross annual expenditure (excluding depreciation) is \$100,000 or more;
  - (b) are to set out the total amount of payments made by the Trust or a Trust Entity to Trustees in that financial year, including any travel expenses, fees or any other payments;
  - (c) are to be made available to the Beneficial Owners at least 14 days before a General Meeting and produced at each General Meeting for discussion; and
  - (d) are to be filed with the **Aotea** registry of the Court no later than one (1) month after the General Meeting has taken place.

### Controlling Trust funds

- 7.2 The Trustees must ensure that all money received by or on behalf of the Trust is paid without delay into the Trust's bank account.
- 7.3 The Trustees must keep a detailed record of all receipts and payments of Trust funds.
- 7.4 No debt is to be incurred by the Trustees other than by approval prior to the incurring of the debt, or at the Trustee meeting that immediately follows the incurring of the debt on their behalf.

## 8. DUTY OF DISCLOSURE

- 8.1 Upon request by any Owner, the Trustees must make available to that Owner:
- (a) a copy of this Order and any amendment to it;
  - (b) the annual accounts of the Trust for any preceding financial years;
  - (c) the minutes of any General Meeting or Special Meeting;
  - (d) the annual accounts of any Trust Entity for any preceding financial years (except for those parts of such accounts as are confidential).





- 8.2 In clause 8.1 above accounts are confidential only if, and to the extent that, the accounts contain commercially confidential material. An Owner who is dissatisfied with a decision to decline a request for accounts on the grounds of confidentiality can apply to the Court for disclosure. If the Trustees are of the view that accounts are confidential, they must notify the requesting Owner of his or her right to apply to the Court for a disclosure order.

## **9. DUTY TO CALL MEETINGS**

### **Calling General Meetings and Special Meetings**

- 9.1 The Trustees must call a General Meeting each year.
- 9.2 The Trustees must also call a Special Meeting within 3 months of receiving written notice requesting that a Special Meeting be held that is signed by at least 100 Owners and which states the purpose of the Special Meeting.
- 9.3 The Trustees must take all reasonable steps at the General and Special Meetings to accurately determine the Owners' support or opposition to any matters that are properly discussed at these meetings. A failure to do so can amount to a breach of trust.

### **Calling Trustee meetings**

- 9.4 The Chairperson is required to call a meeting of the Trustees.
- 9.5 All Trustees must attend trustee meetings unless they have a reasonable excuse for their absence. The Trustees must prepare adequately for trustee meetings and in doing so must acquaint themselves with any material and documents necessary for a given meeting.

### **Complete procedures for meetings**

- 9.6 For the procedural and substantive requirements that Trustees must comply with for General and Special Meetings, and Trustee meetings, refer to the Kawenata.
- 9.7 Trustees must become acquainted with and ensure that the correct meeting procedures are complied with.

# PART C - MEETINGS

## 10. MEETING PROCESS AND PROCEDURES TO BE SET OUT IN THE KAWENATA

- 10.1 The Kawenata must set out the process and procedures for the calling and holding of, and voting at General Meetings, Special General Meetings and Trustee meetings.



# PART D - TRUSTEES

## 11. NUMBER AND TERMS OF TRUSTEES

11.1 The Trust must:

- (a) at all times have no less than **three (3)** Trustees; and
- (b) for the period until Trustees are appointed by the Court as a result of the Trustee elections to be held in 2022, no more than **eleven (11)** Trustees; and
- (c) from the date on which Trustees are appointed as a result of the Trustee elections to be held in 2022, no more than **seven (7)** Trustees.

11.2 A Trustee who wishes to retire continues to hold office until replaced or removed by order of the Court.

11.3 Each Trustee is appointed for a term of **six (6)** years.

11.4 The manner in which Trustees are to be elected and appointed by the Court must be set out in the Kawenata.

## 12. ELIGIBILITY TO BE AND REMAIN A TRUSTEE

12.1 To be and remain a Trustee, a person must not:

- (a) be disqualified from being an officer of a charitable entity under section 16 of the Charities Act 2005;
- (b) have ever been convicted of an offence under section 373(4) of the Companies Act 1993; or
- (c) have ever been convicted in the last 10 years of an offence punishable by more than 2 years imprisonment (unless that person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004);
- (d) be or have ever been removed as a trustee of a trust by order of Court on the grounds of breach of trust, lack of competence or failure to carry out the duties of a trustee satisfactorily;
- (e) be physically or mentally incapacitated to the extent that he or she is unable to perform the duties of a Trustee; or
- (f) be bankrupt or have within the last 5 years been adjudged bankrupt.

- 12.2 The Court may remove a Trustee where:
- (a) The Trustee fails to continue to satisfy any of the criteria set out above at clause 12.1; or
  - (b) The Trustee has been absent for **three (3)** consecutive trustee meetings without reasonable excuse.

12.3 Clauses 12.1 and 12.2 are subject to, and do not limit, the jurisdiction of the Court to appoint and remove Trustees pursuant to sections 222, 239 and 240 of the Act.

### **13. GENERAL TRUSTEE POWERS**

#### **Trustees' powers to be used for purposes of the Trust**

13.1 The Trustees' powers may only be used by the Trustees to give effect to any one or more of the purposes of the Trust set out above at clause 2. Where a Trustee power is exercised for any other reason or purpose it is not a valid use of the power and the Trustee(s) responsible is/are accountable for any loss or damage caused by the invalid exercise of power.

#### **General power of Trustees**

13.2 To achieve the purposes of the Trust, the Trustees have, in the administration, management and investment of the Trust Property, the power to do all or any of the things which they would be entitled to do if they were the absolute owners of the Trust Property except that:

- (a) they must comply with clause 13.3; and
- (b) in respect of the specific powers set out in clause 14, they must comply with such conditions and limits that are placed on those powers by clause 14.

#### **Exceptions to general power of Trustees**

13.3 The Trustees must not:

- (a) sell or gift any of the Corpus Land except by way of exchange of land effected by order of the Court or by a settlement of a proposed acquisition pursuant to the Public Works Act 1981 or similar statutory authority; or
- (b) use any of their powers for a purpose that is not one set out above at clause 2.

#### **Role of Owners' views**

13.4 When exercising their powers, the Trustees are not bound by, or required to comply with, the Resolutions made by Owners at a General or Special Meeting. The Trustees are, however, required to give consideration to the Owners' views in accordance with clause 6.3 above.



## 14. SPECIFIC TRUSTEE POWERS

### Limits on Trustees' specific powers

14.1 The specific powers that the Trustees have and may use when administering, managing and making use of Trust Property are listed below:

- (a) to clarify and provide examples of what particular kinds of actions and decisions are within the Trustees' general power (set out above at clause 13.2); and
- (b) to place express limitations and restrictions on the Trustees' general power set out above at clause 13.2 as permitted by section 226(2) of the Act.

14.2 Subject to clauses 13.2 and 13.3 above and except where expressly limited or restricted in clause 14.4 below, it is possible for actions and decisions of Trustees to still fall within the general power of the Trustees even if they are not specifically listed in clause 14.4 below. For this reason, the specific powers set out below are not a complete list of all the actions and decisions that Trustees are empowered to make in relation to the Trust Property.

### Power to delegate

14.3 In addition to the powers conferred by the Trustee Act 1956, the Trustees have the following powers of delegation:

- (a) The Trustees have the power to delegate any powers of the Trustees to any one of, or a committee of, the Trustees;
- (b) Any Trustee or committee acting under a power delegated to them by the Trustees must comply with the terms of this Order and, in the absence of proof to the contrary, shall also be presumed to be acting within the terms of the delegation;
- (c) The Trustees may revoke wholly or partly any delegation of the powers of the Trustees at any time;
- (d) The Trustees may, in delegating the powers of the Trustees, provide restrictions or rules by or within which such delegated powers are to be exercised;
- (e) Subject to any directions given by the Trustees, any Trustee or committee who has been delegated powers of the Trustees may conduct that Trustee's or the committee's affairs as they wish in accordance with this Order.

### List of Specific Powers

14.4 The Trustees have the powers to:

- (a) **Carry on a business** on the Trust Land, or in relation to Trust Property and are allowed to do all things necessary (subject to the duties contained in this Order), in the process of carrying on that business or businesses.
- (b) **Promote title improvement** by:
  - (i) granting or acquiring any type of right or interest in land;
  - (ii) subdividing any land;
  - (iii) bringing any application to the Māori Land Court that might facilitate the operation of this Trust and the improvement of title to land (held by the Trustees on behalf of the Trust), including applications under Part 14 of the Act; and
  - (iv) forwarding to the Registrar of the Māori Land Court in relation to the above any instruments, titles, plans or other relevant documents for the purpose of maintaining the records of title and ownership of such land.
- (c) **To buy** any land or interest in land, shares or assets whatsoever whether by way of lease purchase exchange or otherwise AND to acquire, sell, hire or otherwise deal in vehicles, shares, plant, chattels or equipment.
- (d) **To subdivide** or partition the Trust Lands in any manner permitted by law into such subdivisions or parts as the Trustees think fit, provided that in doing so they comply with the trustee duties clauses, in particular (but not limited to) clauses 6.1 to 6.5.
- (e) **To improve**; to develop and improve the Trust Land and to erect thereon such buildings, fences, yards and other constructions or erections of whatsoever nature as the Trustees may think fit.
- (f) **To insure** all or any of the Trust Property against any risks that the Trustees shall think fit with such companies and on such terms as the Trustees shall think fit in the name of the Trust.



- (g) **To lease** in accordance with the limitations and restrictions imposed by the Act the whole or any part of Trust Land on whatever, terms, covenants and conditions that the Trustees think fit and to renew, vary, transfer, assign and accept the surrender of any leases thereof PROVIDED THAT no lease shall provide for payment of compensation for improvements to a lessee or grant to the lessee a right to purchase the land AND FURTHER PROVIDED THAT no lease shall be for a period greater than 30 (thirty) years, unless a longer period is approved by the Owners for the purpose at a General or Special Meeting (which approval can be specific to the lease or can be general in nature).
- (h) **To grant forestry rights;** to grant, renew, vary, transfer, assign or accept the surrender of any forestry right or joint venture deforestation agreement in respect of the Trust Land and to sell or mortgage any such forestry right or forest products PROVIDED THAT:
- (i) the term is no longer than 52 years;
  - (ii) the forestry right or agreement shall not provide for payment of compensation for improvements;
  - (iii) no mortgage may be granted over the land; and
  - (iv) professional foresters shall be engaged to supervise all aspects of the forests on the land.
- (i) **To enter into conservation covenants;** to enter into, vary and accept surrender of conservation covenants such as with regional and territorial authorities, government departments, Ngā Whenua Rāhui, and the Queen Elizabeth The Second National Trust PROVIDED THAT any such covenants shall not be for a term of more than 25 years.
- (j) **To engage and employ;** to engage, employ and dismiss employees, contractors, agents, professional advisors and any other supplier of products or services required by the Trustees in order to pursue the purposes of this Trust. No Trustee can be an employee of the Trust or a Trust Entity and a Trustee at the same time.
- (k) **To operate with others;** to enter into agreements or contracts in the name of this Trust or jointly (including joint venture agreements) or in partnership (including, without limitation, limited liability partnerships) with themselves and/or any other person or entity.
- (l) **To carry out and undertake** all things necessary to promote the effective use and efficient administration of all Trust Property, resources and business.

- (m) **To form Corporate Entities;** to form Corporate Entities and to subscribe for and acquire shares in companies under the Companies Act 1993 or subscribe for and acquire interests in other types of Corporate Entities (eg limited partnerships) and to adopt and change their constitutions or applicable governing documents to further the interests of the Trust, PROVIDED THAT:
- (i) subject to clause 14.4(m)(iii) below, any Trustee that acts as a director or office holder of such a Corporate Entity shall be entitled to receive the applicable fee (if any) that the other directors or office holders of that Corporate Entity are entitled to receive; and
  - (ii) the payment of directors or office holder fees to any Trustee is approved or ratified by a resolution of the Owners.
- (n) **To represent the Beneficial Owners and the Trust;** to initiate and respond to and to represent the Beneficial Owners and the Trust in respect of any proceedings or process whatsoever before any court, tribunal, inquiry, arbitration, council hearing, select committee hearing or any other forum in relation to matters that affect or are likely to affect the land or the use and enjoyment of the land or any activities situated thereon or the affairs of the Trust and to represent the Beneficial Owners in any negotiations or questions of compensation for lands taken under the Public Works Act or other statutory authority with the government or any local authority.
- (o) **To borrow;** to borrow and to repay money with or without security over all or any real or personal property of the Trust PROVIDED THAT the Trustees shall not grant security by way of mortgage or otherwise over the Corpus Land.
- (p) **To set aside cash reserves;** to set aside such cash reserves as the Trustees think prudent (in accordance with clauses 6.1 to 6.5) from the net proceeds for contingencies (even if doing so will result in a distribution not being made to the Beneficial Owners) or for capital expenditure or for expansion, provided that in doing so the Trustees:
- (i) comply with the trustee duties; and
  - (ii) consider that their decision to do any of the above will advance the purposes of this Trust.
- (q) **To lend or invest;** to lend or invest all or any money coming into the Trustees hands in such a manner and upon any securities in which trust funds may be invested by trustees in accordance with the Trustee Act 1956 or in accordance with any other statutory authority (in accordance with clauses 6.1 to 6.5).

- (r) **To distribute and apply net proceeds** subject to the Trustees first being satisfied that proper provision has been made for reserves in accordance with clause 14.4(p):
- (i) to distribute to the Owners in accordance with their shares the whole or any part of the net proceeds by way of a dividend;
  - (ii) to apply part of the net proceeds for Māori community purposes in terms of section 218 of the Act;
  - (iii) to make payments authorised by clause 14.4(r)(ii) to a charitable trust on the basis that the charitable trust will apply those payments towards the Māori community purposes specified by the Trustees.

## 15. INDEMNITY OF TRUSTEES

### Indemnity of Trustees

- 15.1 Each Trustee or former Trustee is entitled to a full and complete indemnity from the Trust assets for any liability that Trustee or former Trustee may reasonably and properly incur or has reasonably and properly incurred, in any way, out of or in connection with that Trustee acting on behalf of the Trust.
- 15.2 For the avoidance of doubt, a Trustee is not entitled to the above indemnity where his or her liability is attributable to that Trustee's or former Trustee's own dishonesty, or to the wilful commission or omission by that Trustee or former Trustee of an act known by that Trustee or former Trustee to be a breach of trust or where that Trustee or former Trustees acted in reckless disregard of whether it was a breach of trust, or where such liability is not reasonable or has not been incurred with the authority of his or her co-Trustees.
- 15.3 The indemnity in clause 15.2 may not be met out of the Corpus Land of the Trust, except with the approval of the Court.



## **16. INSURANCE**

- 16.1 The Trustees may purchase and maintain indemnity insurance to cover themselves, or any individual Trustee requiring cover, in respect of:
- (a) any actual or alleged liability attaching to a Trustee in respect of any negligence, default, breach of duty or breach of trust (other than where the actual or alleged liability arises out of an act or omission that either the trustee knew to be a breach of trust or a breach of duty or was committed in reckless disregard of whether it was a breach of trust or a breach of duty);
  - (b) all costs, charges and expenses which may be incurred by the Trustee in connection with any actual or alleged liability; and
  - (c) all costs of a successful defence to proceedings (civil or criminal) against the Trustee.

## **17. EXPENSES, TRUSTEE REMUNERATION AND DIRECTORS' FEES**

- 17.1 The Trustees are entitled to be reimbursed for Trustee's legitimate expenses and disbursements in acting as a Trustee which includes their reasonable travel and accommodation expenses in attending trustee meetings, General and Special Meetings, and in attending other meetings to transact the business of the Trust.
- 17.2 Each Trustee is entitled to remuneration, such remuneration shall be:
- (a) as at the date of adoption of this Order, the remuneration payable to Trustees immediately prior to that date; and
  - (b) thereafter, as otherwise fixed at a General or Special Meeting.
- 17.3 In fixing the remuneration, the Owners shall have regard to the nature of the Trust's activities and in particular their commercial nature, the profitability of the Trust, the number of Trustees and the likely cost of such fees as a reasonable and viable part of the Trust's operation.
- 17.4 All amounts paid to Trustees in the terms of clause 17.1 and 17.2 must be set out in the financial statements in accordance with clause 7.1(b) of this Order.

## PART E - MISCELLANEOUS

### 18. KAWENATA

18.1 The Trustees may adopt and amend from time to time a Kawenata.

18.2 The Kawenata:

- (a) shall adopt such additional rules as the Trustee consider necessary for the proper and efficient administration of the Trust, by which the Trustees shall administer the affairs of the Trust; and
- (b) may contain any other provisions that are not inconsistent with this Order or with law.

18.3 The Kawenata may only be amended in accordance with its terms.

18.4 The Trustees shall ensure that copies of the Kawenata, and of all amendments to that Kawenata that are for the time being in force, are available electronically and at the Trust Office.

### 19. UNCLAIMED DIVIDENDS

19.1 Where the Trustees have declared a dividend in accordance with clause 14.4(r) and a dividend remains unclaimed after 12 months or the Trustees have set a minimum distribution figure before payment of the dividend is effected (in either case “**the Unclaimed Dividends**”):

- (a) the Trustees shall pay all Unclaimed Dividends into a separate account (“**the Pūtea Account**”);
- (b) the Trustees may invest the Unclaimed Dividends;
- (c) any income earned on the Unclaimed Dividends in the Pūtea Account shall belong to the Trust and may be used for the business of the Trust; and
- (d) the Trustees shall pay any Unclaimed Dividend (without interest or associated income) to an Owner or his or her legal representative upon the Unclaimed Dividend being lawfully claimed or upon the minimum distribution figure being met.

## 20. TRUST REVIEW AND REPORTS

### Trust reviews

- 20.1 The Trustees shall by **30 June 2026** apply to the Court for a review of the Trust.
- 20.2 When the Court reviews the Trust, the Court may by order:
- (a) make directions to the Trustees as it thinks fit;
  - (b) confirm the Order without variation;
  - (c) vary the terms of the Order in such manner as it thinks fit; or
  - (d) make an order terminating the Trust.
- 20.3 After the Court has conducted the review referred to in clause 20.1, it shall fix the date by which the Trustees shall next apply for a review. If the Court fails to fix such a date, the date shall be 20 years after the date of the Court's review.

### Court ordered reports

- 20.4 It is the Trustees' duty to comply with any direction by the Court to:
- (a) file a written report to the Court as directed; and
  - (b) make themselves available to the Court for questioning on:
    - (i) the report;
    - (ii) any other matter that relates to the management, administration or performance of the Trust; and/or
    - (iii) the performance by the Trustees of their trustee duties.

## 21. DEFINITIONS AND INTERPRETATION

### 21.1 Definitions:

In this deed, unless the context otherwise requires:

“**Act**” means Te Ture Whenua Māori Act 1993.

“**Alienation**” has the meaning given in section 4 of the Act.



“**Beneficial Owners**” means:

- (a) each Owner;
- (b) the descendants of any Owner; and
- (c) the beneficiaries of any whānau trust that is recorded as an Owner.

“**Chairperson**” means the Trustee who is appointed by his or her fellow Trustees (in accordance with the Kawenata), to be responsible for:

- (d) acting as facilitator at trustee meetings to ensure that no Trustee dominates discussion, that appropriate discussion takes place and that relevant opinion among Trustees is forthcoming;
- (e) calling trustee meetings;
- (f) setting the agenda of trustee meetings and in doing so must liaise with other Trustees;
- (g) ensuring that the Trustees behave consistently with their own rules, procedures, obligations and policies (including this Order);
- (h) ensuring that at trustee meetings, Trustees discuss only the content and issues which, according to the agenda and the Trust’s rules and policies (including this Order), are matters for the Trustees to discuss and decide upon;
- (i) ensuring that all information that the Trustees require or should receive is provided to them;
- (j) ensuring that Trustees as a whole comply with all of the obligations that are imposed on them (by law and this Order);
- (k) act as the main liaison officer between the Trustees and the Beneficial Owners, and in doing so respond to queries and requests from the Beneficial Owners (including requests for information); and
- (l) dealing with conflicts and issues that are referred to the Chairperson.

“**Kawenata**” means the Kawenata adopted by the Trustees from time to time in accordance with clause 18.

“**clause**” is, unless otherwise qualified, a reference to a clause of this Order.

“**Corporate Entity**” includes a company, limited partnership, trust or other body corporate and a body of persons (whether incorporated or not).

**“Corpus Land”** means:

- (a) the land that was the subject of the original trust order constituting the Trust; and
- (b) any land acquired out of the original assets of the Trust in terms of section 243(8) of the Act; and
- (c) land that was acquired out of the revenues derived from the operation of the Trust and the subject of an order under section 243(2) of the Act.

**“Court”** means the Māori Land Court.

**“General Meeting”** means a meeting of the Owners that is convened by the Trustees every year where:

- (a) the Trustees report to the Owners the activities, progress, concerns or any other matters of concern or interest to the Owners;
- (a) the Owners discuss the matters set out in the agenda;
- (b) the Owners vote on any of those matters and pass resolutions based on the outcome of those votes; and
- (c) the Owners discuss the plans for the Trust in the future, in particular for the coming year.

**“Income”** means the income of the Trust.

**“Order”** means this trust order.

**“Owners”** means the persons beneficially entitled to the Corpus Land in accordance with sections 215(5) and 243(5) of the Act and as set out in the record of ownership maintained by the Registrar of the Court in accordance with section 127 of the Act.

**“Person”** and words importing a person or persons include a Corporate Entity, firm, organisation and any state, government or governmental agency.

**“Property”** means any real or personal property of any kind or nature and includes any right or interest in that property.

**“Resolution”** means a matter that is voted on by Owners at a General or Special meeting of the Owners in accordance with the Kawenata.

**“Special Meeting”** means a meeting of the Owners that is called in accordance with the provisions in the Kawenata.

“**Trust**” means the Trust established by this Order.

“**TRUST ENTITY**” INCLUDES AN ENTITY (WHICH, FOR THE PURPOSES OF THIS DEFINITION, INCLUDES, BUT IS NOT LIMITED TO, A CORPORATE ENTITY) IF:

- (a) this Trust directly or indirectly controls the management of that Corporate Entity; or
- (b) that Corporate Entity directly or indirectly controls the management of this Trust; or
- (c) this Trust is entitled to:
  - (i) in the case of a Corporate Entity that is a company, appoint a majority of the directors to the board of that entity; or
  - (ii) in the case of a Corporate Entity that is a limited partnership, appoint a majority of the directors to the general partner of the limited partnership; or
  - (iii) in the case of a Corporate Entity that is a trust, appoint a majority of trustees of that entity; or
- (d) this Trust owns directly or indirectly:
  - (i) in the case of a Corporate Entity that is a company registered under the Companies Act 1955, 50 percent or more in nominal value of the equity share capital (as defined in section 158 of that Act) of that entity; or
  - (ii) in the case of a Corporate Entity that is a company registered under the Companies Act 1993, 50 percent of the issued shares of that entity, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (e) this Trust is entitled to:
  - (i) in the case of a Corporate Entity that is a company, receive more than 50 percent of every dividend paid on shares issued by that entity, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
  - (ii) in the case of a Corporate Entity that is a trust, receive a significant level of current or future ownership benefits, including the reduction of ownership losses, which arise from the activities of that entity.

“**Trustees**” means the Trustees for the time being of the Trust, whether original, additional or substituted. Trustees are the individuals or bodies who the Court has authorised to be the legal owners of the Trust Property for the purpose of administering and managing that property on behalf of, and for the benefit of, the Beneficial Owners.

“**Trust Land**” means any land (including Corpus Land) held by the Trustees on behalf of the Trust from time to time.



“**Trust Property**” means Trust Land and other property held by the Trustees on behalf of the Trust from time to time and may include monies and investments.

## 21.2 Interpretation:

In this Order:

- (a) except as otherwise expressly provided by this Order, the powers or discretions as to the administration of the Trust or as to the distribution of the income and the capital of the Trust fund vested in the Trustees by any clause shall not in any way be limited or restricted by the interpretation of any other clause;
- (b) unless the context otherwise requires:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing one gender include the other genders;
  - (iii) words denoting natural persons include companies;
  - (iv) references to a statute shall be deemed to be references to that statute as from time to time amended or re-enacted or substituted;
- (c) headings and comment boxes have been inserted for guidance only and shall not be deemed to form part of the context of this Order.

# SCHEDULE 1 – MĀORI LAND

<b>Aotea District Block</b>	<b>Area (ha)</b>	<b>Block</b>	<b>Area (ha)</b>
Hautu A1	235.786	Opawa Rangitoto No. 2B	272.3534
Hautu A2	61.5470	Opawa Rangitoto 202	11.4829
Hautu A3	64.3100	Opawa Rangitoto 2D 3B 2	40.8479
Hautu A4	55.8040	Opawa Rangitoto 2G Part	4634.1053
Hautu A5	447.0830	Opawa Rangitoto No. 3	770.1168
Part Hautu 1A1 Block Māori Land		Pahikohuru 4 and Part Section 1 Block II	
Plan 5224	143.5622	Waitahanui Survey District	24.2215
Hautu 1A2	191.0319	Pahikohuru No. 2	250.9050
Hautu 1A3	318.8923	Pahikohuru No. 3	376.3576
Hautu 1A4	774.5683	Pahikohuru No. 5	294.6516
Hautu 1A5	305.5377	Pahikohuru No. 6	378.8034
Hautu 1A6	342.7687	Tauhara South B No. 1	5787.0046
Hautu 1A7	314.8454	Tauhara South B No 2	1040.0000
Hautu 1A8	531.7569	Tauranga Taupō 1A 1	141.6399
Hautu 18181A	11.2028	Tauranga Taupō 1A2	373.5754
Hautu 18182A1	70.0106	Tauranga Taupō 18 182	830.6600
Hautu 18182A2	407.1137	Tauranga Taupō 51B1C	168.248
Hautu 1B1B28581	198.7006	Tauranga Taupō 181D	161.9754
Hautu 18 18 2B 1E 1	5.5012	Tauranga Taupō 2A Section 1	601.3628
Hautu 181B2B1E2C	57.5434	Tauranga Taupō 2A Section 2	547.1349
(being the northern severance of Hautu 1B1B2B1E2A-C & 18182B1F)		Tauranga Taupō 2B 1A	401.5493
		Tauranga Taupō 2818	206.9967
Hautu 1B182B3	25.8999	Tauranga Taupō 28 1C	254.5472
Hautu 1B 1B 2B 4	189.3925	Tauranga Taupō 2B 1D	498.9774
(being the two northern severances)		Tauranga Taupō 281 E	147.8114
Hautu No. 1B No. 3	31.5605	Tauranga Taupō 2B 2M 1	1397.7842
Hautu C	149.7337	Tauranga Taupō 282M No. 5	483.9722
(previously Hautu 2B1B1A)		Tauranga Taupō No. 3B No. 1B	62.6783
Hautu 2B 1B 28	123.1256	Tauranga Taupō D2 Part	357.4984 approx
Hautu 28182D2	416.0168	Tauranga Taupō Y Part	348.0000 approx
Opawa Rangitoto No. 1A	6.8796	Tauranga Taupō 1B 2B No. 2	88.7432
Opawa Rangitoto No. 1B	182.9179	Te Kopihia	219.9466
Opawa Rangitoto No. 1C	95.5058	Te Whakao No. 2	234.92
Opawa Rangitoto No. 1D	7.2843	Te Whakao No. 3	511.5225
* Opawa Rangitoto 4	1307.6200	Turutururoa	687.1562
* Opawa Rangitoto 5	4.5360	Whataroa	544.7069
* Hautu D	143.4000		
		<b>Waiariki District</b>	
* = Aggregated Title		Tauhara Middle No 4A 2B No 2C	2194.6102

## SCHEDULE 2 – MARAE

Ngāti Kurauia at Tokaanu Marae

Ngāti Turangitukua at Hirangi Marae

Ngāti Rongomai at Waiotaka Marae

Ngāti Hine at Korohe Marae

Ngāti Te Rangiita at Waitetoko Marae

Ngāti Tutemohuta at Waitahanui Marae

Ngāti Hinerau at Waipahihi Marae

Ngāti Rauhoto at Nukuhau Marae

Ngāti Turumakina at Waihi Marae

Ngāti Tutetawha at Tutetawha Marae



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LAKE TAUPO *forest* TRUST

