

---

# **FORESTRY RIGHTS REGISTRATION ACT 1983**

## **FORESTRY RIGHT**

---

**AWATEA FOREST FUND TRUSTEES LIMITED**

**"Landowner"**

**AWATEA FOREST FUND TRUSTEES LIMITED**

**"Forest Owner"**



## CONTENTS

1.	INTERPRETATION.....	1
2.	RIGHTS GRANTED .....	2
3.	OBLIGATIONS OF THE FOREST OWNER.....	2
4.	OBLIGATIONS OF THE LANDOWNER .....	3
5.	MUTUAL OBLIGATIONS .....	3
6.	EMISSIONS TRADING SCHEME .....	4
7.	DISPUTES .....	4
	FIRST SCHEDULE .....	6
	RECORDS OF TITLE:.....	6
	SECOND SCHEDULE.....	7
	PLAN .....	7



## PARTIES

1. **AWATEA FOREST FUND TRUSTEES LIMITED** a duly incorporated company having its registered office at Level 8, 191 Queen Street, Auckland Central, Auckland 1010, New Zealand ("**Landowner**")
2. **AWATEA FOREST FUND TRUSTEES LIMITED** a duly incorporated company having its registered office at Level 8, 191 Queen Street, Auckland Central, Auckland 1010, New Zealand ("**Forest Owner**")

## BACKGROUND

- A. The Landowner is the registered owner of the land set out in the First Schedule ("Land").
- B. The Landowner has agreed to grant to the Forest Owner a Forestry Right under the Forestry Rights Registration Act 1983 over the Landowner's Land shown on the Plan attached in Second Schedule ("Forest") subject to the terms and conditions set out in this Forestry Right.

## IT IS AGREED:

### 1. INTERPRETATION

- 1.1 In this Forestry Right unless the context indicates otherwise:

"**Emissions Trading Scheme**" means the Emissions Trading Scheme established under the Climate Change Response Act 2002 or any legislation passed in substitution to such Act.

"**Forestry Right**" means this Forestry Right created in accordance with the Forestry Rights Registration Act 1983.

"**Forest Owner**" means Awatea Forest Fund Trustees Limited and includes the Forest Owner's permitted assignees, successors, authorised agents and invitees.

"**Fund**" means the Awatea Forest Fund, a managed investment scheme registered under the Financial Markets Conduct Act 2013.

"**GST**" means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax.

"**Landowner**" means Awatea Forest Fund Trustees Limited and includes the Landowner's heirs, executors, successors, administrators, assignees and authorised agents.

"**Plan**" means the plan showing the specific location of the Forest as set out in Second Schedule.

"**RDNZ**" means Roger Dickie (N.Z.) Limited in its capacity as the manager of the Fund.

"**Related Scheme**" means schemes that are not the Emissions Trading Scheme and include but are not limited to the Permanent Forest Sinks Initiative, the Afforestation Grant Scheme, the One Billion Trees Programme, the East Coast Forestry Project, the Erosion Control Funding Programme, the Hill Country Erosion (HCE) Programme and such other schemes in relation to Forestry that may arise from time to time.



## **2. RIGHTS GRANTED**

2.1 In consideration of the mutual covenants and conditions set out or implied in this agreement, the Landowner transfers and grants a Forestry Right to the Forest Owner for a term of 99 years commencing on 1 April 2022 which includes the right to:

- (a) Plant, re-establish, protect, manage, maintain, harvest, store, carry away, sell and otherwise utilise all trees growing in the Forest.
- (b) Use and maintain the access ways highlighted on the Plan.
- (c) Make, install and use such roadways, tracks and gates on the Landowner's Land (whether existing now or made or erected in the future) as are reasonably necessary for the purpose of exercising the rights conferred by this Forestry Right.
- (d) Construct on the Landowner's Land buildings, plant and other works as may be reasonably necessary or convenient for the full enjoyment of this grant and to remove them on expiry of the term or sooner at the Forest Owner's expense.
- (e) Fell, destroy or otherwise eliminate all trees or other undesirable growths on the Forest in accordance with accepted reasonable methods of forest land management.
- (f) Generally to do whatever the Forest Owner decides is necessary or convenient for obtaining the full benefit of this Forestry Right (including, subject to clause 3.1(d), grant a lease over or in respect of its rights under this Forestry Right).

## **3. OBLIGATIONS OF THE FOREST OWNER**

3.1 The Forest Owner will:

- (a) Exercise its rights under this Forestry Right so as to cause as little disruption to the Landowner as in all the circumstances is reasonably practicable and to keep all gates closed and to repair gates and fences damaged by the Forest Owner without undue delay.
- (b) Compensate the Landowner for any damage done to the Land or any buildings or other improvements by the Forest Owner or the Forest Owner's agents, employees, licensees, invitees and contractors in the course of exercising the rights conferred upon the Forest Owner by this Forestry Right.
- (c) Comply with good silvicultural and forestry practice in the establishment, maintenance and harvesting of trees in the Forest and all operations which are incidental to that.
- (d) Not, without the prior written consent of the Landowner, assign, lease or otherwise dispose of any of its rights and obligations under this Forestry Right.
- (e) To the extent legally permissible, indemnify the Landowner against any loss or liabilities arising out of the Fire and Emergency New Zealand Act 2017 and the Health and Safety at Work Act 2015 with respect to the Forest, but this will not extend to any amount that would have been payable under any insurance policy rendered irrevocable or void by an act or omission of the Landowner.
- (f) Meet all costs in constructing and maintaining access, roadways and tracks to the Forest including the maintenance of all access ways existing at the date of this Forestry Right.

- (g) Upon completion of the harvest or earlier determination of this Forestry Right the Forest Owner will ensure the Forest is in a condition consistent with sound harvesting methods and will be responsible for performing and complying with all of the terms and conditions and requirements of the Resource Management Act 1991 or any Act amending or passed in substitution.
- (h) Duly and punctually pay and discharge (including the GST if any) all taxes and charges payable in respect of the Forest.
- (i) Be responsible for payment of all expenses relating to the Forest and unless otherwise stated in this Forestry Right will be entitled to all income from the Forest.

#### **4. OBLIGATIONS OF THE LANDOWNER**

##### **4.1 The Landowner will:**

- (a) Not farm or cultivate the Forest without the prior written consent of the Forest Owner.
- (b) Allow the Forest Owner to construct upon the Land such buildings, plant and other works which may be reasonably necessary or convenient for the full enjoyment of this Forestry Right providing all such buildings and plant are removed on expiry or sooner determination of the term at the Forest Owner's expense.
- (c) Allow the Forest Owner to stack upon such part of the Land as is agreed with the Landowner any trees, timber or logs harvested pursuant to this Forestry Right.
- (d) Allow the Forest Owner to remove trees, timber or logs harvested pursuant to this Forestry Right including transport across the Land along the permitted access ways and roads.
- (e) Be responsible for payment of all expenses relating to the Land including rates and will not be entitled to any income from the Forest arising out of this Forestry Right.

#### **5. MUTUAL OBLIGATIONS**

##### **5.1 The Landowner and the Forest Owner covenants with each other as follows:**

- (a) The rights granted to the Forest Owner by this document will be in the nature of a profit in gross over the Forest.
- (b) Neither party will light a fire upon any part of the Land which might spread and damage any improvements, trees, livestock or adjoining land.
- (c) The covenants expressed or implied in this Forestry Right will bind the parties both together and separately.
- (d) If all or part of the Forest growing on the Land is destroyed or damaged, then the Forest Owner will consult with the Landowner to determine the best approach to replant the Forest in order to comply with any obligations under the Emissions Trading Scheme or Related Scheme.
- (e) A meeting may be called by one month's notice by either party to review the progress or to deal with unforeseen problems in regard to this Forestry Right. Any notice which any party may wish to give to the other will be deemed adequately given if it is given in writing and delivered by registered mail to the last known address of either party and in compliance with

Part 7 of the Property Law Act 2007 or emailed to the email address stipulated by the relevant party.

- (f) If prior to or upon completion of the term of this Forestry Right there is any requirement by any authority to plant or replant trees on the Forest or there is a liability for any charge or tax imposed for not replanting trees that the Forest Owner has removed, then it will be the responsibility of the Forest Owner at its own cost entirely to carry out and complete any such planting or replanting or to pay any such charge or tax so as to comply with the requirements of the authority.

## **6. EMISSIONS TRADING SCHEME**

- 6.1 The Landowner may register the Forest under the Emissions Trading Scheme or Related Scheme so as to accrue and incur all benefits, liabilities and obligations under such Scheme or Schemes.
- 6.2 The Forest Owner will:
  - (a) Not register the Forest under the Emissions Trading Scheme or Related Scheme;
  - (b) Execute an "Interested Party Consent" form as grantee of a Forestry Right, so as not to prevent the Landowner from registering under the Emissions Trading Scheme.

## **7. DISPUTES**

- 7.1 If any dispute or difference arises between the parties, the parties will enter into negotiations in good faith to resolve the difference or dispute. If the difference or dispute is not resolved within one month of the date on which the parties begin their negotiations, the parties will submit the difference or dispute to the arbitration of an independent arbitrator appointed jointly by the parties, and if one cannot be agreed upon within ten (10) working days to an independent arbitrator appointed by the President for the time being of the Gisborne Branch of the New Zealand Law Society, or their nominee, and such arbitration will be carried out in accordance with the Arbitration Act 1996 or any then statutory provisions relating to arbitration.

## **8. CAPACITY OF PARTIES**

- 8.1 The parties acknowledge that Awatea Forest Fund Trustees Limited is entering into this document in its capacity as the custodian of the Fund and not in its personal capacity and accordingly the parties agree, notwithstanding any other provision of this document, that:
  - (a) each of Awatea Forest Fund Trustees Limited and Covenant Trustee Services Limited (as the supervisor of the Fund and holding company of Awatea Forest Fund Trustees Limited) will not be personally liable under this document; and
  - (b) the liability of each of them will be limited to any assets of the Fund from time to time held in its or their hands (as the case may be) that are available at law to meet that liability.
- 8.2 The parties further acknowledge that Awatea Forest Fund Trustees Limited (in its capacity as the custodian of the Fund) is generally obligated to act on the instructions of RDNZ (in its capacity as the manager of the Fund), except where any such act would be in breach of their respective obligations in relation to the Fund, and that:
  - (a) RDNZ has instructed Awatea Forest Fund Trustees Limited to enter into this document; and
  - (b) any actions taken by Awatea Forest Fund Trustees Limited under this document will generally only be taken on instructions from RDNZ.

**EXECUTED AS AN AGREEMENT:**

**SIGNED** for and on behalf of  
AWATEA FOREST FUND TRUSTEES LIMITED  
as **“Landowner”**  
by two of its directors

)  
)  
)  
)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**SIGNED** for and on behalf of  
AWATEA FOREST FUND TRUSTEES LIMITED  
as **“Forest Owner”**  
by two of its directors

)  
)  
)  
)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**First SCHEDULE**

**PROPERTY DESCRIPTION**

1131 Whakarau Road, Otoko, Gisborne contained in records of title GS3B/224 and GS5C/581





**SECOND SCHEDULE**

**PLAN – to be supplied**