

**TE ARAWA**  
**and**  
**ARAWA MĀORI TRUST BOARD**  
**and**  
**HER MAJESTY THE QUEEN**  
**in right of New Zealand**

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**DEED OF SETTLEMENT OF THE  
TE ARAWA LAKES HISTORICAL CLAIMS AND  
REMAINING ANNUITY ISSUES**

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[Date]

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TE ARAWA LAKES DEED OF SETTLEMENT

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**DEED OF SETTLEMENT**

**THIS DEED** is made on [insert signing date]

**BETWEEN**

- (1) **TE ARAWA**
- (2) **ARAWA MĀORI TRUST BOARD**
- (3) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Māori Affairs.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**PREFACE****WHAKATAUKI**

E Tama, e Hopo, e Tia, e Hei, Ngātoroirangi  
Whakamaua te waka ki tai, ki uta  
Haere koutou i te Ara-moana-o-Kupe  
Waihotia ngā riri ā Tūmatauenga ki konei  
Waiho mā te pōpō, mā te hūhū, mā te taka i te rākau, i te whenua  
Me te mate tarāwhare me te toromi, hai iriiringa mo o koutou tāranga  
Apuhia ngā tohutohu o te Wānanga o ngā Ahurewa  
Kotahi anake te rangatira o Hawaiiki, tēra ko to koutou tupuna ko Whakatau Pōtiki  
Ohomairangi ē – tohia te iwi, tūngaengae.

**KARAKIA**

Unuhia, unuhia ko te pou mua, ko te pou roa, ko te pou te wharaua  
He aturangi mamao, hekeheke iho i runga i ō ara  
Tākikiwhara te ara o Ngātoro, he ara whano ki te pō  
Ko te pō nui, ko te pō roa, ko te pō matirerau, ko te pō whaiariki  
Ē ko taku waka ko Te Arawa, ngahue i te Parata  
Ēke, ēke, ēke Tangaroa, ēke panuku  
Hui e!  
Taiki e!

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**WAIATA**

Te Puhi-o-Te Arawa ē, te takere o te waka ē  
Tikoki rā, tahuri rā, te taea te unu o te kiato o te waka  
Ka totohu tōnu, ta totohu tōnu  
E momohe ana koa ngā pukanohi o Meremere  
I māwhiti nei te ata o Te Rangikauariro  
Mehe ra ko Maru e huhia ana e te whare ri ...  
He upoko-ti, he marangai kai whare  
He ngārara ka ngāweke i runga, ka ngāweke i raro  
I hirihiria ai e te Whanoeke, ko te here Pō  
He upoko-tī, kei te mura ahi kei te kohiri whenua  
Ko ngā mana ra hoki ēna o ngā uru-poki  
I whakahekea ai koe ki tō whakaongaonga  
I tukutuku marutia ai koe na  
Tokotoru tonu tāngata i waiho ki te ao  
Ko te rā, ko te marama, ko te rangi-ka-awatea  
Ko taku māpihi maurea ia rā, ka Ngonu  
Tapuae o Whatitiri; ko te tuhi, ko te rapa, ko te kanapu  
Ko ngā tohu ra i tāngaretia iho nei  
Whakapua kia mana ai rā ngā ripa  
Ko te ara tukutuku ko Hine-Puaki-hau  
Ki moana nui ra ē, ki moana pōuri  
Tuku iho ki te ao tō punitanga  
Ko Te Rangikauariro!

**Relationship with the Crown in respect of the Te Arawa Lakes**

In 1840 the Treaty of Waitangi was signed between the Crown and Māori. From 1840 the Crown and Te Arawa gradually developed a relationship. At various times, particularly in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, the people of Te Arawa were aggrieved by Crown actions in relation to the Te Arawa Lakes. The events that caused Te Arawa's sense of grievance are outlined in the historical account Part of this Deed.

Te Arawa consider that many of the Crown's acts and omissions in relation to the Te Arawa Lakes have breached the Treaty of Waitangi and have caused significant prejudice to the iwi. Te Arawa have sought justice for these alleged Treaty breaches and a number of Te Arawa have carried their grievance to the Crown. The failure of the Crown to redress these wrongs has also become a significant grievance to Te Arawa.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**BACKGROUND TO THIS DEED**

On behalf of Te Arawa, the Arawa Māori Trust Board registered a claim in relation to the Te Arawa Lakes (WAI 240) in April 1987, following a 1985 amendment to the Treaty of Waitangi Act 1975 to allow the hearing of claims dating back to 1840.

The Board entered into preliminary discussions with the Crown in 1989, and in 1997 the Crown agreed to negotiate Te Arawa's lakes claims separately from their other historical claims.

The mandate of the Board was recognised by the Crown in December 1998, and terms of negotiation specifying the scope, objectives and general procedures for negotiations were signed by the negotiators appointed to represent the Board in March 1999.

The Board and the Crown held negotiations between 1999 and 2001. In May 2001, the Crown made an offer to the Board in settlement of Te Arawa's historical Treaty grievances in relation to the Te Arawa Lakes. This offer was rejected by the Board.

The Minister of Māori Affairs advised Te Arawa on 29 May 2001 that the Minister would like to negotiate a possible capitalisation of the annuity paid in relation to the Te Arawa Lakes, and resolution of any remaining annuity issues.

New terms of negotiation were signed by the Crown and the Board in July 2001 (the **Terms of Negotiation**). At this time the parties agreed that the settlement would address both Te Arawa's historical claims and any remaining annuity issues. In December 2003 the Crown made a second offer to the Board in settlement of Te Arawa's historical Treaty grievances in relation to the Te Arawa Lakes and any remaining annuity issues. The Board accepted this offer, in principle, thereby constituting an agreement in principle (the **Agreement in Principle**), and the Crown and the Board proceeded drafting a deed of settlement.

A deed of settlement for initialling by the Board was achieved in [ ] 2004, and was then put to all registered Members of Te Arawa eligible to vote for ratification. On [ ] 2004, [ ]% of Members of Te Arawa who took part voted to accept this Deed of Settlement.

The Crown having acknowledged that Te Arawa has suffered injustices and breaches of the Treaty of Waitangi and its principles in relation to the Te Arawa Lakes, now wishes to enter into a deed of settlement recording the matters required to give effect to a final settlement of all Te Arawa's claims in relation to the Te Arawa Lakes. Te Arawa, having agreed to the redress, also wishes to enter into a deed of settlement.

Accordingly, Te Arawa and the Crown wish, in a spirit of co-operation and compromise, to enter in good faith into this Deed providing for the settlement of Te Arawa's historical claims and the remaining annuity issues in relation to the Te Arawa Lakes.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**1: TE ARAWA AND THE TE ARAWA LAKES HISTORICAL CLAIMS AND REMAINING ANNUITY ISSUES****INTRODUCTION**

- 1.1 This Deed records the agreement of Te Arawa and the Crown to settle the Te Arawa Lakes Historical Claims and the Te Arawa Lakes Remaining Annuity Issues.
- 1.2 This Part sets out definitions of the Crown, Te Arawa, the Te Arawa Lakes, the Te Arawa Lakes Historical Claims, the Te Arawa Lakes Remaining Annuity Issues and certain related terms. Those definitions apply in this Deed unless this Deed or the context requires otherwise.
- 1.3 Definitions of other terms used in this Deed are set out in:
- 1.3.1 **clauses 3.4, 3.5, 9.1, 10.1, 11.1, 11.2.1, 11.10, 11.12, 11.13, 11.18, 11.19, 12.2, 13.18 and 15.3;** and
- 1.3.2 **Part 16.**

**THE CROWN**

- 1.4 The **Crown** has the meaning given to it in section 2(1) of the Public Finance Act, which (at the Date of this Deed) provides that the Crown:
- 1.4.1 means Her Majesty the Queen in right of New Zealand; and
- 1.4.2 includes all Ministers of the Crown and all Departments; but
- 1.4.3 does not include:
- (a) an Office of Parliament;
  - (b) a Crown entity; or
  - (c) a State Enterprise named in Schedule 1 to the State-Owned Enterprises Act.

**TE ARAWA AND RELATED TERMS**

- 1.5 **Te Arawa:**
- 1.5.1 means the collective group, composed of individuals and groups referred to in **clause 1.5.2** below;
- 1.5.2 means:
- (a) every individual who is descended from a Te Arawa Ancestor; and

## TE ARAWA LAKES DEED OF SETTLEMENT

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**1: TE ARAWA AND THE TE ARAWA LAKES HISTORICAL CLAIMS AND REMAINING ANNUITY ISSUES**

- (b) every individual who is a member of an iwi, hapū, group, family or whānau referred to in **clause 1.5.3**; and

1.5.3 includes:

- (a) the Iwi and Hapū of Te Arawa; and
- (b) any iwi, hapū, group, family, or whānau composed of individuals referred to in **clause 1.5.2**.

1.6 **Te Arawa Ancestor** means an individual who, at any time after 6 February 1840, exercised Customary Rights in relation to the Te Arawa Lakes by virtue of their being descended from a recognised ancestor of an Iwi or Hapū of Te Arawa.

1.7 For the purposes of **clauses 1.5** and **1.6**, **Iwi and Hapū of Te Arawa** means the iwi and hapū specified in **Attachment 1.1**.

1.8 For the purposes of **clause 1.6**, **Customary Rights** means rights according to Te Arawa tikanga, including:

1.8.1 rights of occupation and use; and

1.8.2 rights in relation to the use of natural or physical resources.

1.9 **Member of Te Arawa** means a person who is referred to in **clause 1.5.2**.

1.10 **Representative Entity** means:

1.10.1 the Governance Entity;

1.10.2 a person appointed as agent for Te Arawa under **clause 3.7**; and

1.10.3 a person (including any trust or trustees) acting for or on behalf of:

- (a) the collective group referred to in **clause 1.5.1**;
- (b) any one or more Members of Te Arawa; and/or
- (c) any one or more of the iwi, hapū, groups, families or whānau referred to in **clauses 1.5.3(a)** and/or **(b)**.

**TE ARAWA LAKES HISTORICAL CLAIMS AND REMAINING ANNUITY ISSUES**

1.11 **Te Arawa Lakes** means Lakes Rotorua, Rotoiti, Rotoehu, Rotomā, Ōkātina, Tikitapu, Ōkareka, Tarawera, Rotomahana, Rerewhakaaitu, Ōkaro (also known as Ngākaro), Ngāhewa, Ngāpourī (also known as Ōpourī) and Tutaeinanga, and:

**TE ARAWA LAKES DEED OF SETTLEMENT****1: TE ARAWA AND THE TE ARAWA LAKES HISTORICAL CLAIMS AND REMAINING ANNUITY ISSUES**

1.11.1 includes the water, fisheries and aquatic life in those lakes;

1.11.2 excludes the islands in those lakes, and the land abutting or surrounding those lakes.

1.12 **Te Arawa Lakes Historical Claims** means:

1.12.1 (subject to **clause 1.14**) every claim (whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the Settlement Date) that Te Arawa (or any Representative Entity) had at, or at any time before, the Settlement Date, or may have at any time after the Settlement Date:

(a) that is, or is founded on, a right arising:

(i) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles;

(ii) under legislation;

(iii) at common law (including in relation to aboriginal title or customary law);

(iv) from a fiduciary duty; or

(v) otherwise; and

(b) that arises from or relates to acts or omissions before 21 September 1992:

(i) by or on behalf of the Crown; or

(ii) by or under legislation; and

(c) to the extent that that claim arises from or relates to all or any of the Te Arawa Lakes, the 1922 Arrangements or the Annuity;

1.12.2 every claim to the Waitangi Tribunal to the extent to which **clause 1.12.1** applies to that claim and where that claim relates exclusively to Te Arawa (or a Representative Entity), including Wai 240 (Te Arawa Lakes claim);

1.12.3 every other claim to the Waitangi Tribunal to the extent to which **clause 1.12.1** applies to that claim and so far as that claim relates to Te Arawa (or a Representative Entity), including:

(a) Wai 275 (Tahunaroa and Waitahanui Blocks claim);

(b) Wai 363 (Tuhourangi Taonga Tukuiho claim);

(c) Wai 675 (Lake Okataina and Surrounding Lands claim);

## TE ARAWA LAKES DEED OF SETTLEMENT

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**1: TE ARAWA AND THE TE ARAWA LAKES HISTORICAL CLAIMS AND REMAINING ANNUITY ISSUES**

- (d) Wai 791 (Volcanic Interior Plateau claim);
- (e) Wai 837 (Ngāti Whaoa Rohe claim);
- (f) Wai 911 (Ngāti Tahu and Ngāti Whaoa Lands and Resources claim);
- (g) Wai 918 (Lake Rotorua and Rotorua Airport claim);
- (h) Wai 936 (Ngāti Rangiteaorere Lake Rotorua claim);
- (i) Wai 996 (Ngāti Rangitihī Inland and Coastal Land Blocks claim); and
- (j) Wai 1103 (Ngāti Hinemihi Te Ariki and Punaromia Land claim).

1.13 **Clause 1.12.1** is not limited by **clauses 1.12.2** or **1.12.3**.

1.14 The term **Te Arawa Lakes Historical Claims** does not include the following claims:

- 1.14.1 a claim that a Member of Te Arawa, or an iwi, hapū, group, family or whānau referred to in **clause 1.5.3(a)** and/or **(b)**, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not a Te Arawa Ancestor;
- 1.14.2 any claim that Te Arawa has or may have to the extent that that claim does not arise from or relate to all or any of the Te Arawa Lakes, the 1922 Arrangements or the Annuity, and therefore (without limitation) does not include any claim relating to:
  - (a) the land abutting or surrounding the Te Arawa Lakes;
  - (b) the islands in those lakes;
  - (c) resources not related to those lakes;
  - (d) Crown acts or omissions not arising from or relating to those lakes; or
  - (e) the Ohau Channel between Lakes Rotorua and Rotoiti;
- 1.14.3 a claim that a Representative Entity may have to the extent that claim is, or is based on, a claim referred to in **clauses 1.14.1** or **1.14.2**.

## TE ARAWA LAKES DEED OF SETTLEMENT

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**1: TE ARAWA AND THE TE ARAWA LAKES HISTORICAL CLAIMS AND REMAINING ANNUITY ISSUES****1.15 Te Arawa Lakes Remaining Annuity Issues:**

1.15.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the Date of this Deed) that Te Arawa (or any Representative Entity) had at, or at any time before, the Date of this Deed, or may have at any time after the Date of this Deed, and that:

- (a) is, or is founded on, a right arising:
  - (i) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles;
  - (ii) under legislation;
  - (iii) at common law (including in relation to aboriginal title or customary law);
  - (iv) from a fiduciary duty; or
  - (v) otherwise; and
- (b) arises from or relates to acts or omissions on or after 21 September 1992:
  - (i) by or on behalf of the Crown; or
  - (ii) by or under legislation; and
- (c) arises from or relates to the Annuity; and

1.15.2 includes any right the Arawa Māori Trust Board would have to receive the Annuity for the period from and including the Date of this Deed.

**1.16 In this Deed:**

1.16.1 **1922 Act** means the Native Land Amendment and Native Land Claims Adjustment Act 1922;

1.16.2 **1922 Agreement** means the agreement entered into by Te Arawa and the Crown in 1922 in relation to the Te Arawa Lakes and given effect, in part, by section 27 of the 1922 Act;

1.16.3 **1922 Arrangements** means the 1922 Agreement and the subsequent implementation of that agreement by the 1922 Act and other measures concerning the Te Arawa Lakes, but excludes any matter in that agreement that relates to Lake Rotokakahi;

1.16.4 **Annuity** means the annuity paid to the Arawa Māori Trust Board under section 4(2) of the Maori Trust Boards Act, originating under the 1922 Arrangements;

TE ARAWA LAKES DEED OF SETTLEMENT

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**1: TE ARAWA AND THE TE ARAWA LAKES HISTORICAL CLAIMS AND REMAINING ANNUITY ISSUES**

1.16.5 **Arawa Māori Trust Board** means the Arawa Maori Trust Board referred to in section 4(1) of the Maori Trust Boards Act.

TE ARAWA LAKES DEED OF SETTLEMENT

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**ATTACHMENT 1.1**

(Clause 1.7)

Ngāti Hinekura;  
Ngāti Hinemihi;  
Ngāti Hinerangi;  
Ngāti Hurunga Te Rangī;  
Ngāti Kahuupoko;  
Ngāti Kārenga;  
Ngāti Kawiti;  
Ngāti Kearoa;  
Ngāti Kereru;  
Ngāti Kuri;  
Ngāti Mākino;  
Ngāti Marukukere;  
Ngāti Moemiti;  
Ngāti Moko;  
Ngāti Ngāranui;  
Ngāti Ngata;  
Ngāti Pāruaharanui;  
Ngāti Pīkiao;  
Ngāti Pūkākī;  
Ngāti Rangīwaho;  
Ngāti Rangīteaorere;  
Ngāti Rangītihi;  
Ngāti Rangīwewehi;  
Ngāti Rehu;  
Ngāti Rereāmanu;  
Ngāti Ririū;  
Ngāti Rongomai;  
Ngāti Taeōtu;  
Ngāti Tahu;  
Ngāti Tamakari;  
Ngāti Tamateatutahi;  
Ngāti Tāōi;  
Ngāti Tarāwhai;  
Ngāti Tāwhakī;  
Ngāti Te Ngākau;  
Ngāti Te Purei;  
Ngāti Te Rangīnuora;  
Ngāti Te Tākinga;  
Ngāti Tu;  
Ngāti Tuara;  
Ngāti Tūheke;  
Ngāti Tūmatawera;  
Ngāti Tūnohopu;  
Ngāti Tūhonoa;  
Ngāti Tura;  
Ngāti Tūtaki-a-Hani;  
Ngāti Tūtaki-a-Koti;  
Ngāti Tūteniu;  
Ngāti Uenukukōpako;  
Ngāti Wahanui;

TE ARAWA LAKES DEED OF SETTLEMENT

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ATTACHMENT 1.1

Ngāti Wāhiao;  
Ngāti Waoku;  
Ngāti Whakahemo;  
Ngāti Whakakeu;  
Ngāti Whakaokorau;  
Ngāti Whakaue;  
Ngāti Whaoa;  
Tapuika;  
Te Roro o Te Rangi;  
Tuhourangi;  
Waitaha.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**2: THE SETTLEMENT****THE SETTLEMENT TO ENHANCE THE ONGOING RELATIONSHIP BETWEEN TE ARAWA AND THE CROWN**

- 2.1 The Settlement of the Te Arawa Lakes Historical Claims and the Te Arawa Lakes Remaining Annuity Issues under this Deed is intended to enhance the ongoing relationship between Te Arawa and the Crown (both in terms of Te Tiriti o Waitangi/the Treaty of Waitangi, its principles and otherwise).

**THE TE ARAWA LAKES HISTORICAL CLAIMS AND REMAINING ANNUITY ISSUES ARE SETTLED**

- 2.2 Te Arawa and the Crown agree that this Deed settles:
- 2.2.1 the Te Arawa Lakes Historical Claims from the Settlement Date; and
  - 2.2.2 the Te Arawa Lakes Remaining Annuity Issues from the Date of this Deed.
- 2.3 Te Arawa releases and discharges the Crown from all obligations and liabilities in respect of:
- 2.3.1 the Te Arawa Lakes Historical Claims from the Settlement Date; and
  - 2.3.2 the Te Arawa Lakes Remaining Annuity Issues from the Date of this Deed.

**THE CROWN IS TO PROVIDE REDRESS**

- 2.4 The Crown must provide the Redress set out in:
- 2.4.1 **Part 8: Acknowledgements and Apology by the Crown;**
  - 2.4.2 **Part 9: Cultural Redress: Lakes Management and Relationships;**
  - 2.4.3 **Part 10: Cultural Redress: Statutory Vesting;**
  - 2.4.4 **Part 11: Other Cultural Redress;** and
  - 2.4.5 **Part 12: Financial Redress and Annuity Redress.**

**REDRESS IS TO BE PROVIDED TO THE GOVERNANCE ENTITY**

- 2.5 The Crown must provide the Redress under **Parts 9, 10 and 11 and clause 12.1** to the Governance Entity to be established by Te Arawa under **clause 3.4** (unless this Deed provides otherwise).

**TE ARAWA LAKES DEED OF SETTLEMENT****2: THE SETTLEMENT****CROWN'S ABILITY TO PROVIDE OTHER CULTURAL REDRESS**

- 2.6 The Parties agree that the provision of the Cultural Redress does not prevent the Crown from doing anything that is consistent with that Cultural Redress, including providing Cultural Redress to a person or persons other than the Governance Entity.
- 2.7 **Clause 2.6** does not constitute an acknowledgement that any other iwi or group has interests in relation to areas over which Cultural Redress is to be provided.

**THE SETTLEMENT DOES NOT AFFECT CERTAIN RIGHTS OR DECISIONS**

- 2.8 Nothing in this Deed:
- 2.8.1 extinguishes any aboriginal title, or customary rights, that Te Arawa may have;
  - 2.8.2 is, or implies, an acknowledgement by the Crown that any aboriginal title, or any customary right, exists;
  - 2.8.3 (except as expressly provided in or under this Deed) affects any right that Te Arawa, or the Crown, may have including any right arising:
    - (a) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles;
    - (b) under legislation;
    - (c) at common law (including in relation to aboriginal title or customary law);
    - (d) from a fiduciary duty; or
    - (e) otherwise; or
  - 2.8.4 is intended to affect:
    - (a) the deed of settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims;
    - (b) the Treaty of Waitangi (Fisheries Claims) Settlement Act; or
    - (c) the Maori Fisheries Act or the operation of, or distributions under, the Te Wai Maori Trust established under section 92 of that Act.

- 2.9 **Clause 2.8** does not limit **clauses 2.2** or **2.3**.

**ACKNOWLEDGEMENTS CONCERNING THE SETTLEMENT AND ITS FINALITY**

- 2.10 Te Arawa acknowledges that:
- 2.10.1 the Crown has acted honourably and reasonably in relation to the Settlement;

**TE ARAWA LAKES DEED OF SETTLEMENT****2: THE SETTLEMENT**

2.10.2 it is intended that the Settlement, and the rights of Te Arawa, the Arawa Māori Trust Board and the Governance Entity, under this Deed:

- (a) will be for the benefit of Te Arawa; and
- (b) may be for the benefit of particular individuals or a particular whānau, hapū or group of individuals if the Arawa Māori Trust Board and/or the Governance Entity (as appropriate) so determines in accordance with its procedures; and

2.10.3 the Settlement and the obligations of Te Arawa, the Arawa Māori Trust Board and the Governance Entity under this Deed will be binding on Te Arawa and any Representative Entity.

2.11 Te Arawa acknowledges and agrees (and the Settlement Legislation will provide) that:

2.11.1 the Settlement is final:

- (a) in respect of the Te Arawa Lakes Historical Claims, with effect from the Settlement Date; and
- (b) in respect of the Te Arawa Lakes Remaining Annuity Issues, with effect from the Date of this Deed;

2.11.2 the Crown is released and discharged from all obligations and liabilities:

- (a) in respect of the Te Arawa Lakes Historical Claims, with effect from the Settlement Date; and
- (b) in respect of the Te Arawa Lakes Remaining Annuity Issues, with effect from the Date of this Deed;

2.11.3 the Courts, the Waitangi Tribunal and any other judicial body or tribunal do not have jurisdiction (including the jurisdiction to inquire into or to make a finding or recommendation) in respect of:

- (a) this Deed;
- (b) the Settlement Legislation;
- (c) the Te Arawa Lakes Historical Claims;
- (d) the Te Arawa Lakes Remaining Annuity Issues; and
- (e) the Redress,

(but that jurisdiction is not removed in respect of the interpretation and implementation of this Deed or the Settlement Legislation).

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**2: THE SETTLEMENT**

- 2.12 Te Arawa acknowledges and agrees that the Crown may propose for introduction legislation to repeal section 4(2) of the Maori Trust Boards Act with effect from the Date of this Deed.
- 2.13 The Parties agree that if the Arawa Māori Trust Board resolves to dissolve itself, the Crown may propose for introduction legislation to repeal sections 4(1) and 4(3) of the Maori Trust Boards Act.

**ACKNOWLEDGEMENTS CONCERNING THE SETTLEMENT AND THE REDRESS**

- 2.14 Te Arawa and the Crown acknowledge that:
- 2.14.1 the Settlement represents the result of extended negotiations conducted in good faith and in a spirit of co-operation and compromise;
- 2.14.2 it is difficult to assess the loss and prejudice suffered by Te Arawa as a result of the events on which the Te Arawa Lakes Historical Claims and the Te Arawa Lakes Remaining Annuity Issues are or could be based;
- 2.14.3 it is not possible to fully compensate Te Arawa for all loss and prejudice so suffered;
- 2.14.4 the foregoing of full compensation is intended by Te Arawa to contribute to the development of New Zealand; and
- 2.14.5 taking all matters into consideration (some of which are specified in this clause), the Settlement is fair in the circumstances.

## TE ARAWA LAKES DEED OF SETTLEMENT

**3: RATIFICATION OF THE SETTLEMENT AND THE GOVERNANCE ENTITY AND APPOINTMENT OF AGENT****THIS DEED HAS BEEN RATIFIED**

3.1 Te Arawa confirms that:

3.1.1 this Deed was ratified by Te Arawa by virtue of [ ]; and

3.1.2 the Arawa Māori Trust Board has a mandate from Te Arawa to execute this Deed on behalf of Te Arawa by virtue of [ ].

3.2 The Crown confirms that it is satisfied with:

3.2.1 the ratification of this Deed by Te Arawa; and

3.2.2 the mandate of the Arawa Māori Trust Board from Te Arawa to execute this Deed on behalf of Te Arawa.

**REDRESS AGREED TO BY CABINET**

3.3 The Crown confirms that the Redress to be provided under this Deed was agreed to by Cabinet on 11 October 2004.

**GOVERNANCE ENTITY TO BE ESTABLISHED AND RATIFIED**

3.4 Te Arawa must establish an Entity (the **Governance Entity**) to receive the Redress to be provided by the Crown to the Governance Entity under **Parts 9, 10 and 11** and **clause 12.1**, which the Crown is satisfied (and has Notified Te Arawa that it is satisfied):

3.4.1 will:

(a) be an appropriate Entity to receive that Redress; and

(b) have a structure that provides for:

(i) representation of Members of Te Arawa;

(ii) transparent decision-making, and dispute resolution, processes; and

(iii) accountability to Members of Te Arawa; and

3.4.2 has been ratified by Te Arawa (by a ratification process agreed in writing by Te Arawa and the Crown) as an appropriate Entity to receive the Redress that is to be provided to it under this Deed.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**3: RATIFICATION OF THE SETTLEMENT AND THE GOVERNANCE ENTITY AND APPOINTMENT OF AGENT****GOVERNANCE ENTITY TO SIGN DEED OF COVENANT**

- 3.5 Te Arawa must, once the Governance Entity has been established in accordance with **clause 3.4**, ensure that the Governance Entity signs a deed of covenant as set out in **Schedule 3** (the **Deed of Covenant**) under which the Governance Entity agrees (among other matters) to comply with all the obligations of the Governance Entity under this Deed.

**TIME LIMITS**

- 3.6 Te Arawa must ensure that, by no later than nine months after the Date of this Deed, the Governance Entity:
- 3.6.1 is established in accordance with **clause 3.4**; and
- 3.6.2 has signed the Deed of Covenant.

**APPOINTMENT OF AGENT FOR TE ARAWA**

- 3.7 Until the Governance Entity signs the Deed of Covenant, Te Arawa appoints the Arawa Māori Trust Board as the agent for Te Arawa to:
- 3.7.1 agree with the Crown a process for the establishment and ratification of a Governance Entity that is satisfactory to the Crown under **clause 3.4**; and
- 3.7.2 take any of the following actions on behalf of Te Arawa under this Deed:
- (a) give and receive any Notice or other communication;
  - (b) exercise any right or power;
  - (c) waive any provision;
  - (d) agree to any amendment to this Deed.

**GOVERNANCE ENTITY TO REPLACE AGENT**

- 3.8 Once the Governance Entity signs the Deed of Covenant:
- 3.8.1 the appointment of the agent for Te Arawa under **clause 3.7** terminates; and
- 3.8.2 the actions described in **clause 3.7.2** may be taken by the Governance Entity on behalf of Te Arawa.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**4: SETTLEMENT LEGISLATION****INTRODUCTION OF SETTLEMENT LEGISLATION**

- 4.1 The Crown must (subject to **clause 4.2**) propose Settlement Legislation for introduction within six months after:
- 4.1.1 the Crown has Notified Te Arawa that it is satisfied that the Governance Entity has been:
- (a) established in accordance with the requirements of **clause 3.4.1**; and
  - (b) ratified by Te Arawa in accordance with **clause 3.4.2**; and
- 4.1.2 the Governance Entity has signed the Deed of Covenant.

**CONTENT OF THE SETTLEMENT LEGISLATION**

- 4.2 The Settlement Legislation proposed by the Crown for introduction:
- 4.2.1 must include all matters required by this Deed to be included in the Settlement Legislation;
- 4.2.2 may include any other matter required to:
- (a) give effect to this Deed;
  - (b) achieve certainty in respect of the obligations undertaken by a Party; or
  - (c) achieve a final and durable Settlement; and
- 4.2.3 must be in a form that:
- (a) the Governance Entity has Notified the Crown is satisfactory to Te Arawa; and
  - (b) is satisfactory to the Crown.

**TE ARAWA TO SUPPORT SETTLEMENT AND OTHER LEGISLATION**

- 4.3 Te Arawa and the Governance Entity must support the passage through Parliament of:
- 4.3.1 the Settlement Legislation;
- 4.3.2 any legislation introduced under **clause 5.2.2** to terminate proceedings in relation to any:
- (a) Te Arawa Lakes Historical Claims; or

TE ARAWA LAKES DEED OF SETTLEMENT

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**4: SETTLEMENT LEGISLATION**

(b) Te Arawa Lakes Remaining Annuity Issues; and

4.3.3 any legislation introduced under **clauses 2.12** and **2.13**.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**5: OTHER ACTIONS TO COMPLETE SETTLEMENT****DISCONTINUANCE OF PROCEEDINGS**

- 5.1 The Governance Entity must use its best endeavours to, by or on the Settlement Date, deliver to the Crown notices of discontinuance:
- 5.1.1 of every proceeding to the extent that it relates to:
- (a) Te Arawa Lakes Historical Claims; or
  - (b) Te Arawa Lakes Remaining Annuity Issues,
- that has not already been discontinued; and
- 5.1.2 signed by the applicant or plaintiff to those proceedings (or duly completed by the solicitor for the applicant or plaintiff).
- 5.2 If the Governance Entity does not deliver to the Crown by or on the Settlement Date all notices of discontinuance required by **clause 5.1**:
- 5.2.1 the Governance Entity must continue to use its best endeavours to deliver those notices of discontinuance to the Crown; and
- 5.2.2 the Crown may introduce legislation to terminate the proceedings, provided only that that legislation has first been provided to the Governance Entity.

**WAITANGI TRIBUNAL**

- 5.3 The Crown may, on or after the Settlement Date:
- 5.3.1 advise the Waitangi Tribunal in writing of the Settlement and its terms; and
- 5.3.2 request that the Waitangi Tribunal amend its register, and adapt its procedures, to reflect the Settlement.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**6: SUMMARY OF REDRESS**

- 6.1 This Part sets out a summary of the Redress to be provided by the Crown, if this Deed becomes unconditional. The Redress is provided for in:
- 6.1.1 Part 8: Acknowledgements and Apology by the Crown;
  - 6.1.2 Part 9: Cultural Redress: Lakes Management and Relationships;
  - 6.1.3 Part 10: Cultural Redress: Statutory Vesting;
  - 6.1.4 Part 11: Other Cultural Redress; and
  - 6.1.5 clause 12.1 of Part 12: Financial Redress and Annuity Redress.
- 6.2 This Part also summarises the Annuity Redress to be provided by the Crown on the Date of this Deed, whether or not this Deed becomes unconditional, under **clauses 12.2 to 12.6** of Part 12: Financial Redress and Annuity Redress.
- 6.3 This Part:
- 6.3.1 is not an operative part of this Deed; and
  - 6.3.2 does not affect the interpretation of any other provisions of this Deed.
- 6.4 The Redress includes:

**ACKNOWLEDGEMENTS AND APOLOGY**

- 6.4.1 acknowledgements and apology by the Crown;

**LAKES MANAGEMENT AND RELATIONSHIP REDRESS**

- 6.4.2 Cultural Redress relating to relationships, including:

**Rotorua Lakes Strategy Group**

- (a) the establishment of the Rotorua Lakes Strategy Group with the purpose of contributing to the promotion of the sustainable management of the Rotorua Lakes for the use and enjoyment of present and future generations, while recognising and providing for the traditional relationship of Te Arawa with their ancestral lakes;

**Protocols**

- (b) the issue of protocols to the Governance Entity by each of the following Ministers:

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**6: SUMMARY OF REDRESS**

- (i) the Minister of Conservation;
- (ii) the Minister of Fisheries;
- (iii) the Minister for Arts, Culture and Heritage; and
- (iv) the Minister for the Environment;

**Promotion of relationships with other agencies**

- (c) the provision of letters from the Minister for Conservation to the Bay of Plenty Conservation Board and the Eastern Regional Fish and Game Council, the Minister for Crown Research Institutes to the National Institute of Atmospheric Research, and the Minister of Transport to Transit New Zealand to encourage a relationship between those agencies and Te Arawa;

**CULTURAL REDRESS**

- 6.4.3 further Cultural Redress, including:

**Statutory Vesting of Te Arawa Lakebeds**

- (a) the vesting of the fee simple estate in each Te Arawa Lakebed in the Governance Entity, along with certain benefits, subject to any Encumbrances and certain statutory restrictions;

**Relationship agreement**

- (b) the entry by the Crown into a relationship agreement with the Governance Entity to record the terms on which each Party will exercise its respective rights as owner of the Te Arawa Lakebeds or the Crown Stratum in relation to the other Party and (in some cases) third parties;

**OTHER CULTURAL REDRESS**

- 6.4.4 other Cultural Redress, including:

**Statutory Acknowledgement**

- (a) provision for a Statutory Acknowledgement by the Crown of Te Arawa's cultural, spiritual, historical and traditional association with the Crown Stratum;

**Fishing licences**

- (b) the payment of \$400,000 to capitalise the ongoing annual cost of purchasing 200 fishing licences for the Te Arawa Lakes from the Eastern Regional Fish and Game Council;

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**6: SUMMARY OF REDRESS****Fisheries redress**

- (c) provision for the Governance Entity to manage the customary non-commercial fishing of certain species in the Te Arawa Lakes;

**Amendment of place names**

- (d) provision for the official amendment of various place names relating to the Te Arawa Lakes;

**Access to paru and other indigenous plants**

- (e) the provision of letters to the Bay of Plenty Regional Council and Waikato Regional Council requesting those Councils to consider amending their relevant plans to allow Te Arawa to take paru and indigenous plants from the Te Arawa Lakes without being required to obtain a Resource Consent;

**FINANCIAL REDRESS**

- 6.4.5 Financial Redress comprising the payment of \$2.7 million on the Settlement Date;

**ANNUITY REDRESS**

- 6.4.6 Annuity Redress comprising the payment of \$7.3 million on the Date of this Deed, in accordance with the Escrow Agreement.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**7: HISTORICAL ACCOUNT****INTRODUCTION**

This Part sets out an historical account of the events upon which the Crown's acknowledgements are based.

**TE ARAWA'S HISTORICAL RELATIONSHIP WITH THE LAKES**

- 7.1 At 1840, Lakes Rotoehu, Rotomā, Rotoiti, Rotorua, Ōkātina, Ōkareka, Rerewhakaaitu, Tarawera, Rotomahana, Tikitapu, Ngāhewa, Tutaeinanga, Ngāpouri, and Ōkaro were rich in resources. These included extensive indigenous fauna and flora that provided food, shelter, and economic resources for Te Arawa as well as the means to provide for manuhiri (visitors) and others in the district. The lakes were also primary transport routes for the area. To Te Arawa, the lakes were taonga, and their relationship to the lakes and environs was and continues to be the foundation of their identity, cultural integrity, wairua, tikanga and kawa.
- 7.2 After the signing of the Treaty of Waitangi in 1840, the Crown and settlers increasingly wished to purchase land in the lakes area, however, many Te Arawa did not wish to sell, and by 1880 little land had been alienated. In response to the growing tourism to the area, Te Arawa set up commercial boating operations and other tourist ventures on the lakes. In this period, Te Arawa played a major role in the developing tourism industry and continued to exercise significant control over access and transit activities such as travel to many scenic attractions including the Pink and White Terraces, and other activities including wild game hunting and fishing on the lakes.

**THE FENTON AGREEMENT AND THE THERMAL SPRINGS DISTRICT ACT 1881**

- 7.3 In November 1880 the Crown and certain Te Arawa chiefs signed the 'Fenton agreement' which among other things, enabled the Crown to establish a township at Rotorua to meet the needs of the settlers and the growing tourism industry. Te Arawa understood that they would derive significant benefits from the further development of Rotorua and the tourism industry.
- 7.4 The Thermal Springs District Act 1881 was enacted to implement the Fenton agreement. The Act stated that, "...it would be advantageous to the colony and beneficial to the Maori owners of land in which natural mineral springs and thermal waters exist, that such localities should be opened to colonisation and made available for settlement...". Te Arawa agreed for the Crown to make arrangements to open the land for colonisation by settlers, whereby sales of land would only be possible to the Crown.
- 7.5 The Act also permitted the Crown to, "...treat and agree with the Native proprietors for the use and enjoyment by the public of all mineral or other springs, lakes, rivers and waters...". It stated that, "...the Governor also may, with the consent of the Native proprietors...manage and control the use of all ...lakes...". Te Arawa regard these provisions as acknowledgement of their ownership of the lakes and note that consent was required from Native proprietors in the management of the lakes. The Act became known to Te Arawa as their "Magna Carta" and they looked to the Act as a means of protection against alienation of their resources. Ngāti Whakaue (signatories to the Fenton agreement) did not protest the introduction of the Act, as they believed it gave effect to the Fenton

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**7: HISTORICAL ACCOUNT**

agreement and preserved their rights, allowing the Crown a degree of control subject to their consent. However, later in the 1908 Stout-Ngata Commission, Ngāti Whakaue expressed concerns that the Crown was not fulfilling its obligations regarding the lakes.

**INTRODUCTION AND IMPACT OF FOREIGN FISH SPECIES**

- 7.6 Trout and other foreign fish species were introduced into the Te Arawa Lakes from the 1870s onwards by acclimatisation societies, local bodies and government departments. While the evidence is inconclusive, Te Arawa consider that they were not consulted on the introduction of trout or other species. The introduced species had a devastating effect on the native species, some of which became scarce while others became extinct. Food and economic means, which the lakes provided and upon which Te Arawa depended, diminished as a result of the introduction of foreign fish species.
- 7.7 Te Arawa increasingly relied upon the introduced species as their traditional fisheries were being seriously depleted. However, in 1888, the Crown introduced a fishing licence regime whereby Te Arawa were obliged to pay for licences to take trout and certain other introduced species from the lakes. This restricted the ability of Te Arawa to fish in a customary manner (such as with nets), restricted their food supplies and imposed a financial burden. Despite Te Arawa's protests, the Crown permitted the release of more trout and other foreign species. Together with the fishing licence regime, this had a severe impact on Te Arawa and resulted at times in hardship. Te Arawa state that their mana was deeply affected by the decline in native species and their inability to sufficiently access their traditional food source undermined their ability to trade economically and provide hospitality and koha.
- 7.8 Between 1896 and 1905, Te Arawa presented a number of petitions to the Crown, including objections to the ongoing propagation of trout and to the introduction and operation of the fishing licence regime and requesting that they be exempt from it. A number of Te Arawa were fined for fishing without a licence during this time and those who did not pay the fines were imprisoned. In 1907 Reverend Manihera Tumatahi was fined £5 for fishing without a licence. Around this time there was also a dispute about a leading Te Arawa chief's objection to the imposition of fees for the commercial use of the lakes and wharves.
- 7.9 In 1906 Premier Seddon indicated to Te Arawa that the Government was considering granting a certain number of fishing licences for Te Arawa at reduced rates. When this was not forthcoming, Te Arawa made further representations to the Government in late 1907 requesting a reduction or the abolition of licence fees for Māori.
- 7.10 In 1908 Ngāti Whakaue protested to the Stout-Ngata Native Land Commission regarding several issues, including both the impact of foreign fish and the fishing licence regime. They stated that the lakes and waters were referred to in the Thermal Springs District Act and, generally, the Treaty of Waitangi. They argued that as foreign fish had supplanted the native species in lakes they still regarded as Native domain, they had the right to take the new fish for food without heavy licence fees. The Commission referred the grievance to the Crown stating that "...the Maoris have suffered a grievous loss by the destruction of the indigenous fish..." and recommending that the Crown grant trout licences to the heads of Māori families in the district free of charge.
- 7.11 The Government decided to legislate to address the issues Te Arawa had raised, over a number of years, in regard to the impact of the depletion of indigenous fish on their

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**7: HISTORICAL ACCOUNT**

traditional food supply, the introduction of fishing licence fees and the resulting hardship experienced by some Te Arawa. The resulting legislation, the Fisheries Amendment Act 1908, provided for 20 licences at a fee of not more than 5 shillings to be issued to Te Arawa. The licences were only to be used to fish for trout for the consumption of the licence holder and his family. Premier Ward stated at the second reading of the Bill that there were a number of Māori in the Thermal-Springs District whose condition required that natural food should be provided to them.

- 7.12 The licence fee was set at 1 shilling. The Arawa District Council was responsible for recommending the allocation of the licences. In 1913 the Council noted, in the context of a request to provide licences to people outside its area, that each year it had more applications for licences from destitute Māori than it could supply.

**THE NATIVE LAND ACT 1909**

- 7.13 Following these challenges to their customary rights and their protests and petitions to the Crown, in April 1909 Te Arawa resolved to clarify ownership of the lakes in the courts. While Te Arawa was preparing their case, the Crown introduced the Native Land Bill in late 1909. Te Arawa became aware that certain provisions of that Bill appeared to enable the Crown to stop the courts from investigating Te Arawa's rights to the lakes. Under section 84 of the Native Land Act 1909, Māori customary land was not enforceable against the Crown in any proceeding; under section 85 of the Act, any land proclaimed Crown land was to be considered so, and any argument that customary title had not been extinguished could not stand up in court; under section 87 customary title to land was extinguished if the Crown had been in possession of the land for 10 years or more; and under section 100 the Crown could prohibit the Native Land Court from investigating customary title. Section 100 originated from the Native Land Act 1862 and was repealed in 1913.
- 7.14 Te Arawa protested to the government on the basis that the proposed Act could be used to deny them the opportunity to have the Native Land Court investigate their claims of ownership over the lakes. In response to Te Arawa's concern, the Crown undertook not to utilise certain sections of the Act provided that Te Arawa sought no more than a declaration as to their right to pursue a claim to the lakes in the Native Land Court, however, the Crown reserved its position on whether it would allow proceedings that would culminate in the issue of a freehold title to Te Arawa.
- 7.15 In December 1909 Te Arawa, through two initial cases brought by Tamihana Korokai and Tieri te Tikao, filed proceedings in the Supreme Court, which sought to clarify Te Arawa's right to pursue their claim to the lakes. Given the significance of the issue, the case was removed into the Court of Appeal. The 1912 Court decision upheld Te Arawa's right to have their claims to ownership investigated by the Native Land Court, as it was the court specifically constituted to investigate title to customary lands. The Court found that the mere assertion by the Solicitor General that the Crown owned the lakes was insufficient and that the Crown would have to prove its title.
- 7.16 Te Arawa filed an application with the Native Land Court for an investigation into the title of the lakes in 1913 but it was five years before the case was heard.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**7: HISTORICAL ACCOUNT****DELAYS IN THE NATIVE LAND COURT HEARINGS**

- 7.17 An initial reason for the Native Land Court not being able to investigate Te Arawa's claim immediately was the Crown's deliberate delay in providing the necessary survey plan. The Crown wanted the Native Land Court to first determine whether Māori had exclusive proprietary rights or merely rights of fishing and navigation and therefore whether the Court could make a freehold order.
- 7.18 In 1914 Prime Minister Massey instructed that a plan be prepared so that a hearing for Te Arawa's claim could proceed. At the outbreak of war in 1914, Te Arawa as part of their contribution to the war effort, decided not to press ahead with the presentation of their claim at that stage.
- 7.19 The issue of the Court considering the preliminary question of whether it could issue a freehold title in relation to the lakes was taken up again in 1917. The Court was not able to convene a full bench to consider the issue and following representations from Te Arawa's counsel, Mr Skerrett KC, it decided in November 1917 to proceed by hearing Te Arawa's evidence on its claims to the lakes.
- 7.20 Following this, the Crown deliberately frustrated Te Arawa's preparation of their case by obstructing access to public maps for approximately four months. The case was also delayed by Te Arawa's counsel, Fred Earl, being unavailable to attend on some proposed dates. A subsequent delay in progressing the claim was occasioned when, at the request of the Crown, Earl extended his chairmanship of the Military Services Board for a further term.
- 7.21 Finally, in October 1918, the Native Land Court began its investigation into Te Arawa's claim to Lakes Rotorua and Rotoiti. Te Arawa argued that their title was confirmed by the Treaty of Waitangi, that ownership did not pass to the Crown under the Treaty and had not subsequently passed to the Crown. Te Arawa also argued that The Thermal-Springs Districts Act 1881 recognised their title to the lakes.
- 7.22 After several weeks of hearing part of Te Arawa's evidence, the Native Land Court adjourned the case to the beginning of December 1918. Before the case was reconvened, the presiding judge died. During 1919 the case was not reconvened mainly due to the unavailability of a replacement judge.

**NEGOTIATIONS TO THE 1922 AGREEMENT**

- 7.23 In early May 1920, on the eve of the case being resumed, the Crown approached Te Arawa with the view of negotiating an out of court settlement of their claim. At the time the Crown was concerned that the Native Land Court may find that Te Arawa owned the lakebed of the lakes and that freehold orders would be made in favour of Te Arawa. Te Arawa agreed to enter into negotiations and the case was further adjourned. The costs associated with progressing Te Arawa's claim to the lakes in the courts between 1909 and 1918 were expressed by Te Arawa as a concern at this time. Te Arawa consider that this was one of several factors in deciding to enter negotiations in 1920.
- 7.24 During the negotiations, the question of who owned the lakes was keenly debated. The Crown stated that it was concerned to preserve public access to the lakes, and wanted a term of the settlement to be that the lakes were deemed to belong to the Crown. The

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**7: HISTORICAL ACCOUNT**

Crown also insisted upon a Te Arawa wide settlement and rejected calls by several groups for individual hapū settlements. The Crown warned those groups who declined to enter into a Te Arawa wide settlement that it had 'deep pockets' and would continue to oppose their claim should they continue with their case in the courts.

- 7.25 During the negotiations, Te Arawa reiterated that they owned the lakes and that they had never given up that ownership.
- 7.26 In May 1920 Te Arawa proposed that if the Crown would acknowledge that Te Arawa owned the freehold title to the lakes, Te Arawa would agree to an extinguishment of their rights on the following terms:
- 7.26.1 protection of sites of importance;
  - 7.26.2 establishment and funding of certain educational, health, and cultural establishments;
  - 7.26.3 provision of loans for housing;
  - 7.26.4 payment of a sum of £30,000;
  - 7.26.5 increase of the number of trout fishing licences;
  - 7.26.6 preservation of customary fishing rights; and
  - 7.26.7 reimbursement of Te Arawa's legal fees in pressing their claim.
- 7.27 In the subsequent negotiations, the Crown refused ongoing efforts by some groups for individual hapū settlements. As a result Te Arawa sought to forge a consensus amongst its hapū as to a basis for settlement. By October 1921, Te Arawa then sought a settlement on the following terms:
- 7.27.1 payment of a sum of £120,000;
  - 7.27.2 establishment of a Te Arawa Board to administer the income of the fund;
  - 7.27.3 allocation of a portion of the income from the fund to any hapū that was dissatisfied with the administration of the fund; and
  - 7.27.4 preservation of existing customary rights of fishing and navigation.
- 7.28 In early March 1922, the Crown advised Te Arawa that because of the recession it was unable to afford the proposed settlement and instead offered to negotiate an annuity.
- 7.29 The Crown outlined three methods for proceeding with the matter: Te Arawa could return to the Native Land Court to investigate their claims to the lake beds, Te Arawa could settle directly with the Crown or, in response to Te Arawa's other grievances relating to unfulfilled promises, the Crown's administration of Rotorua Township under the terms of the Fenton Agreement and other matters, the Crown offered a Royal Commission of Inquiry. The

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**TE ARAWA LAKES DEED OF SETTLEMENT**


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**7: HISTORICAL ACCOUNT**

Crown refused Te Arawa's request that the Inquiry be allowed to investigate their claim to the lakes and stated that it would limit the terms of reference of the Commission of Inquiry so that Te Arawa's ownership rights could not be considered.

7.30 Given the risks Te Arawa saw in returning to the Native Land Court (not being granted title, or if title was granted the Crown continuing to appeal the decision or oust the jurisdiction of the courts), and the limited terms of reference of the offered Commission of Inquiry, Te Arawa in accepting the Crown's offer, elected to negotiate the proffered annuity. In electing to maintain negotiations when the Crown was in some financial strait, Te Arawa told the Crown that "the annuity should be somewhat elastic in amount, and that when times improve it might be increased proportionately". Fred Earl, counsel for Te Arawa, Apirana Ngata, local Member of Parliament, and R. Levin were negotiators for Te Arawa.

7.31 On 24 March 1922, Te Arawa and the Crown agreed to a settlement on the following terms:

"1. ...the Crown admits the rights of the Arawas to their ancient fishing rights and the burial reserves in all the Lakes, and the Arawas admit that the fee simple of the Lakes is vested in the Crown.

2. With respect to the lake known as the "Green Lake"- Rotokakahi, a special Board...be appointed...for the control of the surroundings of that Lake, the island to be one of the burial places.

3. ...40 instead of 20 licences to fish for trout in the Lakes at a nominal fee.

4. With respect to the indigenous fish...no trading in such fish shall at any time be permitted.

5. The Civil List Act be amended to add £4,000 to the present £7,000 for native purposes, and to appropriate £2,000 of the £7,000 to the Arawas; and the £6,000 so provided to be paid annually to a Board to be established for the purposes of benefit to the Arawa tribe...With regard to the expenditure already incurred by the Arawas in litigation in the Lakes claims...this has been considerable...a payment limited to £2,000 is proposed...".

7.32 There was no provision in the agreement for the annuity to be reviewed.

7.33 The agreement was formalised in the Native Land Amendment and Native Land Claims Adjustment Act 1922. The 1922 Act declared the lakebeds to be the property of the Crown. It gave the Governor-General the power to reserve any portion of the bed of any of the lakes or any Crown lands on the border of the lakes for the use of Te Arawa and the ability to vest the management and control of those lands in trustees. Section 27 of the Act established the Arawa District Trust Board. The lakes covered by the 1922 Act were: Rotoehu, Rotomā, Rotoiti, Rotorua, Ōkātaina, Ōkareka, Rerewhakaaitu, Tarawera, Rotomahana, Tikitapu (the Blue Lake), Ngāhewa, Tutaeinanga, Ngāpouri, and Ōkaro.

7.34 Following the agreement, there was still some measure of opposition to the terms of the settlement. Some opponents also still preferred hapū settlements.

**ESTABLISHMENT OF THE TE ARAWA TRUST BOARD**

7.35 The 'Arawa District Trust Board' met for the first time on 27 March 1924. The Trust Board's fifteen members represented Te Arawa hapū with interests in the lakes. The Trust Board

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**7: HISTORICAL ACCOUNT**

divided into committees to address Te Arawa wide issues such as water supplies, housing and welfare.

**ECONOMIC HARDSHIP**

- 7.36 In December 1931, the Trust Board resolved to gift 8% of its £6000 annuity for the next three years to the Crown because of the Depression. A letter of thanks was received from the Government on 13 February 1932. During the Second World War, Te Arawa again gifted a proportion of its annuity to the Crown as part of its contribution to the war effort.
- 7.37 Despite ongoing inflation, the Crown failed to review the annuity payments. Consequently, the material value of the annuity diminished over time to the point where it did not make a significant financial contribution to the affairs of the Trust Board. In 1973, the Chairman of the Trust Board asked the Minister of Māori Affairs to review the annuity because of the impact of inflation. The Crown raised the Board's annuity from \$12,000 to \$18,000 in 1977.
- 7.38 In 1989 a Crown commissioned report on the affairs of the Arawa Māori Trust Board found that it was inequitable that the annuity had not been inflation adjusted.

**ENVIRONMENTAL DEGRADATION OF THE LAKES**

- 7.39 Prior to and after the 1922 Agreement the Crown and, through legislation, local government assumed responsibility for regulation of activities on the lakes and lakebeds. Throughout the twentieth century the Crown and local authorities assumed increasing responsibility for discharges impacting upon the lakes.
- 7.40 From the late nineteenth century native vegetation around the edges of Lakes Rotorua and Rotoiti was milled for timber and cleared for farming, and later septic tanks were installed. These developments resulted in an increased nutrient load flowing from the catchments into the lakes. Excess nitrogen and phosphorous led to the growth of blue-green algae in the lakes.
- 7.41 Te Arawa state that the environmental degradation of the lakes has affected the mana and wairua of the lakes to Te Arawa.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**8: ACKNOWLEDGEMENTS AND APOLOGY BY THE CROWN****ACKNOWLEDGEMENTS**

- 8.1 The Crown recognises that Te Arawa value the Te Arawa Lakes and the lakes' resources as taonga. The Crown acknowledges the spiritual, cultural, economic and traditional importance to Te Arawa of the lakes and lakes' resources.
- 8.2 The Crown acknowledges that:
- 8.2.1 the introduction of exotic fish species significantly depleted the indigenous species upon which Te Arawa depended for food, hospitality, trade and koha;
  - 8.2.2 Te Arawa petitioned the Crown for several years concerning the depletion of the indigenous species and access to the new species;
  - 8.2.3 some Te Arawa were prosecuted for fishing without a licence in the lakes during this time; and
  - 8.2.4 its failure to legislate for a sufficient number of licences for Te Arawa in 1908 (when it promoted legislation to address the problem of hardship) was in breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 8.3 The Crown acknowledges that its deliberate delays in providing survey plans and public maps to Te Arawa for the Native Land Court hearings caused a sense of grievance within Te Arawa that is still held today.
- 8.4 The Crown further acknowledges that it failed to review the annuity paid to Te Arawa as part of the 1922 Agreement regarding the lakes when it materially lost value as a result of inflation and this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 8.5 The Crown acknowledges that:
- 8.5.1 Te Arawa has honoured its obligations and responsibilities under Te Tiriti o Waitangi/the Treaty of Waitangi, especially, but not exclusively, in its war service overseas and the gifting of portions of the annuity for the national good in the 1930s and 1940s;
  - 8.5.2 Te Arawa has demonstrated a record of co-operation with the Crown in relation to the lakes and the benefits that Te Arawa expected to flow from its relationship with the Crown were not always realised;
  - 8.5.3 past Crown actions in relation to the Te Arawa Lakes have had a negative impact on Te Arawa's tino rangatiratanga over the lakes and their usage of the resources; and
  - 8.5.4 the pollution and degradation of several of the lakes have caused a sense of grievance within Te Arawa.

**TE ARAWA LAKES DEED OF SETTLEMENT****8: ACKNOWLEDGEMENTS AND APOLOGY BY THE CROWN**

- 8.6 The Crown acknowledges the significant contribution that the Te Arawa Lakes have made to tourism and the wealth of New Zealand and the Rotorua district in particular.
- 8.7 The Crown also recognises the longstanding grievances of Te Arawa in relation to Crown acts and omissions concerning the Te Arawa Lakes, expressed through petitions to Government and the Stout-Ngata Commission. The Crown acknowledges that it has failed to deal with those grievances in an appropriate way and that recognition of Te Arawa's grievances is long overdue.
- 8.8 The Crown accordingly makes the following apology to Te Arawa.

**HE KUPU POURI**

- 8.9 E tuku ana e te Karauna i tēnei kupu pouri ki a Te Arawa nui tonu, ki ō rātau tūpuna, ki ngā whakatupuranga, ki ngā iwi me ngā hapū hoki o Te Arawa.

E aroha nuitia ana te Karauna me te tuku kupu pouri kāore nei he aukati o te kōrero, ki a Te Arawa, mō ngā takahanga i te Tiriti o Waitangi tae atu ki ōna tikanga kua mihia i runga ake nei.

E aroha nuitia ana te Karauna mō āna mahi i runga i ngā moana i papā ki te rangatiratanga o Te Arawa, ki ō rātau moana me ngā taonga o roto; e mapu tonu nei a Te Arawa i roto i te hinengaro.

Nō reira, ka wawata te Karauna, mā tēnei kupu pouri ka mahea aua hē, ā, kia tīmatahia i konei te whakaora i ngā mamae. Ko te titiro whakamua te Karauna i tēnei wā ki te whakatū i tētehi tikanga tūmanako, whakahoahoa ki a Te Arawa mō ngā moana.

**APOLOGY**

- 8.10 The Crown makes this apology to Te Arawa, to their ancestors, to their descendants and to the people and hapū of Te Arawa.

The Crown profoundly regrets and unreservedly apologises to Te Arawa for the breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles acknowledged above.

The Crown profoundly regrets that past Crown actions in relation to the lakes have had a negative impact on Te Arawa's rangatiratanga over the lakes and their use of lake resources, and have caused significant grievance within Te Arawa.

Accordingly, with this apology, the Crown seeks to atone for these wrongs and begin the process of healing. The Crown looks forward to building a relationship of mutual trust and co-operation with Te Arawa in respect of the lakes.

## TE ARAWA LAKES DEED OF SETTLEMENT

**9: CULTURAL REDRESS: LAKES MANAGEMENT AND RELATIONSHIPS****ROTORUA LAKES STRATEGY GROUP****Definitions**

9.1 In this Part:

**Organisations** means the Governance Entity, the Rotorua District Council and the Bay of Plenty Regional Council;

**Group** means the Rotorua Lakes Strategy Group defined in **clause 9.2.1**;

**Rotorua Lakes** means, for the purposes of **clause 9.3**, Lakes Rotorua, Rotoiti, Rotoehu, Rotomā, Ōkātina, Tikitapu, Ōkareka, Tarawera, Rotomahana, Rerewhakaaitu, Ōkaro and Rotokakahi.

**ESTABLISHMENT OF THE GROUP**

9.2 The Settlement Legislation will provide that:

9.2.1 the Bay of Plenty Regional Council and the Rotorua District Council will establish, with the Governance Entity, the Rotorua Lakes Strategy Group (the **Group**) no later than the Settlement Date;

9.2.2 the Group is deemed to be a joint committee within the meaning of clause 30(1)(b) of Schedule 7 of the Local Government Act, despite the Governance Entity's membership of that Group as of right;

9.2.3 despite anything to the contrary in Schedule 7 of the Local Government Act, the joint committee is to be permanent (and not able to be discharged unless the Organisations all agree) and the quorum at meetings of the Group is to be as agreed by the Bay of Plenty Regional Council and the Rotorua District Council, with the Governance Entity;

9.2.4 except insofar as expressly provided, the Local Government Act will apply to the Group;

9.2.5 the clauses of Schedule 7 of the Local Government Act referred to below do not apply to the Group:

- (a) clause 23(3);
- (b) clause 27;
- (c) clauses 30(5) and (7); and
- (d) clauses 31(3) and (4);

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**9: CULTURAL REDRESS: LAKES MANAGEMENT AND RELATIONSHIPS**

- 9.2.6 the clauses of Schedule 7 of the Local Government Act referred to below apply only to the members of the Group appointed by either the Bay of Plenty Regional Council or the Rotorua District Council:
- (a) clauses 6.1(b) and 12;
  - (b) clause 30(3); and
  - (c) clauses 31(1) and (2);
- 9.2.7 any reference in clause 19(2) of Schedule 7 of the Local Government Act to a member of a local authority or of a committee of a local authority, is also a reference to a Governance Entity member of the Group but, for the avoidance of doubt, a Governance Entity member of the Group has a right to attend any meeting of the Group and not any meeting of either local authority merely by virtue of their status as members of the Group;
- 9.2.8 the provisions of the Local Government Official Information and Meetings Act will apply to the Group;
- 9.2.9 in respect of section 48 of the Local Government Official Information and Meetings Act, any reference to local authorities is a reference to the Group;
- 9.2.10 the membership of the Group, its quorum, its functions and its standing orders are as set out in the agreement between the Rotorua District Council, the Bay of Plenty Regional Council and the Arawa Māori Trust Board dated 8 October 2004 in the form set out in **Part 1** of the **Relationship Schedule**.

**PURPOSE OF THE GROUP**

- 9.3 The Settlement Legislation will provide that the purpose of the Group is to contribute to promoting the sustainable management of the Rotorua Lakes and their catchments for the use and enjoyment of present and future generations, while recognising and providing for the traditional relationship of Te Arawa with their ancestral lakes.

**PROTOCOLS****DOC Protocol**

- 9.4 The Crown, through the Minister of Conservation, must issue to the Governance Entity, by or on the Settlement Date, a Protocol that:
- 9.4.1 sets out how the Department of Conservation and the Governance Entity will interact in relation to the matters specified in that Protocol; and
  - 9.4.2 is as set out in **Part 2** of the **Relationship Schedule**.
- 9.5 The Settlement Legislation will provide that:

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**9: CULTURAL REDRESS: LAKES MANAGEMENT AND RELATIONSHIPS**

9.5.1 a summary of the terms of the DOC Protocol must be noted in the Conservation Documents that affect the DOC Protocol Area;

9.5.2 the noting of the DOC Protocol:

(a) is for the purpose of public notice only; and

(b) is not an amendment to a Conservation Document for the purposes of section 171 of the Conservation Act or section 46 of the National Parks Act; and

9.5.3 the DOC Protocol does not grant, create or provide evidence of an estate or interest in, or rights relating to, land held, managed or administered, or flora or fauna managed or administered, under the Conservation Legislation.

9.6 The DOC Protocol does not override or diminish:

9.6.1 the requirements of the Conservation Legislation;

9.6.2 the functions and powers of the Minister of Conservation, or the Department of Conservation, under that legislation; or

9.6.3 the rights of Te Arawa, or a Representative Entity, under that legislation.

**Fisheries Protocol**

9.7 The Crown, through the Minister of Fisheries, must issue to the Governance Entity, by or on the Settlement Date, a Protocol that:

9.7.1 sets out how the Ministry of Fisheries and the Governance Entity will interact in relation to the matters specified in that Protocol; and

9.7.2 is as set out in **Part 2** of the **Relationship Schedule**.

9.8 The Settlement Legislation will provide that:

9.8.1 a summary of the terms of the Fisheries Protocol must be noted in fisheries plans (as provided for in section 11A of the Fisheries Act 1996) that affect the Fisheries Protocol Area;

9.8.2 the noting of the Fisheries Protocol:

(a) is for the purposes of public notice only; and

(b) is not an amendment to a fisheries plan for the purposes of section 11A of the Fisheries Act 1996; and

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**9: CULTURAL REDRESS: LAKES MANAGEMENT AND RELATIONSHIPS**

9.8.3 the Fisheries Protocol does not grant, create or provide evidence of an estate or interest in, or rights relating to, assets or other property rights held, managed or administered under the Fisheries Act 1996 and/or the Treaty of Waitangi (Fisheries Claims) Settlement Act (including fish, aquatic life and seaweed).

9.9 The Fisheries Protocol does not override or diminish:

9.9.1 the requirements of the Fisheries Act 1996;

9.9.2 the functions and powers of the Minister of Fisheries, or the Ministry of Fisheries, under that Act; or

9.9.3 the rights of Te Arawa, or a Representative Entity, under that Act.

**Antiquities Protocol**

9.10 The Crown, through the Minister for Arts, Culture and Heritage, must issue to the Governance Entity, by or on the Settlement Date, a Protocol that:

9.10.1 sets out how the Chief Executive for the Ministry for Culture and Heritage and the Governance Entity will interact in relation to the matters specified in that Protocol; and

9.10.2 is as set out in **Part 2** of the **Relationship Schedule**.

9.11 The Settlement Legislation will provide that the Antiquities Protocol does not grant, create or provide evidence of an estate or interest in, or rights relating to Antiquities or Artifacts.

9.12 The Antiquities Protocol does not override or diminish:

9.12.1 the requirements of the Antiquities Act;

9.12.2 the functions and powers of the Minister for Arts, Culture and Heritage or the Chief Executive for the Ministry for Culture and Heritage under that Act; or

9.12.3 the rights of Te Arawa, or a Representative Entity, under that Act.

**Ministry for the Environment Protocol**

9.13 The Crown, through the Minister for the Environment, must issue to the Governance Entity, by or on the Settlement Date, a Protocol that:

9.13.1 sets out how the Ministry for the Environment and the Governance Entity will interact in relation to the matters specified in that Protocol; and

9.13.2 is as set out in **Part 2** of the **Relationship Schedule**.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**9: CULTURAL REDRESS: LAKES MANAGEMENT AND RELATIONSHIPS**

- 9.14 The Settlement Legislation will provide that the Environment Protocol does not grant, create or provide evidence of an estate or interest in, or rights relating to, resources managed or administered under the Resource Management Act.
- 9.15 The Environment Protocol does not override or diminish:
- 9.15.1 the requirements of the Resource Management Act or the Environment Act;
  - 9.15.2 the functions and powers of the Minister for the Environment, or the Ministry for the Environment, under that legislation; or
  - 9.15.3 the rights of Te Arawa, or a Representative Entity, under that legislation.

**PROVISIONS RELATING TO PROTOCOLS****The Settlement Legislation in relation to Protocols**

- 9.16 The Settlement Legislation will provide that:

***Authority to issue, amend or cancel Protocols***

- 9.16.1 the responsible Minister may issue a Protocol as set out in **Part 2** of the **Relationship Schedule** and may amend or cancel that Protocol;
- 9.16.2 the responsible Minister may amend or cancel a Protocol under **clause 9.16.1** only after consulting with, and having particular regard to the views of, the Governance Entity;
- 9.16.3 the Governance Entity may propose the amendment or cancellation of a Protocol to the responsible Minister;

***Protocols subject to rights and obligations***

- 9.16.4 the Protocols do not restrict:
  - (a) the ability of the Crown, in accordance with the law and government policy, to perform its functions and duties and exercise its powers, including its power to introduce legislation and change government policy;
  - (b) the responsibilities of the responsible Minister or relevant Department; or
  - (c) the legal rights of Te Arawa or a Representative Entity;

***Enforcement of Protocols***

- 9.16.5 the Crown must comply with a Protocol while it is in force;

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**9: CULTURAL REDRESS: LAKES MANAGEMENT AND RELATIONSHIPS**

- 9.16.6 if the Crown fails, without good cause, to comply with a Protocol, the Governance Entity may, subject to the Crown Proceedings Act, enforce the Protocol, but may not recover damages or any form of monetary compensation from the Crown (other than costs related to the bringing of the enforcement proceedings awarded by a Court); and
- 9.16.7 **clauses 9.16.5 and 9.16.6** do not apply to any guidelines developed in relation to a Protocol.

**Breach of Protocols is not breach of Deed**

- 9.17 A failure by the Crown to comply with a Protocol is not a breach of this Deed.

**Protocols do not affect ability of Crown to interact or consult**

- 9.18 The Protocols do not restrict the ability of the Crown to interact or consult with any person including any iwi, hapū, marae, whānau, or representative of tāngata whenua.

**PROMOTION OF RELATIONSHIPS WITH OTHER AGENCIES**

- 9.19 Te Arawa acknowledges that the Minister of Conservation has written to the Bay of Plenty Conservation Board and the Eastern Regional Fish and Game Council, the Minister for Crown Research Institutes has written to the National Institute of Atmospheric Research, and the Minister of Transport has written to Transit New Zealand:
- 9.19.1 promoting a relationship between these agencies and Te Arawa;
- 9.19.2 encouraging discussions between these agencies and Te Arawa about how this relationship may be established;
- 9.19.3 noting that the key component of the settlement redress package offered by the Crown to Te Arawa is the vesting of the ownership of the lakebeds in Te Arawa; and
- 9.19.4 in the case of the Bay of Plenty Conservation Board, noting that discussion might include how Te Arawa can provide input into the preparation of relevant conservation management plans and strategies.

## TE ARAWA LAKES DEED OF SETTLEMENT

**10: CULTURAL REDRESS: STATUTORY VESTING****VESTING OF TE ARAWA LAKEBEDS**

10.1 The Settlement Legislation will provide that:

***Interpretation***

10.1.1 **Crown Stratum** means the stratum occupied by water or air above each Te Arawa Lakebed;

10.1.2 **Reserve Site** means each site declared to be a reserve by the Gazette notice or notices specified for that site in **Subpart A** of **Part 1** of the **Cultural Redress Schedule**;

10.1.3 **Te Arawa Lakebed** means each stratum comprising the lakebed with the legal description specified for that lakebed in **Subpart B** of **Part 1** of the **Cultural Redress Schedule**, which includes all subsoil below that lakebed, but excludes:

- (a) the stratum occupied by water or air above that lakebed;
- (b) any land that is submerged and is not owned by the Crown on the Settlement Date;
- (c) any land that is not submerged on the Settlement Date, whether owned by the Crown or not, including any island in the relevant lake;
- (d) any aquatic life in the relevant lake, except the plants attached to that lakebed;
- (e) any Existing Structure (as defined in **clause 10.1.23**) situated in or on that lakebed (or the Crown Stratum above that lakebed); and
- (f) the Ohau Channel between Lakes Rotorua and Rotoiti;

10.1.4 for the purposes of **clauses 10.1.3(b)** and **(c)**, land is considered to be **submerged** if:

- (a) it would be covered by the waters of the relevant lake:
  - (i) at that lake's highest level without exceeding its margin, in the case of a lake not controlled by artificial means; or
  - (ii) at that lake's maximum operating level as prescribed from time to time by any Resource Consent or rule of a Regional Plan or Proposed Plan, in the case of a lake controlled by artificial means; and
- (b) it has not at the Settlement Date been reclaimed from the relevant lake (by any method of displacing lakewater with soil, sand or other material), whether or not that reclamation was lawful;

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**10: CULTURAL REDRESS: STATUTORY VESTING*****Boundaries of lakebeds***

- 10.1.5 where **clause 10.1.3(c)** applies to exclude non-submerged land from a Te Arawa Lakebed, the boundary thereby created between that non-submerged land and that lakebed is deemed to be a moveable natural boundary;
- 10.1.6 to the extent that a Te Arawa Lakebed has a moveable natural boundary, that boundary will be governed by any applicable common law rule of accretion, erosion or avulsion;
- 10.1.7 the boundary between a Te Arawa Lakebed and the Crown Stratum above that lakebed is deemed to be subject to any common law rule of accretion, erosion or avulsion that would apply to a moveable natural boundary;

***Vesting of lakebeds***

- 10.1.8 the appointment of the Eastern Regional Fish and Game Council to control and manage the Lake Ngapouri Wildlife Management Reserve and the Lake Tutaeinanga Wildlife Management Reserve (being the Reserve Sites described by those names in **Subpart A of Part 1 of the Cultural Redress Schedule**) is revoked in respect of so much of those Reserve Sites as comprise Te Arawa Lakebed or Crown Stratum;
- 10.1.9 the reservation of each Reserve Site, as a reserve subject to section 17, 19 or 22 of the Reserves Act (as appropriate), is revoked in respect of so much of that Reserve Site as comprises Te Arawa Lakebed or Crown Stratum, subject to **clause 10.2.4**;
- 10.1.10 any part of a Te Arawa Lakebed or the Crown Stratum that is conservation area under the Conservation Act, ceases to be conservation area under that Act;
- 10.1.11 when the reserve status of any part of a Reserve Site is revoked under **clause 10.1.9**:
- (a) that part of the Reserve Site becomes Crown land under the Land Act;
  - (b) the intra-Crown payment for the value of that part of the Reserve Site is deemed to be the proceeds of its alienation for the purposes of section 82(1) of the Reserves Act; and
  - (c) the Minister of Conservation may direct that such proceeds be paid, debited and applied in the manner set out in section 82(1)(a) of the Reserves Act;
- 10.1.12 the fee simple estate in each Te Arawa Lakebed vests in the Governance Entity, subject to:
- (a) any Encumbrances relating to that lakebed described in **Subpart B of Part 1 of the Cultural Redress Schedule**; and
  - (b) **clauses 10.1.14 to 10.1.43, clauses 10.2.5 to 10.2.7, and clause 10.11**;

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**10: CULTURAL REDRESS: STATUTORY VESTING**

10.1.13 the Crown retains ownership of the Crown Stratum;

**RIGHTS AND OBLIGATIONS OF OWNERSHIP**

10.1.14 the Governance Entity must not transfer any freehold estate in a Te Arawa Lakebed, but the Governance Entity may:

- (a) grant a leasehold estate in all or part of a Te Arawa Lakebed for a term (including renewals) of not more than 35 years (or any longer term to which the Governance Entity and the Crown agree); or
- (b) grant a licence, easement or profit a prendre over all or part of a Te Arawa Lakebed for any term,

on terms and conditions that comply with **clauses 10.1.15** to **10.1.43** and all applicable laws;

10.1.15 section 26ZO of the Conservation Act does not apply to any Te Arawa Lakebed and the owner or lawful occupier is not, by virtue of that ownership or occupation, exempt from licensing requirements;

10.1.16 despite the inclusion within each Te Arawa Lakebed of the plants attached to that lakebed (under **clause 10.1.3(d)**):

- (a) Te Arawa is not liable for, or responsible for the removal and control of, any weeds attached to that lakebed; and
- (b) the Crown will (in consultation with the Governance Entity) seek the agreement of an appropriate body to control weeds attached to and remove rubbish from the Te Arawa Lakebeds, and the Governance Entity will permit that body to perform those functions;

**PROTECTION OF EXISTING AND NEW ACTIVITIES AND STRUCTURES*****Recreational activities***

10.1.17 any Recreational Activity is permitted to take place in or on, or to otherwise affect, a Te Arawa Lakebed (or the Crown Stratum above that lakebed) at any time on or after the Settlement Date:

- (a) without the requirement for the Governance Entity's consent as owner of that lakebed; and
- (b) without charge by the Governance Entity as owner of that lakebed;

10.1.18 a **Recreational Activity** under **clause 10.1.17** means a recreational activity, and:

- (a) includes swimming, boating, water-skiing and fishing to the extent that that activity is recreational; and

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**TE ARAWA LAKES DEED OF SETTLEMENT**


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**10: CULTURAL REDRESS: STATUTORY VESTING**

- (b) includes a recreational activity that may be conducted lawfully by:
- (i) obtaining and complying with any required licence, permit, Resource Consent or other authorisation required by or under legislation to authorise that activity; or
  - (ii) complying with any applicable District Plan, Regional Plan or Proposed Plan,

whether or not that activity is at any time conducted in compliance with any such current licence, permit, Resource Consent or other authorisation, or in compliance with any such plan;

- (c) includes the right to attach a temporary structure to a Te Arawa Lakebed for recreational purposes; and
- (d) (subject to paragraph (b)) does not include an activity that is unlawful under any legislation;

***Public navigation rights***

10.1.19 the common law right of public navigation applies to a Te Arawa Lakebed (and the Crown Stratum above that lakebed) at all times on and after the Settlement Date:

- (a) without the requirement for the Governance Entity's consent as owner of that lakebed; and
- (b) without charge by the Governance Entity as owner of that lakebed; and
- (c) subject to any relevant Enactment in relation to public navigation rights;

***Existing commercial activities***

10.1.20 any Existing Commercial Activity is permitted to take place in or on, or to otherwise affect, a Te Arawa Lakebed (or the Crown Stratum above that lakebed) at any time on or after the Settlement Date:

- (a) without the requirement for the Governance Entity's consent as owner of that lakebed; and
- (b) without charge by the Governance Entity as owner of that lakebed;

10.1.21 an **Existing Commercial Activity** under **clause 10.1.20** means any commercial activity, including (without limitation) the activities described in **Subpart C of Part 1** of the **Cultural Redress Schedule**, that is or may be capable of being conducted lawfully in or on, or so as otherwise to affect, the relevant Te Arawa Lakebed immediately before the Settlement Date:

- (a) whether or not that activity may at any time require or have required:

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**TE ARAWA LAKES DEED OF SETTLEMENT**


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**10: CULTURAL REDRESS: STATUTORY VESTING**

- (i) acquisition of and compliance with any licence, permit, Resource Consent or other authorisation required by or under legislation to authorise that activity, but that authorisation is or was not at any time acquired or complied with;
  - (ii) compliance with any applicable District Plan, Regional Plan or Proposed Plan, but that plan is or was not at any time complied with;
  - (iii) the consent of the owner of that lakebed and/or the Crown Stratum, but that consent is or was not at any time obtained; or
  - (iv) acquisition of and compliance with a concession under the Reserves Act, but that concession is or was not at any time acquired or complied with; and
- (b) whether or not that activity is being conducted in or on, or so as otherwise to affect, that lakebed on the Settlement Date; but
  - (c) does not include any right to erect or modify a structure in or on, or to attach a structure to, that lakebed;

***Existing structures***

10.1.22 any Existing Structure may remain in or on a Te Arawa Lakebed (or the Crown Stratum above that lakebed) and be used, occupied, accessed, repaired, maintained, removed or demolished at any time on or after the Settlement Date:

- (a) without any requirement for the Governance Entity's consent as owner of that lakebed; and
- (b) without charge by the Governance Entity as owner of that lakebed;

10.1.23 in this Part 10, **Existing Structure** means any structure to the extent that it exists on the Settlement Date:

- (a) including (without limitation) each structure described in relation to the relevant Te Arawa Lakebed in the Disclosure Information;
- (b) whether or not that structure at any time:
  - (i) required the consent of the owner of that lakebed and/or the Crown Stratum, but that consent was not obtained;
  - (ii) required a concession under the Reserves Act, but that concession was not obtained;
  - (iii) does not comply with the Resource Management Act (or any equivalent prior legislation) or any District Plan, Regional Plan or Proposed Plan, or for which any required Resource Consent (or any equivalent

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**10: CULTURAL REDRESS: STATUTORY VESTING**

requirement under prior legislation) has not been obtained or complied with;

10.1.24 for the avoidance of doubt, any person may provide evidence to establish that a structure is an Existing Structure (in respect of which rights are therefore granted under clause **10.1.22**), despite that structure not being described in relation to the relevant Te Arawa Lakebed in the Disclosure Information;

10.1.25 if any person applies for a Resource Consent or Building Consent for an Existing Structure, or otherwise seeks to rectify that structure's non-compliance (as at the Settlement Date) with the Resource Management Act or Building Act, then the relevant Local Authority will consider that application or other matter as if the relevant Te Arawa Lakebed was owned by the Crown;

10.1.26 the Governance Entity will have no liability for any Existing Structure for which the Governance Entity would otherwise be liable by virtue of owning the Te Arawa Lakebed in or on which an Existing Structure is situated;

***New commercial activities and structures***

10.1.27 except as permitted in **clauses 10.1.17, 10.1.19, 10.1.20, 10.1.22 and 10.1.29 to 10.1.32** in relation to Recreational Activities, the common law right of public navigation, Existing Commercial Activities, Existing Structures and Public Utilities (respectively), no person may:

- (a) perform any commercial activity that, at law, requires the consent of the owner of a Te Arawa Lakebed; or
- (b) erect or modify a structure in or on, or attach a structure to, a Te Arawa Lakebed,

at any time on or after the Settlement Date, without first obtaining the written consent of the Governance Entity as owner of that lakebed;

10.1.28 the Governance Entity may impose any conditions on the grant of its consent under **clause 10.1.27**, including the imposition of any charge;

***Public utilities***

10.1.29 a Public Utility Authority that does not otherwise have a statutory right to do so may, at any time on or after the Settlement Date:

- (a) place or install, permanently or temporarily, any structure or thing comprising a Public Utility in or on a Te Arawa Lakebed; or
- (b) enter and remain on a Te Arawa Lakebed to perform any activity comprising a Public Utility, including to gain access to, and perform any activity on, any structure or thing placed or installed under **clause 10.1.29(a)**;

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**10: CULTURAL REDRESS: STATUTORY VESTING**

- 10.1.30 a Public Utility Authority may only exercise the rights under **clause 10.1.29** with the consent of the Governance Entity as owner of the Te Arawa Lakebed;
- 10.1.31 the Governance Entity must not:
- (a) unreasonably withhold its consent under **clause 10.1.30**, despite any Enactment; or
  - (b) impose a charge, whether as a condition of the grant of its consent under **clause 10.1.30** or otherwise, except as expressly permitted under any Enactment;
- 10.1.32 where a Public Utility Authority has a statutory right to do anything referred to in **clause 10.1.29**, and the exercise of that right requires the consent (under the relevant statute) of the Governance Entity as owner of a Te Arawa Lakebed, the Governance Entity must not:
- (a) unreasonably withhold that consent, despite any Enactment; or
  - (b) impose a charge, whether as a condition of the grant of that consent or otherwise, except as expressly permitted under any Enactment;
- 10.1.33 **clauses 10.1.29** to **clause 10.1.32** do not limit the Resource Management Act nor remove any need for compliance with that Act;
- 10.1.34 a **Public Utility** under **clause 10.1.29** means a structure, thing or activity for the purposes of public utility, which is deemed to include (without limitation):
- (a) a network utility operation as defined in section 166 of the Resource Management Act, and any project or works relating to electricity generation, including:
    - (i) telecommunications services and designated services under the Telecommunications Act, together with any lines, existing lines or existing works as defined in that Act; and
    - (ii) works, existing works, line function services, and the national grid as defined in the Electricity Act;
  - (b) harbourmaster functions and structures;
  - (c) navigation aids and any activity of or on behalf of the Crown, a Local Authority or a statutory body that is necessary for the purposes of assisting or improving the navigation of vessels over the Te Arawa Lakebeds;
  - (d) public works, including reclamations, of the Crown or any Local Authority; and
  - (e) structures and activities of the National Institute of Water and Atmospheric Research, Transit New Zealand or the Department of Conservation;

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**10: CULTURAL REDRESS: STATUTORY VESTING**

10.1.35 a Public Utility Authority means any person that places, installs or performs a Public Utility;

10.1.36 **clauses 10.1.17, 10.1.19, 10.1.20** do not apply to any Public Utility;

10.1.37 to the extent that a Public Utility is an Existing Structure, **clause 10.1.22** applies (and **clauses 10.1.29 to 10.1.32** do not apply) to that Existing Structure, without limiting any other statutory rights conferred in relation to that Public Utility;

***Non-rateable status***

10.1.38 subject to **clauses 10.1.39 and 10.1.40**, land forming any part of a Te Arawa Lakebed is non-rateable for the purposes of the Local Government (Rating) Act;

10.1.39 **clause 10.1.38** does not apply to land that is used primarily or exclusively for:

- (a) commercial purposes by the Governance Entity; or
- (b) private or commercial purposes by any person other than the Governance Entity under a lease, licence, or other agreement;

10.1.40 land to which **clause 10.1.38** applies is rateable for the purpose of setting a targeted rate under the Local Government (Rating) Act if:

- (a) the rate is set solely for water supply, sewage disposal, or refuse collection; and
- (b) the service referred to in paragraph (a) is provided in relation to that land;

10.1.41 the Crown will be liable for any rates payable under the Local Government (Rating) Act in respect of any Existing Structure or Existing Commercial Activity, or any Public Utility that exists on the Settlement Date, for which the Governance Entity would otherwise be liable by virtue of owning a Te Arawa Lakebed;

10.1.41A subject to **clause 10.1.41**, a Public Utility Authority must reimburse the Governance Entity for any rates payable under the Local Government (Rating) Act in respect of any relevant Public Utility for which the Governance Entity is liable by virtue of owning a Te Arawa Lakebed, where the Governance Entity is not otherwise able to require such reimbursement by charging under any Enactment as described in **clause 10.1.31(b) or 10.1.32(b)**;

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**10: CULTURAL REDRESS: STATUTORY VESTING*****No rights to water or aquatic life***

10.1.42 for the avoidance of doubt, the vesting of the fee simple estate in each Te Arawa Lakebed in the Governance Entity under **clause 10.1.12** does not confer on the Governance Entity any rights or obligations in relation to the water or the aquatic life in the relevant lakes (except in relation to the plants attached to each lakebed, to the extent provided in **clause 10.1.16**);

10.1.43 the Governance Entity's consent as owner of a Te Arawa Lakebed to any structure, activity or other matter in or on, or otherwise affecting, that lakebed is only required to the extent expressly provided in this Deed;

***Settlement Date***

10.1.44 **clauses 10.1.5** to **10.1.43** will take effect on the Settlement Date;

**IMPLEMENTATION OF VESTING OF TE ARAWA LAKEBEDS**

10.2 The Settlement Legislation will provide that:

***Title to Te Arawa Lakebed***

10.2.1 the Registrar-General of Land must, on written application by a person authorised by the chief executive of Land Information New Zealand (and after completion of any necessary survey) create, in accordance with that application, one or more computer freehold registers in the name of the Governance Entity for the fee simple estate in land that forms all or part of a Te Arawa Lakebed subject to, and, where applicable, with the benefit of, any Encumbrances that are registrable or notifiable and are described in that written application;

10.2.2 the Registrar must, when issuing a computer freehold register under **clause 10.2.1**, make a notation on the computer freehold register recording that the land is subject to **clauses 10.1.14** to **10.1.43**;

10.2.3 a computer freehold register or registers created on written application under **clause 10.2.1** must be requested as soon as reasonably practicable after the vesting of each Te Arawa Lakebed in the Governance Entity but no later than:

- (a) 24 months after that vesting; or
- (b) such later date as may be agreed in writing by the Governance Entity and the Crown;

***Application of other Enactments***

10.2.4 sections 24 and 25 of the Reserves Act do not apply to the revocation of any part of a Reserve Site under the Settlement Legislation;

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**10: CULTURAL REDRESS: STATUTORY VESTING**

10.2.5 section 11 and Part X of the Resource Management Act do not apply to:

- (a) the vesting of a Te Arawa Lakebed under the Settlement Legislation; or
- (b) a matter incidental to, or required for the purpose of, that vesting;

10.2.6 Part IVA of the Conservation Act does not apply to the vesting of a Te Arawa Lakebed under the Settlement Legislation;

10.2.7 the vesting of a Te Arawa Lakebed under the Settlement Legislation does not:

- (a) limit sections 10 or 11 of the Crown Minerals Act;
- (b) affect other rights to sub-surface minerals; or
- (c) limit the Crown's or a Local Authority's rights and obligations in respect of geothermal resources under the Resource Management Act or any other relevant law.

**OTHER MATTERS****No warranties**

10.3 The Crown gives no representation or warranty (whether express or implied) with respect to:

10.3.1 a Te Arawa Lakebed, including (without limitation) as to its ownership, management, occupation, physical condition, fitness for use or compliance with:

- (a) any Enactment; or
- (b) any enforcement or other notice, requisition or proceeding issued by an authority; or

10.3.2 any Existing Commercial Activity or Existing Structure, including as to the lawfulness of any such activity or structure; or

10.3.3 the completeness or accuracy of the Disclosure Information.

**Ability of Te Arawa to inspect**

10.4 Te Arawa acknowledges that (although the Crown is not giving any representation or warranty in relation to any Te Arawa Lakebed) Te Arawa had the opportunity prior to the Date of this Deed to:

10.4.1 inspect each Te Arawa Lakebed and Existing Structure; and

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**10: CULTURAL REDRESS: STATUTORY VESTING**

10.4.2 determine its state and condition.

**No claims**

- 10.5 Te Arawa will not have any recourse or claim against the Crown in relation to the state and/or condition on the Settlement Date of a Te Arawa Lakebed or any Existing Structure situated in or on a Te Arawa Lakebed.

**Access**

- 10.6 The Crown will not make arrangements for access by Te Arawa to a Te Arawa Lakebed following its vesting in the Governance Entity.

**Survey**

- 10.7 If the boundaries of a Te Arawa Lakebed have not been determined sufficiently for the purpose of creating title for that lakebed, the Crown (in consultation with Te Arawa) will arrange for:

10.7.1 that lakebed to be surveyed; and

10.7.2 the survey plan to be prepared and approved (and, where applicable, deposited).

**Costs**

- 10.8 The Crown will pay any costs of survey, registration or issue of title, and any other costs agreed by the Crown and Te Arawa, required to vest each Te Arawa Lakebed in the Governance Entity.

**No liability for damage due to third party**

- 10.9 The Governance Entity may not make any claim against the Crown (including, without limitation, any claim for negligence or nuisance) for any loss or damage to a Te Arawa Lakebed caused by the discharge of any contaminant or other material that originated from a third party and passed through the Crown Stratum and onto or into that lakebed;
- 10.10 The Crown may not make any claim against the Governance Entity (including, without limitation, any claim for negligence or nuisance) for any loss or damage to the Crown Stratum caused by the discharge of any contaminant or other material that originated from a third party and passed through a Te Arawa Lakebed and into the Crown Stratum.

**Governance Entity not liable for others' contamination**

- 10.11 The Settlement Legislation will provide that the Governance Entity shall not at any time be liable for the contamination of any Te Arawa Lakebed, except to the extent that that contamination is caused by the intentional or reckless act or omission, or negligent act, of the Governance Entity.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**10: CULTURAL REDRESS: STATUTORY VESTING****LAKE ŌKARO**

- 10.12 The Parties note that Lake Ōkaro is currently vested in and administered by the Rotorua District Council and that, accordingly, it is not able to be transferred from the Crown to Te Arawa as the lakebeds of the other lakes are. The Crown acknowledges that Te Arawa intend to seek the transfer of the title of Lake Ōkaro from the Rotorua District Council. Following the execution of this Deed, the Minister in Charge of Treaty of Waitangi Negotiations will write to the Council to encourage it to reach a mutually satisfactory arrangement with Te Arawa as to the status, management and ownership of Lake Ōkaro. A draft of the Minister's letter to the Council has been agreed with Te Arawa and is set out in **Part 2** of the **Cultural Redress Schedule**.

**RELATIONSHIP AGREEMENT**

- 10.13 The Governance Entity and the Crown will enter into a relationship agreement in the form attached in **Part 3** of the **Relationship Schedule** on the Settlement Date, to record the terms on which each Party will exercise its respective rights as owner of the Te Arawa Lakebeds or the Crown Stratum in relation to the other Party and (in some cases) third parties.

## TE ARAWA LAKES DEED OF SETTLEMENT

**11: OTHER CULTURAL REDRESS****STATUTORY ACKNOWLEDGEMENT****Provision of Statutory Acknowledgement**

- 11.1 The Settlement Legislation will provide a Statutory Acknowledgement which will comprise:
- 11.1.1 the description of the Crown Stratum (the **Statutory Area**), which is defined in **clause 10.1.1** as the stratum occupied by water or air above each Te Arawa Lakebed, being the lakebeds (as defined in **clause 10.1.3**) of Lakes Rotorua, Rotoiti, Rotoehu, Rotomā, Ōkataina, Tikitapu, Ōkareka, Tarawera, Rotomahana, Rerewhakaaitu, Ngāhewa, Ngāpouri and Tutaeinanga;
  - 11.1.2 the text of the statement (the **Statement of Association**) by Te Arawa of its cultural, spiritual, historical, and traditional association with that Statutory Area as set out in **Part 3** of the **Cultural Redress Schedule**;
  - 11.1.3 an acknowledgement by the Crown of that Statement of Association; and
  - 11.1.4 the other matters required by this Deed.

**Purposes of the Statutory Acknowledgement**

- 11.2 The Settlement Legislation will provide that:
- 11.2.1 for the purposes of this Part:
    - (a) **Consent Authority** has the meaning set out in section 2(1) of the Resource Management Act except that it does not include the Minister of Conservation; and
    - (b) **Relevant Consent Authority** means a Consent Authority of a region or district that contains, or is adjacent to, the Statutory Area;
  - 11.2.2 without limiting **clause 11.8**, the only purposes of the Statutory Acknowledgement are:
    - (a) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust, and the Environment Court have regard to the Statutory Acknowledgement relating to the Statutory Area, as provided in **clauses 11.3** and **11.4**;
    - (b) to require that Relevant Consent Authorities forward summaries of applications for Resource Consents to the Governance Entity, as provided in **clause 11.6**; and

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**11: OTHER CULTURAL REDRESS**

- (c) to enable the Governance Entity, and Members of Te Arawa, to cite the Statutory Acknowledgement as evidence of the association of Te Arawa with the Statutory Area, as provided in **clause 11.7**.

**Relevant Consent Authorities and Environment Court to have regard to the Statutory Acknowledgement**

- 11.3 The Settlement Legislation will provide that, from the Effective Date, and without limiting its obligations under the Resource Management Act:
- 11.3.1 a Relevant Consent Authority must have regard to the Statutory Acknowledgement relating to the Statutory Area in forming an opinion in accordance with sections 93 to 94C of the Resource Management Act as to whether the Governance Entity is a person who may be adversely affected by the granting of a Resource Consent for activities within, adjacent to, or impacting directly on the Statutory Area; and
- 11.3.2 the Environment Court must have regard to the Statutory Acknowledgement relating to the Statutory Area in determining, under section 274 of the Resource Management Act, whether the Governance Entity is a person having an interest greater than the public generally in proceedings in respect of an application for a Resource Consent for activities within, adjacent to, or impacting directly on the Statutory Area.

**New Zealand Historic Places Trust and Environment Court to have regard to the Statutory Acknowledgement**

- 11.4 The Settlement Legislation will provide that, from the Effective Date, the New Zealand Historic Places Trust and the Environment Court must have regard to the Statutory Acknowledgement relating to the Statutory Area:
- 11.4.1 in forming an opinion under section 14(6)(a) of the Historic Places Act; or
- 11.4.2 for the purpose of section 20(1) of the Historic Places Act,
- as to whether the Governance Entity is (or, for the purposes of section 14(6)(a), may be) a person directly affected in relation to an archaeological site (as defined in section 2 of that Act) within the Statutory Area.

**Recording of Statutory Acknowledgement on Statutory Plans**

- 11.5 The Settlement Legislation will provide that, from the Effective Date:
- 11.5.1 Relevant Consent Authorities must attach to all Statutory Plans that wholly or partially cover the Statutory Area information recording the Statutory Acknowledgement in relation to that Statutory Area; and
- 11.5.2 the attachment of information to a Statutory Plan under **clause 11.5.1**:

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**11: OTHER CULTURAL REDRESS**

- (a) must include the relevant provisions of the Settlement Legislation, the description of the Statutory Area, and the Statement of Association; and
- (b) is for the purposes of public notice only and the information is not:
  - (i) part of the Statutory Plan (unless adopted by the Relevant Consent Authority); or
  - (ii) subject to the provisions of the First Schedule to the Resource Management Act.

**Distribution of Resource Consent applications to the Governance Entity**

11.6 The Settlement Legislation will provide that:

11.6.1 a Relevant Consent Authority must, for a period of 20 years from the Effective Date, forward to the Governance Entity a summary of applications for Resource Consents for activities within, adjacent to, or impacting directly on the Statutory Area;

11.6.2 the information provided under **clause 11.6.1** must be:

- (a) the same as would be given under section 93 of the Resource Management Act to persons who may be adversely affected, or as may be agreed between the Governance Entity and the Relevant Consent Authority from time to time; and
- (b) forwarded as soon as reasonably practicable after the application is received and before a determination is made in accordance with sections 93 to 94C of the Resource Management Act;

11.6.3 the Governance Entity may, by notice in writing to a Relevant Consent Authority:

- (a) waive its rights under **clause 11.6.1** and/or **clause 11.6.2**; and
- (b) state the scope of the waiver and the period it applies for; and

11.6.4 this clause does not affect:

- (a) the obligation of a Relevant Consent Authority to notify an application in accordance with sections 93 to 94C of the Resource Management Act; or
- (b) the obligation of a Relevant Consent Authority to form an opinion as to whether the Governance Entity is a person who may be adversely affected under those sections.

**Use of Statutory Acknowledgement**

11.7 The Settlement Legislation will provide that:

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**11: OTHER CULTURAL REDRESS*****Use of Statutory Acknowledgement with submissions***

- 11.7.1 the Governance Entity, or a Member of Te Arawa, may cite the Statutory Acknowledgement as evidence of the association of Te Arawa with the Statutory Area, in submissions to, and proceedings before, a Relevant Consent Authority, the Environment Court, or the New Zealand Historic Places Trust concerning activities within, adjacent to, or impacting directly on the Statutory Area;

***Content of Statement of Association not binding***

- 11.7.2 the content of a Statement of Association is not, by virtue of the Statutory Acknowledgement, binding as deemed fact on Relevant Consent Authorities, the Environment Court, the New Zealand Historic Places Trust, parties to proceedings before those bodies, or any other person able to participate in those proceedings, but the content of a Statement of Association may be taken into account by them; and

***Other association with the Statutory Area may be stated***

- 11.7.3 neither the Governance Entity, nor a Member of Te Arawa, is precluded by this Part from stating that Te Arawa has an association with the Statutory Area that is not described in the Statutory Acknowledgement, and the content and existence of the Statutory Acknowledgement do not limit any such statement.

**General provisions in relation to Statutory Acknowledgement**

- 11.8 The Settlement Legislation will provide that:
- 11.8.1 the Statutory Acknowledgement does not (except as expressly provided in **clauses 11.1 to 11.9**):
- (a) affect, and must not be taken into account by, any person exercising a power or performing a function or duty under legislation or a bylaw;
  - (b) affect the lawful rights or interests of any person; or
  - (c) grant, create or provide evidence of an estate or interest in, or rights relating to, the Statutory Area;
- 11.8.2 a person, in considering a matter or making a decision or recommendation under legislation or a bylaw, must not give greater or lesser weight to a Statement of Association than the person would give if the Statement of Association was not contained in legislation; and
- 11.8.3 the Statutory Acknowledgement does not prevent the Crown from providing a statutory acknowledgement of the association of a person or persons other than Te Arawa in relation to the Statutory Area.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**11: OTHER CULTURAL REDRESS****Amendment to the Resource Management Act**

- 11.9 The Settlement Legislation will amend Schedule 11 of the Resource Management Act by inserting the short title to the Settlement Legislation in that schedule.

**FISHING LICENCES**

- 11.10 Te Arawa and the Crown agree that the sum of \$400,000 (the **Fishing Licences Sum**) capitalises the ongoing annual cost of purchasing 200 fishing licences for the Te Arawa Lakes from the Eastern Regional Fish and Game Council.
- 11.11 On the Settlement Date, the Crown will pay the Fishing Licences Sum to the Governance Entity.

**PLACE NAMES****Definitions**

- 11.12 In **clause 11.13, Place Name Amendment** means the amendment (if any) of each place name shown in the “Existing Place Name” column of the table in **Part 4** of the **Cultural Redress Schedule** (if any) to the name shown in the “Amended Place Name” column of that table, which applies to the place described by the topographic map reference and grid reference in the relevant columns of that table.

**Amendment of Place Names**

- 11.13 The Settlement Legislation will provide for each Place Name Amendment to be treated as having been made:
- 11.13.1 with the approval of the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa (the **NZGB**); and
- 11.13.2 in accordance with the New Zealand Geographic Board Act.

**New Zealand Geographic Board**

- 11.14 The Parties acknowledge that:
- 11.14.1 the NZGB has developed a protocol for Māori place names;
- 11.14.2 that protocol describes the principles and procedures the NZGB is applying to encourage the use of Māori place names and to ensure more effective consultation with use of such names; and
- 11.14.3 the NZGB has resolved that the Governance Entity will be consulted in accordance with that protocol.

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**11: OTHER CULTURAL REDRESS****ACCESS TO PARU AND INDIGENOUS PLANTS**

11.15 Te Arawa acknowledges that the Minister in Charge of Treaty of Waitangi Negotiations, the Minister for the Environment and the Minister of Local Government will, in consultation with Te Arawa, write to the Bay of Plenty Regional Council and the Waikato Regional Council requesting those Councils to consider amending any relevant Regional Plan or Proposed Plan that applies to the Te Arawa Lakes so that, where not already provided, Te Arawa may take paru and indigenous plants from those lakes without being required to obtain a Resource Consent.

**FISHERIES REDRESS****Definitions**

11.16 In this Part:

**Included Species:**

- (a) means fish and aquatic life as defined in section 2 of, and managed and administered under, the Fisheries Act 1983 and fish and aquatic life as defined in section 2 of, and managed and administered under, the Fisheries Act 1996;
- (b) does not include whitebait, sports fish or unwanted aquatic life, as defined in section 2 of the Fisheries Act 1996;
- (c) includes whitebait, any specific whitebait species or any other species that occur in the Te Arawa Fisheries Area, if any such species at any time should come under the management and administration of the Fisheries Act 1996;

**Te Arawa Fisheries Area** means the Te Arawa Lakes;

**Sustainable Utilisation** means the utilisation of fisheries resources while ensuring sustainability, as those terms are used in section 8 of the Fisheries Act 1996.

**Consultation on regulations**

11.17 The Crown will consult with the Governance Entity in respect of the development of regulations referred to in **clauses 11.18 to 11.23**.

**Making regulations**

11.18 The Crown agrees that the Minister of Fisheries will, within 20 Business Days after the Settlement Date, recommend to the Governor-General the making of regulations (the **Regulations**) under the Settlement Legislation and in accordance with **clauses 11.19 to 11.23**.

11.19 The Regulations will prevail over the Fisheries (Amateur Fishing) Regulations 1986 and the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the **1998 Regulations**) insofar as the 1998 Regulations relate to Included Species in the Te Arawa Fisheries Area.

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**11: OTHER CULTURAL REDRESS**

Regulation 4 of the 1998 Regulations will be amended accordingly. The Freshwater Fisheries Regulations 1983 continue to apply.

11.20 The Regulations will:

11.20.1 provide for the Governance Entity to appoint persons to issue authorisations to allow customary non-commercial food gathering in the Te Arawa Fisheries Area to the extent that such food gathering of Included Species is neither commercial in any way nor involves commercial gain or trade;

11.20.2 empower the Governance Entity to nominate for all or any of the Te Arawa Lakes a management structure or structures to manage customary non-commercial food gathering of Included Species within the Te Arawa Fisheries Area to:

(a) authorise Te Arawa to take Included Species for customary non-commercial food gathering purposes from or within the whole or any part of the Te Arawa Fisheries Area, including for the purpose of sustaining the functions of a Te Arawa marae;

(b) prepare a management plan or strategy for the Te Arawa Fisheries Area for the Included Species;

11.20.3 enable the Governance Entity to make bylaws restricting or prohibiting the taking of Included Species from within the whole or any part of the Te Arawa Fisheries Area for any purpose that the Governance Entity considers necessary for the Sustainable Utilisation of the Included Species in the Te Arawa Fisheries Area; and

11.20.4 enable the Governance Entity to recommend to the Minister of Fisheries that commercial fishing be allowed for some or all Included Species in some or all of the Te Arawa Fisheries Area.

11.21 Where the commercial fishing referred to in **clause 11.20.4** is allowed it must continue to be administered by the Ministry of Fisheries in accordance with the Fisheries Act 1996.

11.22 Where commercial fishing of some or all of the Included Species within the Te Arawa Fisheries Area is approved under the Fisheries Act 1996, the Governance Entity may provide advice to the Minister of Fisheries on the conditions that should be imposed, including as to season, methods and areas.

11.23 The Regulations will further:

11.23.1 require the management structure nominated by the Governance Entity to keep accurate records of the quantities of Included Species taken by those persons authorised by them to take Included Species and submit these records to the Minister of Fisheries;

11.23.2 provide for the management structure nominated by the Governance Entity to each year hold a meeting with Te Arawa by calling a hui to report on matters relevant to the effective management of customary food gathering by the management

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**11: OTHER CULTURAL REDRESS**

structure, including, but not restricted to, reporting on the number of authorisations granted for the period and any restrictions or prohibitions in force for that period; and

11.23.3 provide for offences against the Regulations and penalties applying where a person commits an offence against the Regulations.

**Bylaws**

11.24 The provisions in **clauses 11.25 to 11.36** will apply to bylaws made under the Regulations.

***Content of Bylaws***

11.25 Bylaws made under the Regulations may impose restrictions or prohibitions relating to all or any of the following matters:

11.25.1 the species of fish, aquatic life, or seaweed that may be taken;

11.25.2 the quantity of each species that may be taken;

11.25.3 size limits relating to each species to be taken;

11.25.4 the method by which each species may be taken;

11.25.5 the area or areas in which each species may be taken;

11.25.6 any other matters the Governance Entity considers necessary for the Sustainable Utilisation of Included Species in the Te Arawa Fisheries Area.

***Power to restrict or prohibit fishing in Te Arawa Fisheries Area***

11.26 Bylaws made under the Regulations will apply generally to all persons fishing in the Te Arawa Fisheries Area.

11.27 Bylaws made under the Regulations must be deposited with the office of the Ministry of Fisheries nearest the Te Arawa Fisheries Area and also at a place designated by the Chief Executive of the Ministry of Fisheries, that must be open during office hours for the inspection of, and for the purposes of receiving submissions from, the public for at least 15 Business Days immediately before the date on which the restriction or prohibition is notified to the Minister under the Regulations.

11.28 The Chief Executive of the Ministry of Fisheries must notify in a newspaper circulating in the locality of the Te Arawa Fisheries Area the fact that a bylaw has been deposited under **clause 11.27** and the place where that bylaw may be inspected.

11.29 Any submissions made by the public in respect of bylaws made under the Regulations must be sent to the Governance Entity.

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**11: OTHER CULTURAL REDRESS**

11.30 The Governance Entity may amend any bylaw deposited with the Ministry under **clause 11.27**, in light of any submission received, and need not deposit the amended bylaw with the Ministry of Fisheries before notifying the Minister of Fisheries of that restriction or prohibition under the Regulations.

***Notification of restriction or prohibition***

11.31 On the making of a bylaw under the Regulations restricting or prohibiting the taking of fisheries resources within the Te Arawa Fisheries Area, and after amending the bylaw as described in **clause 11.30** (if required), the Governance Entity must notify the Minister of Fisheries of the proposed bylaw by sending to the Minister a copy of that bylaw and:

11.31.1 a statement of the reasons why the Governance Entity considers the proposed restriction or prohibition necessary or desirable for the Sustainable Utilisation of Included Species in the Te Arawa Fisheries Area; and

11.31.2 a statement that the proposed bylaw has been deposited with the Ministry in accordance with the Regulations.

11.32 On receipt of any notification under **clause 11.31**, the Minister must decide, as soon as practicable and in any case no later than 40 Business Days after the making of the bylaw and after taking into account the statements made in accordance with **clause 11.31**, whether or not to approve the bylaw.

11.33 Non-compliance with any time period specified in the Regulations or in **clauses 11.25 to 11.36** does not prevent the Minister of Fisheries approving a bylaw in accordance with the Regulations.

11.34 On approving the imposition of a bylaw in the Te Arawa Fisheries Area under **clause 11.32**, the Minister of Fisheries must, as soon as practicable after approving such a bylaw, publish the approved bylaw in the Gazette.

11.35 On rejecting the imposition of a bylaw in the Te Arawa Fisheries Area under **clause 11.32**, the Minister of Fisheries must notify the Governance Entity of his or her decision.

11.36 Any bylaw approved under the Regulations takes effect from a date specified in the approved bylaw published in the Gazette.

**Settlement Legislation**

11.37 The Settlement Legislation will provide that regulations may be made in accordance with **clauses 11.25 to 11.36** despite section 10(d) of the Treaty of Waitangi (Fisheries Claims) Settlement Act.

**TERMINATION OF 1922 AGREEMENT AND REPEAL OF SECTION OF ACT**

11.38 The Settlement Legislation will provide that:

11.38.1 section 88(1) of the Maori Purposes Act does not apply to any Te Arawa Lakebed;

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**11: OTHER CULTURAL REDRESS**

11.38.2 section 88(2) of the Maori Purposes Act is repealed.

11.39 Te Arawa and the Crown agree that the 1922 Agreement terminates on the Settlement Date.

TE ARAWA LAKES DEED OF SETTLEMENT

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**12: FINANCIAL REDRESS AND ANNUITY REDRESS****PROVISION OF FINANCIAL REDRESS**

- 12.1 The Crown must provide Financial Redress comprising an amount of \$2.7 million to be paid to the Governance Entity by the Crown on the Settlement Date.

**ANNUITY REDRESS**

- 12.2 The Crown and the Arawa Māori Trust Board acknowledge that they entered into an escrow agreement dated 16 December 2003 (the **Escrow Agreement**) under which:

12.2.1 the Crown paid Annuity Redress of \$7.3 million to an escrow agent on 17 December 2003;

12.2.2 the escrow agent will hold the Annuity Redress until:

- (a) the date of execution of this Deed by the Arawa Māori Trust Board, when the escrow agent will pay the Annuity Redress to the Arawa Māori Trust Board; or
- (b) the earlier of the date that the Arawa Māori Trust Board confirms that it will not execute this Deed, and the date twelve months (or any longer period agreed between the Arawa Māori Trust Board and the Crown) after the Parties initial this Deed if the Arawa Māori Trust Board has not by that date executed this Deed, when the escrow agent will pay the Annuity Redress to the Crown;

12.2.3 the escrow agent will pay to the Arawa Māori Trust Board interest earned on the Annuity Redress until the Annuity Redress is due to be paid, whether the Annuity Redress is ultimately paid to the Arawa Māori Trust Board or the Crown.

- 12.3 The Crown agrees to instruct the escrow agent to pay the Annuity Redress to the Arawa Māori Trust Board upon satisfaction of the conditions for such payment under the Escrow Agreement.

- 12.4 The Crown and the Arawa Māori Trust Board acknowledge that payment of the Annuity Redress settles the Te Arawa Lakes Remaining Annuity Issues, and represents a payment to capitalise the annuity from the Date of this Deed and to settle any remaining issues with the Annuity for the period from and including 21 September 1992.

- 12.5 The Arawa Māori Trust Board waives to the fullest extent permitted by law any right to receive the Annuity for the period from and including the Date of this Deed and, if it receives any payment of the Annuity for that period, agrees to hold any such payment on trust for the benefit of the Crown.

- 12.6 **Clause 12.2** summarises the Escrow Agreement, but will not have any legal effect or affect the interpretation of that agreement.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**13: TAX****STATEMENT OF AGREED TAX PRINCIPLES**

13.1 The Parties agree that:

13.1.1 the payment, credit or transfer of Tangible Redress by the Crown to the Indemnified Parties is made as redress to settle the Te Arawa Lakes Historical Claims and the Te Arawa Lakes Remaining Annuity Issues and is not intended to be, or to give rise to:

- (a) a taxable supply for GST purposes; nor
- (b) gross income for income tax purposes;

13.1.2 neither Indemnified Party, nor any other person associated with either Indemnified Party, will claim an input credit (for GST purposes) or a deduction (for income tax purposes) with reference to the payment, credit or transfer by the Crown of any Tangible Redress;

13.1.3 the transfer of the Other Properties/Rights by the Crown to the Governance Entity is not intended to be, or to give rise to, a dutiable gift;

13.1.4 interest paid by the Crown under any provision of this Deed, and interest derived by the Arawa Māori Trust Board under the Escrow Agreement is either gross income or exempt income, for income tax purposes, depending on the recipient's status for income tax purposes; and, furthermore, the receipt or payment of such interest is not subject to indemnification for Tax by the Crown under this Deed;

13.1.5 any indemnity payment by the Crown to an Indemnified Party is not intended to be, or to give rise to:

- (a) a taxable supply for GST purposes; nor
- (b) gross income for income tax purposes; and

13.1.6 each Indemnified Party (at all applicable times) is or will be a registered person for GST purposes (except if that Indemnified Party is not carrying on a taxable activity as that term is defined by the Goods and Services Tax Act).

**ACKNOWLEDGEMENTS**

13.2 For the avoidance of doubt, the Parties acknowledge:

13.2.1 that the Tax indemnities given by the Crown in this Part, and the principles and acknowledgements in **clauses 13.1** and this **13.2**, respectively:

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**13: TAX**

- (a) apply only to the receipt by the Indemnified Parties (but not any nominee of an Indemnified Party) of Tangible Redress or indemnity payments from the Crown;
- (b) do not apply to any subsequent dealings, distributions, payments, uses or applications by the Indemnified Parties, or any other persons, with or of Tangible Redress or indemnity payments.

13.2.2 each obligation to be performed by the Crown in favour of an Indemnified Party under this Deed is performed as redress and without charge to, or consideration to be provided by, the Indemnified Party or any other person;

13.2.3 without limiting **clause 13.2.2**, the payment of any amounts, and the bearing of any costs from time to time, by the Governance Entity in relation to the Other Properties/Rights is not intended to be consideration for the transfer of those properties for GST or any other purpose; and, furthermore (and without limiting **clause 13.2.1**), the payment of such amounts and the bearing of such costs is not subject to indemnification for Tax by the Crown under this Deed.

**ACT CONSISTENT WITH PRINCIPLES**

13.3 Neither Indemnified Party (nor any person associated with an Indemnified Party) nor the Crown will act in a manner that is inconsistent with the principles or acknowledgements set out or reflected in **clauses 13.1** and **13.2** respectively.

**MATTERS NOT TO BE IMPLIED FROM PRINCIPLES**

13.4 Nothing in **clause 13.1** is intended to suggest or imply:

13.4.1 that the payment, credit or transfer of Tangible Redress, or an indemnity payment, by the Crown to an Indemnified Party is or will be chargeable with GST;

13.4.2 if an Indemnified Party is a charitable trust or other charitable entity, that:

- (a) payments, properties, interests, rights or assets the Indemnified Party receives or derives from the Crown under this Deed are received or derived other than exclusively for charitable purposes; or
- (b) the Indemnified Party derives or receives amounts, for income tax purposes, other than as exempt income; or

13.4.3 that gift duty should or can be imposed on any payment to, or transaction with, an Indemnified Party under this Deed.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**13: TAX****INDEMNITY FOR GST IN RESPECT OF TANGIBLE REDRESS AND INDEMNITY PAYMENTS****Tangible Redress provided exclusive of GST**

13.5 If and to the extent that:

13.5.1 the provision of redress through the payment, credit or transfer of Tangible Redress;  
or

13.5.2 an indemnity payment,

by the Crown to an Indemnified Party is chargeable with GST, the Crown must, in addition to the payment, credit or transfer of Tangible Redress or the indemnity payment, pay the Indemnified Party the amount of GST payable in respect of the Tangible Redress or the indemnity payment.

**Indemnification**

13.6 If and to the extent that:

13.6.1 the provision of redress through the payment, credit or transfer of Tangible Redress;  
or

13.6.2 an indemnity payment,

by the Crown to an Indemnified Party is chargeable with GST and the Crown does not, for any reason, pay the Indemnified Party an additional amount equal to that GST at the time the Tangible Redress is paid, credited or transferred and/or the indemnity payment is made, the Crown will, on demand in writing, indemnify the Indemnified Party for any GST that is or may be payable by the Indemnified Party or for which the Indemnified Party is liable in respect of:

13.6.3 the making of the redress; and/or

13.6.4 the payment, credit or transfer of Tangible Redress; and/or

13.6.5 the indemnity payment.

**INDEMNITY FOR INCOME TAX IN RESPECT OF TANGIBLE REDRESS OR INDEMNITY PAYMENTS**

13.7 The Crown agrees to indemnify each Indemnified Party, on demand in writing, against any income tax that the Indemnified Party is liable to pay if and to the extent that receipt of:

13.7.1 the payment, credit or transfer of Tangible Redress; or

13.7.2 an indemnity payment,

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**13: TAX**

from the Crown is treated as, or as giving rise to, gross income of the Indemnified Party for income tax purposes.

**INDEMNITY FOR GIFT DUTY IN RESPECT OF OTHER PROPERTIES/RIGHTS**

- 13.8 The Crown agrees to pay, and to indemnify the Governance Entity against any liability that the Governance Entity has in respect of, any gift duty assessed as payable by the Commissioner of Inland Revenue in respect of a transfer of the Other Properties/Rights by the Crown under this Deed.

**DEMANDS FOR INDEMNIFICATION****Notification of indemnification event**

- 13.9 Each of:

13.9.1 the Indemnified Parties; and

13.9.2 the Crown,

agrees to Notify the other as soon as reasonably possible after becoming aware of an event or occurrence in respect of which an Indemnified Party is or may be entitled to be indemnified by the Crown for or in respect of Tax under this Part.

**How demands are made**

- 13.10 Demands for indemnification for Tax by an Indemnified Party in accordance with this Part must be made by the relevant Indemnified Party in accordance with the provisions of **clause 15.6** and may be made at any time, and from time to time, after:

13.10.1 the Settlement Date, in respect of demands made by the Governance Entity; and

13.10.2 the Date of this Deed, in respect of demands made by the Arawa Māori Trust Board.

**When demands are to be made**

- 13.11 Except:

13.11.1 with the written agreement of the Crown; or

13.11.2 if this Deed provides otherwise,

no demand for payment by way of indemnification for Tax under this Part may be made by an Indemnified Party more than five Business Days before the due date for payment by the Indemnified Party of the applicable Tax (whether such date is specified in an assessment or is a date for the payment of provisional tax or otherwise).

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**13: TAX****Evidence to accompany demand**

- 13.12 Without limiting **clause 13.9**, each demand for indemnification by an Indemnified Party under this Part must be accompanied by:
- 13.12.1 appropriate evidence (which may be a notice, notice of proposed adjustment, assessment, a certificate issued by the relevant Indemnified Party and confirmed or certified by the relevant Indemnified Party's tax advisers or accountants for the time being, or any other evidence which is reasonably satisfactory to the Crown) setting out with reasonable detail the amount of the loss, cost, expense, liability or Tax that the Indemnified Party claims to have suffered or incurred or be liable to pay, and in respect of which indemnification is sought from the Crown under this Deed; and
  - 13.12.2 where the demand is for indemnification for GST, if the Crown requires, an appropriate GST tax invoice.

**Repayment of amount on account of Tax**

- 13.13 If payment is made by the Crown on account of Tax to an Indemnified Party or the Commissioner of Inland Revenue (for the account of an Indemnified Party) and it is subsequently determined or held that no such Tax (or an amount of Tax that is less than the payment which the Crown made on account of Tax) is or was payable or properly assessed, to the extent that the relevant Indemnified Party:
- 13.13.1 has retained the payment made by the Crown;
  - 13.13.2 has been refunded the amount of that payment by the Inland Revenue Department; or
  - 13.13.3 has had the amount of that payment credited or applied to its account with the Inland Revenue Department,

the Indemnified Party (and, where the relevant Indemnity Party is the Arawa Māori Trust Board, the Governance Entity) must repay the applicable amount to the Crown free of any set-off or counterclaim.

**Payment of amount on account of Tax**

- 13.14 The Indemnified Party must pay to the Inland Revenue Department any payment made by the Crown to the Indemnified Party on account of Tax, on the later of:
- 13.14.1 the "due date" for payment of that amount to the Inland Revenue Department under the applicable Tax Legislation; and
  - 13.14.2 the next Business Day following receipt by the Indemnified Party of that payment from the Crown.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**13: TAX****Payment of costs**

- 13.15 The Crown will indemnify an Indemnified Party against any reasonable costs incurred by the Indemnified Party for actions undertaken by the Indemnified Party, at the Crown's direction, in connection with:
- 13.15.1 any demand for indemnification of the Indemnified Party under or for the purposes of this Part; and
  - 13.15.2 any steps or actions taken by the Indemnified Party in accordance with the Crown's requirements under **clause 13.17**.

**DIRECT PAYMENT OF TAX: CONTROL OF DISPUTES**

- 13.16 Where any liability arises to the Crown under this Part, the following provisions shall also apply:
- 13.16.1 if the Crown so requires and Notifies the relevant Indemnified Party of that requirement, the Crown may, instead of paying the requisite amount on account of Tax, pay that amount to the Commissioner of Inland Revenue (such payment to be effected on behalf, and for the account, of the Indemnified Party);
  - 13.16.2 subject to the relevant Indemnified Party being indemnified to its reasonable satisfaction against any reasonable cost, loss, expense or liability or any Tax which it may suffer, incur or be liable to pay, the Crown shall have the right, by Notice to the relevant Indemnified Party, to require the Indemnified Party to:
    - (a) take into account any right permitted by any relevant law to defer the payment of any Tax; and/or
    - (b) take all steps the Crown may specify to respond to and/or contest any notice, notice of proposed adjustment or assessment for Tax, where expert legal tax advice indicates that it is reasonable to do so; and
  - 13.16.3 the Crown reserves the right:
    - (a) to nominate and instruct counsel on behalf of the relevant Indemnified Party whenever it exercises its rights under **clause 13.16.2**; and
    - (b) to recover from the Commissioner of Inland Revenue the amount of any Tax paid and subsequently held to be refundable.

**RULINGS, APPLICATIONS**

- 13.17 If the Crown requires, the Indemnified Parties will consult, and/or collaborate, with the Crown in the Crown's preparation (for the Crown, the Indemnified Parties and/or any other person) of an application for a non-binding or binding ruling from the Commissioner of Inland Revenue with respect to any part of the arrangements relating to the payment, credit or transfer of Tangible Redress.

## TE ARAWA LAKES DEED OF SETTLEMENT

## 13: TAX

## DEFINITIONS AND INTERPRETATION

13.18 In this Part, unless the context requires otherwise:

**gift duty** includes any interest or penalty payable in respect of, or on account of, the late or non-payment of, any gift duty;

**income tax** includes any interest or penalty payable in respect of, or on account of, the late or non-payment of, any income tax;

**Indemnified Parties** means:

- (a) the Governance Entity to the extent that it receives the Financial Redress and the Other Properties/Rights; and
- (b) the Arawa Māori Trust Board to the extent that it receives the Annuity Redress,

and **Indemnified Party** means either of them;

**indemnity payment** means any indemnity payment made by the Crown under or for the purposes of this Part;

**Other Properties/Rights** means those properties, interests, rights or assets which are to be transferred to the Governance Entity, the particulars of which are specified in **Parts 9, 10, and 11** (but, for the purposes of **clauses 13.1.3 and 13.8**, excludes the Fishing Licences Sum);

**payment** extends to the transfer or making available of cash amounts as well as to the transfer of non cash amounts (such as land);

references to the **payment, credit, transfer or receipt** of the Tangible Redress (or any equivalent wording) include a reference to the payment, credit, transfer or receipt of any part (or the applicable part) of the Tangible Redress;

**Tangible Redress** means:

- (a) the Financial Redress
- (b) the Annuity Redress; and
- (c) the Other Properties/Rights; and

**transfer** includes recognising, creating, vesting, granting, licensing, leasing, or any other means by which the relevant properties, interests, rights or assets are disposed of or made available, or recognised as being available, to the Indemnified Parties.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**14: CONDITIONS AND TERMINATION****CONDITIONALITY OF DEED AND SETTLEMENT**

14.1 Subject to **clause 14.2**, this Deed and the Settlement are conditional on:

14.1.1 within nine months after the Date of this Deed:

- (a) the Crown being satisfied that Te Arawa has established the Governance Entity in accordance with **clause 3.4**; and
- (b) the Governance Entity signing the Deed of Covenant; and

14.1.2 the Settlement Legislation coming into force within 24 months after the Date of this Deed.

**SOME PROVISIONS NOT CONDITIONAL**

14.2 Despite **clause 14.1**, the following clauses are binding from the Date of this Deed:

14.2.1 **clauses 3.4 to 3.8, 4.1 to 4.3, 14.1 to 14.5, 15.6 and 15.7**;

14.2.2 **clauses 1.15, 1.16, 2.2.2, 2.3.2, 2.11.1(b), 2.11.2(b), 2.11.3(a), (d) and (e), 2.12, 4.3.2(b), 4.3.3, 5.1.1(b), 5.1.2, 5.2, 5.3 and 12.2 to 12.6**, which relate to the Te Arawa Lakes Remaining Annuity Issues; and

14.2.3 **Part 13** to the extent that it relates to the provision of the Annuity Redress by the Crown to the Arawa Māori Trust Board.

**DEED WITHOUT PREJUDICE**

14.3 To the extent that it is not binding from the Date of this Deed, this Deed:

14.3.1 is entered into on a “without prejudice” basis; and

14.3.2 in particular, may not be used as evidence in any proceedings before, or presented to, any Court, the Waitangi Tribunal, or any other judicial body or tribunal (except for proceedings concerning the interpretation and/or enforcement of this Deed).

**TERMINATION OF THIS DEED**

14.4 Either Party may terminate this Deed, by Notice to the other Party, if:

14.4.1 **clause 14.1.1** is not satisfied within nine months after the Date of this Deed; or

14.4.2 **clause 14.1.2** is not satisfied within 24 months after the Date of this Deed.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**14: CONDITIONS AND TERMINATION****EFFECT OF TERMINATION**

14.5 If this Deed is terminated under **clause 14.4**, then:

14.5.1 this Deed, and the Settlement, will be at an end; and

14.5.2 neither Party will have any rights or obligations under this Deed,

except that **clause 14.3** and the clauses specified in **clauses 14.2.2** and **14.2.3** will continue in effect, and the Parties will continue to have any rights or obligations specified in those clauses.

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**15: MISCELLANEOUS****INTEREST ON FINANCIAL REDRESS**

- 15.1 The Crown will pay interest, from (and including) the Date of this Deed until (but excluding) the Settlement Date, on \$2.7 million (being the amount of Financial Redress).
- 15.2 Interest under **clause 15.1** will:
- 15.2.1 be calculated on each Calculation Date and will be at a rate, expressed as a percentage per annum, equal to the weighted average of the successful yield for 1 year treasury bills resulting from the treasury bill tender process that takes place during the week prior to each Calculation Date (or, if no such treasury bill rate is available, an equivalent rate);
- 15.2.2 not compound;
- 15.2.3 be paid to the Governance Entity on the Settlement Date; and
- 15.2.4 be subject to any Tax payable (and may be paid after any Tax required to be withheld) under any Tax Legislation.
- 15.3 In this Deed, unless the context requires otherwise:
- 15.3.1 **Anniversary Date** means the first Business Day after the expiry of each period of 12 months commencing on the Date of this Deed or the previous Anniversary Date (as the case may be); and
- 15.3.2 **Calculation Date** means:
- (a) the Date of this Deed, in respect of the period commencing on the Date of this Deed and expiring on the date before the first Anniversary Date; and
- (b) each Anniversary Date, in respect of the period commencing on the first Anniversary Date and expiring on the Settlement Date.

**RULE AGAINST PERPETUITIES**

- 15.4 If the Governance Entity is a trust (other than a charitable trust), the Settlement Legislation proposed by the Crown for introduction must provide that the rule against perpetuities, and any relevant provisions of the Perpetuities Act, will not prescribe or restrict the period during which the Governance Entity may:
- 15.4.1 exist in law; or
- 15.4.2 hold or deal with property (including income from property).
- 15.5 The Settlement Legislation proposed by the Crown for introduction must provide that the rule against perpetuities, and any relevant provisions of the Perpetuities Act, will not apply to a

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**TE ARAWA LAKES DEED OF SETTLEMENT**


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**15: MISCELLANEOUS**

document entered into to give effect to this Deed if the application of that rule, or the provisions of that Act, would otherwise make the document, or a right conferred by the document, invalid or ineffective.

**NOTICES**

15.6 The provisions of this clause apply to Notices under this Deed:

***Notices to be signed***

15.6.1 the Party giving a Notice must sign it;

***Notices to be in writing***

15.6.2 a Notice to a Party must be in writing addressed to that Party at that Party's address or facsimile number;

***Addresses for notice***

15.6.3 until any other address or facsimile number of a Party is given by Notice to the other Party, they are as follows:

***Crown:***

C/- The Solicitor-General  
Crown Law Office  
Unisys House  
56 The Terrace  
(PO Box 2858)  
WELLINGTON

Facsimile No: 04 473 3482

***Te Arawa:***

C/- Chief Executive  
Te Arawa Maori Trust Board  
Pukuatua Street  
(PO Box 128)  
ROTORUA

Facsimile No: 07 347 7349

***Delivery***

15.6.4 delivery of a Notice may be made:

- (a) by hand;
- (b) by post with pre-paid postage; or
- (c) by facsimile;

***Timing of delivery***

15.6.5 a Notice delivered:

- (a) by hand will be treated as having been received at the time of delivery;

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**15: MISCELLANEOUS**

- (b) by pre-paid post will be treated as having been received on the second day after posting; or
- (c) by facsimile will be treated as having been received on the day of transmission; and

***Deemed date of delivery***

15.6.6 if a Notice is treated as having been received on a day that is not a Business Day, or after 5pm on a Business Day, that Notice will (despite **clause 15.6.5**) be treated as having been received the next Business Day.

**AMENDMENT**

15.7 This Deed may not be amended unless the amendment is in writing and signed by, or on behalf of, Te Arawa and the Crown.

**ENTIRE AGREEMENT**

15.8 This Deed:

15.8.1 constitutes the entire agreement between the Parties in relation to the matters referred to in it; and

15.8.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between Te Arawa, any Representative Entity or any Member of Te Arawa (separately, or in any combination) and the Crown relating to such matters (including the Terms of Negotiation and the Agreement in Principle but not Te Tiriti o Waitangi/the Treaty of Waitangi).

**NO WAIVER**

15.9 A failure, delay or indulgence by either Party in exercising a power or right under or arising from this Deed shall not operate as a waiver of that power or right.

15.10 A single, or partial, exercise of a power or right under or arising from this Deed shall not preclude further exercises of that power or right or the exercise of another power or right.

**NO ASSIGNMENT**

15.11 Except as expressly provided in this Deed or a document entered into under this Deed, neither Party may transfer or assign any rights or obligations under or arising from this Deed.

**MĀORI TRANSLATION**

15.12 The Māori translation of this Deed will have no legal effect and will not affect the interpretation of this Deed.

## TE ARAWA LAKES DEED OF SETTLEMENT

**16: DEFINITIONS AND INTERPRETATION****DEFINITIONS****Terms defined by legislation**

- 16.1 In this Deed, unless the context requires otherwise, the following terms have the meaning for that term given by the section of the legislation set opposite it below:

<b>Term</b>	<b>Defining section</b>
<b>Antiquities</b>	section 2 Antiquities Act
<b>Artifact</b>	section 2 Antiquities Act
<b>Building Consent</b>	section 2 Building Act
<b>Conservation Board</b>	section 2(1) Conservation Act
<b>Crown entity</b>	section 2(1) Public Finance Act
<b>District Plan</b>	section 2(1) Resource Management Act
<b>Local Authority</b>	section 5(1) Local Government Act
<b>New Zealand Historic Places Trust</b>	section 38 Historic Places Act
<b>Office of Parliament</b>	section 2(1) Public Finance Act
<b>Proposed Plan</b>	section 2(1) Resource Management Act
<b>Regional Council</b>	section 5(1) Local Government Act
<b>Regional Plan</b>	section 2(1) Resource Management Act
<b>Registrar-General of Land</b>	section 4 Land Transfer Act
<b>Resource Consent</b>	section 87 Resource Management Act
<b>State Enterprise</b>	section 2 State-Owned Enterprises Act
<b>Waitangi Tribunal</b>	section 4 Treaty of Waitangi Act

**Terms defined in this Deed**

- 16.2 In this Deed, unless the context requires otherwise, the following terms have the meaning for that term given by the clause or part of this Deed set opposite that term below:

<b>Term</b>	<b>Defining clause or part</b>
<b>1922 Act</b>	1.16.1
<b>1922 Agreement</b>	1.16.2
<b>1922 Arrangements</b>	1.16.3
<b>1998 Regulations</b>	11.19
<b>Agreement in Principle</b>	Background
<b>Anniversary Date</b>	15.3.1
<b>Annuity</b>	1.16.4
<b>Arawa Māori Trust Board (or the Board)</b>	1.16.5
<b>Calculation Date</b>	15.3.2
<b>Consent Authority</b>	11.2.1(a)
<b>Crown</b>	1.4
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## TE ARAWA LAKES DEED OF SETTLEMENT

## 16: DEFINITIONS AND INTERPRETATION

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Terms of Negotiation	Background

**Terms used in Part 13: Tax**

16.3 **Clause 13.18** defines certain terms used in **Part 13: Tax**.

**Defined terms**

16.4 In this Deed, unless the context requires otherwise:

**Annuity Redress** means the Redress to be provided by the Crown described in **clause 12.2** (which, for the avoidance of doubt, does not include any amount of interest paid to the Arawa Māori Trust Board by the escrow agent);

**Antiquities Protocol** means the Protocol issued under **clause 9.10** (as that Protocol may be amended under **clause 9.16.1**);

**Business Day** means the period of 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;

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**TE ARAWA LAKES DEED OF SETTLEMENT**

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**16: DEFINITIONS AND INTERPRETATION**

- (b) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and
- (c) the days observed as the anniversaries of the provinces of Wellington and Bay of Plenty;

**Conservation Document** means a national park management plan, conservation management strategy, or conservation management plan;

**Conservation Legislation** means the Conservation Act and the Enactments listed under Schedule 1 to that Act;

**Court**, in relation to any matter, means a court having jurisdiction in relation to that matter in New Zealand;

**Cultural Redress** means the Redress to be provided by the Crown in accordance with **Parts 9, 10 and 11**;

**Cultural Redress Schedule** means **Schedule 2**;

**Date of this Deed** means the date this Deed is signed by the Parties;

**Deed** and **Deed of Settlement** means this Deed of Settlement, including the Schedules to it;

**Department** means a department or instrument of the Government, or a branch or division of the Government, but does not include a body corporate, or other legal entity, that has the power to contract, or an Office of Parliament;

**Disclosure Information** means the information relating to the Te Arawa Lakes provided by, or on behalf of, the Crown to Te Arawa as referred to in a letter from the Office of Treaty Settlements to the Arawa Māori Trust Board dated [ ];

**DOC Protocol** means the Protocol issued under **clause 9.4** (as that Protocol may be amended under **clause 9.16.1**);

**DOC Protocol Area** means the Te Arawa Lakes, including the streams and rivers flowing into the Te Arawa Lakes only to the extent specifically provided for in clauses 9 and 10, and the lands adjoining the lakes that are administered by the Department of Conservation only to the extent specifically provided for in clause 11, of the DOC Protocol;

**Effective Date** means the date that is six months after the Settlement Date;

**Enactment** has the meaning given to that term by section 29 of the Interpretation Act, and includes Local Authority bylaws;

**Encumbrance** means any lease, tenancy, licence to occupy, easement, covenant, or other right affecting a Te Arawa Lakebed and described in **Subpart B of Part 1** of the **Cultural Redress Schedule** in relation to that lakebed;

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**Entity** means a body corporate or an unincorporated body such as a trust;

**Environment Court** means the Court referred to in section 247 of the Resource Management Act;

**Environment Protocol** means the Protocol issued under **clause 9.13** (as that Protocol may be amended under **clause 9.16.1**);

**Financial Redress** means the Redress to be provided by the Crown under **clause 12.1**;

**Fisheries Protocol** means the Protocol issued under **clause 9.7** (as that Protocol may be amended under **clause 9.16.1**);

**Fisheries Protocol Area** means the Te Arawa Lakes, including the streams and rivers flowing into the Te Arawa Lakes only to the extent specifically provided for in clauses 6, 7, and 8 of the Fisheries Protocol;

**Gazette** has the meaning given to that term by section 29 of the Interpretation Act;

**GST** means goods and services tax chargeable under the Goods and Services Tax Act 1985 and extends to and includes any interest or penalty payable in respect of, or on account of, the late or non-payment of, any GST;

**Minister** means a Minister of the Crown;

**Notice** means a notice in writing given under **clause 15.6** and **Notify** has a corresponding meaning;

**Parties** means Te Arawa, the Arawa Māori Trust Board and the Crown;

**Protocol** means a protocol issued under **clauses 9.4 to 9.15** (as that Protocol may be amended under **clause 9.16.1**);

**Redress** means:

- (a) the acknowledgements and the apology given by the Crown under **Part 8**;
- (b) the Cultural Redress;
- (c) the Financial Redress; and
- (d) the Annuity Redress;

**Settlement** means the settlement of the Te Arawa Lakes Historical Claims and/or the Te Arawa Lakes Remaining Annuity Issues under this Deed, the Settlement Legislation and/or any legislation introduced under **clause 2.12**;

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**16: DEFINITIONS AND INTERPRETATION**

**Settlement Date** means the date which is 20 Business Days after this Deed becomes unconditional;

**Settlement Legislation** means the bill referred to in **Part 4** and, where the bill has become law, means, if the context requires, the Act resulting from the passing of that bill;

**Statutory Acknowledgement** means the acknowledgement made by the Settlement Legislation in relation to the Statutory Area on the terms set out in **clauses 11.1 to 11.9**;

**Statutory Plans** means regional policy statements, regional coastal plans, district plans, regional plans and proposed plans as defined in section 2(1) of the Resource Management Act and includes proposed policy statements referred to in the First Schedule to the Resource Management Act;

**Tax** includes income tax, GST and gift duty;

**Tax Legislation** means any legislation that imposes or provides for the administration of Tax;

**Te Tiriti o Waitangi/the Treaty of Waitangi** has the same meaning as the term "Treaty" in section 2 of the Treaty of Waitangi Act.

**REFERENCES TO LEGISLATION**

- 16.5 In this Deed certain legislation is referred to without including the year of that legislation. The year of the legislation referred to is set out below:

Antiquities Act 1975  
Building Act 1991  
Conservation Act 1987  
Crown Minerals Act 1991  
Crown Proceedings Act 1950  
Electricity Act 1992  
Environment Act 1986  
Goods and Services Tax Act 1985  
Historic Places Act 1993  
Interpretation Act 1999  
Land Act 1948  
Land Transfer Act 1952  
Local Government Act 2002  
Local Government (Rating) Act 2002  
Local Government Official Information and Meetings Act 1987  
Maori Fisheries Act 2004  
Maori Purposes Act 1931  
Maori Trust Boards Act 1955  
National Parks Act 1980  
New Zealand Geographic Board Act 1946  
Perpetuities Act 1964  
Public Finance Act 1989  
Reserves Act 1977

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Resource Management Act 1991  
State-Owned Enterprises Act 1986  
Telecommunications Act 2001  
Treaty of Waitangi Act 1975  
Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

**INTERPRETATION**

- 16.6 In the interpretation of this Deed, unless the context otherwise requires:
- 16.6.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
  - 16.6.2 defined terms appear in this Deed with capitalised initial letters and have the meanings given to them by this Deed;
  - 16.6.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
  - 16.6.4 the singular includes the plural and vice versa;
  - 16.6.5 words importing one gender include the other genders;
  - 16.6.6 a reference to a Part, clause, Schedule or Attachment is to a Part, clause, Schedule or Attachment of or to this Deed;
  - 16.6.7 a reference in a Schedule to a paragraph means a paragraph in that Schedule;
  - 16.6.8 a reference to legislation includes a reference to that legislation as amended, consolidated or substituted;
  - 16.6.9 a reference to a Party in this Deed, or in any other document or agreement under this Deed, includes that Party's permitted successors;
  - 16.6.10 an agreement on the part of two or more persons binds each of them jointly and severally;
  - 16.6.11 a reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced from time to time;
  - 16.6.12 a reference to a monetary amount is to New Zealand currency;
  - 16.6.13 a reference to written or in writing includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
  - 16.6.14 a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**16: DEFINITIONS AND INTERPRETATION**

- 16.6.15 a reference to the Crown, or a Crown Agency, endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction any legislation, except where this Deed requires the Crown to introduce Settlement Legislation;
- 16.6.16 where a clause includes a preamble, that preamble is intended to set out the background to, and intention of, the clause, but is not to affect the interpretation of the clause;
- 16.6.17 in the event of a conflict between a provision in the main body of this Deed (namely, any part of this Deed except the Schedules or Attachments) and the Schedules or Attachments, then the provision in the main body of this Deed prevails;
- 16.6.18 a reference to any document as set out in, or on the terms and conditions contained in, a Schedule or Attachment includes that document with such amendments as may be agreed in writing between Te Arawa and the Crown;
- 16.6.19 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between Te Arawa and the Crown;
- 16.6.20 where something is required to be done by or on a day which is not a Business Day, that thing must be done on the next Business Day after that day;
- 16.6.21 a reference to time is to New Zealand time;
- 16.6.22 a reference to the Settlement Legislation including a provision set out in this Deed includes that provision with any amendment:
- (a) that is agreed in writing between Te Arawa and the Crown; and
  - (b) that results in a provision that is similar to that provided in this Deed and does not have a material adverse effect on any of the Parties;
- 16.6.23 a reference to a particular Minister of the Crown includes any Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the relevant Act or matter; and
- 16.6.24 where the name of a reserve or other place is amended under this Deed, either the existing name or new name is used to mean that same reserve or other place.

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**EXECUTED** as a deed on [*Date*]

**EXECUTED** for and on behalf  
of **TE ARAWA** by the **ARAWA  
MĀORI TRUST BOARD** by  
affixing its common seal  
in the presence of:

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Secretary of the Board  
Name:

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Member of the Board  
Name:

---

Member of the Board  
Name:

**EXECUTED** by the **ARAWA  
MĀORI TRUST BOARD** by  
affixing its common seal  
in the presence of:

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Secretary of the Board  
Name:

---

Member of the Board  
Name:

---

Member of the Board  
Name:

**TE ARAWA LAKES DEED OF SETTLEMENT**

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**SIGNED** for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister in Charge of Treaty of Waitangi Negotiations

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in the presence of:

**WITNESS**

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Name:

Occupation:

Address:

**SIGNED** for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Māori Affairs:

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in the presence of:

**WITNESS**

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Name:

Occupation:

Address:

TE ARAWA LAKES DEED OF SETTLEMENT

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**Other Te Arawa signatures:**