

HER MAJESTY THE QUEEN

WAIKATO REGIONAL COUNCIL

TAUPO DISTRICT COUNCIL

THE LAKE TAUPO PROTECTION TRUST

FUNDING DEED

Table of contents

Parties	1
Background	1
1 Definitions and Interpretations	2
Definitions	2
Interpretation	3
2 Public Fund	4
Nature of contributions	5
Changes in Policy	5
3 Trust obligations	6
4. Expenditure of Trust Fund	6
5. Performance monitoring	6
7. Term & Early Termination	7
8. Accounts and reports to the Public Funders	7
9. Trustees' liability	8
10. Regulatory position	8
11. Dealings with Public Funders and Public Funders' Decisions	8
12. No partnership	9
13. No assignment	9
14. Default	9
15. Notices	10
16. Miscellaneous	10
Execution and date	12
Schedule 1	14
Payments Schedule	14
Schedule 2	15
Address for notices	15

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 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