

# Agreement relating to Deed of Settlement of the Historical Claims of the Affiliate Te Arawa Iwi/Hapu

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The Affiliate Te Arawa Iwi/Hapu

Rotorua District Council

Her Majesty the Queen

September 2006

**Deed of Agreement – September 2006**

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*MAW* *J.R.* *G.P.*

Date:

## **PARTIES**

The Affiliate Te Arawa Iwi/Hapu as represented by the Nga Kaihautu o Te Arawa Executive Council (*KEC*)

Rotorua District Council (the *Council*)

Her Majesty the Queen in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations (the *Crown*)

## **BACKGROUND**

- A. In accordance with the Deed of Settlement, the Karamuramu Baths Land and the Esplanade Land will vest as an esplanade reserve. The vesting of both areas will occur on the day after the Airport Lease with Rotorua Regional Airport Limited (*RRAL*) expires.
- B. The Council will, however, continue to discuss with *RRAL* the possibility of *RRAL* partially surrendering the Airport Lease in respect of the Esplanade Land and the Karamuramu Baths Land so that this vesting could occur prior to expiry of the Airport Lease.
- C. In accordance with the Deed of Settlement, after the Esplanade Land and the Karamuramu Baths Land vest as an esplanade reserve, the Karamuramu Baths Land will vest in the Governance Entity in fee simple.
- D. The Council being the owner of the Karamuramu Baths Land and the Esplanade Land, has agreed to make that land available without compensation in order for the above vestings to occur.
- E. Also in accordance with the Deed of Settlement:
- 1 the Specially Classified Reserves owned by the Council will be subject to a special classification as set out in the Deed of Settlement;
  - 2 the Whakarewarewa Easement and the Tokorangi Easement will create public access rights over parts of the Whakarewarewa Forest; and
  - 3 the Council agrees that the special classification that will apply to the Recreation Reserve at Hannah's Bay (including Otairira Swamp) as a Specially Classified Reserve under the Deed of Settlement will also apply to the Esplanade Land when it vests as an esplanade reserve and to the Karamuramu Baths Land for the period that this land is vested as an esplanade reserve.
- F. *KEC*, the Council, and the Crown each wish to make certain agreements and acknowledgements with each other in respect of the Karamuramu Baths Land, the Esplanade Land, the Specially Classified Reserves and the Whakarewarewa Forest on the terms and conditions set out in this Agreement.

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**OPERATIVE PART****1 DEFINITIONS AND CONSTRUCTION**

1.1 In this Agreement, unless inconsistent with the context, the following words have the following meanings:

*Agreement* means this agreement;

*Airport Land* means 95.3180 hectares more or less being Part Lot 1 Deposited Plan South Auckland 49938, being the land comprised and described in computer freehold register SA52C/128;

*Airport Lease* means registered lease L6499434.3 in computer leasehold register 231242;

*Business Day* means the period 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;
- (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 Auckland;

*Deed of Settlement* means the proposed Deed of Settlement of the Historical Claims of the Affiliate Te Arawa Iwi/Hapu;

*Esplanade Land* has the meaning set out in the Deed of Settlement, and being part of the Airport Land;

*Governance Entity* has the meaning set out in the Deed of Settlement;

*Karamuramu Baths Land* has the meaning set out in the Deed of Settlement, and being part of the Airport Land;

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

*Specially Classified Reserves* has the meaning set out in the Deed of Settlement;

*Tokorangi Easement* has the meaning set out in the Deed of Settlement;

*Whakarewarewa Easement* has the meaning set out in the Deed of Settlement; and

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*Whakarewarewa Forest* means those parts of the Whakarewarewa Forest subject to the Tokorangi and Whaka Crown Forestry Licences.

## 1.2 Construction

In this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any gender includes a reference to all other genders;
- (c) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- (d) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (e) where any act is required by this Agreement to be done on a given day and that day is not a Business Day then the act is required to be done on the next following Business Day; and
- (f) references to clauses are references to clauses in this Agreement and references to parties are references to the parties to this Agreement and their respective successors, successors in title and assigns unless expressly stated otherwise.

## 2 AGREEMENT CONDITIONAL

- 2.1 The parties agree that this Agreement is conditional upon the Deed of Settlement becoming unconditional, the final condition of which is the passing of Settlement Legislation.
- 2.2 This Agreement will terminate and be of no further effect if the Deed of Settlement is terminated in accordance with its terms.

## 3 KARAMURAMU BATHS LAND AND ESPLANADE LAND

- 3.1 The Karamuramu Baths Land and the Esplanade Land are owned by the Council and are part of the Airport Land that is leased to RRAL under the Airport Lease. The Airport Lease expires no later than 31 December 2022.
- 3.2 However it is possible that the Airport Lease may expire earlier than 31 December 2022, or that the Council and RRAL may reach agreement on a new lease of the Airport Land beyond the expiry of the Airport Lease or

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the airport may have an alternative operator. If a new lease is entered into, this will occur only after the vesting of the Karamuramu Baths Land. In this situation the Governance Entity and the operator of the airport will be neighbours.

3.3 The Crown and KEC acknowledge that:

- (a) the Karamuramu Baths Land and the Esplanade Land are owned by the Council; and
- (b) the Council has in goodwill agreed that the Karamuramu Baths Land and the Esplanade Land be vested in the Council as an esplanade reserve on the day after the Airport Lease expires and that the Karamuramu Baths Land will subsequently be vested in the Governance Entity in fee simple:
  - (i) to assist the Crown in achieving the Deed of Settlement; and
  - (ii) in recognition of the cultural significance of the Karamuramu Baths Land to KEC.

3.4 The Council agrees to make available the Karamuramu Baths Land and the Esplanade Land so that:

- (a) the Esplanade Land and the Karamuramu Baths Land will vest in the Council as an esplanade reserve under the Resource Management Act 1991; and
- (b) the Karamuramu Baths Land will subsequently vest in the Governance Entity in fee simple,

in accordance with the provisions of the Deed of Settlement.

3.5 Despite clause 3.2(b), the Council will continue discussions with RRAL regarding the possibility of RRAL partially surrendering the Airport Lease in respect of the Esplanade Land and the Karamuramu Baths Land so that the vesting of the Esplanade Land and the Karamuramu Baths Land as esplanade reserve could occur prior to expiry of the Airport Lease. Should RRAL agree to partially surrender the Airport Lease in respect of the Esplanade Land and the Karamuramu Baths Land prior to the expiry of the Airport Lease, the vesting of the Esplanade Land and the Karamuramu Baths Land as esplanade reserve under clause 3.3(b) will occur on the day after the date of partial surrender of the Airport Lease in respect of that land, and the provisions of this Agreement shall apply accordingly in respect of this alternative vesting date for the Esplanade Land and the Karamuramu Baths Land.



- 3.6 Despite clause 3.2(b), the Council agrees that should clause 3.4 apply, and the Karamuramu Baths Land and the Esplanade Land vest as esplanade reserve prior to expiry of the Airport Lease, the "Vesting Date" for the vesting of the Karamuramu Baths Land in the Governance Entity in fee simple will be that date as defined in the Deed of Settlement.
- 3.7 The parties agree that a distance of 5 metres exists between the existing airport security fence on the Airport Land and the eastern boundary of the Karamuramu Baths Land as depicted on SO370848.
- 3.8 The Crown agrees to give effect to the future vestings by agreeing in the Deed of Settlement to include appropriate vesting provisions in the Settlement Legislation.
- 3.9 The Council will, no later than 20 Business Days after the date the Karamuramu Baths Land is vested in the Governance Entity (the **Vesting Date**), grant the Governance Entity a registerable easement suitable for occasional four wheel drive vehicular access to the Karamuramu Baths Land. The easement route will be determined by the Council and will be over the Recreation Reserve at Hannah's Bay (including Otauirā Swamp) and, or, the Airport Land and will then be over the Esplanade Land.
- 3.10 The registerable form of easement will provide that the Council and the Governance Entity will share equally the costs of:
- (a) establishment, forming and sealing (if required) of the right of way easement; and
  - (b) repair, maintenance and replacement.
- 3.11 The Council will, within 10 Business Days after the Vesting Date, prepare the registerable form of easement and provide it to the Governance Entity for signing and returning. The Governance Entity will sign and return the registerable easement to the Council within 10 Business Days of receipt.
- 3.12 The Council will register the easement at Land Information New Zealand as soon as possible after receiving the executed easement from the Governance Entity.
- 3.13 From the Vesting Date until the easement has been registered, the parties shall be bound by the terms and conditions of the easement as if the easement had been registered.
- 3.14 Also in accordance with the Deed of Settlement, the Council agrees that the special classification that will apply to the Recreation Reserve at Hannah's Bay (including Otauirā Swamp) as a Specially Classified Reserve under the provisions of Part 11 of the Deed of Settlement will also apply to the Esplanade Land when it vests as an esplanade reserve under clause



3.3(b) and to the Karamuramu Baths Land for the period that this land is vested as an esplanade reserve as if the Esplanade Land and the Karamuramu Baths Land were part of the Recreation Reserve at Hannah's Bay (including Otauria Swamp).

- 3.15 KEC acknowledges that the Rotorua District Plan contains restrictions on the use of the Karamuramu Baths Land and agrees that following the vesting of the Karamuramu Baths Land in the Governance Entity in fee simple, the Governance Entity will comply with these restrictions.
- 3.16 The Crown agrees that it will pay all necessary survey and registration costs related to the vestings of the Karamuramu Baths Land and the Esplanade Land including the easement and the partial surrender (if required) of the Airport Lease in respect of the Karamuramu Baths Land and the Esplanade Land.

#### 4 **SPECIALLY CLASSIFIED RESERVES**

- 4.1 The Specially Classified Reserves are administered by the Council under the Reserves Act 1977.
- 4.2 The Council recognises the cultural significance of the Specially Classified Reserves to KEC but also the importance of them to the people of the Rotorua region generally.
- 4.3 Accordingly the Council recognises that its administration of the Specially Classified Reserves is to be effected in the manner contemplated by the relevant provisions in Part 11 of the Deed of Settlement.

#### 5 **WHAKAREWAREWA FOREST AND EASEMENTS**

- 5.1 Under the Deed of Settlement, the Crown will grant public access rights under the Whakarewarewa Easement and the Tokorangi Easement, over parts of the Whakarewarewa Forest, on the terms and conditions set out in the Deed of Settlement.
- 5.2 The Council and KEC acknowledge that each party supports the Tokorangi Easement and the Whakarewarewa Easement into the future.
- 5.3 The Council and KEC record their wish that, once all Treaty of Waitangi settlements are completed, if any of the Whakarewarewa Forest is in Crown ownership, that such parts of the Whakarewarewa Forest should remain in public ownership.



6 **NOTICES**

6.1 **Contact Details**

Unless and until the party provides a different address or facsimile number by notice in writing to the other parties to this Agreement its address for notices will be:

(a) KEC:

Nga Kaihautu o Te Arawa Executive Council  
1 Peace Street  
(PO Box 6084)  
ROTORUA

Facsimile No: 07 347 4654

(b) The Crown:

C/- The Solicitor-General  
Crown Law Office  
Level 10  
Unisys House  
56 The Terrace  
(PO Box 2858)  
WELLINGTON

Facsimile No: 04 473 3482

(c) The Council:

C/- The Chief Executive  
Rotorua District Council  
Civic Centre  
1061 Haupapa Street  
(Private Bag 3029)  
ROTORUA

Facsimile No: 07 350 0184

6.2 **Deemed Receipt**

Any notice given as provided by this clause will be deemed received by the party(ies) to whom it is addressed when:

- (a) in the case of any notice delivered by hand, when so delivered;

- (b) in the case of any notice sent by facsimile such notice, upon the issue to the sender of a transmission control or other like report from the despatching facsimile machine which shows the relevant number of pages comprised in the notice to have been sent and the result of the transmission is "OK".

**7 MISCELLANEOUS**

**7.1 Further Acts**

Each of the parties will without consideration sign, execute and deliver any document and will perform any other act which may be necessary or desirable to give full effect to this Agreement.

**7.2 Entire Agreement**

This Agreement supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter of this Agreement and sets forth the entire and exclusive agreement and understanding between the parties relating to the subject matter of this Agreement.

**7.3 No Waiver or Variation**

The parties agree that no provision of or right created under this Agreement may be waived or varied if that waiver or variation were to materially alter the original purpose of this Agreement.

**7.4 Partial Exercise of Rights**

No single or partial exercise by any party of any right, power or remedy under this Agreement will preclude any other or further exercise of that or any other right, power or remedy.

**7.5 Severance**

If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.

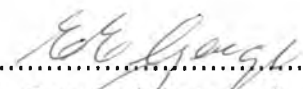



7.6 Counterparts


This Agreement may consist of a number of counterparts, each of which when executed will be an original and all the counterparts together will constitute one and the same instrument.


EXECUTION

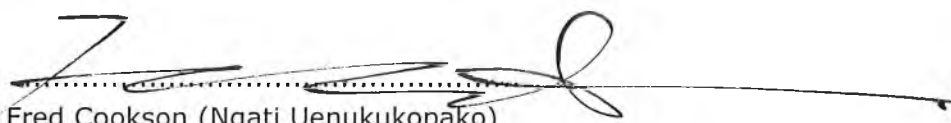
Signed for and on behalf of the **Affiliate**  
**Te Arawa Iwi/Hapu** by in the presence of

  
.....  
Eru George (Chairman)

  
.....  
Rawiri Te Whare (General Manager)

  
.....  
Te Rangipuawhe Maika (Tuhourangi Ngati Wahiao)

  
.....  
Wallace Haumaha (Ngati Ngararanui)

  
.....  
Fred Cookson (Ngati Uenukukopako)

Witness  
  
.....  
Witness signature

**NERO PANAPA**  
.....  
Full name (please print)

**OPERATIONS MANAGER**  
.....  
Occupation (please print)

**ROTORUA**  
.....  
Address (please print)



*[Handwritten signature]*

.....  
Minister in Charge of Treaty of Waitangi  
Negotiations

**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 in the presence of

*[Handwritten signature]*

.....  
Witness signature

*THEA DANIA KOSANOVSKI*

.....  
Full name (please print)

*PRIVATE SECRETARY*

.....  
Occupation (please print)

*WELLINGTON*

.....  
Address (please print)

**Signed by Rotorua District Council**  
by affixing its common seal in the presence of

*[Handwritten signature: Kevin Winters]*

.....  
Kevin Winters (Mayor)

*[Handwritten signature: Peter Guerin]*

.....  
Peter Guerin (Chief Executive)



*[Handwritten signature]*