

HER MAJESTY THE QUEEN
(Crown)

WAIKATO REGIONAL COUNCIL
(EW)

TAUPO DISTRICT COUNCIL
(TDC)

**THE LAKE TAUPO PROTECTION PROJECT
PROJECT AGREEMENT**

Brookfields
LAWYERS

**THE LAKE TAUPO PROTECTION PROJECT
PROJECT AGREEMENT**

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**THE LAKE TAUPO PROTECTION PROJECT
PROJECT AGREEMENT**

AGREEMENT dated the _____ day of _____ 2007

PARTIES

1. **HER MAJESTY THE QUEEN** acting by and through the Minister for the Environment ("Crown")
2. **WAIKATO REGIONAL COUNCIL** ("EW")
3. **TAUPO DISTRICT COUNCIL** ("TDC")

INTRODUCTION AND BACKGROUND

- A. The Crown, EW and TDC, together with Ngati Tuwharetoa and other community interests have identified through scientific evidence that the health of Lake Taupo is declining.
- B. Recent surveys have confirmed that the most important and urgent issue for the Taupo and wider community is the protection of the Lake's water quality. Intensifying land use in the Lake Taupo Catchment Area has significantly increased the amount of nitrogen entering the Lake which reduces the clarity of the water for which Lake Taupo is renowned.
- C. Arising out of the 2020 Taupo-nui-a-Tia project and action plan, which aims to ensure the sustainable development of Lake Taupo and its surrounding land, and following consultation with the Taupo and Waikato communities over a three year period, the Crown, EW and TDC have decided on a strategy to maintain the current health of the Lake by reducing the amount of manageable nitrogen reaching the Lake.
- D. The parties have agreed to contribute to a joint public fund which will be utilised to undertake strategic actions to achieve a reduction in the amount of nitrogen entering the Lake.
- E. This agreement records the agreement of the Crown, EW and TDC with respect to the Lake Taupo Protection Project.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this agreement, unless the context otherwise requires:

"**CCO**" means a Council Controlled Organisation within the meaning of the LGA'02.

"**Chairperson**" means the chairperson of the Joint Committee appointed from time to time by the Joint Committee.

"**EW**" means the Waikato Regional Council, trading as Environment Waikato, and its successors.

"**Funding Deed**" means the deed recording the agreement between the Crown, EW, TDC and the Trust in relation to contributions to the Public Fund setting out the terms of funding, a copy of which is attached to this agreement as Schedule 3.

"**Governance Costs**" means the ongoing annual amount required to cover the costs of the Joint Committee, which shall comprise:

- (a) any remuneration and out of pocket expenses paid to members of the Joint Committee in accordance with clause 8.5 of this agreement;
- (b) any expenses related to the costs of running and administering the Joint Committee, including the holding of meetings.

"**Joint Committee**" means the joint committee for the governance of the Project provided for in clause 7.

"**Lake**" and "**Lake Taupo**" mean Lake Taupo.

"**Lake Taupo Catchment Area**" means the catchment area for Lake Taupo as defined in the Waikato Regional Council Lake Taupo variation to the Regional Plan (proposed 2005). A copy of the relevant map showing the catchment boundaries is attached as Schedule 4.

"**LGA'02**" means the Local Government Act 2002.

"**Operative Date**" is the date of this agreement.

"**Payments Schedule**" means the schedule of payments to be made by each of the parties according to their respective shares as set out in part 1 of Schedule 1.

"**Preliminary Costs**" means:

- (a) the costs related to the establishment of the Project including preparation of the relevant documentation and the establishment of the Trust and the Joint Committee, as set out in Part II of Schedule 1;
- (b) the costs of undertaking the Project already approved by or on behalf of the parties prior to the Operative Date whether such costs have been expended or not, as set out in Part II of Schedule 1.

"**Project**" means The Lake Taupo Protection Project (being the nitrogen reduction component of the Protecting Lake Taupo Strategy) the principal elements of which are set out and described in clause 2.

"**Public Fund**" means the total of the moneys which the parties, according to their respective shares, have committed to the Project, including prior to the Operative Date, as set out in the Payments Schedule and as otherwise provided for in clause 5.

"**Representative Group**" means the individuals specified in clause 7.5 of this agreement, who will govern the Project if the Joint Committee is discharged and not reconstituted and who represent the respective parties specified in clause 7.5 of this agreement or the successors, substitutes or equivalents of such parties.

"**Statement Of Intent**" means the annual statement of intent of the Trust, which has the purpose, meaning and effect as set out and provided for in the LGA'02.

"**TDC**" means the Taupo District Council and its successors.

"**Trust**" means The Lake Taupo Protection Trust to be established by the parties pursuant to this agreement.

"**Trust Deed**" means the trust deed of the Trust a copy of which is attached to this agreement as Schedule 2.

"**Trust Fund**" means the trust fund as defined in the Trust Deed, which includes that part of the Public Fund paid to the Trust under clause 5 of this agreement in accordance with the provisions of the Funding Deed.

"**Working Day**" means a "Working Day" as defined by section 5 of the LGA'02.

Interpretation

1.2 In this agreement:

- (a) all monetary amounts are stated and payable in New Zealand dollars, and the payer shall be obliged to pay all GST (if any) in respect of any such amount, unless otherwise provided in this agreement;
- (b) references to clauses and schedules are references to clauses in, and to schedules to, this agreement, unless stated otherwise. Each such schedule forms part of this agreement;
- (c) where the context permits, the singular includes the plural and vice versa;
- (d) all references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;
- (e) where the context permits, references to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public authority, territorial or regional council, any government, and any agency of any government or of any such authority;

(f) references to a "party" mean a party to this agreement and any reference to a party includes the successors, executors and administrators (as the case may be) of that party.

1.3 Defined words and expressions bear the defined meaning throughout this agreement including the Introduction and Background.

2. PROJECT

2.1 The parties record their agreement as to the constitution of the Project by reference to its principal elements as follows:

- (a) **Name.** The name of the Project is **The Lake Taupo Protection Project**.
- (b) **Objective.** The reduction of manageable nitrogen entering Lake Taupo by a minimum of 20% (such figure being based on benchmarked land use over the period July 2001 to June 2004 – see Waikato Regional Council Lake Taupo variation to the Regional Plan (Proposed 2005)).
- (c) **Strategies.** Strategies which are best suitable for achieving the above objective include but are not limited to:
 - (i) the conversion of high nitrogen leaching pastoral land into low leaching nitrogen land uses;
 - (ii) purchase of land to achieve such conversion;
 - (iii) research into identifying alternative low leaching nitrogen land uses;
 - (iv) researching and developing alternative technologies,

all as set out and provided for in the Statement of Intent.

- (d) **Funding.** The agreed monetary contributions by each of the parties to the Public Fund over the term of the Project are as set out in the Payments Schedule and will be paid according to the provisions recorded in the Funding Deed.

- (e) **Term.** The term of the Project is scheduled to be a period of 14 years commencing on 1 July 2005 and terminating on 30 June 2019 or such earlier date as the Public Fund has been fully expended and the Trust holds no assets.

2.2 The parties acknowledge that over time elements of the Project may vary and that the review provisions (clause 10) will be the means by which variations will be agreed.

3. AGREEMENT TO PARTICIPATE IN THE PROJECT

3.1 Each of the parties agrees with the other parties that it will participate in the Project in accordance with the provisions of this agreement, including:

- (a) payment of monetary contributions to the Public Fund as provided for in clause 5;
- (b) active participation in the governance of the Project as provided for in clause 7.

3.2 EW and TDC acknowledge to the other that the Project is planned to be supported with regional rules developed by Environment Waikato requiring management of nutrient discharges to the Lake from intensifying land use and by planned actions on the part of Taupo District Council, including the reticulation of some unsewered settlements and upgrades to the current sewage treatment systems.

4. COMMENCEMENT OF PROJECT AND TERM

4.1 This agreement shall commence on the Operative Date and each of the parties shall be bound to perform their respective obligations under this agreement with effect from such date.

4.2 EW and TDC confirm to each other and each of them confirms to the Crown that with respect to their involvement in, and establishment of, the Trust and the Joint Committee and their respective funding decisions in regard to the Project, as set out in this agreement:

- (a) the required special consultative procedures or other procedures under the LGA'02 have been undertaken and completed appropriately;

- (b) all delegations necessary to establish the Joint Committee together with its terms of reference have been obtained;
- (c) such procedures and delegations will be undertaken, maintained and renewed, as applicable, throughout the life of the Project; and
- (d) each of them will seek any additional delegations to the Joint Committee which are required.

4.3 The term of the Project shall be as provided for in the definition of the Project in clause 2 but subject to any variation to the term which is determined or permitted by the parties pursuant to this agreement or the Funding Deed.

5. PUBLIC FUND

5.1 Each of the parties agrees to the establishment of the Public Fund to undertake the Project and to pay their respective monetary contributions to the Public Fund as set out in the Payments Schedule in accordance with the provisions set out in the Funding Deed.

5.2 The Trust shall receive hold and administer the Public Fund as follows:

- (a) first, in the payment of the Preliminary Costs and the Governance Costs and;
- (b) the balance to comprise the Trust Fund to be held and applied by the Trust in accordance with the provisions of the Trust Deed.

5.3 Any proposed increase or decrease in the total amount of the contributions to the Public Fund of any party through the review process under clause 10 shall require the agreement of the affected party alone and the affected party may agree to or decline the proposed increase or decrease in the total amount of its contributions to the Public Fund in its sole discretion.

5.4 EW and TDC acknowledge that they in part share a common rating base within the Taupo District. EW and TDC agree that they will not during the term of the Project, for the

purposes of the Project and in particular the contributions to the Public Fund, amend the proportionate contributions of the rating base within the Taupo District.

- 5.5 The parties record, for the avoidance of doubt, that the Public Fund is supplementary to the existing funding committed by EW and TDC to Project Watershed, waste water upgrades and other projects (which together with the Public Fund total \$143 million as at 1 July 2004) which will continue for any future funding committed individually by EW and TDC for the same or similar purposes.
- 5.6 The parties record, for the avoidance of doubt, that the Public Fund includes all funds collected or contributed by the parties with respect to the Project from 1 July 2004.

6. ESTABLISHMENT OF TRUST

- 6.1 The parties agree that the Project will be implemented by an incorporated charitable trust, to be named The Lake Taupo Protection Trust, and agree to do all things necessary to establish the Trust.
- 6.2 The agreed form of the Trust Deed for the Trust is attached to this agreement as Schedule 2.
- 6.3 Unless the parties agree on a different date the Trust shall commence with effect from the Operative Date.
- 6.4 The parties agree, as soon as practicable following the date of this agreement, to:
- (a) appoint the initial trustees in accordance with the provisions of the Trust Deed relating to the appointment of trustees; and
 - (b) execute the Trust Deed as settlors of the Trust.
- 6.5 The parties agree that together they will undertake their role and function as settlors under the Trust Deed.

6.6 The parties acknowledge that the Trust when established will be a CCO under the LGA'02 and will be subject to the requirements for governance and accountability of CCOs as contained in Part 5 of the LGA'02.

7. GOVERNANCE OF PROJECT

7.1 The parties agree to govern the Project for its term and until the Trust has been wound up and its assets distributed

7.2 Governance of the Project for its term shall be undertaken by a joint committee ("Joint Committee") established and maintained by the parties. The Joint Committee shall be established as soon as practicable following the date of this agreement and maintained according to the following principles:

- (a) the Joint Committee shall be as provided for in clause 8 and in compliance with the applicable provisions of schedule 7 of the LGA'02 but at all times such statutory compliance shall be paramount and shall override the provisions of clause 8;
- (b) if the LGA'02 or any other legislation in the future does not provide for joint committees then the provisions of clause 8 shall continue to apply, being the agreement of the parties unless they agree otherwise; and
- (c) if future legislation permits the parties may adopt an alternative to a joint committee but unless all parties agree to an alternative the provisions of clauses 7.4, 7.5 and 8 shall continue to apply.

7.3 The parties acknowledge that provision is made in clause 30 of schedule 7 of the LGA'02 for the Joint Committee to be discharged. EW and TDC, including for the purposes of clauses 30(5) and 30(7) of schedule 7 of the LGA'02, recognise the desirability of maintaining the Joint Committee continuously constituted for the term of the Project and will use their best endeavours to avoid the Joint Committee being discharged and if discharged will use their best endeavours to reconstitute the Joint Committee as soon as possible.

7.4 If the Joint Committee is discharged as the result of the operation of legislation, any decision made pursuant to legislation or for any other reason and not reconstituted within a reasonable period as provided in clause 7.3, the Project shall be governed by a

Representative Group of the parties acting in accordance with this agreement as if it was the Joint Committee.

7.5 The Representative Group shall be made up of the following 4 individuals:

- (a) the chief executive of EW;
- (b) the chief executive of TDC;
- (c) the chief executive of the Ministry for the Environment, or his or her nominee;
- (d) a representative of Tuwharetoa Maori Trust Board as holder of the title and Kaitiaki of Lake Taupo (Taupo-nui-a-Tia) for Ngati Tuwharetoa and its hapu, confirmed by the Tuwharetoa Maori Trust Board or its duly authorised representative, in writing, as being its representative.

7.6 Governance of the Project by the Representative Group shall only be a temporary arrangement and the parties will use their best endeavours to reconstitute the Joint Committee in terms of clause 8 as soon as is practicable.

8. MEMBERSHIP OF AND APPOINTMENTS TO JOINT COMMITTEE

8.1 The membership of the Joint Committee shall comprise not less than six and up to eight persons.

8.2 The membership of the Joint Committee shall be made up as follows:

- (a) Two persons appointed by EW one of which must be an elected member of EW.
- (b) Two persons appointed by TDC one of which must be an elected member of TDC.
- (c) Two persons appointed by the Crown.
- (d) An additional two persons who EW and TDC shall appoint from nominations received from Tuwharetoa Maori Trust Board as holder of the title and kaitiaki of Lake Taupo (Taupo-nui-a-Tia) for Ngati Tuwharetoa and its hapu. For the purpose

of such appointments EW and TDC agree to act together on such appointments from nominations received from Tuwharetoa Maori Trust Board, which nominations shall number no more than two persons, so as to ensure that at all times the same two persons are jointly appointed by EW and TDC.

For the avoidance of doubt the membership of the Joint Committee shall comprise the above appointees only and shall not include any additional members, whether co-opted or otherwise.

- 8.3 The parties acknowledge to each other that as at the Operative Date the membership of the Joint Committee as set out in clause 8.2 complies with clause 31 of schedule 7 of the LGA'02. The membership of and appointments to the Joint Committee shall at all times comply with and be governed by all applicable legislation, including legislation which requires changes to the membership of the Joint Committee, provided that if there is at any time during the term of the Project no legislation applicable the membership of the Joint Committee shall be as set out in clause 8.2.
- 8.4 The term of membership of appointees to the Joint Committee shall be adjusted during the first three years of the Project from the Operative Date so as to achieve:
- (a) the appointment of the appointees of EW and TDC for periods of three years from local government triennial elections;
 - (b) the appointment of the appointees of the Crown and appointees from nominations received from Tuwharetoa Maori Trust Board for periods of three years commencing from the mid point of the local government triennial election cycle.
- 8.5 The following provisions shall apply with respect to the remuneration of the members of the Joint Committee:
- (a) Each member of the Joint Committee who is not already remunerated for such duties under the LGA'02 or other agreements or arrangements shall be entitled to be remunerated for attending meetings of the Joint Committee and shall be reimbursed for reasonable out of pocket expenses.
 - (b) The initial remuneration payable to each member who qualifies under clause 8.5(a) shall be \$190 per meeting for each meeting attended.

- (c) The remuneration shall be reviewed from time to time by the Joint Committee taking into account the relevant policies of EW and TDC.
- (d) The cost of the remuneration paid to members of the Joint Committee who qualify under clause 8.5(a), shall be paid from the Public Fund.

9. OPERATION OF JOINT COMMITTEE

- 9.1 The Joint Committee shall meet at such times as determined by the Chairperson from time to time and/or as determined by the Joint Committee, such meetings to be conducted in accordance with the provisions of Schedule 6 or as otherwise agreed by the Joint Committee from time to time.
- 9.2 The Joint Committee shall otherwise operate in accordance with the applicable provisions of Part I of schedule 7 of the LGA'02. If at any time during the term of the Project such provisions shall be repealed or cease to be of effect and no legislative equivalent is put in place they shall be deemed to be incorporated into and form part of this agreement in the form in which they were in force as at the Operative Date.
- 9.3 The Joint Committee shall appoint and may remove the Chairperson.
- 9.4 For the purpose of the proceedings of the Joint Committee and its standing orders, the Chairperson or other person presiding at the meetings:
 - (a) has a deliberative vote; and
 - (b) in the case of equality of votes, does not have a casting vote (and therefore the act in question is defeated and the status quo is preserved).
- 9.5 The Joint Committee shall, subject at all times to all applicable legislation, provide such information and reports on its decisions and activities to each of EW, TDC, the Crown and Tuwharetoa Maori Trust Board as are reasonably requested by each of them, which information and reports may be of a uniform nature, as the Joint Committee determines.

10. REVIEW OF PROJECT

- 10.1 The parties acknowledge that the Statement of Intent, the reporting and monitoring provisions applicable to the Trust as a CCO, and other provisions of the Funding Deed, provide the parties with ongoing opportunities to review this agreement and related documentation and the performance of the Project, including the variation of strategies and adoption of new strategies.
- 10.2 In addition the parties (acting on their own account, and not through the Joint Committee) agree to undertake a review of the Project:
- (a) at five yearly intervals, calculated from the Operative Date; or
 - (b) at any other time or times they agree on; or
 - (c) if a majority of the parties determine (under clause 5.3 of the Funding Deed) that a review is required.
- 10.3 Reviews shall be undertaken in consultation with the Trust and shall include consideration of:
- (a) revising and/or resetting the objective of the Project as set out in clause 2.1(b);
 - (b) whether the Public Fund should be increased or reduced;
 - (c) whether the parties' contributions to the Public Fund should be discontinued and the Project terminated;
 - (d) any other matter relevant to the Project.

Any decision of the parties as a consequence of or arising out of a review which changes the Project or any provision of this agreement or the Funding Deed shall amount to an amendment to this agreement and shall require the written agreement of all parties.

11. DISPUTES

- 11.1 Without limiting the application of the clauses below relating to dispute resolution, in the event of a dispute arising under this agreement, the parties shall actively and openly endeavour to amicably settle such dispute themselves, with a view to achieving prompt resolution.
- 11.2 In the case of any dispute or difference between the parties or any of them concerning the interpretation of this agreement, unless any such dispute or difference is resolved by mediation or other agreement it shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996.
- 11.3 If the parties are unable to agree on the appointment of the arbitrator an arbitrator shall be appointed upon the request of any party by the President for the time being of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the first schedule of the Arbitration Act 1996 are to be read subject to this provision and varied accordingly.
- 11.4 For the avoidance of doubt all other disputes and differences between the parties or any of them shall be referred to the Joint Committee and shall be determined or resolved by the Joint Committee.

12. TERMINATION

- 12.1 Subject to the provisions of clauses 12.2 and 12.3 this agreement and the Project shall terminate upon:
- (a) a decision of the parties to terminate the Project as a consequence or arising out of a review of the Project under clause 10.3(c); or
 - (b) a decision to terminate the Project under clause 7.2.1 or clause 7.2.2 of the Funding Deed; or
 - (c) a decision to terminate the Funding Deed under clause 14.2 of that deed.

- 12.2 This agreement will continue until the Trust has been wound up and its assets distributed.
- 12.3 Despite clause 12.1, except in respect of monetary contributions which shall cease in terms of the relevant provisions of the Funding Deed, the obligations of each party which arose prior to termination of this agreement shall continue after termination of this agreement. This shall include the continuing obligations of all parties, unless otherwise agreed, to continue to fulfil the role and obligation of settlors under the Trust Deed until the Trust has been wound up and its assets distributed.

13. RELATIONSHIP OF PARTIES/LIABILITY

- 13.1 The parties enter into this agreement as independent contracting parties and nothing in this agreement shall create a relationship of partnership, principal and agent, joint venture or other legal relationship between them.
- 13.2 It is agreed by the parties that no party shall have any liability for any other party's obligations or liabilities under this agreement.

14. NOTICES

- 14.1 **Form and Delivery of Notice:** All notices, requests, demands or other communications to or upon the parties in connection with this agreement shall be:
- (a) given or made in writing and signed by the party giving the notice; and
 - (b) served upon or delivered to the recipient personally, or sent by post, facsimile or email to the recipient's principal office, or the address specified in Schedule 5 or if the recipient, by not less than seven (7) days notice in writing, notifies the other parties to this agreement of another address, facsimile number or email address then to that other address, facsimile number or email address.
- 14.2 **Receipt of Notice:** A notice, request, demand or other communication shall be deemed to have been received:
- (a) in the case of personal delivery, on the date of that delivery;

- (b) if sent by post, on the third Working Day after posting;
- (c) in the case of a facsimile, during normal business hours in the place of receipt, upon the facsimile machine from which the facsimile was sent producing a transmission report which evidences that the facsimile was sent in its entirety to the facsimile number of the recipient noted for the purposes of this clause, or if transmission is after normal business hours in the place of receipt, it shall be deemed to be received on the commencement of the next following Working Day provided that the original copy of all notices sent by facsimile is also posted to the intended recipient on the same day as the facsimile is sent; and
- (d) in the case of email when acknowledged by the recipient by return email or otherwise in writing.

15. ANNOUNCEMENTS

15.1 Each of the parties agrees that:

- (a) it will not make any public announcements or media releases in connection with or on behalf of the other parties or the Joint Committee provided that nothing in this provision shall prohibit or restrict a party from making public announcements or media releases in connection with a party's own implementation of or involvement with the Project or policies in relation to the Project and further provided that any such announcements or releases made by an individual party would not be likely to lead a reasonable recipient of the announcement or release to believe it was made on behalf of the other parties, or the Joint Committee rather than on behalf of the particular party; and
- (b) only the Chairperson or his or her nominee shall be authorised to make public announcements or media releases in connection with or on behalf of the other parties or the Joint Committee in relation to the Project generally.

16. GENERAL PROVISIONS

- 16.1 **Non-Waiver:** No failure or delay by a party in exercising, or single or partial exercise, of any right, power, discretion, remedy or privilege in connection with this agreement shall operate as a waiver of that right, power, discretion or remedy. No course of dealing between the parties shall operate as a waiver of any right, power, discretion, remedy or privilege of that party.
- 16.2 **Partial Invalidity:** Each of the provisions of this agreement is severable and distinct from the others. If at any time one or more or any part of any clause is or becomes invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining clauses or parts of clauses of this agreement shall not in any way be affected or impaired.
- 16.3 **Amendment:** This agreement shall not be amended or varied except in writing signed by all parties.
- 16.4 **Assignment:** A party to this agreement shall not assign or transfer any of its respective rights or obligations under this agreement except with the prior consent in writing of the other parties.
- 16.5 **Counterparts:** This agreement may be signed in any number of counterparts, all of which when taken together shall constitute one and the same agreement. Any party to this agreement may enter into this agreement by executing a counterpart of this agreement. If a party to this agreement executes a counterpart of this agreement then that party shall execute upon demand by any other party to this agreement such additional copies of this agreement as may be required to obtain a copy of this agreement signed by all parties for each of the parties to this agreement.
- 16.6 **Entire Agreement:** This agreement contains all the terms of the agreement between the parties and supersedes all prior discussions and arrangements in relation to the subject matter of this agreement.
- 16.7 **New Zealand Law:** This agreement shall be governed by and construed in accordance with New Zealand law. The parties to this agreement irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand.

EXECUTION

SIGNED on behalf of)
HER MAJESTY THE QUEEN)
acting by and through)
the Minister for the Environment)
in the presence of:)

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

THE COMMON SEAL of)
WAIKATO REGIONAL COUNCIL)
was affixed in the)
presence of:)

Chairperson

Chief Executive

THE COMMON SEAL of)
TAUPO DISTRICT COUNCIL)
was affixed in the)
presence of:)

Mayor

Chief Executive

SCHEDULE 1 -

PART I PAYMENTS SCHEDULE

(attached)

PART II PRELIMINARY COSTS

(attached)

Schedule 1

Payments Schedule

Figures are in \$ millions (excluding GST)

	Govt	EW	TDC
2004/05	0.533	1.261	0.602
2005/06	1.156	0.925	0.488
2006/07	2.133	1.707	0.901
2007/08	2.667	2.133	1.126
2008/09	2.667	2.133	1.126
2009/10	2.667	2.133	1.126
2010/11	2.667	2.133	1.126
2011/12	2.667	2.133	1.126
2012/13	2.667	2.133	1.126
2013/14	2.667	2.133	1.126
2014/15	2.667	2.133	1.126
2015/16	2.667	2.133	1.126
2016/17	2.667	2.133	1.126
2017/18	2.090	0.837	0.505
Totals	32,582	26,060	13,756

Payments Beyond 2011/12

The funding for the Project is to be reviewed at five yearly intervals through the review process as provided for in clause 10 of the Project Agreement. The first review must be completed no later than 2011/12 so that any new Payments Schedule agreed by the Public Funders (Crown, EW and TDC) as a decision arising out of the review can be inserted in the Project Agreement and Funding Deed as a replacement Payments Schedule.

PRELIMINARY COSTS

(a)	Establishment costs of Project to June 2006	\$361,814
	Establishment costs to 31 December 2006	\$79,156
	(excluding final legal costs)	
(b)	Project costs approved prior to the Operative Date (to June 2006)	\$251,451
	Total Preliminary Costs	<u>\$692,421</u>

NB:

1. Project costs to 31 December 2006 (to be approved by Trustees) \$133,221
2. Final legal costs for establishment of Project – estimated at \$13,500 plus GST

**SCHEDULE 2 -
TRUST DEED**

HER MAJESTY THE QUEEN
WAIKATO REGIONAL COUNCIL
TAUPO DISTRICT COUNCIL
(Settlers)

SUSAN YEREX

JOHN THOMAS KNEEBONE

COLIN TREVOR HORTON

JOHN ATIRAU HURA

JEREMY JAMES RICKMAN

GERALD FRASER FITZGERALD
(Trustees)

**THE LAKE TAUPO PROTECTION TRUST
TRUST DEED**

Brookfields
LAWYERS

**THE LAKE TAUPO PROTECTION TRUST
TRUST DEED**

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**THE LAKE TAUPO PROTECTION TRUST
TRUST DEED**

DEED dated the day of 2007

PARTIES

1. **HER MAJESTY THE QUEEN acting by and through the Minister for the Environment**

WAIKATO REGIONAL COUNCIL

TAUPO DISTRICT COUNCIL (together "the Settlers")

2. **SUSAN YEREX, JOHN THOMAS KNEEBONE, COLIN TREVOR HORTON,
JOHN ATIRAU HURA, JEREMY JAMES RICKMAN and GERALD FRASER
FITZGERALD (together "the Trustees")**

INTRODUCTION

- A. The Settlers have identified that the quality of water in Lake Taupo is declining and have agreed to commit resources to a project, named The Lake Taupo Protection Project, with the objective of achieving a reduction in the amount of nitrogen entering the Lake.
- B. Under the Project Agreement the Settlers have decided to establish a charitable trust for the purpose of implementing The Lake Taupo Protection Project.
- C. The Settlers have paid the sum of \$10.00 to be held by the Trustees upon the trusts and with and subject to the powers and provisions expressed in this deed.

THIS DEED RECORDS that:

1. DEFINITIONS AND INTERPRETATIONS

Definitions

1.1 In this deed unless the context otherwise requires:

"**Charitable Purposes**" means every purpose which under the law of New Zealand is charitable.

"**Chairperson**" means the chairperson of the Trust appointed under clause 12 and may, as provided in clause 12, include the Deputy Chairperson.

"**CCO**" means a Council Controlled Organisation within the meaning of the LGA'02.

"**deed**" means this deed of trust and includes all additions and amendments made pursuant to and in compliance with the relevant provisions of this deed.

"**Funding Deed**" means the deed between the Settlers and the Trust in relation to contributions to the Public Fund, setting out the terms of funding.

"**Governance Costs**" means the ongoing annual amount required to cover the costs of the Joint Committee, which shall comprise:

- (a) any remuneration and out of pocket expenses paid to members of the Joint Committee in accordance with clause 8.5 of the Project Agreement;
- (b) any expenses related to the costs of running and administering the Joint Committee, including the holding of meetings.

"**Joint Committee**" means the joint committee established by the Settlers pursuant to the Project Agreement.

"**Lake Taupo Catchment Area**" means the catchment area for Lake Taupo as defined in the Environment Waikato Lake Taupo variation to the Regional Plan (Proposed 2005). A copy of the relevant map showing the catchment boundaries is attached as Schedule 2.

"**Lake Taupo**" and "**Lake**" mean Lake Taupo.

"**LGA'02**" means the Local Government Act 2002.

"**Operative Date**" is the date of this deed.

Preliminary Costs means:

- (a) the costs related to the establishment of the Project including preparation of the relevant documentation and the establishment of the Trust and the Joint Committee, as set out in part II of Schedule 1 to the Project Agreement;
- (b) the costs of undertaking the Project already approved by or on behalf of the Settlers prior to the Operative Date whether such costs have been expended or not, as set out in part II of Schedule 1 to the Project Agreement.

"Project" means The Lake Taupo Protection Project (being the nitrogen reduction component of The Protecting Lake Taupo Strategy) as set out and described in clause 2.

"Project Agreement" means the agreement between the Settlers establishing the Project, dated 9 February 2007.

"Public Fund" means the Public Fund established by and provided for in the Project Agreement.

Representative Group means the individuals specified in clause 7.5 of the Project Agreement who will govern the Project if the Joint Committee is discharged and not reconstituted and who represent the respective parties specified in clause 7.5 of the Project Agreement or the successors, substitutes or equivalents of such parties.

"Secretary" means the Secretary of the Trust appointed under clause 12.

"Statement of Intent" means the annual statement of intent required under clause 14, which has the purpose, meaning and effect as set out and provided for in the LGA'02 and which shall include the proposed annual budgeted expenditure of the Trust together with projections for the following two financial years.

"Trust" means the trusts established by this deed.

"Trust Fund" means:

- (a) the sum of \$10 referred to in paragraph C of the Introduction being the initial capital settled on the Trustees by the Settlers; and

- (b) the balance of the moneys comprising the Public Fund which are paid or transferred to the Trustees after payment of the Preliminary Costs and the Governance Costs; and
- (c) all other moneys or property (both tangible and intangible) paid or transferred to or acquired by the Trustees to be held by them upon the trusts established by this deed; and
- (d) all income received from the property held by the Trustees upon the trusts established by this deed unless inconsistent with the context; and
- (e) all moneys invested and property from time to time representing the items mentioned in (a), (b), (c) and (d) of this definition.

"Trust Period" means the duration of the period of the Project as determined by the Settlers under the Project Agreement and notified in writing to the Trustees together with any further period of time as is determined by the Trustees and approved by the Settlers.

"Trustees" means the trustees for the time being of the Trust and "Trustee" means a trustee of the Trust.

"working day" means a "working day" as defined by Section 5 of the LGA'02.

Interpretation

1.2 In this deed:

- (a) where the context permits, the singular includes the plural and vice versa;
- (b) references to one gender include the other genders;
- (c) references to sections, clauses and schedules are references to sections and clauses in, and to schedules to, this deed, unless stated otherwise. Each such schedule forms part of this deed;

- (d) headings are inserted for guidance only and shall not govern the interpretation of the sections and clauses that they introduce;
- (e) all references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;
- (f) where the context permits, references to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public authority, territorial or regional council, any government, and any agency of any government or of any such authority;
- (g) references to a "party" mean a party to this agreement and any reference to a party includes the successors, executors and administrators (as the case may be) of that party.

1.3 Defined words and expressions bear the defined meaning throughout this deed including the Introduction.

2. THE LAKE TAUPO PROTECTION PROJECT

2.1 The Trustees acknowledge that the Project is the project established by the Settlers by the Project Agreement and that the constitution of the Project is as set out and described in Schedule 1 by reference to its principal elements.

2.2 The Trustees acknowledge that pursuant to the Project Agreement elements of the Project may be varied by the Settlers from time to time and that following the written notification of the Settlers to the Trustees of such variations, being a decision to which clause 22.2 shall not apply, the constitution of the Project shall be deemed to be varied and as a consequence Schedule 1 shall be varied accordingly provided that any such variation does not have the effect of altering the purposes of the Trust.

3. NAME OF TRUST

3.1 The name of the Trust shall be **The Lake Taupo Protection Trust** or such other name as the Trustees shall from time to time resolve to adopt for the Trust with the consent of the Settlers.

4. ESTABLISHMENT OF TRUST

4.1 The Settlers direct and declare, and the Trustees acknowledge, that the Trustees shall, with effect from the Operative Date, stand possessed of the Trust Fund and all income deriving from the Trust Fund for the Trust Period.

5. PURPOSES OF THE TRUST

5.1 The Trustees shall hold the Trust Fund upon trust to pay or apply in New Zealand the capital and income of the Trust Fund in such amounts, at such times, and subject to such terms and conditions as the Trustees, in accordance with the terms of this deed, shall decide, exclusively for all or any of the following purposes:

- (a) The maintenance of water quality in Lake Taupo through a reduction in nitrogen levels in the Lake Taupo Catchment Area, being a purpose which is a Charitable Purpose.
- (b) All things as are incidental or conducive to the attainment of the purpose described in clause 5.1(a).

5.2 For the avoidance of doubt:

- (a) The Trust is a CCO but has not been established for the purposes of making a profit and is not intended to be a council controlled trading organisation under the LGA'02.
- (b) The Trust's purposes are for the benefit of people in the communities surrounding Lake Taupo and of New Zealand.

- (c) The Trustees acknowledge their obligation to undertake the activities of the Trust in a manner which is not for the purpose of making a profit.

6. TRUSTEES

Number of Trustees

- 6.1 The Trustees shall number not less than six persons and not more than eight persons. If at any time there are less than six Trustees the person or persons having the power of appointment of Trustees shall act so as to increase the number of Trustees to at least six as soon as is reasonably practicable. The remaining Trustees shall be entitled to act until the number of Trustees is so increased and no act or decision of the Trustees shall be called into question on such account.

Cessation of Office of Trustee

- 6.2 A Trustee shall cease to hold office and shall be deemed to have retired if that Trustee:
 - (a) resigns by giving notice in writing to the Secretary for the time being of the Trust; or
 - (b) fails to attend three consecutive meetings of the Trustees without leave of absence, unless it appears to the other Trustees at their first meeting after the last of such absences that there is a proper reason in each instance for such non-attendance; or
 - (c) becomes of unsound mind or subject to an order under the Protection of Personal and Property Rights Act 1988 or whose property is managed by a trustee corporation under section 32 of that Act, or otherwise becomes unfit or unable to act as a Trustee; or
 - (d) becomes insolvent or commits an act of bankruptcy or is an undischarged bankrupt; or
 - (e) dies; or
 - (f) is removed from office under clause 8; or

- (g) ceases, in the opinion of the person or persons having the power of appointment of Trustees, to hold the office, skill, qualification or affiliation necessary to continue as a Trustee; or
- (h) has been convicted of a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961) and has been sentenced for that crime within the last seven years; or
- (i) is convicted of an offence punishable by prison for a term of two years or more; or
- (j) has been convicted of an offence punishable by a term of imprisonment of less than two years and has been sentenced to imprisonment for that offence; or
- (k) is prohibited from being a director or promoter or being concerned or taking part in the management of a company under sections 382, 383 or 385 of the Companies Act 1993; or
- (l) is disqualified from being an officer of a charitable entity under section 31(4) of the Charities Act 2005; or
- (m) being a body corporate, is wound up, is in liquidation or receivership, or is subject to statutory management under Corporations (Investigation and Management) Act 1989.

Retirement by Rotation

- 6.3 With effect from the end of each third financial year of the Trust, commencing in 2009, one half of the Trustees, or if the number of Trustees is not an even number the number of Trustees which make up one half of the lower even number, shall retire from office .

Order of Rotation

- 6.4 The Trustees to retire in rotation under clause 6.3 shall be those who have been longest in office since their last appointment. As between Trustees who became Trustees on the same day, those to retire shall (unless they otherwise agree amongst themselves) be determined by lot. A Trustee retiring by rotation shall be eligible for reappointment.

Consequences of Retirement

- 6.5 A Trustee who has retired shall cease to be a Trustee immediately except for the purpose of carrying out the acts and deeds necessary for the proper vesting of the Trust Fund in the continuing and/or new Trustees, which acts and deeds shall be carried out at the expense of the Trust.

7. APPOINTMENT OF TRUSTEES

Signatories to be First Trustees

- 7.1 The persons named in this deed as Trustees shall be the first Trustees of the Trust.

Power of Appointment

- 7.2 The power of appointment of Trustees shall be vested in the Settlor.

Attributes of Trustees

- 7.3 The Trustees shall be appointed on the basis that they have identified skills, knowledge and/or experience based on the following attributes:
- (a) skills, knowledge and/or experience relevant to the Project;
 - (b) appreciation of the wider public interest and ability to contribute positively to the achievement of the purposes of the Trust;
 - (c) understanding of governance issues;
 - (d) high standard of personal integrity;
 - (e) time available to undertake the duties of a Trustee;
 - (f) no conflict of interest.

8. REMOVAL OF TRUSTEES

Power of Removal

- 8.1 A Trustee may at any time be removed as a Trustee:
- (a) by resolution of all other Trustees with the consent of the Settlers; or
 - (b) by the Settlers if in the opinion of the Settlers a Trustee has been guilty of misconduct in the capacity of Trustee.
 - (c) by the Settlers by their unanimous decision, being a decision to which clause 22.2 shall not apply.

Removal for Mismanagement

- 8.2 The Settlers may remove all Trustees from office if they consider that the Trustees have:
- (a) failed to manage the Trust in accordance with the provisions of this deed; or
 - (b) failed to manage the Trust Fund in accordance with the Statement of Intent;

being in each case a failure which is significant and not inconsequential provided that the Settlers shall not remove the Trustees for mismanagement under this clause without first giving them notice of the alleged mismanagement and a reasonable and full opportunity to either refute the allegation of mismanagement or to rectify the alleged mismanagement.

Consequences of Removal

- 8.3 A Trustee who is removed from office shall cease to be a Trustee immediately except as to the acts and deeds necessary for the proper vesting of the Trust Fund in the continuing and/or new Trustees which acts and deeds shall be carried out at the expense of the Trust.

9. TRUSTEES' GENERAL AND SPECIFIC POWERS

Promotion of Purposes

- 9.1 The Trustees shall promote the purposes of the Trust and shall act on the Trust's behalf and in particular and in addition to all other powers conferred by law the Trustees shall have the same powers as a natural person acting as beneficial owner of the Trust Fund and such powers shall not be limited or restricted by any principle of construction or rule of law or statutory power or provision except as provided in this deed and otherwise to the extent that such is obligatory, which shall include the status of the Trust as a CCO.

Specific Powers

- 9.2 Without limiting the generality of clause 9.1 and by way of example the Trustees shall have the power, which may be exercised either alone or jointly with any other person or persons:

Collect Funds

- (a) To collect funds and raise money by all lawful means and to receive, accept, encourage and enlist financial and other contributions, subscriptions, donations, legacies, endowments or bequests from any source and to conduct fund raising campaigns in order to further the purposes of the Trust.

Receive Grants and Subsidiaries

- (b) To receive from the New Zealand Government or any local authority, board or body of the New Zealand Government or any other government, state or national body or any international organisation, any grant, subsidy or payment whatsoever in order to further the purposes of the Trust.

Specified Trust

- (c) To carry out any specified trust attaching or relating to any contribution, subscription, donation, legacy, endowment, bequest, grant, subsidy, or payment received to the extent such specified trust conforms with the purposes of the Trust.

Apply Funds

- (d) To apply any money forming part of the Trust Fund to the promotion, advancement and development of the purposes of the Trust.

Investment Funds

- (e) To invest any money forming part of the Trust Fund in any of the ways authorised by law for the investment of trust funds.

Acquire Property

- (f) To acquire any real or personal property or interest in such property, within the Lake Taupo Catchment Area, but to include property which is partly in and partly out of the Lake Taupo Catchment Area, whether by purchase, lease, exchange, or otherwise and upon and subject to such terms and conditions as the Trustees shall think fit.

Sell and Reinvest

- (g) To sell, join in selling, call in or convert all or part of any real or personal property forming part of the Trust Fund in such manner (including the granting of options to purchase or repurchase) and subject to such terms and conditions as the Trustees shall think fit (including the granting of time for payment of the purchase price with or without security) and to re-invest the proceeds of such sale, calling in or conversion in such manner as the Trustees shall think fit.

Postpone Sale

- (h) To postpone the sale of any real or personal property forming part of the Trust Fund for so long as the Trustees shall think fit notwithstanding that such property may be wasting, speculative or reversionary in nature.

Lease

- (i) To let or lease or bail to any person or persons any freehold or leasehold property or any plant and chattels or interest therein forming part of the Trust Fund either

from year to year or for any term of years or otherwise at such rent and subject to such covenants and conditions as the Trustees shall think fit (including if the Trustees shall think fit an optional or compulsory purchasing clause) and also to accept surrenders of leases and tenancies and generally to manage them as the Trustees shall think fit.

Lend

- (j) To lend any moneys forming part of the Trust Fund to any person or persons with or without security on such terms and either free of interest or at such rate of interest as the Trustees shall think fit.

Pay Debts

- (k) To apply any income or capital of the Trust Fund in, for or towards payment of any fees, costs, disbursements, debts or other liabilities or any part thereof, owing by or in respect of the Trust Fund or incurred in connection with the trusts of this deed including with respect to the establishment of the Trust and the Project, whether or not the fees, costs, disbursements, debts or other liabilities are charged upon the Trust Fund or on any part of the Trust Fund and whether or not the Trustees are contractually liable for payment of the fees, costs, disbursements, debts or other liabilities.

Join in Partition

- (l) To consent to and join in the partition of any assets in which the Trust Fund is interested and to take a transfer of a divided or undivided share or interest in any such assets.

Maintain Property

- (m) Generally to maintain, manage, repair, improve or develop any real or personal property which or an interest in which forms part of the Trust Fund in such manner as the Trustees shall think fit.

Borrow

- (n) To borrow or raise any moneys on mortgage or overdraft or otherwise with or without security from any person or persons at such rate of interest for such terms and generally on such conditions as the Trustees shall think fit and to sign any mortgage, deed, agreement or other document in connection with such borrowing or raising.

Settle Accounts

- (o) To agree and settle accounts with all persons liable to account to the Trustees and to compromise all questions relating to the Trust Fund and to grant effectual receipts, discharges and releases.

Services

- (p) Instead of acting personally, to engage, instruct and pay any person whatsoever to transact all or any business or do any act or perform any services required to be transacted or done in the execution of the trusts of this deed including the receipt and payment of money and the Trustees shall not be responsible for the default of any such person appointed in good faith or for any loss occasioned by such person's instruction. Any engagement of or instruction to any of the Settlers by the Trust to undertake services for or the business of the Trust shall be a formal engagement or instruction recorded in writing.

Bank Accounts

- (q) To open or maintain such current or other accounts at such banks or other institutions in New Zealand and in such manner as the Trustees may from time to time think fit.

Insure

- (r) To insure against loss or damage by any cause whatsoever any insurable property forming part of the Trust Fund, and to insure against any risk or liability against which it would be prudent for a person to insure if that person were acting for himself or herself for such amounts and on such terms as the Trustees may from time to time think fit.

Statutory Authorisation

- (s) In addition to the things listed at paragraphs (a) to (r), to do all or any of the things which the Trustees are authorised to do by the Trustee Act 1956, the Charitable Trusts Act 1957, the LGA'02 or the Charities Act 2005.

General

- (t) To do all such other things as in the opinion of the Trustees are incidental or conducive to the attainment of the purposes of the Trust.

Exercise Powers Independently

- 9.3 None of the powers or authorities conferred on the Trustees by clauses 9.1 and 9.2 or otherwise shall be deemed subsidiary or ancillary to any other power or authority and the Trustees shall be entitled to exercise all or any of the said powers and authorities independently of any other or others of them. In the event of any ambiguity this provision shall be construed so as to widen and not restrict the powers of the Trustees provided however that at no time can any provision be construed so as to detract from the exclusively charitable objects and purposes of the Trust.

Exercise Powers as CCO

- 9.4 The Trustees shall at all times exercise the powers and authorities conferred on them by clauses 9.1, 9.2 and 9.3 in a manner which is consistent with the status of the Trust as a CCO and in compliance with such of the provisions of the LGA'02 as are applicable to a CCO.

10. APPLICATION OF THE TRUST FUND

- 10.1 The Trustees may in any year:

- (a) use or apply, or decide not to use or apply, all or any of the income of the Trust Fund for any of the purposes of the Trust;

- (b) use or apply any capital of the Trust Fund for all or any of the purposes of the Trust without first using or applying the whole or any portion of the income of the Trust Fund for that year; and
- (c) set aside reserves or accumulations for future use or application.

10.2 All actions of the Trustees under clause 10.1 shall at all times be subject to the provisions of this deed and shall be consistent with the powers and obligations of the Trust as a CCO.

11. ADMINISTRATION OF THE TRUST AND REPORTING

Meetings

11.1 The Trustees shall meet to conduct business at such intervals as the Trustees may decide but not less frequently than four times in each year. The Trustees may invite to such meeting whatever other person or persons as the Trustees may decide will assist with their deliberations.

Voting

11.2 Except as expressly provided otherwise by this deed any matter requiring decision at a meeting of the Trustees shall be decided by a simple majority of the Trustees personally present and voting on the matter. In the event of an equality of votes the Chairperson shall not have a second or casting vote.

Resolution in Writing

11.3 A resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several like documents each signed by one or more Trustees.

Convening Meetings

11.4 Any two Trustees may at any time give notice convening a meeting of the Trustees. Such notice shall be given by post, facsimile or email to each Trustee at their last known address, facsimile number or email address at least 14 days before the date of the

proposed meeting unless compliance with such period of notice is modified or waived by all Trustees. The notice shall state the time and place of the meeting and, in efficient terms, the nature of the business to be transacted.

Quorum

- 11.5 The quorum for a meeting of Trustees shall be one half of the Trustees then holding office or such greater number adopted from time to time by a resolution passed by at least half, but not less than three, of the Trustees then holding office.

Minutes

- 11.6 Minutes of the proceedings of all meetings of the Trustees shall be recorded in a book to be kept for that purpose by the Secretary and shall be signed by the Chairperson of the meeting at which the minutes are confirmed. Every such minute purporting to be so signed shall be prima facie evidence of the matters recorded.

Meetings by Telephone

- 11.7 The contemporaneous linking together of a quorum of the Trustees and the Secretary by telephone (which may include a voice/visual link) shall constitute a meeting of the Trustees and the provisions of this clause as to meetings of the Trustees shall apply to such meetings provided the following conditions are met:
- (a) Each Trustee shall be entitled to at least two days' notice of such a meeting by telephone and to be linked by telephone for the purposes of the meeting.
 - (b) Each of the Trustees taking part in the meeting by telephone must be able to hear each of the other Trustees taking part during the whole of the meeting.
 - (c) At the commencement and conclusion of such meeting each Trustee must acknowledge his or her presence.
 - (d) A Trustee may not withdraw from such a meeting unless that Trustee has previously obtained the express consent of the Chairperson of the meeting to do so.

- (e) A Trustee linked by telephone for the purposes of the meeting shall be conclusively presumed to have formed part of the quorum of such meeting throughout the meeting unless that Trustee obtains the express consent of the Chairperson to withdraw from such a meeting.

Minute of Proceedings

- 11.8 A minute of the proceedings of a meeting by telephone under clause 11.7 shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified to be a correct minute by the Chairperson of the meeting.

Annual General Meeting

- 11.9 The Trustees shall within two months of the end of each financial year of the Trust hold an annual general meeting. The Secretary of the Trust shall give no less than 30 days' notice of the annual general meeting to the Trustees and the Joint Committee. The business to be transacted at the annual general meeting shall be:
 - (a) the receipt of the audited financial statements of the Trust;
 - (b) the noting of the remuneration of the Trustees as set by the Settlers;
 - (c) the consideration and approval of a report on the Trust's operations for the previous financial year which shall include compliance with the Trust's reporting obligations as a CCO;
 - (d) the election of a Chairperson and deputy chairperson under section 12;
 - (e) special business of which notice in writing has been given to the Secretary at least 21 days prior to the date of the meeting.

The Secretary shall circulate a written agenda (including all special business) to the Trustees at least 14 days prior to the date of the meeting.

Validity of Proceedings

11.10 All acts done by any meeting of Trustees or by any person acting as Trustee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Trustee or Trustees or that any Trustee was for any reason disqualified from holding office as Trustee or that there was accidental failure to comply with any of clauses 11.1 to 11.9 shall be as valid as if such Trustee had been duly appointed and was qualified to hold office as Trustee and the requirements of clauses 11.1 to 11.9, had been complied with.

Delegation of Powers

11.11 The Trustees may delegate to any committee of Trustees or employee or contractor to the Trust, such of the powers and functions of the Trustees as the Trustees may decide except the power to borrow or raise money or give security of whatever kind or to purchase property or to lend or advance money by whatever means and in respect of any such delegation:

- (a) any committee of Trustees or employee or contractor acting under delegated power shall act in accordance with the terms of this deed and, in the absence of proof to the contrary, shall also be presumed to be acting within the terms of the delegation;
- (b) the Trustees may revoke wholly or partly any delegation of the powers or functions of the Trustees at any time;
- (c) subject to any directions given by the Trustees, any committee of Trustees or employee or contractor to which any powers of the Trustees have been delegated shall conduct its affairs as that committee or employee may decide; and
- (d) the Trustees may provide restrictions within which or rules by which such delegated powers are to be exercised.

12. OFFICERS

Chairperson

- 12.1 The Trustees shall at their first meeting after the Operative Date elect one Trustee to act as Chairperson of the Trustees until the next annual general meeting of the Trust and at that annual general meeting shall elect one Trustee to act as Chairperson until the next annual general meeting, and so forth.

Deputy Chairperson

- 12.2 The Trustees shall at the first meeting of Trustees after the Operative Date elect one Trustee to act as deputy chairperson for the same term as the Chairperson. In the absence of the Chairperson the deputy chairperson shall have and may exercise all the powers of, and shall perform all the duties, of the Chairperson.

Temporary Chairperson

- 12.3 In the absence of the Chairperson and deputy chairperson, the Trustees present shall elect one of their number to chair any meeting of the Trustees.

Secretary

- 12.4 The Trustees shall appoint a Secretary who may be a full-time or part-time employee of the Trust or may be contracted to the Trust.

13. FINANCE

Bank Account

- 13.1 The Trustees shall keep an account or accounts at such bank or banks as the Trustees may decide. Cheques, withdrawals and authorities shall be signed or endorsed, as the case may be, by such person or persons as the Trustees may decide.

Accounts and Audit

- 13.2 The Trustees shall cause financial statements for each year to be kept and audited in accordance with the requirements of section 69 LGA'02 and provided to the Joint Committee within 3 months of the end of each financial year in accordance with section 67 LGA'02.

Financial Year

- 13.3 The financial year of the Trust shall end on 30 June in each year.

Preliminary Costs and Governance Costs

- 13.4 The Trustees acknowledge that the Preliminary Costs and the Governance Costs shall be paid from the Public Fund and must not be paid from the Trust Fund.

14. STATEMENT OF INTENT AND REPORTS

Statement of Intent

- 14.1 On or before 1 March in each year the Trustees must prepare and deliver to the Joint Committee a draft Statement of Intent and having considered any comments on such draft provided to it within two months of 1 March by the Joint Committee, the Trustees must deliver the complete Statement of Intent to the Joint Committee on or before 30 June in each year.

Reporting

- 14.2 The Trustees shall provide the following reports to the Joint Committee:
- (a) A half yearly report on the operations of the Trust during that half year within two months after the end of the first half of each financial year such report to include the information required to be included by the Statement of Intent; and

- (b) An annual report on the operations of the Trust during the financial year within three months after the end of each financial year which report must include the information required to be included by Section 67 LGA'02.

Statutory Compliance

- 14.3 The provisions of clauses 13.2, 14.1 and 14.2 are as at the Operative Date in compliance with sections 64, 66, 67 and 69 of the LGA'02. The Trust shall at all times comply with and be governed by all applicable legislation which shall be paramount and shall override the provisions of clauses 13.2, 14.1 and 14.2 provided that if there is at any time no such legislation in force the provisions of clauses 13.2, 14.1 and 14.2 shall continue to apply together with, as deemed provisions of this deed, such other applicable or supporting provisions of the LGA'02 as were in force at the Operative Date.

15. INCORPORATION AND REGISTRATION

Application

- 15.1 The Trustees shall apply to incorporate as a board under Part 2 of the Charitable Trusts Act 1957 under the name of the Trust.

Incorporation as a Board

- 15.2 Upon incorporation all the powers, discretion, obligations and duties conferred on the Trustees by this deed or by law shall be conferred upon the Trustees as a trust board.

Common Seal

- 15.3 Following incorporation the Trustees shall obtain a seal and provide for its safe custody. The seal shall be affixed by the authority of the Trustees previously given to any document requiring execution by the Trustees. Each such affixing shall be attested by two Trustees and shall be sufficient evidence of authority to affix the seal.
- 15.4 No person dealing with the Trustees shall be bound or concerned to see or enquire as to the authority to affix the seal, or to enquire as to the authority under which any document was sealed or in whose presence it was sealed.

- 15.5 The Trustees shall as soon as practicable after the execution of this deed apply for registration with the Charities Commission under the Charities Act 2005.

16. LIABILITY AND INDEMNITY OF TRUSTEES

No Liability of Trustees

- 16.1 No Trustee shall be liable for any loss to the Trust Fund unless attributable to that Trustee's own dishonesty, or to the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of trust. No Trustee shall be bound to take any proceedings against any other Trustee for any breach or alleged breach of trust committed by such Trustee.

Indemnity of Trustees

- 16.2 Each Trustee shall be entitled to a full and complete indemnity from the Trust Fund for any personal liability which that Trustee may incur in any way arising from or in connection with that Trustee acting or purporting to act as a Trustee of the Trust, unless such liability is attributable to that Trustee's own dishonesty, or to the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of trust.

17. INTERESTED TRUSTEE

Disclosure of Interest

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

Recording of Interest

- 17.2 A disclosure by an interested Trustee shall be recorded in the minutes of the meeting at which such disclosure is made. If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by that Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson and the Chairperson's ruling in relation to that Trustee shall be final and conclusive except in any case where the nature or extent of the interest of that Trustee has not been fully disclosed.

18. PECUNIARY PROFIT

No Private Pecuniary Profit

- 18.1 No private pecuniary profit may be made by any person from the Trust, except that:
- (a) any Trustee may receive such remuneration for services rendered to the Trust in the capacity of Trustee as is determined from time to time by the Settlor;
 - (b) any Trustee may receive full reimbursement for all expenses properly incurred by that Trustee in connection with the affairs of the Trust as determined from time to time by the Settlor;
 - (c) the Trust may pay reasonable remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
 - (d) any Trustee or Settlor, subject in the case of a Settlor to compliance with clause 9.2(p), may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or Settlor or by any firm or entity of which that Trustee or Settlor is a member, employee or associate in connection with the affairs of the Trust;
 - (e) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding

that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

Trustees to Comply with Restrictions

18.2 The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by the following clause are strictly observed.

19. RESTRICTIONS ON BENEFITS TO AND INFLUENCE BY INTERESTED PERSONS

Recipients Not to Influence Benefits

19.1 Notwithstanding anything contained or implied in this deed, any person who is:

- (a) a Settlor or Trustee of the Trust; or
- (b) a shareholder or director of any company carrying on any business of the Trust; or
- (c) a settlor or trustee of any trust which is a shareholder of any company carrying on any business of the Trust; or
- (d) an associated person (as defined by the Income Tax Act 2004) of any such settlor, trustee, shareholder or director,

shall not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence in any way the determination of the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person.

Professional Account and Influence

19.2 A person who in the course of and as part of the carrying on of his or her business of a professional public practice shall not, by reason only of his or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause 19.

- 19.3 Nothing in this clause 19 shall prevent or restrict the Trustees from properly fulfilling or carrying out the purposes of the Trust.

20. NO APPORTIONMENT

- 20.1 There shall be no apportionment as between capital and income of the Trust Fund of rents, interest, dividends, or other periodic payments for the period current to the Operative Date or for any other period current at the date upon which any interest created under the terms of this deed commences or determines.

21. OFFICE OF THE TRUST

- 21.1 The office of the Trust shall be at Taupo or such other place as the Trustees from time to time may decide.

22. DEALINGS WITH SETTLORS AND SETTLORS' DECISIONS

- 22.1 For the purposes of this deed the Trustees shall undertake all communications and conduct all their dealings with the Settlers through the Joint Committee (as is acknowledged and accepted by the Settlers) unless notified by the Settlers in writing that communications and dealings are to be conducted in some other manner.
- 22.2 All decisions of the Settlers under this deed, as defined in clause 22.3 (but excluding any decision or consent in regard to winding up required under clause 25.1 or 25.2) and unless otherwise specified in this deed, shall be exercised by the Settlers through the Joint Committee except at any time when the Joint Committee shall be deemed to be discharged or is in any way inoperative, in which event the Settlers shall make such decision through the Representative Group.
- 22.3 For the purposes of clause 22.2 "decisions of the Settlers" shall include the undertaking of any act, exercise of any power or the giving of any consent under this deed.

- 22.4 All financial statements, reports, information and notices required to be provided to the Settlers under this deed, shall be provided to the Joint Committee, except at any time when the Joint Committee shall be deemed to be discharged or in any way inoperative, in which event the financial statements, reports, information and notices shall be provided to the Representative Group.

23. ALTERATIONS OF TERMS OF DEED

- 23.1 The Trustees may, by a unanimous resolution, and with the consent of the Settlers, revoke, vary, or add to any of the provisions of this deed, provided such revocation, variation, or addition does not detract from the purposes of the Trust, or jeopardise the Trust's ability to retain its status as a charitable entity under the Charities Act 2005. For the purposes of this clause a unanimous resolution means a resolution of all persons for the time being holding office as Trustees.

24. GOVERNING LAW

- 24.1 The Trust shall be governed by and construed in accordance with the laws of New Zealand.

25. WINDING UP

Winding Up

- 25.1 The Trustees shall wind up the Trust upon the termination of the Project as notified by the Settlers to the Trustees, or at any earlier time if the Trustees decide that for any reason it is no longer practicable or desirable to carry out the purposes of the Trust, by the unanimous resolution of the Trustees with the prior unanimous consent of the Settlers.

Surplus Assets

- 25.2 On the winding up of the Trust all surplus assets, after payment of all costs, debts and liabilities shall be paid, applied or appropriated by the Trustees to or for any Charitable Purpose or purposes within the Lake Taupo Catchment Area approved and confirmed in writing by the unanimous consent of the Settlers.

Decisions of the Settlers

25.3 For the avoidance of doubt, the decisions and the consent of the Settlers under clauses 25.1 and 25.2 must be exercised by the unanimous decision of the Settlers, acting on their own account and not through either the Joint Committee or the Representative Group.

EXECUTION

SIGNED on behalf of)
HER MAJESTY THE QUEEN) _____
acting by and through)
the Minister for the Environment)
in the presence of:)

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

THE COMMON SEAL of)
WAIKATO REGIONAL COUNCIL)
was affixed in the)
presence of:)

Chairman

Chief Executive Officer

THE COMMON SEAL of)
TAUPO DISTRICT COUNCIL)
was affixed in the)
presence of:)

Mayor

Chief Executive Officer

SIGNED by)
)
SUSAN YEREX)
)
)
JOHN THOMAS KNEEBONE)
)
)
COLIN TREVOR HORTON)
)
)
JOHN ATIRAU HURA)
)
)
JEREMY JAMES RICKMAN,)
)
)
GERALD FRASER FITZGERALD)

in the presence of:

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

SCHEDULE 1**Project**

- (a) **Name.** The name of the Project is **The Lake Taupo Protection Project**.
- (b) **Objective.** The reduction of manageable nitrogen entering Lake Taupo by a minimum of 20% (such figure being based on benchmarked land use over the period July 2001 to June 2004 – see Waikato Regional Council Lake Taupo variation to the Regional Plan (Proposed 2005)).
- (c) **Strategies.** Strategies which are best suitable for achieving the above objective include but are not limited to:
- (i) the conversion of high nitrogen leaching pastoral land into low leaching nitrogen land uses;
 - (ii) purchase of land to achieve such conversion;
 - (iii) research into identifying alternative low leaching nitrogen land uses;
 - (iv) researching and developing alternative technologies,

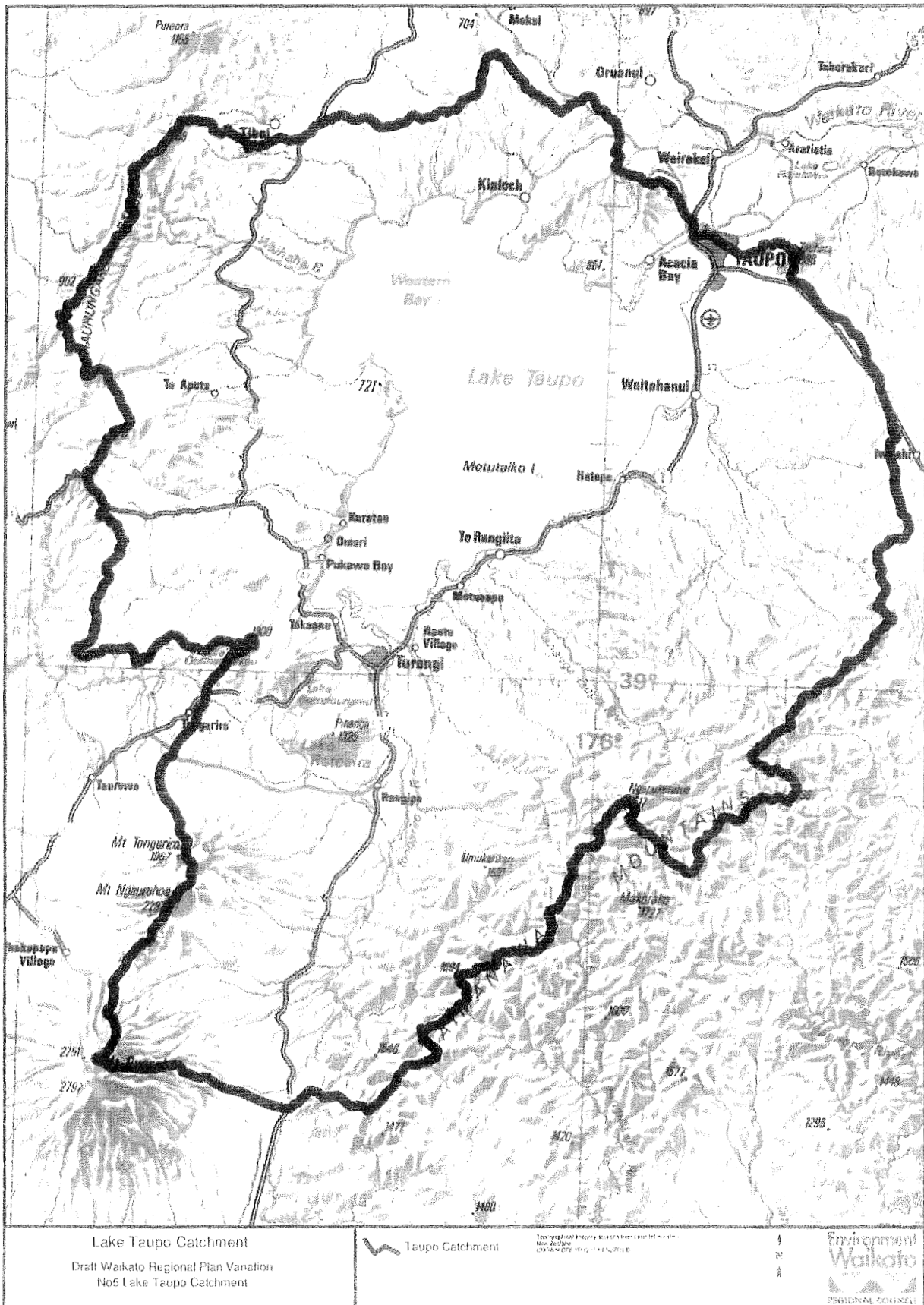
all as set out and provided for in the Statement of Intent.

- (d) **Funding.** The agreed monetary contributions by each of the parties to the Public Fund over the term of the Project are as set out in the Payments Schedule and will be paid according to the provisions recorded in the Funding Deed.
- (e) **Term.** The term of the Project is scheduled to be a period of 14 years commencing on 1 July 2005 and terminating on 30 June 2019 or such earlier date as the Public Fund has been fully expended and the Trust holds no assets.

SCHEDULE 2

Lake Taupo Catchment Area - Map

Map of Lake Taupo Catchment



**SCHEDULE 3 -
FUNDING DEED**

HER MAJESTY THE QUEEN

WAIKATO REGIONAL COUNCIL

TAUPO DISTRICT COUNCIL

THE LAKE TAUPO PROTECTION TRUST

FUNDING DEED

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Parties

1. **Her Majesty the Queen acting by and through the Minister for the Environment ("Crown")**
2. **Waikato Regional Council ("EW")**
3. **Taupo District Council ("TDC")**
4. **The Lake Taupo Protection Trust ("Trust")**

Background

- A. The Crown, EW and TDC (together "Public Funders"), together with Ngati Tuwharetoa and other community interests have identified through scientific evidence that the health of Lake Taupo is declining.
- B. Recent surveys have confirmed that the most important and urgent issue for the Taupo and wider community is the protection of the Lake's water quality. Intensifying land use in the Lake Taupo catchment area has significantly increased the amount of nitrogen entering the Lake which reduces the clarity of the water for which Lake Taupo is renowned.
- C. Arising out of the 2020 Taupo-nui-a-Tia project and action plan, which aims to ensure the sustainable development of Lake Taupo and its surrounding land, and following consultation with the Taupo and Waikato communities over a three year period, the Public Funders have decided on a strategy to maintain the current health of the Lake by reducing the amount of manageable nitrogen reaching the Lake, known as the Protecting Lake Taupo Strategy.
- D. The Public Funders have entered into the Project Agreement which sets out the agreement between them as to arrangements for governance of the Protecting Lake Taupo Project, including establishment of the Joint Committee and the Trust.
- E. This Deed records the manner in which the Public Funders will contribute to and manage the Public Fund, to be utilised to undertake strategic actions to achieve a reduction in the amount of nitrogen entering the Lake.
- F. The Trust has been established as a charitable trust incorporated under the Charitable Trusts Act 1957 and to be registered with the Charities Commission under the Charities Act 2005 in order to coordinate and focus efforts on reduction of nitrogen entering the Lake.
- G. The Public Funders and the Trust have agreed to enter into this Deed to define their respective obligations to each other in respect of the funding of the Trust.

1 Definitions and Interpretations

Definitions

1.1 In this Deed the following definitions apply:

CCO means a Council controlled organisation within the meaning of the LGA'02.

Default Event means any of the events specified in clause 14.1.

Deed means this funding deed.

Financial Year means the year commencing on 1 July and ending on 30 June, or such other financial year adopted by the Trustees.

Governance Costs means the ongoing annual amount required to cover the costs of the Joint Committee, which shall comprise:

- (a) any remuneration and out of pocket expenses paid to members of the Joint Committee in accordance with clause 8.5 of the Project Agreement;
- (b) any expenses related to the costs of running and administering the Joint Committee, including the holding of meetings;

Joint Committee means the committee established under the Project Agreement to oversee the governance of the Project.

LGA'02 means the Local Government Act 2002.

Operative Date is the date of the Project Agreement.

Payments Schedule means the schedule of payments to be made by the Public Funders as set out in Schedule 1.

Preliminary Costs means:

- (a) the costs related to the establishment of the Project including preparation of the relevant documentation and the establishment of the Trust and the Joint Committee, as set out in part II of Schedule 1 to the Project Agreement;
- (b) the costs of undertaking the Project already approved by or on behalf of the parties prior to the Operative Date whether such costs have been expended or not, as set out in part II of Schedule 1 to the Project Agreement.

Project means the Lake Taupo Protection Project, more fully described in the Project Agreement.

Project Agreement means the agreement dated 9 February 2007 between the Public Funders.

Public Fund means the total of the moneys which the Public Funders, according to their respective shares, have committed to the Project including prior to the Operative Date as set out in the Payments Schedule and as otherwise provided for in clause 5 of the Project Agreement and in clause 2 of this Deed.

Representative Group means the individuals specified in clause 7.5 of the Project Agreement who will govern the Project if the Joint Committee is discharged and not reconstituted and who represent the respective parties specified in clause 7.5 of the Project Agreement or the successors, substitutes or equivalents of such parties.

Statement of Intent means the annual Statement of Intent of the Trust which has the purpose, meaning and effect as set out and provided for in the LGA'02 and as required by clause 14.1 of the Trust Deed.

Trust Deed means the deed for The Lake Taupo Protection Trust to be established pursuant to the Project Agreement.

Trust Fund means the trust fund as defined in the Trust Deed, which includes that part of the Public Fund paid to the Trust under clause 5 of the Project Agreement in accordance with the provisions of this Deed.

Trustees means the trustees of the Trust from time to time.

Interpretation

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.5 A reference in this Deed to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
 - 1.2.6 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.

- 1.2.7 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.9 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
- 1.2.10 A reference to the word 'include' or 'including' is to be construed without limitation.
- 1.2.11 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.12 Any schedules and attachments form part of this Deed.

2 Public Fund

- 2.1 The Public Funders will contribute to the Public Fund in accordance with the Payments Schedule.
- 2.2 The Public Fund will be used:
- 2.2.1 First, to pay the Preliminary Costs and the Governance Costs.
- 2.2.2 As to the balance, to comprise the Trust Fund.
- 2.3 Any of the Public Funders shall be entitled, but shall not in any circumstances be required, to pay or make provision for its contributions or any one or more annual instalments of its contributions earlier than provided for in the Payments Schedule.
- 2.4 Clause 5 of the Project Agreement (Public Fund) shall be deemed to be included as a term of this Deed to the extent applicable.
- 2.5 The payment of the Public Funders' contributions to the Trust in each year is subject to the Trust carrying out its obligations and responsibilities set out in this Deed, to the reasonable satisfaction of the Public Funders. If the Public Funders determine that they are not reasonably satisfied they shall act in accordance with the processes set out in clauses 5.2 and 5.3 (Performance Monitoring) and 6.2 (Review of Project).
- 2.6 The Public Funders agree to pay GST on each instalment of their contributions on receipt of a valid and complete tax invoice from the Trust. For the avoidance of doubt the sums stated in the Payments Schedule are exclusive of GST.
- 2.7 The Public Funders and the Trust agree that:
- 2.7.1 any future requests by the Trust to increase the Public Funders' annual contributions to the Trust or for any annual contributions to be paid in advance will be identified by the Trustees in the Trust's annual Statement of Intent or modified Statement of Intent; and

- 2.7.2 the Public Funders' contributions to the Trust will not vary unless:
- (a) the variation is approved or required as a result of a review of the Project; or
 - (b) as a result of policy changes, as provided for by clause 2.10; or
 - (c) a Public Funder makes early payment under clause 2.3.

Nature of contributions

- 2.8 The Public Funders' contributions under this Deed are payments intended to allow the Trust to achieve the objectives of the Project through the carrying out of the purposes of the Trust, involving supplying the activities stated in the Trust's Statement of Intent.
- 2.9 The Trust acknowledges that the Public Funders' contributions will make up the principal funding available to the Trust. The Trust shall use its best endeavours to ensure that the public recognises the contributions that the Public Funders make to the Trust and its activities.

Changes in Policy

- 2.10 The Public Funders record their agreement with respect to changes in their respective policies which affect contributions to the Public Fund, as follows:
- 2.10.1 The Public Funders acknowledge their commitment to the Project and its successful implementation and undertake to act in good faith towards one another and the Trust under this Deed in respect of the Project.
 - 2.10.2 Notwithstanding anything to the contrary in this Deed or any other document relating to the Project, the contributions of any of the Public Funders to the Public Fund, and the obligations of any of the Public Funders under this Deed, may be terminated in accordance with clause 2.10.3 if the relevant Public Funder's policy changes and funding for the Project is no longer available.
 - 2.10.3 If a Public Funder's policy changes and funding for the Project from a Public Funder is no longer available, the relevant Public Funder shall give written notice to the other Public Funders and the Trust of the change in policy and the reasons for the change. Where a Public Funder has given notice under this clause, its contributions and obligations under this Deed shall terminate on the expiry of 12 months from the date of that written notice, unless the notice is withdrawn.
 - 2.10.4 Where notice has been given under clause 2.10.3, before the expiry of the 12 month period specified in clause 2.10.3 the Public Funders and the Trust shall meet to discuss the implications for the Project of the proposed termination of the relevant Public Funder's contributions and other obligations under this Deed.
 - 2.10.5 If the relevant Public Funder considers it appropriate, that Public Funder shall use reasonable endeavours to notify the other Public Funders of a proposed change in policy prior to giving notice under clause 2.10.3 and shall use reasonable endeavours to meet with the other Public Funders to discuss the implications for the Project of the proposed change in policy.

- 2.11 For the purposes of clause 2.10 "changes in their respective policies", "policy changes", "change in policy" and "policy change" are effected:
- (a) for EW and TDC by a resolution of the respective Councils;
 - (b) for the Crown by a decision of Cabinet or a Minister or Ministers.

3 Trust obligations

- 3.1 The Trust shall submit financial statements, reports and Statements of Intent to the Public Funders in accordance with this the provisions of this Deed and the Trust Deed.
- 3.2 The Trust shall act at all times in accordance with its Trust Deed, and not inconsistently with this Deed.

4. Expenditure of Trust Fund

- 4.1 The Trust shall obtain the approval of the Public Funders prior to entering into any commitment to incur expenditure on any one item or project of more than 15% of the total proposed annual expenditure of the Trust referred to in the Statement of Intent. Approval of such expenditure within the Statement of Intent process under the LGA'02 shall be sufficient compliance with this provision.

5. Performance monitoring

- 5.1 The Trust and the Joint Committee shall meet at least every six months during the term of this Deed to discuss the Trust's performance, any departures from or amendments to the Trust's Statement of Intent, and any other relevant matters.
- 5.2 If the Public Funders acting reasonably consider the Trust is not performing in terms of its obligations under this Deed, the Public Funders shall discuss this with the Trustees and advise the Trust in writing of their concerns. The Public Funders and the Trust will agree a plan to improve the Trust's performance. The Trust shall not be required to agree a plan which would place it in breach of trust or in breach of the Trust Deed or which is inconsistent with section 64(5)(a) of the LGA'02.
- 5.3 If the Trust's performance does not improve to the satisfaction of the Public Funders, acting reasonably, a majority of the Public Funders (acting on their own account, and not through the Joint Committee) shall be entitled to initiate a review of the Project in accordance with clause 6.

6. Review of Project

- 6.1 The Public Funders (acting on their own account and not through the Joint Committee) shall undertake a review of the Project at 5 yearly intervals or as otherwise provided under clause 10 of the Project Agreement (or earlier if required under clause 5.3 of this Deed).

- 6.2 Following a review under clause 10 of the Project Agreement, the Public Funders (acting on their own account and not through the Joint Committee), may unanimously decide to withhold all or part of their contribution to the Trust on a temporary or permanent basis if they believe, acting reasonably, that the Trust has failed to carry out its obligations and responsibilities.
- 6.3 If a Default Event has occurred and has not been remedied the Public Funders (acting on their own account and not through the Joint Committee), may unanimously decide to withhold all or part of their contribution to the Trust on a temporary or permanent basis.

7. Term & Early Termination

- 7.1 The term of this Deed shall commence on the Operative Date and, subject to earlier termination under clause 7.2 shall terminate at the same time as the Project Agreement terminates.
- 7.2 This Deed shall terminate prior to the date in clause 7.1 if:
- 7.2.1 As a consequence of the withdrawal of a Public Funder's contributions to the Public Fund under clause 2.10 the remaining Public Funders (acting on their own account and not through the Joint Committee) determine that the Project cannot continue; or
 - 7.2.2 If the Public Funders (acting on their own account and not through the Joint Committee) unanimously determine, following the completion of a review under clause 6.1 that the Project should be terminated; or
 - 7.2.3 If the Public Funders terminate this Deed under clause 14.2.
- 7.3 The date of termination of this Deed under clause 7.2 shall be the date determined by the parties making the determination under clause 7.2 following consideration of the circumstances, at least 3 months' notice of which must be given to the Trust. Any termination of this Deed shall not relieve the Public Funders, or the remaining Public Funders as the case may be, of their obligation to provide funding to the Trust for the financial year in which notice is given under this clause 7.3. For the avoidance of doubt the provisions of this clause 7.3 shall not affect a withdrawing Public Funder's obligation under clause 2.10.3.

8. Accounts and reports to the Public Funders

- 8.1 The Trust will prepare financial statements, reports and Statements of Intent in accordance with the requirements set out in the Trust Deed and provide copies to the Public Funders.
- 8.2 In addition to the financial statements, reports and the Statement of Intent referred to in clause 8.1, the Trust will also:
- 8.2.1 provide any additional information that may be reasonably and properly required by the Public Funders regarding the position of the Trust; and

- 8.2.2 meet with the Public Funders as may be reasonably required by the Public Funders from time to time.

9. Trustees' liability

- 9.1 The parties acknowledge that any personal liability of any of the trustees of the Trust under this Deed shall, except in respect of any wilful act or omission which constitutes a breach of trust or an act of dishonesty, be limited to the capital assets and income of the Trust that are from time to time held by the Trust or that, except for the individual default of any trustee, should have come into the hands of the Trust.

10. Regulatory position

- 10.1 The Public Funders' ability to act under this Deed shall in all things be subject to any and all statutory and regulatory requirements establishing or recording powers or functions or delimiting the same and/or the exercise thereof by the Public Funders. Nothing in this Deed shall be read or construed as abrogating, delimiting or otherwise affecting the proper or valid undertaking or exercise of any such power or function by the Public Funders.
- 10.2 The parties acknowledge that the Trust is a CCO. The Trust's ability to act under this Deed and comply with its provisions shall in all things be subject to any and all statutory and regulatory requirements establishing or recording powers or functions or delimiting the same and/or the exercise thereof by the Trust, and nothing in this Deed shall be read or construed as abrogating, delimiting or otherwise affecting the proper or valid undertaking or exercise of any such power or function by the Trust.

11. Dealings with Public Funders and Public Funders' Decisions

- 11.1 For the purposes of this Deed the Trust shall undertake all communications and conduct all their dealings with the Public Funders through the Joint Committee (as is acknowledged and accepted by the Public Funders) unless notified by the Public Funders in writing that communications and dealings are to be conducted in some other manner.
- 11.2 All decisions of the Public Funders under this Deed, as defined in clause 11.3, unless otherwise specified in this Deed or otherwise agreed by the Public Funders shall be exercised by the Public Funders through the Joint Committee except at any time when the Joint Committee shall be deemed to be discharged or is in any way inoperative, in which event the Representative Group shall make such decision jointly, provided that if the Representative Group cannot achieve unanimous agreement the decision of a majority of the Representative Group shall prevail and shall constitute the decision of the Public Funders for the purposes of this Deed.
- 11.3 For the purposes of clause 11.2 "decisions of the Public Funders" shall include the undertaking of any act, exercise of any power or the giving of any consent under this Deed.

12. No partnership

- 12.1 Nothing in this Deed or in the relationship of the parties to this Deed shall be construed as creating a partnership or as conferring upon the parties or any of them any of the rights, or subjecting any of them to any of the liabilities, of a partner.

13. No assignment

- 13.1 Neither the Public Funders nor the Trust shall, without the prior consent in writing of the other (which shall not be unreasonably withheld), assign, charge or sublicense any of the rights granted in this Deed.

14. Default

- 14.1 Any of the following events shall constitute a Default Event ("Default Event") for the purposes of clause 14.2:
- 14.1.1 Failure by the Trust to pay its debts when due and owing, or failure to satisfy within 30 days any levy or execution in excess of \$50,000.
 - 14.1.2 If an encumbrancer takes possession or receiver or manager is appointed of any of the property or assets of the Trust.
 - 14.1.3 The Trust proposing to make any arrangement or composition with creditors or ceasing or threatening to cease to carry on business of the Trust.
 - 14.1.4 The Trust losing its status as a charitable entity under the Charities Act 2005 for any reason.
 - 14.1.5 If, without the prior consent in writing of the Public Funders, the Trust alters or attempts to alter its Trust Deed.
 - 14.1.6 The Trust committing any material breach of its obligations under its Trust Deed or this Deed, or failure to significantly comply with the approved Statement of Intent, and such breach or non-compliance continuing for a period of not less than 30 days but in any event having regard to the nature of the breach after written notice has been given to the Trust requiring it to remedy its breach or non-compliance.
- 14.2 In the event of a Default Event having occurred which remains unremedied for 14 days the Public Funders (acting on their own account and not through the Joint Committee), shall have the right, acting unanimously, to terminate this Deed.

15. Notices

Giving notices

- 15.1 Any notice or communication given to a party under this Deed is only given if it is in writing and sent in one of the following ways:
- 15.1.1 Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in **Error! Reference source not found.**
 - 15.1.2 Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out in **Error! Reference source not found.**

Change of address or fax number

- 15.2 If a party gives the other party three business days' notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

Time notice is given

- 15.3 Any notice or communication is to be treated as given at the following time:
- 15.3.1 If it is delivered, when it is left at the relevant address.
 - 15.3.2 If it is sent by post, two business days after it is posted.
 - 15.3.3 If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 15.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

16. Miscellaneous

Approvals and consents

- 16.1 Unless this Deed expressly provides otherwise, a party may give or withhold an approval or consent in that party's discretion, acting reasonably and at all times in good faith. A party shall give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- 16.2 Where this Deed refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party acting reasonably and in good faith.

Further acts

- 16.3 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Deed and all transactions incidental to it.

Variation

- 16.4 No variation of this Deed will be of any force or effect unless it is in writing and signed by each party to this Deed.

Waivers

- 16.5 A waiver of any right, power or remedy under this Deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 16.6 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed does not amount to a waiver.

Execution and date

Executed as a deed.

Date: 2007

Signed on behalf of)
HER MAJESTY THE QUEEN)
acting by and through)
the Minister for the Environment)
in the presence of:)

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

THE COMMON SEAL of)
WAIKATO REGIONAL COUNCIL)
was affixed in the)
presence of:)

Chairman

Chief Executive Officer

THE COMMON SEAL of)
TAUPO DISTRICT COUNCIL)
was affixed in the)
presence of:)

Mayor

Chief Executive Officer

THE COMMON SEAL of)
THE LAKE TAUPO PROTECTION TRUST)
was affixed in the)
presence of:)

Trustee

Trustee

Schedule 1
Payments Schedule

Schedule 1

Payments Schedule

Figures are in \$ millions (excluding GST)

	Govt	EW	TDC
2004/05	0.533	1.261	0.602
2005/06	1.156	0.925	0.488
2006/07	2.133	1.707	0.901
2007/08	2.667	2.133	1.126
2008/09	2.667	2.133	1.126
2009/10	2.667	2.133	1.126
2010/11	2.667	2.133	1.126
2011/12	2.667	2.133	1.126
2012/13	2.667	2.133	1.126
2013/14	2.667	2.133	1.126
2014/15	2.667	2.133	1.126
2015/16	2.667	2.133	1.126
2016/17	2.667	2.133	1.126
2017/18	2.090	0.837	0.505
Totals	32,582	26,060	13,756

Payments Beyond 2011/12

The funding for the Project is to be reviewed at five yearly intervals through the review process as provided for in clause 10 of the Project Agreement. The first review must be completed no later than 2011/12 so that any new Payments Schedule agreed by the Public Funders (Crown, EW and TDC) as a decision arising out of the review can be inserted in the Project Agreement and Funding Deed as a replacement Payments Schedule.

Schedule 2 Addresses for Notices

Minister for the Environment

Contact: Kevin Currie
Physical Address: 23 Kate Sheppard Place
Wellington
Postal Address: P O Box 10362
Wellington
Fax number: (04) 439 7705

Waikato Regional Council

Contact: Chief Executive Officer
Physical Address: 401 Grey Street
Hamilton East
Hamilton
Postal Address: P O Box 4010
Hamilton East 2001
Fax number: (07) 859 0998

Taupo District Council

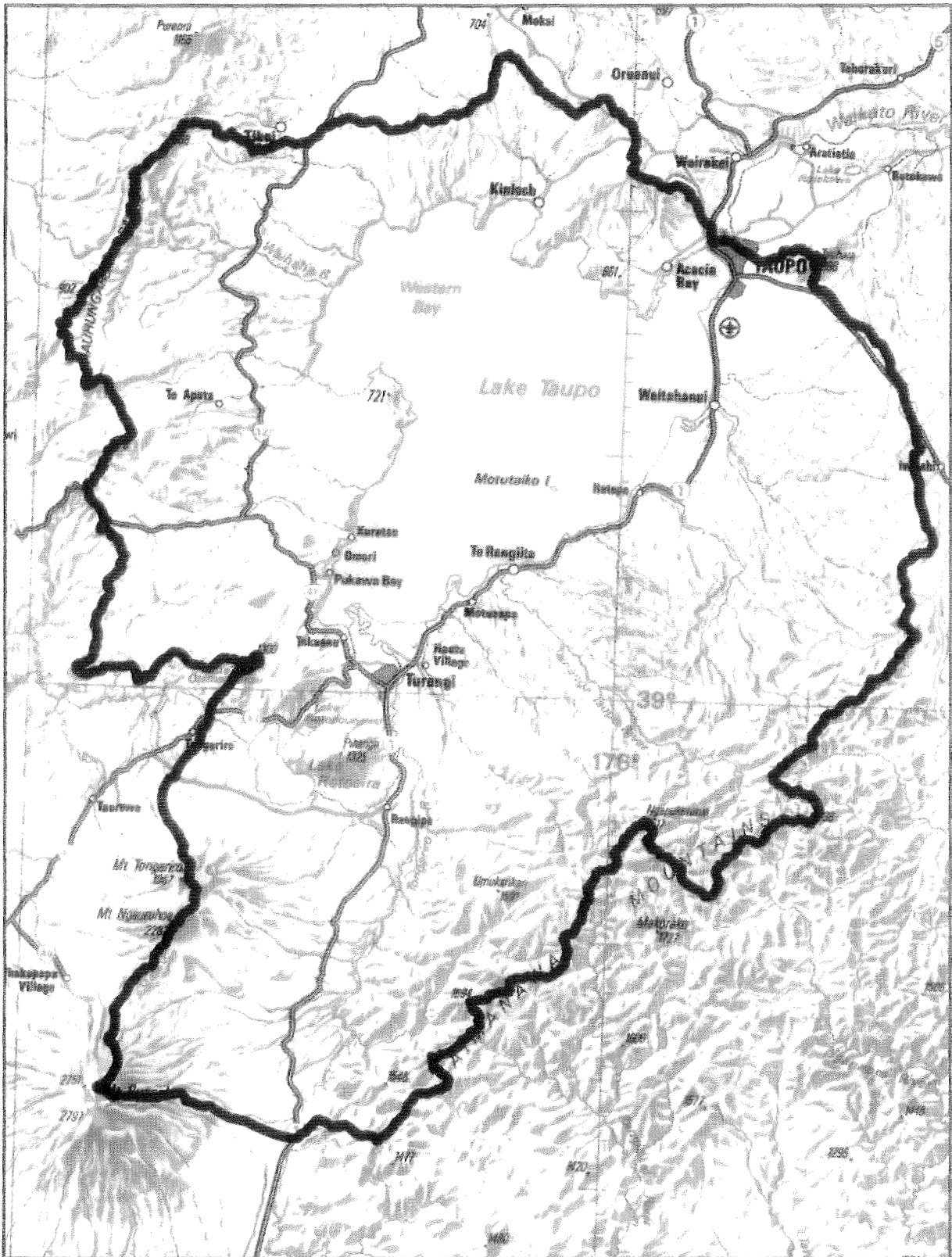
Contact: Chief Executive Officer
Physical Address: 72 Lake Terrace
Taupo
Postal Address: Private Bag 2005
Taupo
Fax number: (07) 378 0118

Lake Taupo Protection Trust


Contact: Chief Executive Officer
Physical Address: Waikato District Council
401 Grey Street
Hamilton East
Hamilton
Postal Address: P O Box 4010
Hamilton East 2001
Fax number: (07) 859 0998

**SCHEDULE 4 -
LAKE TAUPO CATCHMENT AREA MAP**

Map of Lake Taupo Catchment



Lake Taupo Catchment
Draft Waikato Regional Plan Variation
No5 Lake Taupo Catchment

 Taupo Catchment

Topographic information extracted from Land Information New Zealand (LINZ) data.



**SCHEDULE 5 -
ADDRESSES FOR NOTICES**

Minister for the Environment

Contact: Kevin Currie
Physical Address: 23 Kate Sheppard Place
Wellington
Postal Address: P O Box 10362
Wellington
Fax number: (04) 439 7705
Email: kevin.currie@mfe.govt.nz

Waikato Regional Council

Contact: Chief Executive Officer
Physical Address: 401 Grey Street
Hamilton East
Hamilton
Postal Address: P O Box 4010
Hamilton East 2001
Fax number: (07) 859 0998
Email: harry.wilson@ew.govt.nz

Taupo District Council

Contact: Chief Executive Officer
Physical Address: 72 Lake Terrace
Taupo
Postal Address: Private Bag 2005
Taupo
Fax number: (07) 378 0118
Email: srowbotham@taupo.govt.nz

SCHEDULE 6 -**PROCEEDINGS AT MEETINGS OF JOINT COMMITTEE****1. Standing Orders**

The standing orders shall be the New Zealand Standard Model Standing Orders for meetings of local authorities and community boards NZS 9202:2003 or the current New Zealand Model Standing Orders for meetings of local authorities and community boards as shall from time to time apply, with such variations as are required to give effect to the following provisions.

2. Methods of holding meetings

(1) A meeting may be held either –

- (a) by the number of members of the Joint Committee who constitute a quorum being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all members of the Joint Committee participating and constituting a quorum, can simultaneously hear each other throughout the meeting, provided that public attendance at one location at least be provided and notified.

3. Quorum

(1) No business may be transacted at a meeting if a quorum is not present.

(2) A quorum for a meeting is present if one of the members appointed by each of EW, TDC, and the Crown and one of the nominees of Tuwharetoa Maori Trust Board appointed by EW and TDC are present.

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the chairperson of the meeting may appoint.

4. Voting

(1) In the case of a meeting held under clause 2(1)(a) of this schedule, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:

- (a) voting by voice; or
- (b) voting by show of hands.

(2) In the case of a meeting held under clause 2(1)(b) of this schedule, voting at the meeting shall be by each of the members of the Joint Committee participating and constituting a quorum signifying individually their assent or dissent by voice

(3) A resolution will be carried if not less than a majority of the Joint Committee members present or participating and constituting a quorum vote in favour of the resolution.

- (4) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact.
- (5) In the case of an equality of votes the chairperson of a meeting is not entitled to a casting vote.