

**THE TRUSTEES OF TE PUMAUTANGA O TE ARAWA
TRUST ON BEHALF OF NGATI UENUKUKOPAKO AND
(AFFILIATE) RUAMATA MARAE**

and

THE CROWN

TERMS OF AGREEMENT

4 November 2008

Parties to these Terms

- 1 The parties to this document, known as the "**Terms of Agreement**", are the Crown (as defined in paragraph 27) and the Trustees of Te Pumautanga o Te Arawa Trust (as defined in paragraph 24) on behalf of the Ngati Uenukukopako (as referred to in paragraph 23) (together, the "**Parties**").
- 2 Although not parties to these Terms of Agreement, the Parties agree that the Rotorua District Council and Civil Aviation Authority should also be invited by the Crown to engage in the discussions between the Parties under these Terms of Agreement.

Background

- 3 During the oral hearings of the Maori Affairs Select Committee, a representative of the Trustees of the Ruamata Marae Reservation Trust (the "**Marae Trust**") made a submission recommending that the Affiliate Te Arawa Iwi and Hapu Claims Settlement Bill be amended to exclude the settlement of a claim that the Crown breached the Treaty by designating a flight path immediately over Ruamata Marae.
- 4 The submitter provided an account of the detrimental effects of the operation of low-flying aircraft on the Marae, urupa and associated activities, and the efforts to resolve issues allegedly caused by the flight path of aircraft over the Marae and in and out of Rotorua Airport.
- 5 The primary concerns of the Marae Trust relate to the perceived impacts of the flight path and in particular that:
 - 5.1 The Whare Tupuna (Meeting House) and Urupa were relocated during the development of the airport, and the Marae went into debt (for 10 years) as a consequence of delays in being reimbursed for the relocation costs;
 - 5.2 The Marae complex is made less appealing for hire, due to aircraft noise, and the Marae's income for maintenance suffers as a consequence;

- 5.3 Customs and practices are interrupted, in that karanga, whaikorero, waiata and wananga are disrupted due to aircraft noise;
- 5.4 People at the Marae are put in danger from the operation of low-flying aircraft, which gives rise to health (due to the fuel residue deposited by low-flying aircraft) and safety (due to the regular presence of low-flying aircraft overhead and 'whiplash') issues; and
- 5.5 Buildings are damaged by vibrations due to aircraft noise, in that roofing nails are loosened over time.
- 6 Officials from OTS and the Treasury met with representatives of the Marae Trust, Ngati Uenukukopako and Te Pumautanga o Te Arawa Trust on 2 September 2008, to discuss a possible way forward to respond to concerns about the current impact of the Rotorua Airport flight path on Ruamata Marae.
- 7 Copies of claims dated 29 August 2008 to the Waitangi Tribunal regarding the southern extension to Rotorua Airport and other matters were tabled by Rua Taikato and Hera Naera on behalf of Ngati Uenukukopako at the hui.
- 8 A concern raised in one of the Waitangi Tribunal claims was that the Rotorua District Council had not consulted with tangata whenua on the southern extension, despite the wahi tapu nature of the land at the southern end of the runway, and in particular despite the special classification provided for in respect of the adjacent recreation reserve at Hannah's Bay (including Otauirā swamp) in Part 7 of Schedule 3 to the Deed of Settlement of the Historical Claims of the Affiliate Te Arawa Iwi and Hapu dated 11 June 2008.
- 9 It was agreed at the meeting on 2 September that a letter of commitment from the Minister in Charge of Treaty Negotiations would be an acceptable measure to initiate discussions about a way forward to address the Marae Trust's concerns.
- 10 The letter of commitment relating to possible steps to address Ruamata Marae's concerns in relation to the flight path as a contemporary issue,

was provided to Te Pumautanga o Te Arawa Trust and Ngati Uenukukopako on 9 September 2008.

- 11 It was subsequently agreed that concerns about the process to consult with Ngati Uenukukopako on the proposed extension of the Rotorua Airport runway be noted in these Terms of Agreement.
- 12 On 12 October 2008 a publicly notified Ngati Uenukukopako Hui a Iwi (including the Ruamata Marae Trust) was held to discuss the mandate entity to progress the issues contained in these Terms of Agreement. The mandate to progress these Terms of Agreement was unanimously provided to Te Pumautanga o Te Arawa Trust.

The Purpose of these Terms of Agreement

- 13 These Terms of Agreement have been developed further to the letter of commitment and set out the scope, objectives, general procedures and "ground rules" for formal discussions between the Parties regarding a process to investigate and address if possible, the Marae Trust's concerns about the Rotorua Airport flight path, and the concerns of Ngati Uenukukopako in relation to the Southern extension of the Rotorua Airport runway.
- 14 In particular, these Terms of Agreement record the intentions of Te Pumautanga o Te Arawa Trust and the Crown regarding the discussions, including the intention to negotiate in good faith.
- 15 These Terms of Agreement are not legally binding and do not create a legal relationship. However, the Parties acknowledge that each expects the other to use their best endeavours to comply with the terms set out in this document during discussions.

Issues to Address

- 16 In negotiating an arrangement to address Ngati Uenukukopako's concerns in respect of the flight path over Ruamata Marae and the use of that flight path by proposed international services to Rotorua Airport, the Parties acknowledge that the following initial objectives need to be addressed, and the manner in which the objectives are addressed will determine the ongoing nature and extent of the discussions.

Objectives of the discussions

- 17 The Parties agree that the objectives of the current process are to:
- 17.1 Investigate and where necessary facilitate research to determine and/or confirm risks, damage and safety issues associated with low-flying aircraft over the Ruamata Marae;
 - 17.2 Identify and agree any short-term actions to address immediate and obvious issues (e.g. fixing damaged buildings, noise proofing and compensation where this can be justified) associated with low-flying aircraft over the Ruamata Marae;
 - 17.3 Identify strategies to reduce, mitigate and where possible eliminate impacts on the Marae from current domestic and future international low-flying aircraft using the flight path over the Marae;
 - 17.4 Identify and research practical options for addressing the Ruamata Marae's concerns in relation to flight path and its impacts on the marae.
 - 17.5 Consider the practicality of a broad range of options including restrictions on flight path, runway alignment and relocation options.
 - 17.6 Develop and agree a process for input and proper consideration of the concerns of Ngati Uenukukopako through the Ngati Uenukukopako Trust and Ruamata Marae Reservation Trust, with regard to the internationalisation of the Rotorua airport as covered in this Agreement.
- 18 In working toward the achievement of these objectives, the Parties agree that all relevant existing research and other documentation and material compiled by any stakeholders, including the Rotorua District Council, must be taken into consideration when developing possible ways to address the concerns of Ngati Uenukukopako and the Marae Trust.
- 19 The Parties acknowledge that the Crown does not have ownership or control of Rotorua Airport, and that the Airport is managed by Rotorua Regional Airport Ltd, a limited liability company 100% owned by the

Rotorua District Council and a Council-controlled Trading Organisation pursuant to Section 6 Local Government Act 2002.

- 20 The Parties agree that the Rotorua District Council and Civil Aviation Authority should be invited to engage from the outset in the discussions between the Parties under these Terms of Agreement.
- 21 The Parties acknowledge that these Terms of Agreement do not seek to address wider interests of Te Pumautanga o Te Arawa in respect of airspace.

Definition of Terms

- 22 **Ngati Uenukukopako** means the Affiliate iwi of Te Pumautanga o Te Arawa.
- 23 **Te Pumautanga o Te Arawa Trust** means the trust created as the post-settlement governance entity for the Affiliate Te Arawa Iwi and Hapu Settlement on 1st December 2006, representing the following Te Arawa Iwi and Hapu (the Affiliates):
- Ngati Ngararanui (including Ngati Tuteaiti and Ngati Tamahika)
 - Ngati Tura / Ngati Te Ngakau
 - Ngati Kearoa / Ngati Tuara
 - Ngati Te Roro o te Rangi
 - Ngati Uenukukopako
 - Ngati Tuteniu
 - Ngati Pikiāo
 - Ngati Tarawhai
 - Ngati Rongomai
 - Tuhourangi Ngati Wahiao
 - Ngati Tahu-Ngati Whaoa
- 24 **Trustees of Te Pumautanga o Te Arawa Trust** means the trustees of Te Pumautanga o Te Arawa Trust and includes the trustees appointed from time to time under the Deed of Trust for Te Pumautanga o Te Arawa Trust in their capacity as trustees.

25 **The Issues** means the primary concerns of the Marae Trust referred to in paragraph 5 and the Ngati Uenukukopako Iwi Trust in relation to paragraph 8.

26 **The Crown:**

26.1 Means the Sovereign in right of New Zealand; and

26.2 Includes all Ministers of the Crown and all government departments; but

26.3 Does not include:

26.3.1 An Office of Parliament; or

26.3.2 A Crown entity; or

26.3.3 A State Enterprise named in the First Schedule to the State-owned Enterprises Act 1986.

Mandate to Negotiate

27 The Crown is satisfied that at a Ngati Uenukukopako Hui a Iwi to be held on 12 October 2008 will confirm the mandate of the Trust in relation to the discussion of the Issues with any final agreement subject to ratification by Ngati Uenukukopako.

Subject matter for discussions

28 The discussions will focus on the Issues. Without limiting the matters to be discussed by the Parties, which may be further refined during the course of the discussions, the subject matter for discussions will relate to the desire of Ngati Uenukukopako to have the concerns relating to the impact of the flight path over the Ruamata Marae and the extension of the southern end of the Rotorua Airport runway addressed. The Parties will together agree upon further particular subject matters to be negotiated.

Schedule for discussions

29 The Parties agree to:

29.1 Commence discussions as soon as reasonably practicable; and

29.2 Meet regularly and often until an outcome is determined.

Milestones for discussions and agreement

- 30 The Parties seek to reach an agreement by June 2009.
- 31 The Parties will develop discussion milestones as the preliminary issues are addressed.

Communication

- 32 The Parties will each ensure regular and appropriate consultation procedures throughout the discussions, taking into account the need to keep Ngati Uenukukopako and the Marae Trust fully informed, but also the need for confidentiality regarding third parties.
- 33 The Crown will advise Te Pumautanga o Te Arawa Trust of all documentation received by the Crown that affects Ngati Uenukukopako, and forward on to them documentation subject only to the need for confidentiality regarding third parties.
- 34 The Parties agree to engage with other local stakeholder groups and relevant departments during the course of discussions.

Not bound until Agreement

- 35 The Parties acknowledge that this document does not bind either Party to reach an agreement.

Claimant funding

- 36 All funding for this agreement will be agreed between the Parties on the basis of a budget provided by Te Pumautanga o Te Arawa Trust and accepted by the Crown for reasonable costs associated with the achievement of agreed objectives and milestones,
- 37 The Parties will agree upon any further funding once the preliminary issues are addressed.
- 38 The Parties will consult to ensure fairness and transparency in resolving funding issues for the remaining process.

Procedural matters

- 39 The Parties agree that:

- 39.1 Discussions will be on a “without prejudice” basis and will be conducted in good faith and in a spirit of co-operation;
- 39.2 Discussions will be conducted in private and will remain confidential unless agreed otherwise (such as when consultation with third parties is necessary) or when the Crown is required to release information under the Official Information Act 1982.
- 39.3 Both Parties reserve the right to withdraw from discussions if they become untenable. Either party may terminate this agreement by giving ten days notice to the other party;
- 39.4 Media statements concerning the discussions will only be made when mutually agreed by both Parties;
- 39.5 The location of meetings will be suitable and convenient to both Parties;
- 39.6 The use of Te Reo Māori in the discussions, where appropriate, is important. Te Pūmāutanga o Te Arawa Trust will provide the Crown with adequate notice when a translator is required in the discussions; and
- 39.7 The Crown will promptly provide the Claimants with any correspondence or documentation it receives about the discussions if that information is of a kind that would require disclosure in response to a request for it under the Official Information Act 1982.

Amendments

- 40 The Parties acknowledge that it may be necessary to amend these Terms of Agreement from time to time and agree that all amendments must be approved by both Parties and recorded in writing.
- 41 Owing to the early stage of these discussions, the Parties acknowledge that the process and outcome of the discussions may change, and these terms will be amended to reflect that.

SIGNED THIS 4th DAY OF November 2008

For and on behalf of the Crown:

A handwritten signature in black ink, appearing to read 'M. Cullen', written over a horizontal line.

Hon Dr Michael Cullen


Minister in Charge of Treaty of Waitangi Negotiations

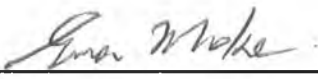
Hon Parekura Horomia

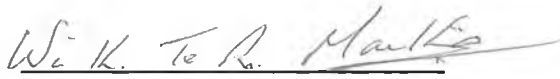
Minister of Maori Affairs

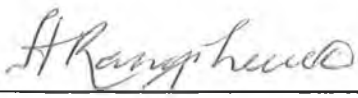
SIGNED for and on behalf of the
AFFILIATE TE ARAWA IWI/HAPU


by the Trustees of Te Pumautanga o Te Arawa Trust in the presence of:


Eru George Ngati Kea Ngati Tuara


Eva Moke
Ngati Pikiao


Wikeepa Te Rangipuawhe Maika
Tuhourangi Ngati Wahiao


Anaru Rangiheuea
Tuhourangi Ngati Wahiao

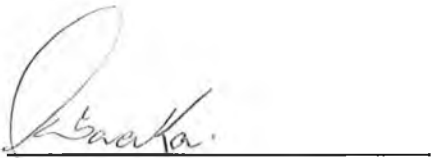

Te Poroa Joseph Malcolm
Ngati Tarawhai



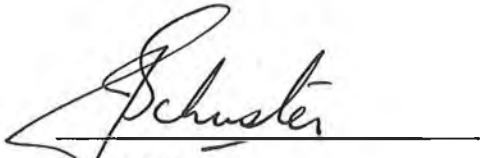
Ruka Hughes
Ngati Rongomai



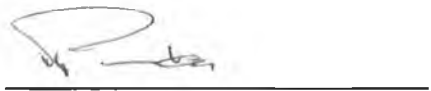
Edwin McKinnon
Ngati Pikiao



John Waaka
Tuhourangi Ngati Wahiao



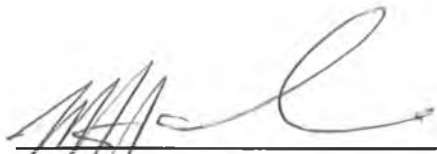
Jim Schuster
Ngati Pikiao



Mita Pirika
Ngati Tuteniu



Materoa Peni
Ngati Tura – Ngati Te Ngakau



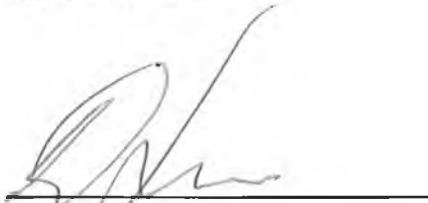
Wallace Haumaha
Ngāti Ngararanui



Fred Cookson
Ngāti Uenukukopako



Roger Pikia
Ngāti Tahu – Ngāti Whaoa



Te Po. Hawaiki Wiringi Jones
Ngāti Te Roro o Te Rangi

Through a show of hands Te Pumautanga received unanimous support to act on behalf of Ngāti Uenukukopako and Ruamata Marae in relation to the issues contained in this Terms of Agreement