

**ORDER VARYING THE TERMS OF TRUST**

Te Ture Whenua Māori Act 1993, Section 244

In the Māori Land Court  
of New Zealand  
Aotea District

**IN THE MATTER** of the Lake Taupō Forest Trust

AT a sitting of the Court held at Taumarunui on 16 December 2019 before Michael John Doogan, Judge

WHEREAS application has been filed by the Amy Amiria Walker to vary the terms of the Trust

AND WHEREAS on 11 December 1968 at 48 Tokaanu MB 255-285 and 310-330 the Court constituted the Lake Taupō Forest Trust.

AND WHEREAS at 55 Tokaanu MB 224-228 dated 26 March 2004 the Court made an order pursuant to section 438(1) of the Māori Affairs Act 1953 vesting the lands known collectively as Lake Taupo Forest Trust in the trustees upon certain trusts

AND WHEREAS on 18 April 2016 at 351 Aotea MB 100-103 the Court varied the terms of trust

NOW THEREFORE the Court upon reading and hearing all evidence in support and being satisfied on all matters upon which it is required to be so satisfied HEREBY VARIES the terms of the trust made at 351 Aotea MB 100-103 on 18 April 2016 by making a new trust order in substitution for the existing trust order such trusts being set out in the schedule attached

AND pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011 this order shall issue IMMEDIATELY

AS WITNESS the hand of a Deputy Registrar and the seal of the Court.

A circular seal with the text "THE MAORI LAND COURT OF NEW ZEALAND" around the perimeter. In the center is a coat of arms featuring a crown, two figures holding a shield, and a star above the shield.  
A handwritten signature in black ink, consisting of a large loop and a trailing line.  
**DEPUTY REGISTRAR**

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## 3.

## INTRODUCTION

- A. Lake Taupo 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 this Trust order ("Order").
- C. The Trust 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.

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**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;

## 5.

- (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 Ngāhere 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);

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- (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.

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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.

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**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.
  - (e) 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.



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**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.

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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

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- (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 off 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;

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- (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).

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- (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 (e.g. 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)(ii) 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.

## 14.

- (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

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**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 trustees.

**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:
  - (b) administration of the Trust, by which the Trustees shall administer the affairs of the Trust; and
  - (c) 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.

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- 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;
- (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:

- (a) 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;
- (b) calling trustee meetings;
- (c) setting the agenda of trustee meetings and in doing so must liaise with other Trustees;
- (d) ensuring that the Trustees behave consistently with their own rules, procedures, obligations and policies (including this Order);
- (e) 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;
- (f) ensuring that all information that the Trustees require or should receive is provided to them;
- (g) ensuring that Trustees as a whole comply with all of the obligations that are imposed on them (by law and this Order);
- (h) 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
- (i) 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).

18.

**"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;
- (b) the Owners discuss the matters set out in the agenda;
- (c) the Owners vote on any of those matters and pass resolutions based on the outcome of those votes; and
- (d) 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

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(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.

## 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;

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- (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.

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## SCHEDULE 1

## MĀORI LAND

Aotea District			
Block	Area (ha)	Block	Area (ha)
Hautu A1	235.786	Opawa Rangitoto No. 2B	272.3534
Hautu A2	61.5470	Opawa Rangitoto 2D2	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 Plan 5224	143.45622	Pahikohuru 4 and Part Section 1 Block II 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 1B1B1A	11.2028	Tauranga Taupō 1A2	373.5754
Hautu 1B1 B2A1	70.0106	Tauranga Taupō 1B 1B2	830.6600
Hautu 1B1B2A2	407.1137	Tauranga Taupō 1B1C	168.248
Hautu 1B1 B2B5B1	198.7006	Tauranga Taupō 1B1D	161.9754
Hautu 1B1B2B1E1	5.5012	Tauranga Taupō 2A Section 1	601.3628
Hautu 1B1B2B1E2C (being the northern severance of Hautu 1B1 B2B1E2A-C & B2B1F)	57.5434	Tauranga Taupō 2A Section 2	547.1349
		Tauranga Taupō 2B 1A	401.5493
Tauranga Taupō 2B 1B	206.9967		
Hautu 1B1B2B3	25.8999	Tauranga Taupō 2B 1C	254.5472
Hautu 1B 1B 2B 4 (being the two northern severances)	189.3925	Tauranga Taupō 2B 1D	498.9774
		Tauranga Taupō 2B1 E	147.8114
Hautu No. 1B No. 3	31.5605	Tauranga Taupō 2B 2M 1	1397.7842
Hautu C (previously Hautu 2B1 B1 A)	149.7337	Tauranga Taupō 2B2M No. 5	483.9722
		Tauranga Taupō No. 3B No. 1B	62.6783
Hautu 2B 1B 2B	123.1256	Tauranga Taupō D2 Part	357.4984 approx
Hautu 2B1B2D2	416.0168	Tauranga Taupō Y Part	348.0000 approx

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<b>Aotea District</b>			
<b>Block</b>	<b>Area (ha)</b>	<b>Block</b>	<b>Area (ha)</b>
Opawa Rangitoto No. 1A	6.8796	Tauranga Taupō 1B 2B No. 2	88.7432
Opawa Rangitoto No. 1B	182.9179	Te Kopiha	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		
* = Aggregated Title			

<b>Waiariki District</b>	
<b>Block</b>	<b>Area (ha)</b>
Tauhara Middle No 4A2B No 2C	2194.6102

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**SCHEDULE 2**

**MARAE**

Ngāti Kurauia at Tokaanu Marae

Ngāti Tūrangitukua at Hīrangī 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 Tutetawhā at Tutetawhā Marae

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**KAWENATA****1. GENERAL AND SPECIAL MEETING PROCESS**

- 1.1 Subject to clause 1.2 below, the Trustees, when convening and holding a meeting of Owners must recognise the importance of General and Special Meetings as the:
- (a) Resolutions passed at these meetings are considered the official expression of the Owners' view on the matter voted on in each Resolution;
  - (b) Resolutions passed are the only means by which the Trustees may determine the views of the Owners; and
  - (c) views arrived at by the Owners by passing Resolutions at these meetings will only be considered valid and relevant if they are determined in accordance with proper and fair processes.
- 1.2 For the avoidance of doubt, resolutions passed at General and Special Meetings do not bind the Trustees but must be given consideration by the Trustees.

**2. NOTIFYING OWNERS OF A GENERAL OR SPECIAL MEETING**

- 2.1 The Trustees must take all reasonable steps to notify the Owners that a General or Special Meeting of Owners is to be held ("Notice"). Notice may be facilitated by:
- (a) notifying Owners directly in writing by a preferred method such as by letter or email where it is reasonable to do so (e.g. where the Trust has the mail and/or email addresses of the Owners and doing so is inexpensive); and
  - (b) where direct notification is not possible, by publishing notice in any one or more of the following ways:
    - I. in a daily newspaper circulating in the district where the Corpus Land is Situated;
    - II. by any electronic means (such as a website) associated with the Trust and the Owners;
    - III. broadcasting over the local iwi radio station.
- 2.2 The notice must specify:
- (a) the agenda for the meeting with sufficient detail to accurately inform the Owners of all matters that are to be discussed and voted on at the meeting, and where the agenda includes consideration of, and voting on variations or other changes to this Order, the notice shall include a summary of the proposed changes and shall state that a full copy of the proposed change can be obtained from the Secretary, and providing contact details for the Secretary.
  - (b) how voting is to be conducted, including, where Proxy votes are to be allowed, the formal requirements that must be met when voting by these means (see Clause 4 for the specific requirements of these forms of voting).
- 2.3 The notice must invite the Owners to submit a matter to be added to the agenda.
- 2.4 The notice must be given at least 14 days before the Special or General Meeting to which the notice relates.

### 3. CONDUCTING A GENERAL OR SPECIAL MEETING

- 3.1 The number of Owners required to be at a General or Special Meeting in order to conduct the business of that meeting ("Quorum") is 100 Owners of this Trust present for the duration of the meeting.
- 3.2 At the General Meeting the Trustees must present to the Owners the reports and financial statements for the Financial Year that immediately preceded the current General Meeting.
- 3.3 The Trustees must keep a record of the General or Special Meeting ("Minutes") that accurately describes the events of the meeting, starting with a list of attendees, a statement of the issues considered by the Owners and other attendees, and a reasonable summary of exchanges made by attendees on those issues. The Minutes risk being considered flawed if they fail to provide a proper indication of the views expressed by the Owners.
- 3.4 The person who chairs the meeting must call for the Owners to vote on matters that are to be decided at the General or Special Meeting by majority vote ("Resolutions"). When a Resolution is passed it is the official expression of the Owners' views on each matter to which a Resolution relates.

### 4. VOTING ON RESOLUTIONS AT GENERAL OR SPECIAL MEETINGS

- 4.1 When a Resolution is put to a General or Special Meeting for a vote by the Owners, the Trustees must determine before a General or Special Meeting commences, which of the people attending the meeting are entitled to vote (either as a Beneficial Owner entitled to vote or a Proxy), by:
  - (a) checking that each attendee is entitled to vote;
  - (b) where an attendee holds a Proxy, by checking that the Proxy voting right is validly given and that the Proxy possesses all the necessary documents to prove this; and
  - (c) by formally registering each individual present entitled to vote.
- 4.2 For the purposes of a vote by show of hands, where the trustees of another trust are collectively an Owner of the Trust (e.g. a Whānau Trust) then only one of their number may vote on behalf of that trust. Where more than one of the trustees of that trust are in attendance at the meeting of the Trust, they must inform the Trustees which of them is to exercise the vote of that Trust. In the absence of a Proxy or failing agreement between them, none of the trustees of that trust is entitled to vote on that trust's behalf at the meeting of the Trust.

### 5. PROXY VOTES AT A GENERAL OR SPECIAL MEETING

#### Certifying Proxy votes

- 5.1 Where Proxy votes are allowed, a Proxy voter for an Owner is entitled to attend and vote at a Special or General Meeting only if the:
  - (a) Proxy voter is 20 years or older, of capacity and is an Owner;
  - (b) Proxy voter is appointed by a notice in writing in accordance with the form provided in Schedule 1 of this Order;

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- (c) Notice is received by the Trustee nominated as Chairperson, at least one hour before the meeting begins;
- (d) Notice is signed by the Owner on whose behalf the Proxy voter is voting and is witnessed by a non-family member of the Owner;
- (e) Notice states the particular meeting for which the Proxy voter is appointed; and
- (f) Chairperson determines whether the notice is valid (if it is decided that the notice is invalid the Chairperson must provide reasons for that determination and record those reasons on the notice presented by the Proxy voter).

5.2 The Chairperson may on request, allow any person entitled to vote to inspect any notice.

5.3 The notice of any Proxy voter will lapse if the Owner who authorises it dies, gives a written notice that it is cancelled prior to the meeting for which the Proxy was issued, or is present at the meeting for which the Proxy was issued.

## 6. TRUSTEE ELECTIONS

6.1 The Trust will hold triennial elections in accordance with *Schedule 2*.

## 7. TRUSTEE MEETINGS

7.1 The number of Trustees required to attend a trustee meeting in order to conduct the business of that meeting ("Quorum") is a majority in number of the Trustees appointed by the Court. If the Trustees agree, a Trustee who cannot attend in person may do so by teleconference or other digital or electronic means, provided that they can and do remain in contact with the other Trustees at all times throughout the meeting to the extent required to maintain a Quorum.

7.2 Following appointment by the Court of new trustees after an Election, the Trustees must at their first meeting appoint a Trustee to be Chairperson and another Trustee to be the Deputy Chairperson.

7.3 Unless a Trustee meeting is convened in an emergency, at least fourteen (14) working days' notice of any meeting shall be given to all Trustees.

7.4 Trustee meetings will be based primarily on a pre-prepared agenda, the preparation of which is the responsibility of the Chairperson. The other Trustees also have the right to submit items for inclusion on the agenda and should endeavour to submit items at the earliest opportunity.

7.5 Trustee meetings are held with the expectation that all Trustees have prepared for them adequately and will participate in all discussions at all times, in a manner that is consistent with behaviour that is considered acceptable.

7.6 The Trustees must keep Minutes of all trustee meetings in accordance with the requirements of clause 3.3, copies of which must go to all Trustees and any other persons that the Trustees determine should receive them. The Chairperson shall be responsible for ensuring that a record of all Resolutions (and the votes for and against) is recorded.

7.7 The Trustees, when conducting Trust business, will make all decisions that they are empowered to make on behalf of this Trust by a majority vote of the Trustees. The

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Chairperson does not have a casting vote; in the case of a tied vote on a resolution, the resolution is to be treated as having been defeated. All acts and proceedings that follow the vote on any decision will be valid and of good effect as if all Trustees concurred.

- 7.8 Where any Trustee dissents in writing from the majority decision of the Trustees before the decision is implemented, that Trustee is absolved from any personal liability arising out of the implementation of that decision. Any such dissent shall be sent to the Chairperson or to the Secretary. Where the dissenting Trustee is the Chairperson, notice must be given to the Secretary; where the dissenting Trustee is the Secretary, notice must be given to the Chairperson; where both the Chairperson and the Secretary dissent, they must give notice to at least one other Trustee who is a member of the majority.

## **8. ADDRESSING GRIEVANCES**

- 8.1 If an Trustee or Owner is aggrieved by a decision, action or omission of the Trustees ("Applicant"), that person may first give written notice of the grievance to the Trustees.
- 8.2 If the Applicant's grievance is not satisfactorily addressed within a reasonable period of time, the Applicant may in writing, notify the Trustees of his or her intention to have his or her grievance referred to a Special Meeting of the Owners in accordance with clause 9.2.
- 8.3 If the Trustees fail to convene a Special Meeting of the Owners within 3 months of receiving the written notice specified above at clause 8.2, the Applicant may file in Court an application pursuant to section 238 of the Act or section 68 of the Trustee Act 1956 requesting that the Court:
- (a) review any decision, action or failure to act of the Trustees; and/or
  - (b) give directions in relation to any action or failure to act or contemplated action or failure to act of the Trustees; and/or
  - (c) grant an injunction preventing the Trustees from taking any further steps in relation to the decision, action, or failure to act.

## **9. MAJOR TRANSACTIONS**

- 9.1 In this clause, Major Transaction means:
- (a) the acquisition of, or an agreement to acquire, whether contingent or not, property by the Trustees the value of which is more than 15% of the value of the Trust Property less the value of any Corpus Land owned by the Trust before the acquisition; or
  - (b) the disposition of, or an agreement to dispose of, whether contingent or not, property by the Trustees the value of which is more than 15% of the value of the Trust Property less the value of any Corpus Land owned by the Trust before the disposition; or
  - (c) a transaction that has or is likely to have the effect of the Trustees acquiring rights or interests or incurring obligations or liabilities the value of which is more than 15% of the Trust Property less the value of any Corpus Land owned by the Trust before the transaction,

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but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the Trust Property; or
- (e) any disposition of property by the Trustees to any Trust Entity, or between Trust Entities.

9.2 The Trustees must not enter into a Major Transaction unless that Major Transaction is:

- (a) approved by a majority of the Owners present and voting at a General Meeting called to consider the Major Transaction; or
- (b) contingent on such approval.

## 10. MĀORI COMMUNITY PURPOSES

10.1 In making payments for Māori Community purposes pursuant to *clause 14.4(r)(ii)* of the Trust Order, the Trustees shall apply:

- (a) Up to \$170,000 per annum (unless a higher amount is first approved at a Special or General Meeting) for making grants or loans towards the cost of the construction, establishment, management, maintenance, repair or improvement of Māori meeting house, halls, churches and church halls, kohanga reo, villages, marae or cemeteries associated with the Beneficial Owners.
- (b) Up to \$500,000 (unless higher amount has been approved at a General Meeting) towards a Tangihanga Fund. The purpose of the fund will be to allow for grants to be made towards the cost of tangihanga for deceased Owners or for deceased persons nominated to the Trust by the trustees of a Whānau Trust which is an Owner. Funds so allocated or any part thereof may be applied for the purchase by the Trustees of insurances. Any money received by the Trustees from any such insurance shall be applied to the Tangihanga Fund by the Trustees.

## 11. AMENDMENTS

11.1 The Trustees have the power to amend, revoke or add to the provisions of this Kawenata (in each case, a Change) provided that:

- (a) no Change may be inconsistent with the Trust Order or the Act; and
- (b) subject to clause 11.2, a Change may only be promoted if a majority of the Owners present and voting at a Special or General Meeting resolve that the Change is for the collective benefit of the Owners.

11.2 The Trustees have the power to effect a Change if:

- (a) the Change relates to clause 7; and
- (b) the Change is approved by a majority of the Trustees.

## 12. INTERPRETATION

12.1 Definitions

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In this Kawenata, unless the context otherwise requires:

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

**“Trust Order”** means the order of the Māori Land Court that sets out the terms of the Trust, as amended from time to time.

12.2 In this Kawenata, unless the context otherwise requires:

- (a) terms defined in the Trust Order have the same meanings when used in this Kawenata;
- (b) reference to a statute or statutory provision in this Kawenata includes that statute or provision as amended, modified, re-enacted or replaced from time to time;
- (c) references to:
  - (i) one gender includes the other gender;
  - (ii) the singular includes the plural and vice versa;
  - (iii) a sub-clause are to a sub-clause of a clause; and
  - (iv) a person includes an individual, body corporate, an association of person (whether corporate or not) and a trust (in each case, whether or not having separate legal personality); and
- (d) headings, sub-headings and the table of contents are to be ignored in interpreting the Kawenata

### 13. STATUS OF THE KAWENATA

- 13.1 The Kawenata constitutes a contract between the Trustees and the Owners and between each of the Owners. It is enforceable by law by the Trustees and the Owners.
- 13.2 The Trustees and the Owners acknowledge that the terms of the Kawenata, and Compliance with the terms of the Kawenata, may be reviewed by the Court pursuant to section 231 of the Act.
- 13.3 The Trustees and the Owners agree that:
  - (a) the Kawenata is subject to, and must not be inconsistent with, the Act and the Trust Order; and
  - (b) In the event of any conflict or inconsistency between the provisions of this Kawenata and the provisions of the Act or the Trust Order, the Act or the Trust Order (as the case may be) shall prevail.

**SCHEDULE 1****Proxy Voter Form**

I, **[NAME]**, being an Owner of the Lake Tāupo Forest Trust, hereby appoint **[PROXY VOTER'S NAME]** ("Proxy Voter") to be my Proxy Voter at the General or Special Meeting of Owners to take place on **[STATE DATE AS ACCURATELY AS POSSIBLE]** ("Meeting").

I direct my Proxy Voter to:

1. vote as he or she decides;
2. vote for/against the resolution(s) (specify) proposed for determination at the Meeting.

This Proxy has been signed by me in the presence of **[NAME OF WITNESS]** who is a

Solicitor

Justice of the Peace

Registered Medical Practitioner

Officiating Minister

Registered Nurse

School Teacher

Officer of the Ministry of Justice

Chartered or Registered Accountant

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**SCHEDULE 2****ELECTIONS OF TRUSTEES****1. PROCEDURE****1.1 This Schedule to apply:**

This Schedule shall apply for the Trustee elections held in 2022 and all subsequent Trustee elections. For the purposes of those Trustee elections, the Trustees shall be appointed in accordance with the rules and procedures set out in this Schedule.

**1.2 2019 Trustee election**

The 2019 Trustee election shall be held in accordance with clause 5(e) of the Trust Order for the Trust as set out at Māori Land Court Minute Book reference 351 AOT 100-103, even if that version of the Trust Order is superseded before the 2019 Trustee election takes place.

**2. ELIGIBILITY FOR APPOINTMENT****2.1 Nominee to be registered:**

To be elected as a Trustee a nominee must, as at the closing date for nominations, be a Beneficial Owner and be eligible in accordance with clause 12.1 of the Trust Order.

**2.2 Trustees Roles:**

A Trustee may not simultaneously hold the position of employee of, or a contractor to, the Trust or any Trust Entity.

**2.3 Trustees may be directors or trustees:**

Subject to *clause 14.4(m) of the Trust Order*, a Trustee may be a director or a trustee of a Trust Entity.

**2.4 Number of Trustees to be limited:**

The number of Trustees in office from time to time shall be as follows:

- (a) For the period from the date of adoption of this Kawenata to the date of the election to be held in 2022, there shall be no more than eleven (11) Trustees.
- (b) Thereafter, there shall be no more than seven (7) Trustees.

**3. ELECTION OF TRUSTEES****3.1 Election of Trustees:**

The Owners shall be entitled to elect the Trustees in accordance with the rules for elections as set out in this Schedule.



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**3.2 Timing of elections:**

Trustee elections shall be held:

- (a) on a date between 1 October and 30 November 2022, such date to be determined by the Trustees; and
- (b) thereafter, in every third calendar year.

**3.3 Successful candidates:**

The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees. If there is an equal number of votes for the last available position, then the successful candidate will be decided by the drawing of lots.

**4. TERM OF OFFICE****4.1 Term of office:**

Subject to *rule 4.2* of this Schedule the Trustees from time to time shall hold office for a term of no more than 6 years.

**4.2 Retirement and rotation of Trustees:**

The Trustees shall retire from office with elections to be held for their respective positions as Trustee as follows:

- (a) for the purposes of the Trustee elections held in 2022:
  - (i) three (3) of the Trustees elected at the 2019 Trustee election shall retire, such that four (4) of the Trustees elected at the 2019 Trustee election shall remain in office;
  - (ii) all Trustees who were elected prior to the 2019 Trustee election shall retire; and
  - (iii) an election shall be held for three (3) Trustee positions;
- (b) for the purposes of the Trustee elections held in 2025, the remaining Trustees elected at the 2019 Trustee election shall retire and an election shall be held for four (4) Trustee positions

**4.3 Order of retirement of Trustees:**

The order of retirement of the Trustees under *rule 4.2* of this Schedule shall be determined by agreement among the Trustees failing which the determination shall be made by lot.

**4.4 Term following retirement of Trustees:**

Following the retirement of the Trustees in accordance with *rule 4.2* of this Schedule, each newly elected Trustee shall hold office for no longer than six (6) years. However, because Trustees are formally appointed by the Māori Land Court:

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- (a) any Trustee that is re-elected shall continue in office, with a new term of office of no more than 6 years commencing on the date on which he or she was re-elected;
- (b) any Trustee that is not re-elected shall continue to hold office until the Māori Land Court grants an order relieving that Trustee from their position; and
- (c) any person who is not already a Trustee and is elected as a Trustee shall take office on the date that the Māori Land Court grants an order to that effect, but his or her term for the purposes of rule 4.1 of this Schedule shall commence on the date on which he or she was elected.

#### 4.5 Eligibility of retiring Trustees:

Retiring Trustees shall be eligible for re-election.

#### 4.6 Casual vacancies:

Should:

- (a) there be no person elected to replace a Trustee following that Trustee's retirement; or
- (b) any casual vacancy arises prior to the expiry of any Trustee's term of office; and
- (c) the term to run for that vacant position in either 4.6(a) or 4.6(b) exceeds twelve (12) months;

then that vacancy shall be filled

- (d) in the first instance, by appointing the next highest polling candidate in the most recently held Trustee election who is not already a Trustee; and
- (e) If no person is able to be appointed pursuant to rule 4.6(d), by the holding of a further election in accordance with this Schedule.

#### 4.7 Term of casual appointments:

In the case of an appointment made pursuant to *rule 4.6* of this Schedule the Trustee thereby appointed shall, as the case may be, hold office:

- (a) In the case of a Trustee appointed pursuant to *rule 4.6(a)* of this Schedule, for the same term as that Trustee would have been appointed had he or she been appointed, immediately following the retirement of the previous Trustee, under *rule 4.4* of this Schedule; or
- (b) In the case of a Trustee appointed pursuant to *rule 4.6(b)* of this Schedule, for the balance of the term of office of the Trustee that he or she has replaced.

### 5. TIMING OF ELECTIONS

- 5.1 The elections for Trustees must, except in the case of elections to fill casual vacancies under *rule 4.6* of this Schedule or to the extent that any review under *rule 13* of this Schedule has been sought in respect of an election, be concluded so that no Trustee holds office for more than six (6) years without facing re-election

### 6. MAKING OF NOMINATIONS

#### 6.1 Calling for nominations:

The Trustees shall give notice calling for nominations for those Trustee positions for which elections are required at least three (3) months before the date on which Trustee elections are to be held, and in any event in sufficient time for the election to be concluded in accordance with *rule 5* of this Schedule. Such notice shall specify the method of making nominations, the requirement in *rule 2.1* of this Schedule in terms of Trustee eligibility, and the latest date by which nominations must be made and lodged with the Trustees or such other person as the notice directs.

## **6.2 Timing for nominations:**

All nominations must be lodged with the Trustees (or such other person as the Trustees elect) no later than twenty-one (21) days following the date upon which the notice calling for nominations is first given.

## **6.3 Form of notice:**

All notices given under this rule shall be given by:

- (a) inserting a prominent advertisement on at least two (2) separate days in appropriate newspapers circulating in regions where the Trustees consider that a significant number of Owners reside; and
- (b) such other means as the Trustees may determine.

## **6.4 Nomination to be in writing:**

The nomination of a candidate for election as a Trustee shall be in writing signed by not less than three (3) Owners.

## **6.5 Consent of nominee:**

The consent of each candidate to his or her nomination shall be endorsed on the nomination paper, provided that a candidate may at any time, by notice to the Trustees, withdraw his or her nomination.

## **6.6 Eligibility for nomination:**

Notwithstanding the foregoing rules of this Schedule, a Beneficial Owner shall not be eligible for nomination as a candidate for election as a Trustee if he or she does not meet the requirements of *clause 12.1 of the Trust Order*.

# **7. HOLDING OF ELECTIONS**

## **7.1 Mode of Voting at Elections:**

Subject to rule 7.3 of this Schedule, voting at all elections shall be by way of secret ballot. Voting forms may be delivered to the Returning Officer by post or by electronic form where available. The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees. Where there is an equal number of votes for the last trustee position the decision as to the successful candidate shall be made by the drawing of lots.

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**7.2 No elections where nominees' equal vacancies:**

In the event that the total number of nominations of Trustees is less than or equal to the total number of vacancies, no election shall be necessary, and the person or persons nominated shall be deemed to have been duly appointed.

**7.3 Owners to vote in elections:**

Each Owner is eligible to vote in an election, provided that each such Owner will only be eligible to cast one vote in an election listing up to 3 preferred Trustees in an election.

**8. NOTICE OF ELECTIONS****8.1 Notice to be given:**

Immediately after the closing date for nominations, the Trustees shall, where an election is required, fix a closing date for the election (being the last day upon which a vote may be validly cast in the election).

**8.2 Period of notice:**

The Trust shall give not less than twenty-eight (28) days' notice of the closing date for the elections and the method by which votes may be cast as set out in *rule 7.1* of this Schedule.

**8.3 Method of giving notice:**

Notice under *rule 8.2* of this Schedule shall be given by:

- (a) post (including by electronic form where available) to all Owners at the addresses shown on the register of Owners maintained by the Trust. If notice sent to an electronic address fails, and the Trustees are aware of the failure, then the notice must be sent to the last known physical address;
- (b) inserting a prominent advertisement on at least two (2) separate days in appropriate newspapers circulating in regions where the Trustees consider that a significant number of Owners reside;
- (c) such other means as the Trustees may determine.

**8.4 General content of notices:**

Every notice given in accordance with *rule 8.3(a) and (b)* of this Schedule shall contain:

- (a) a list of the nominees for election as Trustees; and
- (b) the mode by which votes may be cast as set out in *rule 7.1* of this Schedule.

**8.5 Additional content of notice:**

Each notice given in accordance with *rule 8.3(a)* of this Schedule shall also contain:

- (a) a voting form that complies with *rule 9.1* of this Schedule; and
- (b) details of the procedure to be followed in making a vote by post or by electronic form, including the date by which the voting form must be received by the Returning Officer.

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**8.6 Additional information in other notices:**

Each notice given in accordance with *rule 8.3(b) and (c)* of this Schedule shall also give details about how voting forms may be obtained.

**9. POSTAL VOTING****9.1 Other details to accompany vote:**

Each voting form must contain information that is sufficient to identify the voter and the voting documents issued to that voter.

**9.2 Timing of postal votes:**

Votes must be made no later than the closing date for the election of the Trustees to which the postal vote relates. Votes otherwise validly cast are valid and able to be counted if they are received by the Returning Officer no later than three (3) days after the closing date for the election, but only if the envelope containing the voting form is date stamped on or before the closing date for the election.

**10. APPOINTMENT OF RETURNING OFFICER****10.1 Appointment of Returning Officer:**

For the purposes of elections, the Trustees shall appoint as required a Returning Officer who shall not be a Trustee or employee of the Trust. The Trustees shall ensure that the Returning Officer is appointed on terms requiring the Returning Officer to act in accordance with the provisions of this Trust Order setting out the powers and duties of the Returning Officer. The Returning Officer shall be responsible for co-ordinating Trustee elections.

**10.2 Returning Officer to receive voting forms:**

All voting forms must be addressed to the Returning Officer.

**10.3 Only one vote to be cast:**

The Returning Officer shall ensure that appropriate measures are in place to ensure that only one vote is cast by each Owner.

**10.4 Recording of votes:**

A record shall be kept by the Returning Officer of all votes received.

**11. COUNTING VOTES****11.1 All votes to be counted:**

Upon the expiry of the date for the receipt of postal votes, the Returning Officer shall record and count all votes validly cast.

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**11.2 Certification and notifying election result:**

Once all votes have been counted and the result of the election determined by the Returning Officer, the Returning Officer shall certify the result of the election and communicate the result of the election to the Trustees. The Trustees shall thereafter advise the candidates of the result and give notice of the same to the Owners. The candidates in each election who receive the highest number of valid votes for the relevant vacancies will be elected as Trustees.

**12. RETENTION OF ELECTION RECORDS****12.1 Compiling and sealing voting records:**

The Returning Officer shall, as soon as practicable after he or she has certified the result of the election, place all voting forms and other voting records into a sealed packet. The Returning Officer shall endorse upon the sealed packet a description of the contents of that packet together with the final date for voting in that election. The Returning Officer shall then sign the endorsement and forward the sealed packet to the Trustees.

**12.2 Retention and disposal of packets:**

The sealed packets received from the Returning Officer shall be safely kept unopened by the Trustees for a period of one (1) year from the closing date for making votes in the election to which the packet relates. At the expiry of that one (1) year period the packets shall be destroyed unopened.

**13. TERMINATION OF OFFICE OF TRUSTEES****13.1 Termination of office of Trustees:**

Notwithstanding the foregoing rules of this Schedule, a Trustee shall cease to hold office he or she is removed from office as a result of the application of clause 12 of the Trust Order.