



Deed of

Between the Crown and
Te Arawa for their lakes
and annuity claims

Settlement

General Background

Te Arawa is a large confederation of iwi and hapū. Their traditional area of interest ranges from Maketu to Tongariro in the south. According to the 2001 census, Te Arawa's population is approximately 40,000.

An account of the historical background agreed between the Crown and Te Arawa is included in the Deed of Settlement, along with acknowledgements of Crown breaches of the Treaty of Waitangi and a Crown Apology for those breaches.

The Te Arawa Māori Trust Board lodged the Te Arawa lakes claim (Wai 240) with the Waitangi Tribunal in April 1987. Rather than proceed with a hearing, Te Arawa entered preliminary discussions with the Crown in 1989 for the direct negotiation of their historical lakes claims. In September 1997, the Crown agreed to negotiate Te Arawa's lakes claims separately from their other historical claims. In December 1998 the Crown recognised the Te Arawa Māori Trust Board's mandate to negotiate the settlement of the Te Arawa lakes claims. Terms of Negotiation were subsequently signed in March 1999.

In May 2001, in response to a request from the Trust Board, the Crown made an offer for the settlement of the Te Arawa lakes claims. The Trust Board rejected the offer. 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 lakes, and resolution of any remaining annuity issues. In new Terms of Negotiation signed by the Crown and the Board in July 2001, the parties agreed the settlement would address both Te Arawa's historical lakes claims and any remaining annuity issues. In December 2003, the Trust Board agreed in principle to a revised Crown offer for the settlement of Te Arawa's historical grievances relating to the lakes and any remaining annuity issues. The Crown mandated representatives of Te Arawa initialled a draft Deed of Settlement on 15 October 2004. The Deed was then ratified by the members of Te Arawa through a postal ballot, and signed on 18 December 2004. The Deed is now subject only to the establishment by Te Arawa of a suitable governance entity to receive the settlement redress, and the passage of settlement legislation.

Te Arawa was represented in negotiations for their lakes claims by the Te Arawa Māori Trust Board. The Trust Board is chaired by Anaru Rangihueua, and day-to-day negotiations were managed by negotiators appointed by the Trust Board. The Office of Treaty Settlements, with the support of the Department of Conservation, Land Information New Zealand, Te Puni Kōkiri and other government agencies, represented the Crown in day-to-day negotiations. The Minister in Charge of Treaty of Waitangi Negotiations, Hon Margaret Wilson, and Minister of Māori Affairs, Hon Parekura Horomia, represented the Crown in high-level negotiations with Te Arawa.

Summary of the Historical Background to the Lakes and Annuity Claims by Te Arawa

In 1840, lakes Rotoehu, Rotomā, Rotoiti, Rotorua, Ōkātaina, Ōkareka, Rerewhakaaitu, Tarawera, Rotomahana, Tikitapu, Ngāhewa, Tutaeinanga, Ngāpouri and Ōkaro provided food, shelter, economic resources and primary transport routes for Te Arawa. By 1880 Te Arawa was playing a major role in the developing tourism industry in the area. Little land had been sold to settlers and Te Arawa continued to exercise significant control over the lakes.

Trout and other foreign fish were introduced into the lakes from the 1870s, seriously depleting the indigenous fisheries and forcing Te Arawa to rely increasingly on the introduced species. The introduction of a fishing licence regime from the late 1880s and the ongoing propagation of trout drew protests and petitions from Te Arawa in the late 19th and early 20th centuries. In 1908 the Government decided to legislate to address issues Te Arawa had raised over a number of years regarding the depletion of indigenous fish, fishing licences and the resulting hardship experienced by some Te Arawa. The resulting legislation provided Te Arawa with 20 fishing licences at a nominal fee.

In 1909, following what Te Arawa regarded as a series of challenges to their customary rights to the lakes, Te Arawa decided to seek clarity of the lakes' ownership in the courts. The Crown disputed Te Arawa's claim to ownership of the lakes.

In 1912 the Supreme Court upheld Te Arawa's rights to have their claims to lake ownership investigated by the Native Land Court and in 1913 Te Arawa filed an application with the Native Land Court for an investigation into the title of the lakes. Following lengthy delays the Court began hearing Te Arawa's application for title to Lakes Rotorua and Rotoiti in 1918. After several weeks of hearing part of Te Arawa's evidence the hearings were further adjourned. In 1920, on the eve of the case being resumed, the Crown approached Te Arawa to negotiate a settlement of their respective claims of ownership of the lakes.

In 1922 Te Arawa and the Crown reached an out of court agreement regarding the ownership litigation. Under the agreement Te Arawa admitted that the fee simple of the lakes was vested in the Crown. In return, the Crown admitted the rights of Te Arawa to their ancient fishing rights and the burial reserves in all the lakes. The Crown also agreed to provide Te Arawa with 40 licences to fish for trout at a nominal fee and an annuity of £6,000, to be paid to a Board to be established for the benefit of the Te Arawa tribe. There was no provision in the agreement for the annuity to be reviewed. The agreement also provided for a special Board to be appointed for the control of the surroundings of Lake Rotokakahi.

The agreement was enacted in part by the Native Land Amendment and Native Land Claims Adjustment Act 1922, which declared the lakes to be the property of the Crown and extinguished any customary title that Te Arawa had to the lakes. The Act also reserved all the islands in the lakes to Te Arawa, protected Te Arawa's right to take indigenous fish in the lakes for their own use and established the Arawa District Trust Board (later the Arawa Māori Trust Board).

The Trust Board gifted a proportion of its annuity to the Crown during the Depression and the Second World War. The material value of the annuity diminished over time because of inflation. The Crown raised its value in 1977, from \$12,000 to \$18,000. The Crown and, through legislation, local authorities have increasingly assumed responsibility for regulation of activities on the lakes and for discharges impacting on the lakes. Te Arawa consider that the environmental degradation of the lakes has affected the mana and wairua of the lakes.

Settlement

Summary of the Te Arawa lakes settlement

Overview

The Te Arawa Lakes Deed of Settlement is the final settlement of all Te Arawa's historical claims relating to the 14 lakes shown in the map on the facing page, resulting from acts or omissions by the Crown prior to 21 September 1992, and any remaining annuity issues from 21 September 1992. It is made up of a package that includes:

- An agreed historical account and Crown acknowledgements, which form the basis for a Crown Apology to Te Arawa;
- Cultural redress, including the transfer of 13 lakebeds with public access protected; and
- Financial and annuity redress.

No private land is involved in the redress, only Crown assets. Existing rights of public access will be preserved.

The benefits of the settlement will be available to all members of Te Arawa, wherever they live.

Crown Apology

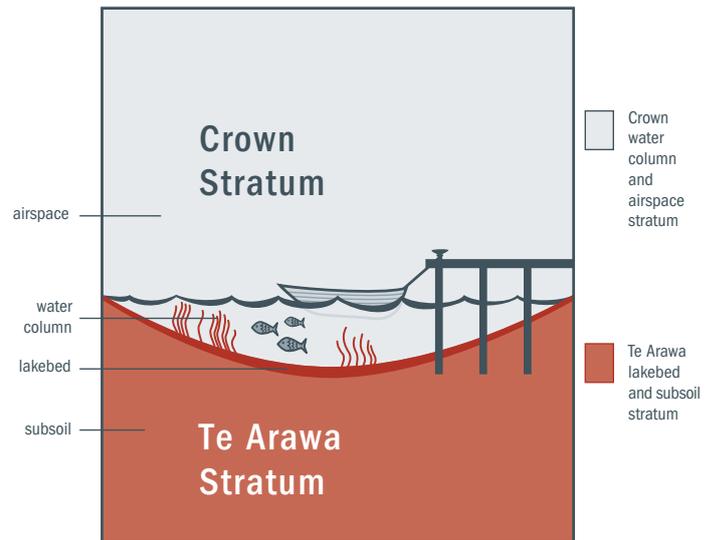
The Crown apologises to Te Arawa for past dealings that breached the Crown's obligations under the Treaty of Waitangi. These include the Crown's failure to legislate for a sufficient number of fishing licences for Te Arawa in 1908 when it promoted legislation to address the problem of hardship, and the Crown's failure to review the annuity paid to Te Arawa as part of the 1922 Te Arawa lakes agreement when it materially lost value as a result of inflation.

Cultural Redress

1. **Recognition of Te Arawa's traditional, historical, cultural and spiritual association with the lakes covered by the settlement. This includes:**

1(A) TRANSFER OF LAKEBEDS

Title to 13 lakebeds will be returned to Te Arawa. The title includes the ownership of the lakebeds (including plants attached to the lakebeds) and subsoil (referred to as the Te Arawa stratum). The title specifically excludes the water column (the space occupied by the water) and the airspace, which will remain in Crown ownership (referred to as the Crown stratum).



1(B) LAKE ŌKARO

The Crown has written to the Rotorua District Council encouraging them to come to an agreement with Te Arawa regarding the future status, management and ownership of the 14th lake, Lake Ōkaro, which is currently vested in the Council.

1(C) STATUTORY ACKNOWLEDGEMENT

This registers Te Arawa's special association with an area. Statutory Acknowledgements are recognised under the Resource Management Act and the Historic Places Act.

One Statutory Acknowledgement will cover those parts of the 13 lakes remaining in Crown ownership (i.e. the water column and airspace).

1(D) PLACENAMES

The Deed of Settlement will provide for the official amendment of various place names relating to the lakes. The spelling of some names will be changed (e.g. Awahou Point to Te Awahou Point), some sites without official names will be named (e.g. Kaikaitāhuna Bay), and some names will become dual names (e.g. Lake Rotorua/Te Rotorua nui a Kahumatamomoe).

The long form of the dual names will be acknowledged as the 'official' place names, but the short form of these place names will be accepted as remaining in common usage and can be used in publications and databases.

2. Relationships

2(A) RELATIONSHIP AGREEMENT

The Deed provides for Te Arawa and the Crown to enter into a relationship agreement that will outline the respective rights of the two stratum owners and describe how they will consider applications to erect new structures or undertake any activity that traverses both strata and requires the owners' consent by law. The Crown will be represented in this relationship by Land Information New Zealand.

2(B) STRATEGIC MANAGEMENT OF THE LAKES

The Deed will provide for the settlement legislation to deem the Rotorua Lakes Strategy Group, currently known as the Rotorua Lakes Strategy Joint Committee, to be a joint committee under the Local Government Act 2002. Legislation will provide for the Group's permanence, Te Arawa's membership as of right, and the Group's purpose, which 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.

2(C) PROTOCOLS WITH GOVERNMENT DEPARTMENTS AND THIRD PARTIES

The Deed of Settlement also provides for the establishment of protocols to enhance a good working relationship, on cultural matters of importance to Te Arawa, between Te Arawa and the Department of Conservation, the Ministry of Fisheries, the Ministry for Culture and Heritage and the Ministry for the Environment.

The Crown has written to the Bay of Plenty Conservation Board, Eastern Regional Fish and Game Council, the National Institute of Water and Atmospheric Research, and Transit New Zealand, encouraging a relationship between these agencies and Te Arawa.

3. Restoration of Te Arawa access to food sources and traditional materials, including:

3(A) INDIGENOUS PLANTS AND PARU

The Crown has written to both Environment Bay of Plenty and Environment Waikato encouraging them to allow cultural harvest of indigenous plants and parū (pigmented mud) in their regional plans.

3(B) FISHERIES

The Deed of Settlement provides for the making of regulations to allow Te Arawa to manage the non-commercial fishing of certain indigenous species in the 14 lakes.

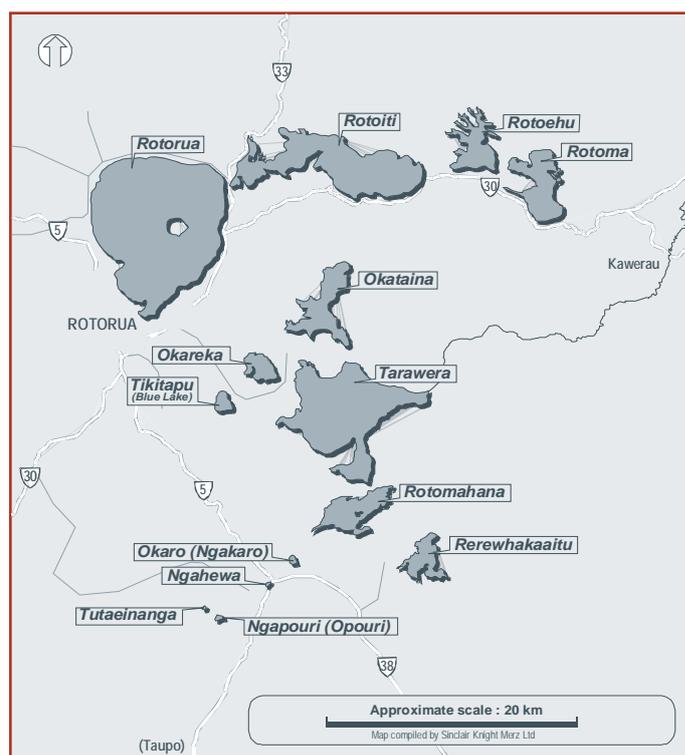
The Settlement also includes a capitalised sum of \$400,000 to provide for the purchase of 200 fishing licences per year from the Eastern Regional Fish and Game Council.

Financial redress

This redress recognises the economic loss suffered by Te Arawa arising from breaches by the Crown of its Treaty obligations in relation to the lakes. It is aimed at providing Te Arawa with resources to assist them to develop their economic and social well-being. Te Arawa will receive \$2.7 million in cash.

Annuity redress

Te Arawa will also receive \$7.3 million to capitalise the annuity Te Arawa receive from the Crown (currently \$18,000 per year), and address any remaining annuity issues.



Lakes covered by the settlement

Q&A

Questions and Answers

1. What is the total cost to the Crown?

\$10 million plus interest from the date of the signing of the Deed of Settlement, the cost of the lakebeds returned as listed at 1(A), and \$400,000 to provide for fish licences.

2. What lakes are covered by the settlement?

Lakes Rotoehu, Rotomā, Rotoiti, Rotorua, Ōkātina, Ōkareka, Rerewhakaaitu, Tarawera, Rotomahana, Tikitapu, Ngāhewa, Tutaeinanga, Ngāpouri and Ōkaro are covered by the settlement.

3. What is being transferred to Te Arawa?

Title to the lakebeds and subsoil of all these lakes except for Ōkaro is being transferred to Te Arawa.

4. Who owns the water column and airspace above the lakes?

The Crown will continue to own the water column and airspace. The water itself is not owned by either the Crown or Te Arawa, and will continue to be regulated in accordance with the Resource Management Act 1991.

5. Is there any private land involved?

No.

6. Are the public's rights to use the lakes protected?

Yes. Public access for recreational purposes (e.g. swimming, watersports, fishing, duckshooting, boating, aircraft landing), rights of navigation, existing structures (e.g. jetties, boat ramps and boat sheds) and existing types of commercial activities will be protected by the settlement legislation.

Public utility activities including network utility operation, any project or works relating to electricity generation, harbourmaster functions and structures, navigation aids and structures and activities of the National Institute of Water and Atmospheric Research, Transit New Zealand and the Department of Conservation, will also be protected.

7. What is the process for building new structures or modifying existing structures on the lakebeds after the settlement?

Individuals or businesses that wish to build new structures or modify existing structures on the lakebeds will need the consent of both Te Arawa and the Crown (through Land Information New Zealand) after settlement. Currently, only the Crown's consent as owner is required by law. All applicable resource consent requirements still apply. A relationship agreement between the Crown and Te Arawa as the two stratum owners describes how they will consider applications for consent for new structures and new commercial activities that traverse both strata. Te Arawa and Land Information New Zealand will jointly consider applications and will be able to charge a rental and issue a licence in respect of any new structure.

8. What is the Rotorua Lakes Strategy Group?

The Group is made up of two representatives from each of the following bodies: the Rotorua District Council, Environment Bay of Plenty and Te Arawa Māori Trust Board. It was established (initially as the Rotorua Lakes Strategy Joint Committee) to give effect to the vision of the Strategy for the Lakes of the Rotorua District. The Deed provides for the settlement legislation to deem the Group to be a joint committee under the Local Government Act 2002.

9. Are any place names changed?

Yes. The spelling of some names will be changed, some sites without official names will be named, and some names will become dual English and Māori names. A full list of place name changes is included in the Deed of Settlement, available on www.ots.govt.nz.

10. Does Te Arawa have the right to come back and make further claims about the behaviour of the Crown in the 19th and 20th centuries in respect of the lakes?

No. Both parties agree that the Deed of Settlement is fair in the circumstances and will be a final and comprehensive settlement of all Te Arawa's historical (relating to events before 21 September 1992) Treaty claims in relation to the lakes. It will also settle any annuity-related issues regardless of when they arose. The settlement legislation, once passed, will prevent Te Arawa from re-litigating their historical claims or any remaining annuity issues before the Waitangi Tribunal or courts.

The settlement will still allow Te Arawa or members of Te Arawa to pursue their historical non-lakes claims. These will be negotiated separately.

The settlement will also allow Te Arawa or members of Te Arawa to pursue claims against the Crown for acts or omissions after 21 September 1992 (other than annuity-related issues), including claims based on the continued existence of aboriginal title or customary rights. The Crown also retains the right to dispute such claims or the existence of such rights.

11. Will Te Arawa gain any rights to the foreshore and seabed under the settlement?

No. The settlement relates only to the lakes, and the existence of aboriginal title or customary rights is not affected by the Deed of Settlement.

12. Didn't Te Arawa already have a settlement in 1922?

No. The 1922 agreement was not a settlement of Treaty grievances relating to the lakes. It was an out of court agreement concerning ownership litigation. The Crown and Te Arawa are not revisiting the 1922 agreement, but are settling Treaty grievances from 1840 to 1992, including breaches associated with insufficient fishing licences and the Crown's failure to review the annuity when it lost value due to inflation.

13. Who benefits from the settlement?

All members of Te Arawa, wherever they may now live.

This and other settlement summaries are also available at www.ots.govt.nz